ORISSA HIGH COURT,
CUTTACK

JAIL CRIMINAL APPEAL NO. 216 OF 1996

From the judgment dated 27.07.1996 passed by Shri M.R. Behera, Sessions Judge, Phulbani in S.T. No.7 of 1996.

Basanta Konhar @ Babula ..... Appellant

Versus

State of Orissa ..... Respondent

For Appellant - Miss. Dipali Mohapatra

For Respondent - Mr. A.K. Mishra,
Standing Counsel.

PRESENT:-

THE HON'BLE MR. JUSTICE P.K.TRIPATHY
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 15.02.2005

In the above appeal, the appellant has challenged the judgment and order dated 27.07.1996 passed by the learned Sessions Judge, Phulbani in S.T. No.7 of 1996 whereby he has been convicted under Sections 302/201, I.P.C. and sentenced to undergo imprisonment for life for committing murder of his co-villager Kiabala Konhar and causing disappearance of his dead body.

2. The case of the prosecution in a nutshell is that the appellant and deceased-Kiabala Konhar are co-villagers. Rajkishore Konhar is the son of the deceased. Some years prior

to the occurrence, appellant had snatched away a gold 'Mali' from the neck of the daughter-in-law of the deceased. A Punch was convened in the village where the appellant admitted the above fact. In the said Panchayat, the appellant also agreed to compensate Kiabala Konhar with the cost of the 'Mali' ,i.e. Rs.3000/-, as the same was disposed of by him. Accordingly, the appellant paid Rs.2,500/-. A couple of months before the occurrence, appellant apprehending that deceased-Kiabala is practicing witchcraft on him, convened a meeting in the village with a view to drive him out of the village, but failed. On the date of occurrence, i.e., 17.09.1995, at about 4 p.m., in an isolated place near river Salunki, the appellant finding that the deceased alone was proceeding towards Kuchilagada, caused his murder by inflicting several axe blows on him. With a view to cause disappearance of evidence, he tied a napkin on the left feet of the deceased, dragged the dead body to the river bed and threw it into the river Salunki. Thereafter, he appeared at Tikabali police-station at about 6.30 p.m., made a statement before the A.S.I. of Police, namely, Gopal Chandrea Mohapatra (P.W.7) the commission of murder of Kiabala by him and produced the weapon of offence (axe). P.W.7 reduced the statement of the appellant to writing vide Station Diary Entry No.345 dated 17.09.1995 and seized the axe and the blood stained cloth on the person of the appellant. Immediately thereafter investigation was set into motion in course of which the police along with the appellant went to the house of the deceased. From there, on the disclosure made by the appellant, the son of the deceased and some villagers accompanied the police to the place where Kiabala was murdered and the place where the dead body was thrown. Police seized blood stained earth and sample earth from the place of occurrence and recovered the dead body from the river. On completion of investigation, charge sheet was submitted against the appellant.

3. The defence plea is one of complete denial. The specific case of the appellant is that during the relevant time he was mad.

4. In order to prove its case, prosecution examined as many as ten witnesses. P.W.1 is a witness to the seizure, P.W.2 is the son of the deceased, P.Ws.3 and 4 are co-villagers, P.W.5 is the doctor who conducted postmortem examination, P.Ws.6 to 9 are police officials and P.W.10 has been examined on behalf of the Court. Prosecution also exhibited sixteen documents and proved eight material objects. Defence did not choose to examine any witness in support of its plea.

5. The learned Sessions Judge, Phulbani on evaluation of the evidence on record convicted the appellant under section 302/201, I.P.C. and sentenced him to undergo imprisonment for life with a finding that the appellant caused the murder of the deceased by means of an axe at Gahipakali Padar land and threw the dead body into the river Salunki in order to cause disappearance of evidence to screen himself from legal punishment.

6. P.W.5, the doctor who conducted postmortem examination over the dead body, found the following injuries :-

(1) Cut wound on the left face below the left ear extending to thel neck with fracture of mandible and tearing of muscles underneath. The size of the wound was 5" x 2".

(2) Cut wound over the left scalp above the left ear of size 2" x 1" with fracture of left temporal bone, brain matter coming out from the fracture site.

(3) Cut wound over the right neck above the collar bone of size 3" x 2" with tearing of muscles underneath with extension of injury to the back of the neck.

(4) Cut wound over left back on the supra-scapular region of size 3” x 2” with fracture of scapula.

According to P.W.5, all the above injuries were ante mortem and homicidal in nature. Injuries no.1 and 2 are individually fatal and sufficient in ordinary course of nature to cause death. The cause of death was due to asphyxia and haemorrhage. Thus, the deceased died a homicidal death. The question is whether the appellant is the author of the crime.

7. Miss Mohapatra, learned counsel for the appellant, contends that P.W.1 is a co-villager of the appellant before whom the appellant allegedly made a statement in the police station about committing the murder of the deceased and produced the blood stained axe. But, in his cross-examination, he has stated that he saw the axe on the table of the police station. Therefore, P.W.1 can by no stretch of imagination be said to be a witness to the alleged confession and production of the axe by the appellant and his statement to that effect during his examination-in-chief cannot be relied upon. P.W.2 is the son of the deceased. His evidence is full of contradictions. That apart, prosecution has failed to produce any evidence that the appellant and the deceased were last seen together or that there was a probable chance of their meeting at Gahipakal padar land. Though the prosecution has alleged that the appellant dragged the dead body for some distance and threw the same into the river Salunki to cause disappearance of evidence, from the evidence of the doctor (P.W.5) it is found that there was no mark of injury on the body of the deceased to establish such dragging, particularly when admittedly the land was dry. In view of the above, contends Miss Mohapatra, prosecution has miserably failed to prove the case beyond reasonable doubt and so the appellant is entitled to an order of acquittal.

8. In this case, there is no eyewitness to the occurrence to state that the accused-appellant is the author of the crime. The conviction is based solely on circumstantial evidence. In a case of the present nature, the following conditions must be fulfilled:-

(a) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(b) 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.

(c) The circumstances should be of a conclusive nature and tendency.

(d) They should exclude every possible hypothesis except the one to be proved.

(e) There must be a chain of events so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must show that in all human probability the act must have been done by the accused.

9. We have carefully gone through the evidence of the prosecution witnesses. As contended by the learned counsel for the appellant, P.W.1 cannot be said to be a witness to the alleged confession and production of the weapon of offence at the police station in view of his admission in course of cross-examination that he saw the axe on the table of the police station. None of the witnesses has stated that he had seen the appellant and the deceased together just before the occurrence. Prosecution has also not been able to establish that there was any probable chance of the appellant and the deceased meeting together at the place of occurrence. Dragging of the dead body by the appellant to some distance can also not be believed. Had

it been so, there should have been some abrasions on the dead body as it has been brought out in course of cross-examination of P.W.2 that the land was dry. But, no such injury has been found by the doctor on the dead body. In such circumstances, none of the conditions enumerated above have been fulfilled in this case to establish beyond doubt that the appellant committed the murder and tried to cause disappearance of evidence in order to screen himself from legal punishment. As such, the appellant is entitled to the benefit of doubt.

10. In the result, the appeal is allowed and the order of conviction and sentence passed against the appellant is set aside. He be set at liberty forthwith, if his detention in jail is not required in connection with any other case.

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P.K. Tripathy, J.

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Pradip Mohanty, J.