

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.445 of 2014

(An appeal under Section 374(2) of the Code of Criminal Procedure, 1973)

Sarathi Mahananda *Appellant*

-versus-

State of Odisha *Respondent*

Advocates appeared in this case:

For Appellant : Mr. Nityananda Mohapatra
Advocate

For Respondent : Mrs. S. Patnaik
Addl. Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE BISWAJIT MOHANTY

JUDGMENT
27.10.2021

Dr. S. Muralidhar, CJ

1. This appeal is directed against the judgment and order dated 12th November, 2013 passed by the learned Additional Sessions Judge, Titilagarh (hereinafter 'the trial Court') in Sessions Case No.15 of 2011 convicting the Appellant for the offence under Sections 302 IPC and sentencing him to rigorous imprisonment (RI) for life and to pay a fine of Rs.25,000/- and in default of payment of fine, to further undergo RI for one year.

2. At the outset, it must be noted that the present Appellant along with his parents (Accused Nos.2 and 3) faced trial having been charged for the offence under Sections 498A, 304B, 302 and 34 IPC. By the same impugned judgment of the trial Court Accused Nos.2 and 3 were acquitted from the charges. The present Appellant was acquitted of the offence under Section 498A, 304B/34, IPC but was convicted for the offence under Section 302 IPC.

3. The case of the prosecution was that the Appellant was married to the deceased Harabati Besra in 2005 and soon thereafter the family members of the Appellant commenced ill-treating and torturing the deceased. The deceased then came to her father's house and remained there for a period of one year. Thereafter, the mother of the deceased left her in the house of the accused persons requesting them not to ill-treat her in future.

4. Six-seven months later, on 22nd July 2010, one Padu Mahananda informed Lakhpati Besra, father of the deceased over phone that his daughter was in a serious condition. On getting the said information, Lakhpati Besra along with his other family members went to the house of the accused persons and found that his daughter was lying dead. The broken bangles and 'Mangal Sutra' of the deceased were lying near her dead body. Accordingly, Lakhpati Besra lodged an F.I.R. at Sindhekala Police Station where P.S. Case No.84 was registered for the offences under Section 498A, 302/34 IPC.

5. After completion of the investigation, a charge sheet was submitted against three accused persons for the offences under Sections 498A, 304B, 302, 406 and 34 IPC read with Section 4 of Dowry Prohibition Act. The accused persons faced trial having been charged under Sections 498A, 304B, 302 and 34 IPC. 21 witnesses were examined by the prosecution whereas the defence adduced no evidence. Several witnesses turned hostile including PWs 1 and 2 who were supposed to have called the Police to the house of the accused and are supposed to have found the dead body of the deceased lying in the verandah of their house. Likewise, PWs 3, 4, 5, 6, 10 and 18 were declared hostile and were cross-examined by the prosecution.

6. Sri Satyanarayan Behera (PW 21), the then Officer-in-Charge of Sindhekala PS seized two plastic ropes after visiting the spot and prepared an inquest report. On 24th July, 2010 he arrested the present Appellant. According to the prosecution, the Appellant made a disclosure in the presence of the witnesses that the plastic ropes and kendu stick used in the killing had been kept concealed in his house and he offered to get them recovered. The aforementioned relevant portion of the disclosure statement of the Appellant was marked as Ext. 2/2. The Appellant led the I.O. and the witnesses to the place of concealment of the aforementioned objects which were then seized under Seizure List Ext. 3/2. The wearing apparels of the deceased were seized.

7. On 25th July, 2010 PW 21 received the post-mortem examination report and on 7th November, 2010 he sent the seized

articles to the Regional Forensic Science Laboratory (RFSL), Sambalpur. Thereafter the charge sheet was submitted in the trial Court.

8. The medical officer (PW 11) who conducted the post-mortem on 23rd July, 2010 found *inter alia* one ligature mark in the neck, which was transverse continuous low down in the neck, below the thyroid, extending from left side of the neck into right side of the neck. There were injuries found on larynx and trachea. Fracture of hyoid bone was present. The cause of death was opined to be asphyxia, resulting from strangulation. The death was opined to be homicidal in nature.

9. On an analysis of the evidence, the learned trial Court came to the conclusion that although PW 16, father of the deceased reported that the accused had subjected to his daughter torture, PW 16 was completely silent regarding any demand of dowry by the accused at any point in time. Likewise, mother of the deceased (PW 15) and maternal uncle (PW 19) spoke of the deceased being subjected to cruelty. However, they were silent on cruelty or harassment by the accused persons soon before her death. It was held that the PWs 15, 16 and 19 did not inspire confidence to prove that the deceased was subjected to cruelty and harassment by the accused in connection with any demand for dowry soon prior to her death.

10. The evidence of PW 11 regarding the death being homicidal went unchallenged. Although the prosecution successfully proved

that the death of the deceased had occurred in otherwise than normal circumstances and was homicidal in nature and within seven years of marriage yet the basic ingredients of the offence under Section 498A and 304B/34 IPC were held by the trial Court to be not fulfilled. Accordingly, it was held that the prosecution had failed to prove the charge under the aforementioned provisions against the accused beyond all reasonable doubt.

11. As far as the charge under Section 302/34 IPC was concerned, the trial Court held that although there were minor discrepancies in the evidence of the PWs 15, 16, 17 and 19 and they were related to each other, their evidence could not be completely ignored. The credibility of their evidence regarding the death of the deceased inside the house of the accused persons could not be shaken. Apart from this, the Appellant admitted in his examination under Section 313 Cr PC that the I.O. (PW 21) had conducted inquest on the dead body of the deceased. Accordingly, it was proved that the death of the deceased took place in the house of the accused. From the evidence of PWs 1, 4, 6, 7 and 18, it was held by the trial Court to be proved that the Appellant was alone present in the house where the death took place; therefore, the cause of the death of the deceased was within the special knowledge of the Appellant.

12. The trial Court held that the evidence regarding recovery of the weapon of offence was also proved. When it was put to the accused during his examination under Section 313 Cr PC, except denying the seizure itself, he had no satisfactory explanation as to

how the seized weapons came into his possession. That apart the chemical examination report (Ext.15) of the Appellant contained faded patches of human blood. The explanation of the Appellant even in this regard in his statement under Section 313 Cr.P.C. was not found convincing.

13. In terms of Section 106 of the Evidence Act, the fact of the death of the deceased which occurred in his house was within the knowledge of the Appellant and he was unable to offer a satisfactory explanation except a vague denial. For all of the aforesaid reasons, the trial Court held the circumstances proved formed a continuous chain and pointed unerringly to the guilt of the Appellant and his innocence was inconsistent with the evidence.

14. This Court has heard the submissions of Mr. Nityananda Mohapatra, learned counsel for the Appellant and Mrs. S. Patnaik, learned Additional Government Advocate for the State (Respondent).

15. This was a case based on circumstantial evidence. The following circumstances have been convincingly proved by the prosecution:

(i) That, the accused and his wife were not living a happy conjugal life. This stood proved from the evidence of PWs 15, 16, 17 and 19.

(ii) That the death of the deceased took place in the dwelling house of the accused and he alone was present with the deceased. This stands proved by the evidence of PWs 1, 4, 6, 7 and 18.

(iii) Prior to death of the deceased, she was residing separately from her parents.

(iv) The death of the deceased was homicidal in nature and resulted from strangulation. This is proved by evidence of PW 11, the medical officer.

(v) The disclosures made by the Appellant while in custody about knowledge of the weapons of offence and their seizure pursuant to the statement made by him under Section 27 of the Evidence Act stood proved beyond reasonable doubt.

(vi) The accused could offer no satisfactory explanation as to how he came into possession of the weapon of offence and therefore, an adverse inference could be drawn. The explanation offered while making statement under Section 313 Cr PC, as to the human blood in his pant, was unconvincing.

(vii) There was no evidence to indicate that other than the Appellant anyone else entered into the house at the relevant point in time. The Appellant also could not offer a satisfactory explanation as regards any of the incriminating circumstances against him.

16. As regards the deceased being found dead in the dwelling house of the Appellant and his not offering any convincing explanation as to the cause of the death, the following observations in *Trimukh Maroti Kirtan v. State of Maharashtra (2006) 10 SCC 681* are relevant:

"If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties."

17. On an analysis of the evidence the Court is satisfied that each of the above links form a continuous chain of circumstances and each of them has been sufficiently proved, beyond reasonable doubt by the prosecution. Taken together, they unerringly point to the guilt of the Appellant and are inconsistent with his innocence.

18. The Court finds no grounds made out for interfering with the impugned judgment and order of the trial Court. The appeal is accordingly dismissed.

(S. Muralidhar)
Chief Justice

(Biswajit Mohanty)
Judge

S.K.Jena/PA