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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.29 of 2003

Tapan Kumar Pradhan .... ***Appellant***

-versus-

State of Odisha .... ***Respondent***

Advocates appeared in the cases:

For Appellant : Mr. Basudev Pujari, Advocate

For Respondent : Mr. Pravat Kumar Muduli, Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
11.08.2022

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment dated 8th January 2003 passed by the learned Additional Sessions Judge, Deogarh in S.T. Case No.185/19 of 2001, convicting the Appellant for the offence punishable under Section 302 of IPC and sentencing him to undergo Rigorous Imprisonment (RI) for life.

2. At the outset, it requires to be noticed that by an order dated 31st August 2004, this Court enlarged the Appellant on bail during the pendency of the present appeal.

3. To begin with, it requires to be noted that the present Appellant was sent up for trial along with one Bidyadhar Pradhan, who was

charged for the offence under Section 109 IPC read with Section 302 IPC on the ground of abetting the murder.

Case of the prosecution

4. The case of the prosecution is that the informant Dayanidhi Pradhan (PW-1) and both the accused are co-villagers of village Talabahali. A few days prior to the occurrence, one Diptibala Pradhan, the daughter of the co-accused Bidyadhar Pradhan eloped from the village. The family members of Diptibala Pradhan, while searching for her, reached the house of PW-1 and enquired from his daughters Bisakha Pradhan (PW-3) and Bhagabati Pradhan (the deceased) about Diptibala.

5. The case of the prosecution is that on 1st April 2001, the present Appellant and Diptibala Pradhan returned to the village. Thereafter, the parents of both the Appellant and Diptibala picked up a quarrel with the daughters of PW-1 alleging that they had spread scandal against the Appellant and Diptibala Pradhan. In course of the quarrel, the Appellant and the co-accused Bidyadhar Pradhan threatened to murder the deceased Bhagabati that very night. The case of the prosecution further is that the co-accused Bidyadhar Pradhan and his wife allegedly instigated the Appellant to kill them.

6. The further case of the prosecution is that on 1st April, 2001 itself in the night, after taking her meals, the deceased Bhagabati went to the backyard of her house to answer the call of nature and did not return. Her family assumed that she may have gone to see the ‘Danda Jatra’ and after taking their meals, went to sleep. Early

in the morning of 2nd April 2001, Bisakha Pradhan (PW-3) found the deceased Bhagabati lying dead in the backyard of the house with bleeding injuries on her head and neck.

7. PW-1 lodged a written report before the Officer-in-Charge, Reamal Police Station (PS), who registered PS Case No.31 of 2001 and took up the investigation. In the course of his investigation, the Investigating Officer (IO) Dakhin Charan Murmu (PW-7) visited the spot, prepared the spot map, seized bloodstained lota (pot), bloodstained earth and sample earth, a piece of necklace of black moti, a soaked piece of white cloth with blood and seized these articles. He conducted an inquest over the dead body. He also arrested the Appellant. While in custody, the Appellant made a statement leading to the recovery of the axe (MO-V) from his kitchen room. The said axe was seized. He is also stated to have produced his sporting Genji, one navy-coloured blue half pant and one old chappal. The IO is said to have seized the same. On completion of investigation, he filed the charge-sheet. The Appellants pleaded not guilty and claimed trial.

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Trial Court judgment

8. The prosecution examined seven witnesses, whereas the defence examined one Bhaskar Gadtia (DW-1). After analyzing the evidence, the trial Court delineated the following circumstances as forming a continuous chain that established the guilt of the Appellant:

(i) PWs-1, 2 and 3 being the father, the brother and the sister of the deceased had consistently stated that both the accused persons

had picked up a quarrel with them alleging that the deceased and PW-3 had spread a scandal in the village that the Appellant had eloped with Diptibala, the daughter of the co-accused Bidyadhar. Despite PWs-1 to 3 proclaiming their innocence, both the Appellants came holding axe and threatened to kill the family members of PW-1 in the course of same night. Specifically, PW-3 stated that the Appellant came holding an axe and shouting at Bhagabati and threatened to murder her with the same axe.

(ii) The deceased had disclosed to her family members that she wished to go and see the Danda Jatra with her friends on that very night in village Tentloi, which was at a distance of 10-minute walk. The deceased after having her dinner, collected the utensils and went to the backyard. PW-1 presumed that she had gone to answer the call of nature, while PW-3 presumed that she had gone to see the Danda Jatra. PW-2 was not aware of her absence.

(iii) The deceased was found dead with bleeding injuries to the neck and head on the next morning in the backyard. The medical evidence of Dr. Gangadhar Pradhan (PW-4) proved that the death was homicidal.

(iv) The statement made by the Appellant while in custody led to the recovery of the axe and wearing apparels, which were also bloodstained. Although the independent witnesses to the recovery were not examined, the evidence of the IO, who was cross-examined at length in this regard, remained unshaken.

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(v) The plea of *alibi* of the Appellant, sought to be proved through DW-1, was to no avail since village Tentloi was hardly one kilometer away from the village where the murder took place.

(vi) On chemical examination, Group-B human blood was found on the articles seized from the spot, and from the dead body of the deceased. However, the clothes of the Appellant and his nail clippings on the Tangia did not have any bloodstain. It had obviously been washed.

9. According to the trial Court, all of the above circumstances collectively examined led to the inevitable result pointing to the guilt of the Appellant. There was however no evidence to implicate the co-accused for the offence of abetment of the murder. Therefore, while acquitting the co-accused, the trial Court convicted the present Appellant and sentenced him in the manner aforementioned.

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10. This Court has heard the submissions of Mr. Basudev Pujari, learned counsel appearing for the Appellant and Mr. Pravat Kumar Muduli, learned Additional Government Advocate for the State.

Submissions on behalf of the Appellant

11. The submissions of learned counsel for the Appellant are as under:

(I) Although the charge-sheet named eighteen witnesses, only seven were examined by the prosecution. Four of them were

stated in the FIR to have heard the alleged extra judicial confession of the Appellant and these witnesses were also named by the other PWs. Likewise, two of the witnesses to the recovery, i.e., Dwarikanath Gadtia and Luhura Patra were not examined. Bainshi Patra named by PW-1 to have been present at the time of the alleged confrontation of the Appellant was also not examined. This must lead to an adverse inference against the prosecution.

(II) There is no finding by the Doctor who conducted the postmortem that the death of the deceased was homicidal.

(III) There are several discrepancies in the evidence of PW-1 and PW-7 as regards the exact time of scribing of the FIR. PW-1 stated that he had scribed it as directed by Dowaru Gartia (not examined).

(IV) Although the trial Court referred to the chemical examination report, neither such report was in fact exhibited nor did PW-7 rely on any such report.

(V) The trial Court had not considered the evidence of DW-1 in its proper prospective and had unfairly discarded it.

(VI) The circumstances allegedly found against the Appellant were not put to him in proper way while recording his replies under Section 313 Cr PC and this has caused severe prejudice to the Appellant.

(VII) PWs-1, 2 and 3 were related to the deceased and had borne a grudge against the Appellant for the discord over the rumor

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spread by the family of PW-1 regarding elopement of the Appellant with the daughter of the co-accused. In this background, non-examination of independent witnesses was fatal to the prosecution. The criteria spelt out in cases relating to circumstantial evidence as explained in ***Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622*** and ***Ashish Batham v. State of Madhya Pradesh, 2002 CRI L.J. 4676 (SC)*** was not met in the present case.

Submissions on behalf of the State

12. On the other hand, Mr. Muduli, learned AGA submitted that:

(a) the proximity between the death and the quarrel between the accused and the family of the deceased lent credibility to the evidence of PWs-1, 2 and 3. Merely because they were related to the deceased would not result in their evidence being discarded if it was found to be consistent and true. Reliance is placed on the decision in ***Waman v. State of Maharashtra, (2011) 7 SCC 295***;

(b) The minor contradictions in the statements of the witnesses would not result in their evidence being discarded;

(c) In the present case, the prosecution has proved each of the links in the chain of circumstances, which was conclusive in nature excluding every possible hypothesis except the one pointing to the guilt of the Appellant. Reliance was placed on the decisions in ***Krishnan v. State, (2008) 15 SCC 430*** and ***G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593***.

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Analysis and reasons

13. The above submissions have been considered. This is a case of circumstantial evidence and the law in this regard is well settled. In ***Sharad Birdhichand Sarda*** *(supra),* the conditions to be fulfilled before conviction could be based on circumstantial evidence were summarized thus:

> *"(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;*
>
> *(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
>
> *(iii) the circumstances should be of a conclusive nature and tendency;*
>
> *(iv) they should exclude every possible hypothesis except the one to be proved; and*
>
> *(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

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14. In ***Krishnan*** (*supra*), the Supreme Court summarized the tests to be fulfilled as under:

> *"15. ....(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
>
> *(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;*
>
> *(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra (1982) 2 SCC 351)."

15. This was reiterated in ***G. Parshwanath*** *(supra)* as under:

"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The Court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of

these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.

16. Keeping the above settled principles in view, the Court proceeds to examine each of the circumstances pointed out by the trial Court.

17. The first circumstance is regarding the quarrel that took place in the previous night between the Appellant, the co-accused on one hand and the deceased and her family on the other. This was spoken of by PWs-1, 2 and 3. No doubt that these are the witnesses who are related to the deceased but that by itself would not result in their testimonies being discarded if they are otherwise truthful and consistent with each other. The legal position in this regard has been explained by the Supreme Court in ***Waman*** *(supra)* as under:

"15. In Sarwan Singh v. State of Punjab, (1976) 4 SCC 369, a three-Judge Bench of this Court, while considering the evidence of an interested witness held that: (SCC p. 376, para 10)

> *"10.....it is not the law that the evidence of an interested witness should be equated with that of a tainted [witness] or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once that approach is made and the court is satisfied that the evidence of the interested [witness has] a ring of truth such evidence could be relied upon even without corroboration."*

16. The fact of being a relative cannot by itself discredit the evidence. In the said case, the witness relied on by the prosecution was the brother of the wife of the deceased and was living with the deceased for quite a few years. This Court held that: (Sarwan Singh case (1976) 4 SCC 369, SCC p. 379, para 16)

> *"16.....But that by itself is not a ground to discredit the testimony of this witness, if it is otherwise found to be consistent and true".*

17. In Balraje vs. State of Maharashtra, (2010) 6 SCC 673, this Court held that the mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eye-witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically and the court would be required to analyze the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. After saying so, this Court held that: (SCC p. 679, para 30)

> *"30... if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and*

credible, there is no reason to discard the same."

18) The same principles have been reiterated in Prahalad Patel v. State of M.P. (2011) 4 SCC 262. In para 15, this Court held that: (SCC p. 265)

> *"15….Though PWs 2 and 7 are brothers of the deceased, relationship is not a factor to affect credibility of a witness. In a series of decisions this Court has accepted the above principle (vide Israr v. State of U.P., (2005) 9 SCC 616 and S. Sudershan Reddy v. State of A.P., (2006) 10 SCC 163)*

19) The above principles have been once again reiterated in State of U.P. v. Naresh, (2011) 4 SCC 324. Here again, this Court has emphasized that relationship cannot be a factor to affect the credibility of a witness. The following statement of law on this point is relevant: (SCC p. 334, para 29)

> *"29. .... The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives' evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the Court has to analyse the evidence of related witnesses carefully to find out whether it is cogent and credible. (Vide Jarnail Singh v. State of Punjab (2009) 9 SCC 719, Vishnu v. State of Rajasthan, (2009) 10 SCC 477 and Balraje (2010) 6 SCC 673)"*

20) It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinize their evidence meticulously with a little care."

18. PW-1 stated in his examination-in-chief that the Appellant along with the co-accused and the mother of the accused, Basanti had abused PWs-1, 2 and 3 and that they later had offended them by accusing their daughter Diptibala. PW-1 clearly stated "both my daughters pleaded their ignorance about the occurrence". At around 4 PM, the co-accused came to the road in front of their house holding an axe and shouted saying that he would kill them. The present Appellant also arrived there and threatened to finish them in course of the day. In the same night, the deceased after taking meals, went to the rear side to attend the call of nature. Since the Danda Jatra was being played in the neighbouring village Tentloi, all of them thought that she had gone to see the Danda Jatra with her friends and therefore went to sleep.

19. PW-1 also spoke about finding the dead body of the deceased in the next morning at the rear side of his house with five cut injuries on the neck. PW-1 was present when PW-3 confronted the Appellant stating "you murdered Bhagabati" to which the Appellant replied "JAA HANI DEICHI, JAIL JIBI, MORA BHAYA NAHIN MORA MAMU MUKULEI AANIBA".

20. PW-1 was cross-examined extensively but on the aspect of the Appellant coming that very evening threatening to finish off the deceased, his evidence has remained unshaken. PW-1's evidence has been corroborated by the evidence of PW-2, who is the brother of the deceased on the aspect of the Appellant coming and threatening to murder and also PW-3 confronting the Appellant about having murdered her sister to which the Appellant was

supposed to have admitted the words spoken of by PW-1. The cross-examination of PW-2 also did not yield much for the defence.

21. The younger sister of the deceased, Bisakha (PW-3) also corroborated the above evidence of PWs-1 and 2. She also spoke of confronting the Appellant of murdering her sister to which he admitted doing so. Again, the cross-examination of this witness did not yield much for the prosecution.

22. Therefore, it is clear that the evidence of PWs-1, 2 and 3 not only supplies the motive for the offence, but also proves the fact that immediately prior to the occurrence on that very evening, the accused had threatened to finish off the deceased.

23. The minor inconsistency pointed out by learned counsel for the Appellant as regards the registration of the FIR and who scribed it by comparing the evidence of PW-1 and P.W.-7, i.e., the IO can only be viewed by the Court as minor contradiction not affecting the credibility of the testimonies of PWs-1, 2 and 3. It is really a minor defect, which does not dilute the case of the prosecution.

24. As regards the recovery evidence, the Court is of the view that it has been more than adequately proved by the IO himself by producing the relevant record. No doubt, he could have examined the independent witnesses in whose presence the recoveries were effected but, as explained in ***Kashmira Singh vs. State of Punjab 1999 Cri LJ 2876,*** this again need not discredit the entire

recovery evidence. In ***Pradeep Narayan Madgaonkar and Ors. v. State of Maharashtra, [1995] 4 SCC 255***, it was observed:

> "11. …the evidence of the officials (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigating or the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation, requires greater care to appreciate their testimony."

25. The Court has examined the evidence of the Doctor, PW-4, who conducted the post-mortem. He found the following injuries on the deceased:

> *"Post mortem lividity on the back. There was no injury on the breast or genital organ.*
>
> *(i) Incised injury of size 8cm x 5cm x 4cm over the ocipital region.*
>
> *(ii) Incised injury 7cm x 3cm x 5cm over the back of the neck below 1cm to the injury No.1.*
>
> *(iii) Incise injury 9cm x 3cm x 7cm over the back of the neck 0.5cm below to Injury No.2.*
>
> *(iv) Incised injury 8cm x 4cm x 4.5cm over the root of the neck 2cm below to injury No.3.*
>
> *(v) Incise injury 7cm x 3cm x 4cm over the front of the neck towards the left side.*
>
> *(vi) Abrasion of 1" x 1" over the left shoulder and waist."*

26. The injuries were said to be ante-mortem in nature. It is clearly said that:

> *"xxx.The cause of death was due to haemorrhage and transection of the spinal cord.xxx"*

27. While the above opinion of the Doctor is more than sufficient for the Court to conclude that the death was homicidal, although he may not have used those exact words, the cross-examination of the above witness also did not yield much for the deceased. In fact, the following answer makes it even more clear:

> *"xxx. As my report reveals the oblique incise wound was caused while the deceased was standing and the other blows were caused after the deceased fell down."*

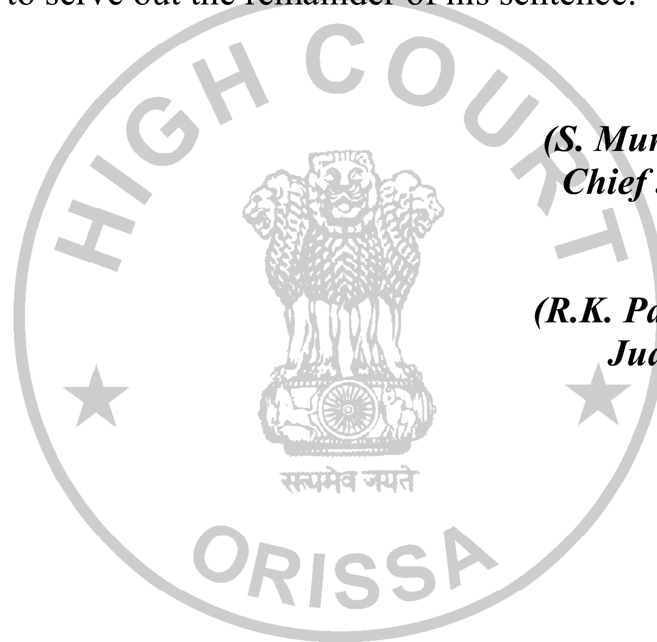
28. It is therefore, futile for learned counsel for the Appellant to contend that the prosecution had failed to prove that the death was homicidal.

29. The fact that the weapon of offence did not have bloodstains will not matter if all the above circumstances form a continuous chain and clearly point to the guilt of the Appellant and no one else. Therefore, the fact that the chemical examination report may not have been exhibited is also not of much significance.

30. The Court is satisfied that the prosecution in the present case has been able to establish convincingly each of the links in the chain of circumstances and further prove that the circumstances are so complete and incapable of an explanation of any other hypothesis than that of the guilt of the Appellant. The evidence is not only consistent with his guilt but is also inconsistent with his innocence.

31. Consequently, the Court is of the view that no error can be found in the impugned judgment of the trial Court holding the Appellant guilty of the offence punishable under Section 302 IPC and sentencing him in the manner aforementioned.

32. The appeal is accordingly dismissed. The bail bonds of the Appellant are hereby cancelled and he is directed to surrender forthwith and, in any event, not later than 26th August, 2022 failing which the IIC concerned will take steps to take him into custody to serve out the remainder of his sentence.



(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

M. Panda