ORISSA HIGH COURT
CUTTACK

JAIL CRIMINAL APPEAL NO. 76 OF 1997

From the judgment dated 31.03.1997 passed by Sri A.K.Samantaray, Sessions Judge, Dhenkanal-Angul, Dhenkanal in Sessions Trial Case No.69-A of 1994.

Peju @ Hrudananda Behera ..... Appellant

Versus

State of Orissa ..... Respondent

For Appellant - Mr. B.K. Nanda

For Respondent - Mr. P.K. Khuntia,
Addl. Govt. Advocate

PRESENT:-

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

Date of hearing and judgment : 18.10.2006

Heard argument from both the parties. The judgment is as follows.

2. Karuna Behera is the deceased. He had a quarrel with the accused-appellant in the matter relating to 'Dandanata' resulting in institution of a criminal case against the accused. Hara Behera, the foster father of the accused, wanted a settlement outside the court and in presence of the accused and Pahali(P.W.11) requested the deceased to withdraw the criminal case against the accused. That incident took place at about evening time in front of the house of Hara Behera.

Deceased did not oblige to that request and made statement in furtherance thereof. At that, accused reacted sharply and threatened to do away with the deceased. Thereafter, deceased went to his thrashing floor. His wife (P.W.6) brought food for his supper. Sitting by the side of a small fireplace, because of the cold climate, the deceased started taking food. P.W.6 also remained present at that spot. Pahali(P.W.11) had his thrashing floor adjoining to that of the deceased. He was also present in his thrashing floor and was taking food. Accused arrived there at about 8 p.m. and attacked and injured the deceased by means of katari(M.O.IV). Receiving several blows and sustaining bleeding injuries on the neck region, chest and back and the hands, he died at the spot. Accused, after committing the crime fled away with the weapon of offence. But after his arrest, on police query, gave recovery of the weapon of offence from a well. In that context, on police requisition, the fire brigade people came and drained out the water from the well and thereafter a fireman (P.W.8) brought out the katari from inside the well. That katari was sent to the doctor(P.W.12), who conducted the post-mortem examination to give his opinion.

Soon after the occurrence, hearing the shout of P.W.6, the neighbours and the villagers gathered there and thereafter police was informed and routine investigation was undertaken. On completion of investigation, charge-sheet was submitted against the accused for the offence under Section 302 IPC.

3. Accused denied to the charge and claimed for trial. But he did not adduce any defence evidence.

4. To substantiate the charge, prosecution relied on the evidence of thirteen witnesses and series of documents, besides the material objects. The relevant evidence shall be taken note of at appropriate places of this judgment.

5. Trial court recorded that accused is the author of the crime, i.e., the homicidal death of the deceased. Homicidal death has

been proved by the doctor(P.W.12), and the charge under Section 302 IPC against the accused has been proved both by direct evidence of P.Ws.6 and 11 and the circumstantial evidence such as recovery of the weapon of offence(M.O.IV) under Section 27 of the Evidence Act and presence of the same group of blood in the wearing apparel of the accused and deceased. Accordingly, learned Sessions Judge, Dhenkanal-Angul, Dhenkanal in Sessions Trial Case No.69-A of 1994 convicted the accused for the offence under Section 302 IPC and as per the impugned judgment dated 31.03.1997 sentenced him to imprisonment for life.

6. While challenging to the aforesaid order of conviction, Mr. Nanda, learned counsel appearing for the appellant argues that evidence of P.Ws.6 and 11 is not sufficient enough to warrant conviction against the accused. He argues that P.W.6 being the widow of the deceased is his close relative, and P.W.11, though related to the accused has enmity with him. Therefore, evidence of both the witnesses should have been discarded by the trial court. We do not find any merit in that argument inasmuch as P.W.6 being a witness present at the spot, in natural sequence of events, does not stand disqualified to be eye witness simply because she is the widow of the deceased. Apart from that, her close relationship with deceased, in a case of the present nature, would not prompt her to protect murderer of her husband, i.e., the real assailant and prosecute an innocent person. At least no circumstance is emerging from her evidence to entertain doubt on her veracity or credibility as an eye witness. Thus, ground of relationship of P.W.6 with the deceased is no reason for us to discard her evidence. Similarly, there is nothing on record to indicate that P.W.11 had enmity with the accused. A mere suggestion to that effect without any reference to the nature of enmity and the particulars of enmity is not enough to take away evidentiary value of his deposition and his evidence under such circumstance cannot be rejected. On the other hand, on perusal of the evidence of P.Ws.6 and

11, we do not find any semblance of interestedness so as to make false accusation against the accused.

7. Mr. Nanda further argues that the aforesaid two witnesses have not stated about the number of blows given by the accused. We find on record that the trial court while recording the deposition has recorded that accused dealt 'blow' by katari. He had utilized that word even for plural purpose, which is apparent on reading deposition of P.W.11 in particular, inasmuch as P.W.11 stated that because of the 'blow' given, the deceased sustained injuries at differennt places. Apart from that, there was no cross-examination on the aforesaid aspect by the accused. Under such circumstances, using the term 'blow' for 'blows' does not render their evidence untruthful or doubtful.

8. Mr Nanda then argues that the other two witnesses, namely, Hara Behera and Panu pradhan were not examined by the prosecution and it is guilty of withholding the relevant witnesses from the box. The aforesaid argument is attractive but does not bear any merit. It is trite law that it is the quality and not the quantity of evidence which matters for adjudicating a dispute of the present nature. Hara Behera and Panu Pradhan were supposed to make statement about the proposal given by Hara for withdrawal of the criminal case and the reaction of the accused when the deceased refused to withdraw the criminal case. In that respect, P.W.6 and P.W.11 have corroboratively stated about such proposal being given by Hara, not accepted by the deceased and the reaction of the accused in giving the ultimatum. Therefore, examination of those two witnesses was not necessary in furtherance of the proof of that aspect by the prosecution. If at all their evidence in any way was advantageous to the accused, then he was not precluded from examining them as witnesses from his side.

9. Mr. Nanda further argues that recovery of weapon of offence under Section 27 of the Evidence Act is not clearly proved

inasmuch as recording of the statement was not made in presence of P.W.8. When direct evidence is available to connect the accused with the crime, we do not feel it necessary to make a deliberation on this side issue or the circumstantial evidence. Suffice it for the purpose of record to indicate that that aspect was dealt with by the trial court and in that respect he did not commit any illegality.

10. Upon attending to the submissions made by the learned counsel for the appellant in the above indicated manner, we find that the evidence of P.W.12 clearly indicates that the six incised wounds; two on the neck region, one on the back and three on the hands and palm are sufficient in ordinary course of nature, as opined by P.W.12, to cause death of the deceased. P.W.12 further opined that he examined the katari sent by P.W.13 and found that weapon to be capable of producing such injuries. From the aforesaid evidence of P.W.12, a clear case of homicidal death was proved. Similarly, on the evidence of P.Ws.6 and 11 appellant has been proved to be the author of those injuries. Under such circumstances, appellant's conviction under Section 302 IPC cannot be found to be wrong or illegal. Therefore, we do not find any reason to interfere with the order of conviction, as recorded by the trial court.

11. Accordingly, the Jail Criminal is dismissed.

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P.K.Tripathy,J.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
October 18, 2006 / ***Samal***