

HIGH COURT OF ORISSA: CUTTACK.

CRA No.216 of 1998

From the judgment of conviction and order of sentence dated 18th August, 1998 passed by Sri A.K. Parichha, learned District and Sessions Judge, Ganjam-Gajapati, Berhampur in S.C. No.336 of 1997.

Ramachandra Sahu Appellant.

- Versus-

State of Orissa Respondent.

For Appellant : Mr. B.K. Ragada, L.N. Patel,
H.K. Muduli and M Sahoo.

For Respondent : Mr. A.K. Nanda,
Additional Government Advocate.

C O R A M:

SHRI JUSTICE S. K. MISHRA
AND
SHRI JUSTICE PRAMATH PATNAIK

Date of Hearing- 09.11.2020 & 11.06.2021
and
Date of Judgment- 11.06.2021

S. K. MISHRA, J. In this appeal, the sole appellant-Ramachandra Sahu assails his conviction under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as “the Penal Code” for brevity) and sentence to undergo

imprisonment for life recorded by the learned District and Sessions Judge, Ganjam-Gajapati, Berhampur in S.C. No.336 of 1997 vide judgment and order dated 18th August, 1998.

02. The prosecution case in short is that in the early morning on 30.06.1997 three sisters viz., Laxmi, Hema and Srimati (deceased) started from their house at village Dankalpadu to collect 'Kia' flowers. After moving together for some distance, Laxmi left in one direction towards 'Kaburigudi' whereas Hema and Srimati went together in another direction towards 'Jambari'. While both sisters were walking on the lane, flanked on either side by 'Kia' bushes, Hema, who was walking ahead, heard the cry of agony raised by Srimati. She turned around to find the accused dealing sword blows on the neck of the deceased. Seeing such brutal attack, Hema fainted and collapsed. P.W.4 (B. Lachhmeya), who was passing nearby saw the dead body of Srimati lying on the lane and informed the family members of the deceased. Laxmi and Sashi, the sister and sister-in-law of the deceased, rushed to the spot and found the dead body of Srimati lying there. They also saw the accused and his companions running away through the lands. The other villagers came there and saw the dead body of the deceased. P.W.1 (Ullas Krishna Reddy), another villager informed the police over phone and police staff arrived. On their arrival, Laxmi submitted the report before the police officer orally and the police officer reduced it into

writing. This report was treated as F.I.R. and investigation was taken up. During investigation, the Investigating Officer recorded the statement of the eye witnesses and other witnesses, seized the blood stained earth, sample earth, incriminating articles from the spot, prepared spot map, held inquest over the dead body, took photographs of the dead body, spot and place of recovery of the weapon of offence through the photographers, sent the dead body for post-mortem examination, utilized the police dog, arrested the accused and basing on the information given by the accused, seized the weapon of offence from the place of concealment, sent the seized articles for chemical examination, got the weapon examined by the doctor and then on completion of investigation, submitted charge-sheet.

03. The plea of the defence is one of complete denial and false implication.

04. The prosecution in order to prove its case examined 15 witnesses of whom P.W.8 (Laxmi Sahu) is the informant, P.W.9 (Hema Sahu) is the eye witness, P.W.13 (Smt. Sashi Sahu) is the sister-in-law of the deceased, P.Ws.4 (B. Lachhmeya) and 5 (B. Madhab Reddy) are villagers who saw the dead body of the deceased lying at the spot, P.W.1 (Ullas Krishna Reddy) is the villager who saw the dead body and informed the police, P.Ws.2(Mangulu Raulo) and 3 (Bulu Jena) are photographers who took photographs of the dead body and the surrounding and the place of

concealment of the weapon on the direction of the Investigating Officer, P.Ws.6 (Naryan Sabat) and 12 (B. Jagadish Reddy) are witnesses to the recovery of the weapon, P.W.7 (Dr. H.K. Sahu) is the doctor who conducted post-mortem examination over the dead body of the deceased. P.W.14 (Prakash Maharana) is the Blacksmith, who manufactured the sword, P.W.11 (A. Parichha) is the A.S.I. of Police who wrote the inquest report, P.W.10 (Satyanaryan Misra) is the S.I. of Police, Dog Squad who brought the police dog for detection of the culprit and P.W.15 (Rajendra Prasad Behera) is the Inspector of Police, who investigated the case and submitted charge-sheet. Apart from oral evidence, the prosecution also relied upon the documents marked as Exts.1 to 14 as well as the material objects marked as M.Os.I to VI.

The defence neither examined any witness nor produced any document.

05. On an appraisal of evidence on record, the trial court held the evidence of P.Ws.8, 9 and 13 is acceptable and also found the evidence of P.W.9 corroborated by the testimony of the official witness P.W.10; medical evidence of P.W.7; and the discovery of weapon of offence (M.O.I) basing upon the information given by the appellant from the spot. Accordingly, prosecution was held to have established the charge against the appellant and the impugned judgment of conviction was passed.

06. Learned counsel for the Appellants contended that the learned trial court without considering the evidence of the sole eye witnesses P.W.9 with regard to her presence at the spot of occurrence, credibility of her evidence and by overlooking material evidence, mechanically passed the impugned judgment of conviction and order of sentence. It was further contended that leading to discovery under Section 27 of the Indian Evidence Act, 1872 is wholly misconceived, as the witnesses to the same P.Ws.6, 12 and 14 have turned hostile to the prosecution. Therefore, the learned counsel for the Appellant submitted that the impugned judgment may be set aside and the Appellant may be acquitted of the charge in which he has been convicted.

07. Learned counsel for the State supported and defended the impugned judgment. It was strenuously argued that evidence of P.W.9 is free from any inconsistency and infirmity. There being adequate corroboration to the evidence of P.W.9, there is no scope to interfere with the impugned judgment of conviction.

08. Learned counsel for the Appellant submitted that the appellant does not dispute the homicidal nature of death of the deceased. However, it is apposite to look into the evidence of the doctor P.W.7 who has stated that he conducted post-mortem examination on the dead body of the deceased and found the following injuries:

“External injuries:-

- (i) Incised wound present horizontally above the Thyroid cartilage and the head was almost remotely attached to the trunk by means of tag of skin of length 9 cm. in left side of the neck. The soft tissue, muscles, vessels, larynx, pharynx have been cut with regular margin. The head had been separated at the level of 4 cervical vertebra. The inter vertebral disc had been cut thoroughly and the spinal cord had been severed completely. Three notches were present in sinital matter indicating three notches had inflicted to produce the said injury.
- (ii) Incised wound of size 7 cm. x 5 cm. x bone deep present in slight oblique manner in outer aspect of right elbow joint.
- (iii) Obliquely placed incised wound 10 cm. x 4 cm. x bone deep with beveled margine directed above downwards present in back aspect of right forearm 4 cm. below injury no.3.

- (iv) Incised wound 3 cm. x 1 cm. x bone deep present in outer aspect of right forearm 4 cm. above right wrist joint.
- (v) Incised wound 3 cm. x 1 cm. x muscle deep present slight obliquely in front aspect of left shoulder 9 cm. below the tip of shoulder joint.

Internal Injuries.

- (i) The muscles, vessels, soft tissues, skin including spinal cord had been cut thoroughly under external injury no.1 and the inter vertebral disc between 4th and 5th cervical vertebra had been cut completely.
- (ii) The lower end of left humerus had been cut partially under external injury No.2.
- (iii) The right radius and ulna had been cut thoroughly under external injury No.3 and 4 respectively.”

He opined that all the injuries were ante mortem in nature and could have been caused by sharp cutting weapon; the injuries were homicidal in nature and sufficient to cause death in ordinary course of life; death was due to coma, as a result of the injuries mentioned above; external injury nos.2, 3

and 4 and corresponding internal injuries were defence injuries; and the time since death was about 12 to 24 hours at the time of post mortem examination. Therefore, it is clear that the death of the deceased was homicidal in nature.

09. The prosecution case is based entirely on the evidence of P.Ws.8, 9 and 13 who are the family members of the deceased. P.W.8 has stated that since last 10 years trouble was going on between their family and the family of the accused for the ancestral property and due to that enmity the accused and his brothers made several attempts on the life of her brother Apana Sahu, but luckily he escaped. The accused and Suri Sahu also waited for them armed with sword and kati while herself and her sister Srimati were coming from their land, but due to presence of people they could not do anything. Three days thereafter, on early morning, herself, Hema and Srimati started for collecting Kia flowers. She went to Kaburi Badi, Hema and Srimati went towards Jambari. She returned home at about 6 A.M. After some time when she was at the mill her niece Sukanti informed her that Srimati had been killed at Jambari lane and that her dead body was lying. She went to the spot and found the deceased Srimati lying on the lane. Her throat had been cut and there was lot of blood. She saw accused Rama Sahu, Jaya Sahu and some others were running away towards their land. Villagers gathered at the spot. She narrated the incident to Krishna, the Ward

Member and Krushna Murty, the Samiti Member. Then, she went to Golanthara Police Station and narrated her report orally.

It appears that there are certain contradictions in the F.I.R. version and the evidence of P.W.8, the informant. In her statement this witness stated that when she was at the mill her niece Sukanti informed her that Srimati had been killed at Jambari lane, whereas in her report before the police, she has stated that when she was taking bath at village, her niece Sukanti Sahu informed her that Srimati had been killed by someone and that her dead body was lying.

That apart from the abnormality with regard to presence of P.W.9 –Hema Sahu at the spot, the evidence of the said witness is full of contradictions in material particulars and not trustworthy. This witness in her cross-examination stated that she did not state to Investigating Officer that she saw the accused dealing sword blows on Srimati. The Investigating Officer (P.W.15) has also admitted in his evidence that P.W.9 has not stated before him that she saw the sword blows on the deceased.

Section 134 of the Indian Evidence Act, 1872 provides that no particular number of witnesses shall in any case be required for the proof of any fact. It is well settled principle of law that evidence has to be weighed and not counted. So, a solitary eye-witness can be relied upon to convict a person. However, such evidence of solitary eye-witness should be of sterling

quality, so that there is doubt regarding complicity of the Appellant as stated by the witnesses in commission of the crime. In this case, P.W.9- Hema Sahu, the solitary eye-witness cannot be accepted as a reliable witness in view of the fact that she has not stated, in her statement under Section 161 of the Code, recorded by the Investigating Officer, that she saw the Appellant was dealing blows on the deceased Srimati by means of sword. Such contradiction appearing in her evidence with respect to her statement made under Section 161 of the Code is substantial and material contradiction making her evidence doubtful. So, in that view of the matter, we are of the opinion that reliance upon the evidence of P.W.9-Hema Sahu will not be proper.

10. The prosecution also relied upon the circumstantial evidence i.e. leading to discovery of the weapon of offence under Section 27 of the Indian Evidence Act, 1872. It was submitted that leading to discovery as has been relied upon by the learned Trial court is wholly misconceived and against the law. P.W.15 the Investigating Officer has stated that Accused Rama Chandra Sahu voluntarily appeared in the Police Station. He gave statement in presence of the witnesses that after committing of the offence, he concealed the weapon in a secret place and voluntarily lead us to that place. P.Ws.6, 12 and 14, the witnesses to the leading to discovery have turned hostile and did not support the prosecution case. Moreover, though

the weapon of offence i.e. sword (M.O.I) recovered stained with blood, no opinion was given regarding existence of human blood on it or that blood of human origin of the group belonging to the deceased was found on it.

So, from an analysis of the evidences of P.W.8 juxtaposed with the contents of the F.I.R., the evidence of P.W.9, the eye witness and the evidence of P.W.13, the post-occurrence witness, it is our opinion that the evidence of the informant P.W.8 has been contradicted with respect to her statement in court and in the F.I.R. and evidence of P.W.9, the eye-witness has been contradicted with regard to dealing of sword blows on the deceased and such contradictions are material contradictions. So, their evidences cannot be accepted to prove a case of murder of the deceased against the convict/ appellant.

11. In that view of the matter, we are of the opinion that the prosecution has not proved its case beyond all reasonable doubt.

12. Hence, the appeal is allowed. Accordingly, the impugned judgment of conviction and order of sentence dated 18th August, 1998 passed by the learned District and Sessions Judge, Ganjam-Gajapati, Berhampur in S.C. No.336 of 1997 convicting the appellant for commission of offence under Section 302 of the I.P.C. and sentencing him to undergo

imprisonment for life are set aside. The appellant is acquitted of the said charge.

The appellant- Ramachandra Sahu is on bail. He be set at liberty forthwith by cancelling the bail bond executed by him.

The T.C.R. be returned back forthwith.

As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021.

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(S. K. Mishra)
Judge

Pramath Patnaik, J. I agree.

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(Pramath Patnaik)
Judge