IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.473 of 2014

(From the judgment dated 21st February, 2014 passed by Shri Chintamani Panda, learned Special Judge-cum-2nd Addl. Sessions Judge, Berhampur in Sessions Case No.88 of 2009/Sessions Trial No.286 of 2009 of G.D.C.)

Suduru @ Sudarsan Gouda **……** **Appellant**

Versus

State of Orissa **…...** **Respondent**

Advocate(s) appeared in this case :-

For Appellant : Mr. Ashok Das, Advocate

For Respondent : Mrs. Saswat Patnaik, A.G.A

CORAM :
THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY

JUDGMENT
21st October, 2021

B.P. Routray,J.

1. The sole Appellant namely, Suduru @ Sudarsan Gouda has been convicted and sentenced to life imprisonment for commission of offence under Section 302 of the I.P.C. by the learned Special Judge-cum-2nd Addl. Sessions Judge, Berhampur.

2. The deceased – Raghumani Das was a resident of village Balarampur and belonged to scheduled caste community. The Appellant also belongs to the same village Balarampur under Hinjli Police Station. On 30th

January, 2009 in the afternoon while the deceased along with his wife Bangali Das (P.W.2) was returning in an auto rickshaw driven by Arjun Das (P.W.4), the Appellant detained their auto rickshaw and attempted to kill P.W.2 by means of a knife. The deceased protested the same. Thereafter the Appellant fled away and the deceased along with P.W.2 returned to their house. On the same evening at around 7.30 P.M., the deceased along with P.W.2 and their daughter Mami Das (P.W.3) had gone near the village pond for defecation. After cleaning in the village pond, the deceased returned first and P.Ws.2 and 3 were still at the village pond. At that time one Naba Das of their village came running to P.Ws.2 and 3 and told that the Appellant stabbed deceased by means of a knife near village library and he was lying there with bleeding injury. Immediately, both P.Ws.2 and 3 rushed to the spot and found the deceased lying in a pool of blood having an injury in the left side abdomen. Thereafter other villagers namely Sarat Chandra Das (P.W.1), Lochan Das (P.W.5) and others gathered and the deceased was shifted in the same auto rickshaw of P.W.4 to the hospital, where the doctor declared him dead. P.W.2 lodged the F.I.R. under Ext.9 scribed by P.W.10 – Ramesh Chandra Sethi, which was registered as Hinjli Police Station Case No.09 dated 30th January, 2009. The F.I.R. was registered by Harihar Sahu (P.W.11), the then Police Sub-Inspector present in the Police Station. He then took up investigation and requested the SDPO, Aska, Shri B.P.Dehuri to take up investigation as the deceased is a member of the scheduled caste community. Requesting so, P.W.11 proceeded to investigate the case and examined the informant and other witnesses, visited the spot, collected sample earth, bloodstained earth, held inquest over the dead body and sent the dead body for post-mortem examination to MKCG Medical College and Hospital, Berhampur. He

thereafter arrested the Appellant on 31st January, 2009 and as per the disclosure statement given by the Appellant, discovered the weapon of offence i.e., the knife from the house of one Narshu Gouda of village Alavigada and seized the same under Ext.4. P.W.11 continued the investigation till 25th March,2009 and then handed over it to the SDPO. On the same day, P.W.12, Binaya Krushna Kamila, DSP took up investigation from B.P. Dehuri and on completion of investigation, P.W.12 submitted the chargesheet on 29th May, 2009 for offences under Section 302 of the I.P.C. and Section 3(2)(v) of the SC & ST (PoA) Act against the accused.

3. The Appellant faced trial taking the plea of innocence. In course of trial, the prosecution examined thirteen witnesses and marked eighteen documents as Exhibits. The Appellant examined himself as Defense Witness No.1 in support of his plea of innocence.

4. The learned trial court upon conclusion of trial found him guilty for the charge under Section 302 of the I.P.C., but acquitted from the offence under the SC & ST (PoA) Act. The learned trial court convicted the Appellant mainly relying on the evidence of P.Ws.1, 2 and 4.

5. As seen from the medical evidence, the deceased died homicidal death. P.W.6-Dr.Sachidananda Mohanty, who conducted the postmortem examination over the dead body on 31st January, 2009 at 11.30 A.M., has opined that the deceased died due to the stab wound, which was ante mortem and homicidal in nature. He noticed one stab wound of size 5 cm x 2 cm up-to cavity deep over the left chest 5 cm below from the left nipple, and another abraded contusion of size 0.5 cm x 0.5 cm. over the right elbow. On dissection, he further noticed that

stab wound was entering to the left thoracic cavity through 5th intercostal space and subsequently enters to left ventricle in the postero-lateral aspect resulting collection of blood around 500 ml. in the thoracic cavity. The time of death was within 12 to 18 hours, which means in between 5.30 P.M. to 11.30 P.M. on 30th January, 2009. The inquest report under Ext.2 as well as the statement of different witnesses supports the injury sustained by the deceased as described by P.W.6. As such, no doubt is left to conclude the death of the deceased as homicidal.

6. It is seen that the learned trial judge without discussing the evidences, treated P.W.2 as an eyewitness. It is mentioned at page 9 of the impugned judgment that, *".. xx .. .. From the evidence of P.W.2 and the evidence of P.Ws.1 & 4 that the accused led the police and gave recovery of the knife. It is material evidence against the accused, as the accused was prepared beforehand to commit the murder of the deceased and attempted while the deceased was returning with his wife, after leaving their daughter for her in-law's house, there was sufficient preparation and intention to commit murder .. .. xx .. .. The evidence of accused as D.W.1 that he did not know the deceased and nor about his murder. His evidence is not acceptable in view of consistent nature of evidence of the prosecution witnesses and giving recovery of the knife."* It is also observed at page 11 that, *".. xx ... ... Moreover, the accused has prepared to cause murder, he restrained the informant and deceased while they were returning after leaving their daughter in her in-laws house. The accused has the intention to caused injury on the vital part of the body which caused injury to the heart of the deceased who died at the spot."*

7. Coming to examine the evidences of P.Ws.2 & 3, who claim to be eyewitnesses to the alleged assault made by the Appellant, it is seen that their evidence goes contrary to the very contention of the F.I.R. lodged by P.W.2. They have stated in their evidence that, while they were returning along with the deceased from the pond, the Appellant stabbed the deceased causing severe bleeding injury. The defence in the cross-examination have suggested both the witnesses to have not stated so in their earlier statement made before the investigating officer. This is also confirmed by P.W.11, who have examined both the witnesses under Section 161 Cr.P.C. P.W.11 in his evidence has admitted to the suggestion of defence that both P.Ws. 2 & 3 have not stated so before him in course of investigation. He has further admitted that, these P.Ws.2 & 3 have stated before him that while both mother and daughter (P.Ws. 2 & 3) were near the tank, at that time Naba Das told them that Appellant stabbed the deceased. The recitals of the F.I.R. under Ext.9 also speaks in the same line. It has been categorically mentioned by P.W.2 in the F.I.R. that while she along with her daughter were present near the tank (Pond), one Naba Das of their village informed them that the Appellant stabbed the deceased by means of a knife. Thus, the statement of P.Ws.2 & 3 to the effect they saw the Appellant stabbing the deceased by a knife is not believed. The aforesaid statement of P.Ws.2 & 3 amounts to contradiction in terms of Section 162 of the Cr.P.C. The prosecution have tried to develop their case by such statement of P.Ws. 2 & 3, which is not permissible. Thus, the evidence of P.Ws. 2 & 3 to the effect that they saw the Appellant dealing the knife blow to the deceased is discarded from their evidence.

8. Admittedly, Naba Das, who allegedly informed P.Ws. 2 and 3 about the assault has not been examined by prosecution as a witness. Said Naba Das is definitely a relevant witness as he first informed about the assault. His non-examination casts a serious doubts on prosecution version. The evidence of P.Ws. 2 & 3 are hearsay evidence since they heard about the assault from Naba Das. So in absence of any statement from Naba Das, the evidence of P.Ws. 2 & 3 to the effect that they know about the assault made by the Appellant (from Naba Das) cannot be accepted as reliable evidence. It is needless to say that hearsay evidence is a very weak piece of evidence. Therefore, nothing can be utilized from the statement of P.Ws. 2 & 3 to implicate the Appellant as the assailant of the deceased.

9. As seen from the evidence of P.Ws.1, 4 and 5, they are the post occurrence witnesses, who have admitted to have not seen the alleged assault. From a thorough analysis of evidences of P.Ws.1, 2, 3, 4 & 5, nothing can be taken to implicate the Appellant as the author of the crime.

10. The prosecution through the evidence of P.Ws.1, 4 and 11 have projected another piece of evidence relating to discovery of weapon of offence at the instance of the Appellant under Section 27 of the Indian Evidence Act. The disclosure statement of the Appellant in this regard has been marked as Ext.3 and the seizure list of the knife (weapon of offence) is Ext.4. P.W.11 in his evidence has stated that the Appellant while in police custody gave discovery of the knife, which he concealed in the house of one Narshu Gouda of village Alavigada, and P.Ws. 1 & 4 are the witnesses of such disclosure information as well as seizure of the weapon.

Interestingly the knife was not produced before the learned trial court without assigning any reason, which is the first deficiency noticed in this regard. Now looking to evidence of P.W.4, it is seen that he has denied in his cross-examination about any such disclosure information given by the Appellant. It is stated by him that, *".. xx .. .. when I reached at the P.S. found the accused present there in the P.S. and the knife was lying on the floor. On the instruction of police I myself and Sarat Chandra Das (P.W.1) put our signatures in the seizure list. I do not know the contents of the seizure list under Ext.4"*

11. P.W.4 appears to be truthful a witness. He is the auto rickshaw driver who brought the deceased, P.Ws. 2 and 3 at the first instance when the appellant allegedly attempted to assault P.W.2. He is also the same driver who took the deceased in his auto rickshaw to hospital after the occurrence. On a close and careful analysis of his evidence in comparison with the evidence of P.Ws. 1 and 11 to the extent that the Appellant gave discovery of the weapon of offence, the evidence of P.W. 4 seems more trustworthy than them. P.W. 4 speaks truthfully and that goes contrary to their (P.Ws. 1 & 11) evidences. So what is stated by the P.W.11 and supported by P.W.1 in respect of discovery of the weapon of offence is viewed with serious doubt. As such the same is not accepted as a reliable evidence.

12. Except as discussed above, there is no further material from prosecution side. Nothing more has been brought by prosecution against the Appellant. No motive on the part of the Appellant has been suggested or attributed against the appellant for causing any murderous assault on the deceased. The first incident alleged by prosecution that the Appellant attempted to assault P.W.2 while they were returning in

the auto rickshaw of P.W.4 in the same afternoon prior to the present occurrence, no separate F.I.R. was lodged for the same nor any separate charge has been framed in that respect. However, the injury report of P.W.2 in relation to that occurrence has been marked under Ext.14 through the I.O. Neither the doctor has been examined in that respect nor P.W.2 has whispered anything about her examination by the doctor. Therefore no gain can the prosecution achieve by exhibiting the said injury report. It is no way helpful to the prosecution case.

13. Apart from above, several other errors and infirmities are noticed in the impugned judgment of the trial court. The impugned judgment shows complete non-application of mind of the trial court as well as his whimsical approach. The learned trial court has failed to make an analytical discussion of the evidence adduced on record. Though the accused himself has been examined as D.W.1, but the learned trial court has failed to notice the same in the list of witnesses at the bottom of the judgment.

14. For the doubts raised on analysis of the prosecution evidence, P.Ws. 2 & 3 cannot be treated as an eyewitness and their evidences are found insufficient to lead the conviction against the Appellant. The prosecution has not bothered to produce the weapon of offence before the learned trial court. It has also not assigned any reason for non- examination of Naba Das, the key witness. A serious doubt is casted in the projected disclosure information given by the Appellant leading to discovery of the knife. Though P.W.6 has stated in his evidence about his opinion on examination of the knife with regard to possibility of causing the fatal stab wound, but the same cannot be held in any way helpful in absence

of production of the knife before the court for identification without any valid reason.

15. In view of the discussions made above, it is thus concluded that the prosecution has failed to prove the charge of murder against the Appellant beyond all reasonable doubts. Accordingly, the impugned judgment conviction dated 21st February, 2014 is set aside and the Appellant is acquitted from the charges. He is held not guilty for the charge under Section 302 of the I.P.C. and directed to be released forthwith from the custody, if his detention is not required in any other case.

16. The appeal is allowed.

(B.P.Routray)
Judge

(Dr. S. Muralidhar)
Chief Justice

C.R. Biswal, Secy.