



IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.37 of 2008

In the matter of an Appeal under section 383 of the Code of Criminal Procedure, 1973 and from the judgment of conviction and order of sentence dated 5th January, 2008 passed by the learned Sessions Judge, Phulbani in Sessions Trial No.44 of 2004.

Gariba Naik

.... *Appellant*

-versus-

State of Odisha

.... *Respondent*

Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):

For Appellant - Mr. D.K. Mishra,
Mr. G.K. Nayak

For Respondent - Mr.P.K, Maharaj,
Addl. Standing Counsel

CORAM:
MR. JUSTICE D.DASH
MR. JUSTICE V. NARASINGH

Date of Hearing : 03.10.2024 : Date of Judgment:09.10.2024

D.Dash,J. The Appellant from inside the jail, has assailed the judgment of conviction and order of sentence dated 05.01.2008 passed by the learned Sessions Judge, Phulbani in Sessions



Trial No.44 of 2004 arising out of G.R. Case No.462 of 2001 corresponding to Daringbadi P.S. Case No.133 of 2001 of the Court of the learned Judicial Magistrate First Class (J.M.F.C.), Daringbadi.

The Appellant (accused) thereunder has been convicted for committing the offence under section 302 of the Indian Penal Code, 1860 (for short, 'the IPC'). Accordingly he has been sentenced to undergo imprisonment for life for the offence under section 302 of the I.P.C.

2. Prosecution case:-

On 07.10.2001, it was around 2.30 p.m. one Dillip Naik (P.W.1), who happens to be the brother of deceased-Anusuya, wife of the present accused lodged a written report with the Officer-In-Charge (OIC), Daringbadi Police Station (P.W.10) that his sister Anusuya had married the accused in the month of Falguna-1999. It is further stated that after the marriage torture being meted out at Anusuya when it became unbearable, Anusuya had been brought to her father's house at village Sarniketa. The accused later on came and stayed with Anusuya in that village taking a house on rent. On 11.09.2001, the accused and his wife Anusuya left the village for attending the Shradha ceremony of the father of the accused. On 30.09.2001 the mother and aunt of the accused



came to village Sarniketa and told Dillip (P.W.1) that they would take back the accused and his wife to their house. Thereafter two letters were received from the accused, one on 02.01.2001 and the other on 05.10.2001 which gave raise to some suspicion of the mind of the Informant (P.W.1) and other relations. They then searched for Anusuya. Finally wearing apparels of Anusuya as also that of the accused were found lying at a place inside the Kadiki hill where some skeletal remains emitting foul smell were also detected. The written report being received by the OIC (P.W.10), he treated the same as F.I.R. and registering the case took up investigation.

In course of investigation, he examined the Informant (P.W.1), seized those two letters produced by the Informant (P.W.1) vide seizure list (Ext.2). He visited the spot as shown by the Informant (P.W.1) and prepared the spot map (Ext.9). Some bone pieces, bunch of human hair, wearing apparels, such as, saree, blouse, pant, shirt and one tooth brush were found lying at the spot and those were also seized under seizure list (Ext.5). The I.O. (P.W.10) examined the other witnesses and it is stated that the accused being arrested while in police custody disclosed to have concealed a knife in a hole near the hill. The statement of the accused being recorded under Ext.7, he led the police and other witnesses to the place in giving recovery of the knife which was seized under seizure



list (Ext.6). The accused was then forwarded in custody to court on 11.10.2001. The seized incriminating articles were sent for Chemical Examination through Court. On completion of Investigation, the Final Form was submitted on 06.02.2002 placing this accused to face the trial for commission of offence under section 302/201 of the IPC.

3. Learned J.M.F.C., Daringbadi, having received the Final Form as above took cognizance of the said offences and after observing the formalities committed the case to the Court of Sessions for trial. That is how the trial commenced by framing the charges for the said offences against this accused.

4. The prosecution, in course of trial, has examined in total sixteen (10) witnesses. As already stated, the Informant who is the brother of the deceased-Anusuya and had lodged the F.I.R. (Ext1) is P.W.1 and P.W.8 is the brother of P.W.1. The scribe of the F.I.R. has been examined as P.W.4. P.W.No.3, P.W.6 and P.W.7 are the villagers of Sarniketa whereas P.W.2 is the witness to the recovery of the knife and P.W.5 is the witness to the seizure of the letters produced by P.W.1. The Associate Professor of F.M.T. Department, M.K.C.G. Medical College and Hospital, Berhampur who had the occasion to examine the bones seized in connection with the case has



come to the witness box as P.W.9 whereas P.W.10 is the Investigating Officer.

5. The prosecution besides leading the evidence by examining the witnesses as above named has also proved several documents which have been admitted in evidence and marked Ext.1 to Ext.11. Out of those the important are the F.I.R. (Ext.1), the letters (Exts.3 and 4), the spot map Ext.9 and the Chemical Examiner's Report (Ext.11) as also the statement of the accused (Ext.7) and the corresponding seizure list (Ext.6).

6. The plea of defence is that of complete denial. However, no such evidence has been let in by the accused being called upon to do so.

7. The Trial Court, upon examination of the evidence and their evaluation has found the prosecution to have established the charge under section 302 of the IPC against the accused beyond reasonable doubt. However, the charge under section 201 of the IPC is found to have not been established. Therefore, the Trial Court while convicting the accused for commission of offence under section 302 of the IPC has sentenced him to undergo imprisonment for life.



8. Learned counsel for the Appellant (accused) submitted that the prosecution case is based on circumstantial evidence and according to him, the only important circumstance is that the accused being the husband of the deceased was seen leaving the house that they had taken on rent at village Sarniketa on 11.09.2001 and thereafter, deceased Anusuya was no more found or traced out and the F.I.R. to that effect had lodged on 07.10.2001 after the wearing apparels of Anusuya and wearing apparels of the accused with some skeletal remains were found at a distance place. According to him, these circumstances even if are believed, save and except saying that the accused did not disclose regarding the whereabouts of his wife, all other hypothesis other than the guilt of the accused are not ruled out, nothing more as regards the complicity of this accused surfaces. He thus submitted that when the letters (Exts.3 and 4) have not been proved for being accepted to have been written by the accused, the conviction of this accused for commission of murder of his wife-Anusuya cannot be sustained by merely finding that few wearing apparels of the accused was found lying with the wearing apparels of the deceased with some skeletal remains lying nearby. He further submitted that when the Trial Court has found the evidence let in by the prosecution to be wholly insufficient to establish the charge under section 201 of the



IPC, that accused again could not have been found guilty for commission of offence under section 302 of the IPC in intentionally causing the death of his wife by banking upon his silence in not informing the whereabouts of his wife and as to her parting his company. He, therefore, submitted that the judgment of conviction and order of sentence impugned in this Appeal cannot be sustained.

9. Learned Additional Standing Counsel while supporting the finding of guilt against the accused as has been returned by the Trial Court contended that it having been proved by the prosecution that the accused and the deceased had left their house where they were staying at village Sarniketa on 09.02.2001 and thereafter the accused when is not providing any explanation as to what happened to his wife and how she parted with his company, the conviction of the accused is not liable to be interfered with.

10. Keeping in view the submissions made, we have carefully read the impugned judgment of conviction. We have also extensively travelled through the depositions of the witnesses (P.W.1 to P.W.10) examined from the side of the prosecution and have perused the documents admitted in evidence and marked Ext.1 to Ext.P-11 from the side of the prosecution.



11. It has been stated by P.W.1 the Informant, who happens to be the brother of the deceased that on 11.09.2001 the accused and the deceased left the village to attend the Shradha ceremony of the father of the accused. Although, it is stated that on the way there was quarrel between them and Anusuya did not agree to go, since he has not stated that he had accompanied them and when no such evidence is forthcoming from any other witness who had seen the quarrel, the evidence of P.W.1 as to the quarrel is of no consequence. It is his evidence that 15 to 20 days thereafter the brother of the accused and his father's sister came to their village and wanted to take back the accused and the deceased when he told that they had gone to their village on 11.09.2009, it is his evidence that some days thereafter the accused wrote two letters to two brothers of deceased, namely, Ranjan (not examined) and Akshya (P.W.8) requesting them to leave the deceased in his house and therefore, suspicion arose that the accused might have killed Anusuya where after search being made skeletal remains and few wearing apparels were found lying on a place near Kadiki hill. As regards these two letters, it be stated that the accused had denied to have written the same. Some witnesses when claim that the letters were written by the accused, they have not clarified as to how they had the opportunity to come across the writings of the accused who



earns his livelihood as a daily labour so as to assert that the letters were the handwritings of the accused. The Trial Court has rightly found the letters (Ext.3 and 4) to be unsafe to be relied upon as an incriminating circumstance against the accused.

No such other evidence as to the conduct of this accused right from 11.09.2001 till he was arrested is stated by any of the witnesses. It is not even stated by the I.O. (P.W.10) that wherefrom the accused was arrested and what he was then doing. The I.O. (P.W.10) when states that the accused being in police custody, pursuant to his statement, had led him and others to a place where he had kept the knife and had given recovery of the same; his evidence is silent as to where such statement were given by the accused and wherefrom they started the journey and how they went to the place. The accused then was arrested on 10.10.2001 and was forwarded in custody to Court on 11.10.2001. It is not even stated by P.W.10 as to at what time the accused gave the statement.

When it is the prosecution case that the accused and the deceased were staying for some time in village Sarniketa by taking a house on rent and they had left the house on 11.09.2001, the I.O. (P.W.10) although is silent as regards his visiting that house and finding the same to have been locked



from outside. When P.W.3 states that after leaving the village, the accused and the deceased did not return, he simply raises suspicion against the accused as to have killed his wife. It being the evidence of P.W.1 that the deceased was being tortured by the accused, P.W.6 is stating that the accused was staying in the house as he was suffering from Tuberculosis and he used to suspect the character of the deceased. P.W.3 although has stated that the accused and the deceased before leaving the house had been to the house of P.W.1, that is however not the version of P.W.1. P.W.6 having stated that the accused had locked the house while leaving, it is not stated by the I.O. (P.W.10) to have seen the house being locked nor it is the version of P.W.1. The prosecution has also not let in evidence in specifically establishing that the apparels worn by the accused while leaving the village were the apparels found lying and later on seized near Kadiki hill.

12. In such state of affair in evidence as discussed, we are of the considered view that the chain of events is not getting complete as there remains missing links for which there cannot be the irresistible conclusion that it is the accused who had caused the death of the deceased and none else by giving all such explanations. The foundational facts having not been proved beyond reasonable doubt, the prosecution in the facts and circumstances cannot be said to have discharged the



burden of proof shifting the same upon the shoulder of the accused to be duly elbowed.

In that view of the matter, we are of the considered view that the judgment of conviction and order of sentence impugned in this Appeal cannot be sustained and as such are liable to be set aside.

13. In the result, the Appeal stands allowed. The judgment of conviction and order of sentence dated 5th January, 2008 passed by the learned Sessions Judge, Phulbani in Sessions Trial No.44 of 2004 are hereby set aside.

The Appellant (accused), namely, Gariba Naik be set at liberty forthwith, if his detention is not required in connection with any other case.

(D. Dash)
Judge

I agree.

(V. Narasingh)
Judge