

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No. 89 of 2006

Bimada Patamajhi *Appellant*

-versus-

State of Odisha *Respondent*

Advocates appeared in the cases:

For Appellant : Mr. B.C.Parija, Advocate

For Respondent : Mr. R.Tripathy, ASC

**CORAM:
THE CHIEF JUSTICE
JUSTICE G. SATAPATHY**

**JUDGMENT
28.06.2023**

Dr. S.Muralidhar, C.J.

1. The present appeal is directed against the judgment dated 21st June, 2006 passed by the Sessions Judge, Phulbani in ST Case No. 40 of 2004 convicting the appellant for the offences punishable under section 302 of IPC and section 376 (2)(e) of IPC. The trial Court has sentenced the appellant to imprisonment for life for the offence punishable under Section 302 IPC and to R.I. for 10 years for the offence under section 376 (2) (e) of IPC and directed both the sentences to run concurrently.

2. The appellant was charged with having committed the rape and murder of the deceased Tumkuli Patamajhi who at the time of death was seven months pregnant. The motive for the crime was

that the villagers compelled the appellant to marry the deceased with whom he was having a relationship. However, he did not agree. A meeting was convened in the village just the night previous to the occurrence and it was decided that the marriage of the appellant with the deceased would be solemnized after Christmas.

3. On 23rd December, 2002, the appellant visited the house of the deceased and took her away with him. This is spoken to by PW 2 the sister of the deceased. The cross-examination of PW 2 did not yield much for the defense. Since this case is based on circumstantial evidence, the evidence of P.W. 2 establishes that the deceased was last seen with the appellant just prior to the incident. A suggestion was made by the defence to P.W. 2 about the deceased having an illicit relationship with someone else, but this was denied by P.W. 2.

4. As to what happened in the Madipeta Jungle is spoken to by P.W. 4 who states that the murder took place near a Kendu tree inside the said forest. On the date of the occurrence, PW 4 was in the said forest to search for his missing bullock. He noticed the appellant pulling a rope on a branch of Kendu tree and the other end of the rope was tied to the neck of the deceased. In effect, this witness was speaking about the appellant making it appear as if the deceased had hung herself.

5. In the cross-examination PW 4 states that he noticed the appellant lifting the dead body of the deceased with the help of the rope. However, this witness did not disclose this fact to anyone till

such time he was examined by the Police more than a week after the incident.

6. Counsel for the appellant has relied on the decision of the Supreme Court in *State of Orissa v Brahmananda Nanda AIR 1976 SC 2488* to urge that an eye witness who does not disclose the name of the assailant for a day and half after the incident cannot be reliable.

7. In the present case PW 4 is not projected as an eye witness, but at best a post-occurrence witness. Considering that P.W.4 was naturally scared on seeing the way the appellant was dealing with the dead body, it is not unusual for him not to immediately go to the Police with that information. Therefore, the Court is not prepared to discard the evidence of P.W. 4 altogether. Moreover, the said evidence has to be seen in the context of the other circumstances put forth by the prosecution to prove the guilt of the appellant.

8. The prosecution has relied on the evidence of Dr. Trinath Panda (P.W.6) who conducted the post mortem of the deceased. Apart from noticing external injuries and abrasions, he in particular noted that the absence of dribbling or saliva which raised a suspicion that this was a case of perimortem hanging i.e. hanging the dead body after the death. Further, he categorically stated that he found signs of forcible sexual intercourse prior to the death. In cross-examination, he was categorical that there was no fracture of hyoid bone. After perusing the chemical examination report, he was able to opine that “the death of the deceased was homicidal with perimortem hanging.” In his cross-examination by the defence

counsel he was categorically that it was not a case of suicidal hanging.

9. The appellant having being last seen with the deceased, the burden was on him to explain this incriminating circumstance, but he was unable to do so. Apart from suggesting that the deceased had an illicit relationship with someone else the appellant was unable to satisfactorily explain any of the circumstances against him.

10. In a case of circumstantial evidence, the prosecution has to demonstrate that each of the links of the chain of circumstances has been satisfactorily proved and that the said links form a continuous chain which points to the guilt of the appellant.

11. Having examined the entire evidence, with the assistance of counsel for the parties, the Court is satisfied that the prosecution has discharged the burden of satisfactorily proving each of the links in the chain of circumstances noted hereinbefore.

12. Counsel for the appellant sought to place reliance in the judgment of *Nagendra Sah v. State of Bihar (2021) 10 SCC 725* to urge that conviction could not be based only on the postmortem report.

13. In the present case, the trial Court has not arrived at the conclusion of the guilt of the appellant only based on the post mortem report, but on an overall conspectus of the evidence led by the prosecution including the evidence of PWs. 2 and 4.

14. This Court is of the view that no grounds have been made out to interfere with the impugned judgment of the trial Court. The

appeal is accordingly dismissed. A copy of the judgment be delivered to the Superintendent of the Jail concerned for being further transmitted to the appellant and if necessary to explain it to him in a language understood by him.

(Dr. S. Muralidhar)
Chief Justice

(G. Satapathy)
Judge

Kishore

