

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.67 of 2015

AFR

Ashis Kerketta and another *Appellants*

-versus-

State of Odisha *Respondent*

Advocates appeared in the cases:

For Appellants : Mr. S. Sourav, Advocate
Mr. Debasnan Das, Advocate

For Respondent : Mrs. Saswata Patnaik
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

JUDGMENT

05.09.2022

सत्यमेव जयते

Dr. S. Muralidhar, CJ.

1. This appeal is directed against the Judgment dated 18th August 2015, passed by the learned Additional Sessions Judge, Sundargarh in S.T. Case No.216/73 of 2013, convicting the Appellants for the offence punishable under Sections 450/302 read with Section 34 of IPC and sentencing each of them to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default to undergo Rigorous Imprisonment (RI) for two years for the offence punishable under Section 302/34 of IPC and RI for five years and to pay a fine of Rs.5,000/- for the offence punishable under Section 450/34 of IPC and in default to undergo

RI for one year for the offence punishable under Section 450/34 IPC. Both the sentences were directed to run concurrently.

2. The case of the prosecution is that PW-11, namely, Bijay Kumar Tirkey was present in his official quarters on 29th June, 2013 in the Town P.S. Sundargarh, when he received a telephonic message from Subardani Lakra (PW-2), the then Naib Sarapanch of Deogaon Panchayat that his uncle Nemahansh Kerketta and aunt Nemahanti had been brutally murdered.

3. Immediately, PW-11 accompanied by his father proceeded to the spot by 7.30 am. He found the dead body of the deceased Nemahansh lying on a cot with bleeding injuries on his neck, shoulder and left hand with two of the fingers having been chopped off. The dead body of the deceased Nemahanti was lying under the wooden bed in a pool of blood with injuries all over her person.

4. PW-11 and his father then proceeded to the house of the first Appellant, namely, Ashis Kumar Kerketta (Accused No.1) (A-1) who happened to be the first cousin, being the son of Irmian Kerketta, the maternal uncle of PW-11. He was, however, not present. PW-11 was informed by his aunt that on the previous night, A-1 and his friend Saroj Dungdung (A-2) had slept in the house keeping an axe and a Tapli (Farsa) under their cot. Around midnight, they had proceeded outside. According to PW-11, he then enquired about the incident from the sons and the daughters

of the deceased persons and all of them implicated A-1 and A-2 in the offence.

5. PW-11 then gave a complaint to the P.S. Talsara, where an FIR (Ext-1) was registered. Amulya Kumar Routray (PW-22), working as the Inspector-In-Charge (IIC), Talsara P.S., on receipt of the written report from PW-11, he examined PW-11 and arranged for a Scientific team of the D.F.S.L., Sundargarh to reach the spot to collect the clue materials. At the spot, PW-22 examined one Balamdina Barla (PW-15) and Christodasi Kerketta.

6. PW-22 then conducted inquest on the dead body of the deceased persons and prepared two separate reports. He sent the bodies to the District Headquarters Hospital (DHH), Sundargarh for post mortem. He seized material objects from the spot. He examined Supriya Kerketta (PW-14), the child of the deceased persons on the spot. The wearing apparels of the deceased were seized by him.

7. On 1st July 2013, on receiving reliable information, PW-22 proceeded to the Subdega bus stand area and nabbed A-1. Pursuant to the statement made by him, he went to the village Deogaon along with A-1 and arrested A-2 from his sister's house there. Pursuant to a further statement given by A-1, the weapon of offence, viz., an axe was recovered from the waters of the Luhurapada Dam. Likewise, A-2 gave a statement and from his

cowshed, gave recovery of a Tabli (Farsa) kept concealed there under the thatch. On completion of investigation, a charge sheet was laid against both the accused persons. They pleaded not guilty and claimed trial.

8. Twenty-two witnesses were examined by the prosecution and none for the defence. Chemical examination reports were exhibited.

9. On an analysis of the evidence, the trial Court found the prosecution to have proved the case against both the accused persons beyond all reasonable doubt and convicted and sentenced them in the manner indicated hereinbefore.

10. This Court has heard the submissions of Mr. S. Sourav and Mr. Debasnan Das, learned counsel appearing for the Appellants and Mrs. Saswata Patnaik, learned Additional Government Advocate (AGA) for the State.

11. This is a case based on direct evidence. One of the star witnesses is PW-14, the daughter of the deceased persons, and who was a child when her evidence was recorded.

12. As far as the evidence of a child witness is concerned, the law in this regard is that the evidence must be evaluated carefully. In *Alagupandi @ Alagupandian v. State of Tamil Nadu (2012) 10 SCC 451*, it is explained as under:

"36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no Rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a Rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable."

13. To the same effect are the decisions in *Digambar Vaishnav v. State of Chhatisgarh (2019) 4 SCC 522* and *Nirmal Kumar v. State of U.P. (1993) Supp (1) SCC 510*, which were relied upon by learned counsel for the Appellant.

14. In the present case, it is seen that before proceeding to record her testimony, the trial Court took all the necessary precautions by administering questions to her to test her voluntariness and willingness to depose. PW-14 stated that on the fateful night she was sleeping with her father in the cot, whereas her younger siblings were sleeping with her mother on a wooden bed. Hearing some sound, she woke and saw in the light of the lamp (Dibiri),

A-1 and A-2 having entered the house. A-2 was flashing a torch light at her father upon which A-1 dealt blows with an axe on her father's right cheek and left ribs. While her father groaned, her mother woke and implored A-1 not to kill his uncle Nemahansh. Thereafter, both A-1 and A-2 assaulted her mother. While A-1 assaulted her repeatedly with an axe, A-2 dealt blows with a Farsa and then both the accused fled away. Then her mother asked for water which PW-14 gave her. The child who was ten-years of old at the time of her deposition, was cross-examined but, nothing came up as far as the defence was concerned. The motive for the crime was supplied during her cross-examination by A-1, when following answers were elicited from her:

"5..... Prior to the incident accused Ashish and my parents were having altercations. The dispute between my father and Ashish arose since earlier Ashish had killed one of our bullocks."

15. The evidence of the child witness (PW-14) remained unimpeachable in the trial.

16. Dr. Golekha Behera (PW-1) conducted the postmortem on the dead body of Nemahansh and found as many as seven incised wounds on the face, neck and ribs. Dr. Bibhudatta Nayak (PW-16) conducted the postmortem on the dead body of the deceased Nemahanti and found as many as eighteen wounds, of which, sixteen were incised wounds all over the body. In both instances, the Doctors certified the deaths to be homicidal as a result of the fatal injuries to the vital organs. The weapons shown to them were certified by them to be capable of causing those injuries. Again,

there was hardly any cross-examination of both doctors to elicit any contradictions or inconsistencies.

17. Learned counsel for the Appellants sought to submit that the evidence of PW 14 contained contradictions and was not reliable as she did not immediately after the incident name the accused when she spoke to PW 12 or even to the informant PW 11. Reliance was placed on the decision in ***Bisli Murmu v. State of Odisha (2012) (1) ILR Cut 817.***

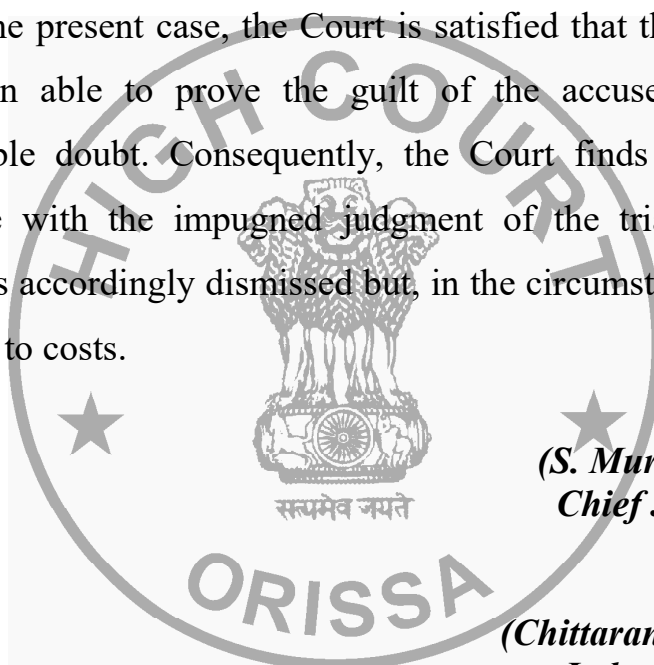
18. In the present case, the Court is satisfied that the evidence of PW-14, the child witness, is clear and cogent without any contradictions and has been fully corroborated by the medical evidence. She was subjected to cross-examination but none of the so-called inconsistencies could be brought out by the defence. The Court has also perused the remainder of the evidence which by and large corroborates the evidence of the PW-14 as regards events prior to the actual occurrence. Consequently, the Court is satisfied that the evidence of PW 14 can safely form the basis for sustaining the conviction of the present Appellants for the offences aforementioned.

19. Relying on the decision in ***Niranjan Panda v. State of West Bengal (2010) 6 SCC 525***, counsel for the Appellants submitted that the recovery of the weapon of offence was not supported by PWs 6 and 10 who were cited as witnesses to the recovery. In the present case, with there being unimpeachable direct evidence of the crime in the form of the evidence of the child witness, the

failure of PWs 6 and 10 to support the recovery of the weapon of offence loses significance.

20. It was then submitted that mere gravity of the crime should not dispense with the requirement for the prosecution to prove the case against the Appellants beyond reasonable doubt. Reference in this regard is made to the decision in *Digambar Vaishnav v. State of Chhatisgarh* (*supra*).

21. In the present case, the Court is satisfied that the prosecution has been able to prove the guilt of the accused beyond all reasonable doubt. Consequently, the Court finds no reason to interfere with the impugned judgment of the trial Court. The appeal is accordingly dismissed but, in the circumstances, with no order as to costs.



(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera/Jr. Steno.