



IN THE HIGH COURT OF ORISSA AT CUTTACK
JCRLA No.56 of 2021

In the matter of an Appeal under section 374 (2) of the Code of Criminal Procedure, 1973 and from the judgment of conviction and order of sentence dated 4th October, 2021 passed by the learned Additional Sessions Judge, Talcher in C.T(S) No. 72 of 2019.

Ratha Munda

.... Appellant

-versus-

State of Odisha

.... Respondent

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

For Appellant-

Mr. Abhinandan Pradhan,
Advocate as Amicus Curiae

For Respondent-

Mr. S. K. Nayak,
Additional Government Advocate

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE V. NARASINGH

Date of Hearing : 26.09.2024::Date of Judgment: 01.10.2024

The Appellant, by filing this Appeal, has assailed the judgment of conviction and the order of sentence 4th October,



2021, passed by the learned Additional Sessions Judge, Talcher in C.T(S) No. 72 of 2019, arising out of Pallahara P.S. Case No.67 of 2019, corresponding to G.R. Case No.116 of 2019, of the Court of learned Sub-Divisional Judicial Magistrate (SDJM), Pallahara.

The Appellant (accused) thereunder has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (in short, 'the IPC'). Accordingly, he has been sentenced to undergo imprisonment for life and pay fine of Rs.10,000/- in default to undergo Rigorous Imprisonment for six months for the offence under section 302 of the IPC.

2. Prosecution Case:-

On 11.06.2019, around 10.30 p.m., one Bhagya Naik (Informant-P.W.16) lodged a written report being scribed by Senior Sundhi (P.W.4) with the Sub-Inspector (SI) of Police attached to Pallahara Police Station in the absence of Inspector-In-Charge (I.I.C) was functioning as such stating therein that his son, namely Prasanna along with Ratha Munda (accused) had gone to take bath and his son had not returned. Bhagya (Informant-P.W.16) searched for him and finally got information that a dead body was lying on the Illisuan village road. Bhagya Naik (Informant-P.W.16) rushed



to the spot and saw that the dead body was that of his son Prasanna. It was stated that someone had murdered Prasanna by cutting his neck.

3. Receiving the above written report from the Informant (P.W.16), The S.I (P.W.15)-IIC/I/C treated the same as FIR (Ext.6) and upon registration of the case, took up the investigation.

4. In course of investigation, he (P.W.15) examined the Informant (P.W.16) and other available witnesses. The dead body was guarded as per his direction. On the next day morning around 7.30 a.m., the I.O (P.W.15) again went to the spot, prepared the spot map (Ext.13). He (P.W.15) had requisitioned the service of the members of the scientific team, who then arrived with the Dog Squad. The I.O (15) held inquest over the dead body of Prassana Naik (deceased) and prepared the report to that effect in presence of the witnesses (Ext.7). The dead body was sent for Post Mortem Examination issuing necessary requisition. The I.O (P.W.15) seized some articles which according to him were incriminating under seizure list. On 13.06.2019, the accused was arrested. It is stated that pursuant to his statement while in police custody, the accused led them to near bushy area in the field in village Illisuan-Radha Sahi and gave recovery of an axe, stained with



blood, which was seized under the seizure list (Ext.10). The statement of the accused had been recovered at the initial stage under Ext.9. The accused was then sent for medical examination and his clippings and blood samples were collected which were also seized along with his wearing apparels. The statement of witnesses, namely, Tutu Munda (P.W.8) was recorded under section 164 of the Cr.P.C. on a move when made by the I.O (P.W.15). The seized incriminating articles were sent for chemical examination and finally, on completion of investigation, the I.O (P.W.15), submitted the Final Form placing the accused to face the Trial for commission of the offence under section 302 of the IPC.

5. Learned SDJM, Pallahara, receiving the Final Form as above, took cognizance of the said offence and after observing the formalities committed the case to the Court of Sessions and that is how the trial commenced.

6. In the Trial, the prosecution in total has examined sixteen (16) witnesses. Out of them, the Doctor, who had conducted autopsy over the dead body of the deceased is P.W.1 and the star witness for the prosecution, who was projected as the eye witness i.e. Tutu Munda has come to the witness box as P.W.8. As already stated P.W.16 is the father of the deceased and is the Informant in the case, who has lodged



the FIR (Ext.6), which has been scribed by P.W.4. P.W.5 and P.W.6 are the two witnesses who although had stated during investigation to have seen the accused, Tutu Munda (P.W.8) and Prasanna (deceased) sitting on the Sahi Square when accused was holding an axe, have however resiled from their previous version. P.W.9 is the witnesses to the seizure of the axe whereas P.W.12 is a witness to the inquest. P.W.13 though had stated during investigation to have seen accused and Prasanna going on the village road when accused was holding an axe, has resiled from the said version. The Investigating Officer has been examined as P.W.15.

7. Besides leading the evidence by examining the above witnesses, the prosecution has also proved several documents which have been admitted in evidence and marked Ext.1 to Ext.21. Out of those, the important are the FIR, Ext.6, Inquest Report, Ext.7. The statement of the accused in leading the police and giving recovery of the axe has been admitted in evidence and marked Ext.9 and the relevant seizure list is Ext.10. The Post Mortem Report proved by the Doctor conducting Post Mortem Examination is Ext.1 and the opinion of P.W.1 as regards possibility of causing said injury by the seized axe produced before him has been admitted in



evidence and marked Ext.2. The report of the chemical examiner has been proved as Ext.21

8. The plea of the accused is that of denial and false implication. However, despite opportunity, the accused has not led any evidence in support of his defence.

9. The Trial Court relying upon the version of P.W.18 stating that the same receive corroboration from other evidence has held that prosecution to have established the charge against the accused in intentionally causing the death of Prasanna (deceased) beyond reasonable doubt.

10. Learned counsel for the Appellant (accused) submitted that the Trial Court under no circumstance should have accepted the version of P.W.8 as reliable and safe to base the conviction upon the accused for committing the murder of Prasanna. He further submitted that the Trial Court has lost sight of the very conduct of the P.W.8 after the said incident which very much shakes his credibility. He submitted that when in the FIR, it had been simply stated that the accused and the deceased had gone together, no suspicion even had been raised against the accused and it was stated that someone had committed the murder of Prasanna. He further submitted that the FIR being scribed by P.W.4, when it has



been stated by P.W.8 that he disclosed about the involvement of the accused after 10/15 days when he met police, P.W.4 states to have heard from the villager that the deceased, accused and Tutu (P.W.8) were together sitting when accused was holding then an axe. He, therefore, submitted when the conduct of P.W.4 is also suspicious and so also that of P.W.16, who does not state to have asked P.W.8 (Tutu Munda) as regards the happening after the period when they were with the deceased, the evidence of P.W.8 ought to have been held as unreliable. He thus submitted that with such available evidence on record when the recovery of the axe at the instance of the accused pursuant to his statement has not been duly proved, the Trial Court ought not to have convicted the accused.

11. Learned Additional Government Advocate for the Respondent-State while supporting the finding of guilt against the accused as has been rendered by the Trial Court contended that upon detail examination of evidence of P.W.8, 4 and 15, the Trial Court has rightly held the prosecution to have established that it was the accused who having assaulted the deceased by means of axe had caused his death.

12. Keeping in view the submissions made, we have carefully read the judgment of conviction impugned in this



Appeal. We have also gone through the depositions of all the witnesses. We have also perused the documents which have been admitted in evidence and marked Ext.1 to Ext.21.

13. The death of the deceased as stated by P.W.1, the Doctor, who had conducted autopsy over the dead body of the deceased was homicidal in nature. It is his evidence that he had noticed several cut injuries on the vital part of the body and so also abrasions all over the body. As per his evidence, the death was due to shock, haemorrhage and cardio respiratory arrest. It is also his evidence that the cut injuries on the throat were sufficient enough to cause the death and those were possible by the seized axe which he had examined. We find that the defence has not seriously challenged the evidence of P.W.1 as regards the nature of death to have resulted from the injuries caused on the throat and other parts of the body. The inquest report prepared by P.W.15 also provides support that all said injuries were found with the dead body which was lying at the spot. The evidence of other witnesses including P.W.4 is also to that effect but they had seen the deceased lying dead with such injuries on his person.

In view of the above overwhelming evidence remaining unimpeached, we are left with no option but to hold that the nature of death of Prasanna was homicidal.



14. Now, proceeding to examine the sustainability of the finding of the Trial Court as regards the complicity of the accused by addressing the rival submission, it be first stated that the most important witness for the prosecution in that regard is P.W.8. First it be noted that in the FIR, lodged by the father of the deceased (P.W.16) scribed by P.W.4, it is not mentioned anywhere that Tutu Munda (P.W.8) at any time was with the accused and the deceased. In the FIR (Ext.6), it is stated that the accused and the deceased had gone to take bath and thereafter, the deceased did not return. But nowhere, it is mentioned in Ext.6 that there was if any attempt to search for the accused so as to ascertain the whereabouts of the deceased, who according to the prosecution did not return home after leaving for taking bath with the accused. P.W.4, the scribe of the FIR although has stated that he was told that accused, deceased and said P.W.8 were sitting together when accused was holding an axe, he does not state as to from whom, he heard about the same. It is his further version that P.W.16 told him to write the FIR which he accordingly wrote. Thus, by the time of lodging of the FIR, which he scribed although it was within his knowledge that P.W.8 would also with the accused and the deceased, he has not so indicated by telling it to P.W.16. He is also silent to have told P.W.16 to make any attempt to contact P.W.8 in ascertaining as to what



happened to the deceased either during the time when they were sitting together or thereafter nor he (P.W.4) himself did so. P.W.5 and 6 although had stated during investigation to have seen the accused, deceased and P.W.8 sitting together and then the accused was holding an axe, they have resiled from the said version in saying that they had never stated so in course of their examination by the I.O (P.W.15). Although prosecution has cross-examined these two witnesses, we find that from them nothing important has been elicited in coming to the aid of the prosecution case that the deceased was seen with the accused and P.W.8. The prosecution having cross-examined these two witnesses has simply remained satisfied by drawing their attention to the previous statement during investigation which they had denied.

P.W.8 during trial has stated that on the date of incident around 7 p.m., he, accused and the deceased were sitting on the bridge and after sometime, he came from that place and the deceased and the accused were following him. It is also stated by him that at that time, accused was carrying an axe. He has further stated that when accused and the deceased reached near the house of Jogeswar, accused inflicted an axe blow on Prasanna and when he turned around, he saw the accused to have inflicted knife blow upon the deceased. Thus



this P.W.8 in this way is directly implicating the accused to be the author of the fatal injury upon the deceased in further stating that the accused inflicted those more blows upon the deceased in his presence. He was next stated that the accused throwing the axe went to the house of one Turam Sirka. This Turam Sirka has been examined as P.W.14 and he has expressed his ignorance as regards the incident nor has stated the accused to have even gone to his house or seen him passing by the side of his house. P.W.8 during cross-examination has stated that on the date of incident, he had not gone to the police station and he met the police 10/15 days after the incident and narrated everything before him. He next states that the police interacted with him after arresting the accused after 10-15 days of the incident. His explanation in remaining silent without disclosing the incident to anybody including his family members is that he was terrified and therefore, maintained silence. He has also stated that he did not narrate the incident before villager out of fear. When as per the evidence of P.W.8, the accused was not there in the village after the incident, the explanation given by him in not stating anything about the incident either to the villagers or to the family members and also the father of the deceased being terrified is unacceptable. When the fact remains that in the very night, police had been to the village and also in the next



morning, this witness states to have never gone to the spot after seeing the incident.

The father of the deceased (P.W.16), who had lodged the FIR being scribed by P.W.4 in his evidence have never raised any suspicion as regards the complicity of the accused. Although P.W.4 states that he had heard about the presence of the accused with the deceased, the same is not stated by P.W.15. The reason given by the Trial Court to accept the version of P.W.8 that as the accused has not stated that he was in inimical term with the accused, that version of P.W.8 as to the disclosure about the involvement at a highly belated stage of the accused has no adverse impact on his evidence does not appeal to us. Furthermore, we find from the evidence of P.W.15 (I.O) that the evidence as to the recovery of the axe at the instance of the accused pursuant to his statement do not successfully pass through the required tests. It being the evidence of P.W.8 that the accused after inflicting the blows upon the deceased had thrown the axe at the spot, such evidence wholly belies the version of P.W.15 that the accused led them near a bushy area in the field and brought out the axe. Moreover, it is not stated by P.W.15 that where the accused gave the statement and wherefrom the journey started and when the accused led them to the place to give



recovery of the axe. There is also no independent corroboration to the evidence of P.W.15 that the accused had led P.W.15 and others to the place in giving recovery of axe. The evidence of P.W.12 is simply to the effect that the accused gave his statement in presence to have kept the weapon of offence inside the bush and then he showed the axe to them. He is silent as to where such statement was given by the accused and wherefrom they started the journey to the particular place. When P.W.8 states that accused was arrested 10/15 days after the incident, this P.W.12 does not state that as to wherefrom the accused was arrested.

15. In view of the aforesaid discussion, we are of the considered view that with the available evidence on record, the Trial Court ought not to have held that the prosecution has established the charge against the accused beyond reasonable doubt.

In that view of the matter, the finding of guilt returned by the Trial Court in holding the accused guilty of committing the murder of Prasanna and as such liable under section 302 of the IPC cannot be sustained.

Therefore, we hold that the impugned judgment of conviction and order of sentence are liable to be set aside.



16. In the result, the Appeal stands allowed. The judgment of conviction and order of sentence dated 4th October, 2021 passed by the learned Additional Sessions Judge, Talcher in C.T(S) No. 72 of 2019 are hereby set aside.

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

(V. Narasingh)
Judge

(D. Dash)
Judge

Gitanjali