



IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.59 of 2007

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

Bishnu Charan Ganda ***Appellant***

-versus-

State of Odisha ***Respondent***

Advocate for the parties:

For Appellant : Mr. H.K.Mallik, Advocate

For Respondent : Mr. Raj Bhusan Dash,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

JUSTICE V. NARASINGH

Date of Hearing: 12.12.2024 and Date of Judgment: 04.03.2025

JUDGMENT

K.R.Mohapatra, J

1. This matter is taken up through hybrid mode.
2. This Appeal has been registered under Section 374 Cr.P.C. receiving the prisoner's petition through Welfare Officer, District Jail, Phulbani, where the Appellant was incarcerated. The Appellant has been convicted under Section 302 IPC and has been sentenced to undergo imprisonment for life by the judgment dated 17th February, 2006 passed by learned Sessions Judge, Phulbani in ST No.111 of 2003.
3. The prosecution story is that the Appellant had married the deceased- Mina Nayak nine years prior to the date of occurrence, i.e., on



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4th February, 2003. They were blessed with two daughters. The Appellant was very often ill-treating and assaulting his wife, the deceased. On 4th February, 2003 at about 3:00 PM, there was some altercations between the Appellant and the deceased and the Appellant assaulted the deceased. Later at 7:00 PM, the Appellant again assaulted the deceased mercilessly for which the deceased suffered serious bodily injuries and succumbed to such injuries. On 5th February at 6:00 AM, the maternal uncle of the deceased (the Informant) got information about the death of the deceased and came to the house of the Appellant, where he found the deceased lying dead in the courtyard of the house of the Appellant. The Informant found injuries on her person. He enquired about the death of the deceased from the villagers who informed that the Appellant assaulted the deceased to death on the previous day. Thus, the Informant lodged FIR at Khajuripada Police Station. Upon receipt of the report, the Police registered Khajuripada PS Case No.12 dated 5th February, 2003. As the FIR disclosed a cognizable case, the Investigating Officer took up investigation. On the basis of the FIR, GR Case No.55 2003 was registered on the file of learned SDJM, Phulbani.

3.1 During investigation, the Investigating Officer (IO)-PW-8 made inquest over the dead body; examined the Informant-PW-6 and other witnesses; arrested the Appellant and sent the dead body for post mortem. After completion of the investigation, the IO submitted charge sheet under Section 302 IPC against the Appellant.

4. The plea of defence was one of complete denial of the involvement of the Appellant. However, the defence did not examine any witness. The prosecution examined as many as eight



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witnesses. PWs-1 and 2 are the witnesses to the assault on the deceased by the Appellant and dragging her to their residence holding her hair. PW-5 is the Medical Officer who conducted the autopsy of the dead body. PW-3 is a post-occurrence witness. PW-6 is the Informant, namely, the maternal uncle of the deceased. PW- 7 is the mother of the deceased and PW-8 is the IO. Seven exhibits as MOs were marked on behalf of the prosecution

5. Mr. Mallik, learned counsel for the Appellant being engaged by Legal Services Authority on being requested by the Appellant argued with vehemence that the conviction is based on surmises and conjectures. Although PWs-2 and 3 have been cited as eyewitnesses to the occurrence, but both of them have not seen the alleged incident of murder of the deceased, which occurred at the residence of the Appellant. They had only seen the Appellant dragging the deceased to his residence by holding her hair on the alleged date of occurrence. Neither the weapon of offence was seized nor were the wearing apparels of the deceased as well as the Appellant sent for chemical examination. Informant-PW-6 did not disclose in his evidence as to who informed him about the death of his niece, the deceased. In essence, there is no direct evidence implicating the Appellant in the offence. Learned Sessions Judge on a sheer presumption convicted the Appellant under Section 302 IPC and sentenced him to undergo imprisonment for life. All the witnesses had only stated previous incident of assault on the deceased by the Appellant, which are not sufficient to complete the chain to implicate only the Appellant in the



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alleged crime. Thus, the Appellant is entitled for acquittal and he should be set at liberty forthwith.

6. Mr. Dash, learned ASC, on the other hand, submitted that the witnesses, more particularly, PW-1 deposed that on 4th February, 2023, they had seen that the Appellant had caught hold the hair of the deceased and dragged her to his residence. PW-1 categorically stated that although he intervened, it yielded no result. PW-2 also deposed that the incident occurred in front of the shop of his son at 3:00 PM on 4th February, 2003. At that time, he was present in the shop. He had seen the Appellant dragging the deceased by holding her hairs. Although he protested the accused did not pay any heed. PW-3 also corroborated the testimony of PWs-1 and 2. Evidence of the Medical Officer-PW-5 who conducted post mortem of the dead body also vividly stated the external and internal injuries of the deceased. He had also opined that the injuries were ante mortem in nature and may be possible by means of iron wire (M'O-III) and Sal Medha (MO-I), which were produced before him. It was further deposed that the injuries on the scalp and both forearms could be caused by Tangia (MO-II) and Sal Medha (MO-I). Although PW-6, the Informant is not the eyewitness to the occurrence he had described the behavior and ill-treatment of the Appellant on the deceased. PW-7 is the IO who had also supported the case of the prosecution. On a cumulative assessment of the evidence adduced, the learned Sessions Judge rightly convicted the Appellant under Section 302 IPC and sentenced him to undergo imprisonment for life. The same as such warrants no interference.



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7. Heard learned counsel for the parties; perused the evidence, both oral and documentary available on record. The incident occurred on 4th February, 2003 in between 8:00 PM to 10:00 PM at the residence of the Appellant. It was alleged that the Appellant brutally assaulted his wife, namely, Mina Ganda @ Nayak (deceased) by means of iron wire and Sal Medha as a result of which she succumbed to the injuries at the spot. PW-6 is the maternal uncle of the deceased and Informant in the case. He categorically stated in his evidence that on 4th February, 2003, he went to the Appellant's village getting information about death of his niece. He stated in his evidence that he along with his sister (mother of the deceased) went to the house of the Appellant and found the deceased lying dead in the courtyard of the house of the Appellant. When the Informant enquired about the matter, the villagers informed that the Appellant brutally assaulted the deceased on the previous day, i.e., on 4th February, 2003. Parents of the Appellant also disclosed before PW-6 that the Appellant being drunk assaulted the deceased. Although they protested but the Appellant ignoring the same mercilessly assaulted the deceased, which caused her death. The evidence of PW-6, the Informant, was not shaken in cross-examination. PWs-1 to 3 are the eyewitnesses to the occurrence. On the date of occurrence at about 3:00 PM, PW-2 was in the shop of his son. He vividly described that the deceased was coming towards their shop. At that time, the Appellant reached there and dragged her by holding her hair. When PW-2 protested he did not pay any heed and dragged the deceased to his residence. On the next day when the Police reached at the village he came to know



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about the death of the deceased. PW-1 also in his evidence stated to have seen the incident described by PW-2. Their evidence was not shaken in any manner in the cross-examination. PW-5, the Medical Officer, who conducted autopsy over the dead body, has described the injuries on the person of the deceased as under:-

“EXTERNAL :-

2. The body is stout, average body built, eyes were closed, rigor mortis present in lower extremities only post-mortem lividity was absent, left eye black and adjacent tissue one is superior to the eye cavity. Capering 2” inferior to above set eye ball. External and multiple bruises above 3 cm. x 0.5 cm. were present on the tip of the right shoulder three in numbers.

(ii) On the front of neck below the thyroid cartilage one inch apart the next. Abrasion on the outer border of the right iliac fossa two in numbers 2” incise.

(iii) Swelling and bruise 5” x 2” on palpation, there is reptation over the lower end of left fore-arm.

(iv) Scalp hair intact and on inspection a lacerated wound 2” x 2” bone deep present on left parietal bone.

(v) Clotted blood present over the left pina and the external auditory meatus.

(vi) One bruise with depressed fracture of the middle of the left temporal bone with a bruise of 3” x 2” continuing inferior to the tragus of the left ear. The Spinal cord is intact.

On dissection of the skin over the dorsal aspect of the right fore-arm it is found that about 39 ml. of clotted blood in the subcutaneous tissue on removal of the compartment i.e. second compartment of extensor muscle of fore-arm that is a chief fracture of the lower end of alna. But rarious and others are intact.

On dissection of the left fore arm there is 30 ml. of clotted blood with a fracture of lower end of rarious.

On dissection of skull, on removal of skin of skull a haematoma of 3” present on the left temporal bone with a linear depress fracture 2” deep and above-mentioned bone is opposed with a gap of half inch. The area adjacent to the left eye ball is bruised and contused.

A haematoma 6” x 3” starting from inferior border of the frontal bone to the bregma but the bone is intact.

On further dissection of the brain the durameter and piameter are intact, except a small haematoma of size 1” x 1”



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present over a temporal protuburnce. The gyri and sulsei are intact. Corpuscallosus intact.

A haemotama above 50 ml. present on the middle cranial fossa compressive pons and medillaoblongata.”

The seized weapons were also shown to the Medical Officer who opined that the external injuries as per the injury report (Ext.6) could be possible by means of iron wire, Sal Medha (wooden). The injury on the scalp and the injuries on both the fore-arms can be cause by Tangia and Sal Medha (wood). He had further opined that the injuries on the skull, one left temporal aspect and clot on the base of the skull which were fatal in nature, could be caused by Tangia and Sal Medha (wood). The injuries found on the dead body of the deceased were sufficient to cause death in ordinary course. In the cross-examination, the Medical Officer also opined that the skull injuries may be possible by fall from five meters height on a rough surface. No further cross-examination of the Medical Officer was made. It is not the case of the Appellant that the deceased succumbed to the injuries by falling from the height of five meters on rough surface. The Appellant only denied his involvement in the alleged incident in his statement under Section 313 Cr.P.C. PW-7 is the mother of the deceased who had also corroborated the stand of PW-6, the Informant. From the evidence of PW-8, the IO and other witnesses including the Medical Officer-PW-5, the prosecution story is established beyond any reasonable doubt.

7.1 The Appellant was last seen dragging the deceased to his house. In view of Section 106 of the Evidence Act, burden is on the Appellant to prove as to how the incident occurred at his residence.

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He has miserably failed to discharge the onus. The conduct of the Appellant absconding, which is relevant under Section 8 of the Indian Evidence Act, 1872, cannot be ignored.

8. In the face of the evidence of PWs-1 and 3 and that of the Medical Officer-PW-5 coupled with the conduct of the Appellant and his defence of bald denial thereby failed, to discharge the burden under Section 106 of the Evidence Act, the MOs- I to III not being sent for chemical examination and their non-seizure in terms of Section 27 of the Evidence Act on which the defence rested its submissions in the factual backdrop of the case at hand, falls into insignificance.

9. On a cumulative assessment of the evidence on record and the discussions made above, this Court is of the considered view that the Appellant is the author of the crime. As such, the conviction of the Appellant under Section 302 IPC and sentencing him to undergo imprisonment for life warrant no interference.

10. This Court, vide order dated 23rd September, 2010 in Misc. Case No.16 of 2010, had released the Appellant on bail. Hence, the bail bond is cancelled and the Appellant shall be taken to custody forthwith to serve out the sentence.

11. The Jail Criminal Appeal is accordingly dismissed.

(K.R. Mohapatra)
Judge

(V. Narasingh)
Judge

High Court of Orissa, Cuttack
Dated the 4th day of March, 2025/s.s.satapathy