

**ORISSA HIGH COURT,
CUTTACK**

JAIL CRIMINAL APPEAL NO. 179 OF 1999

From the judgment dated 27.04.1999 passed by Sri N.Prusty, 1st Additional Sessions Judge, Cuttack in Sessions Trial No.220 of 1997.

Deepak Kumar Dash

.....

Appellant

Versus

State of Orissa

.....

Respondent

For Appellant - M/s S.R.Mulia, B.R.Dalai,
D.Dash & S.Mohanty.

For Respondent - Additional Government Advocate

PRESENT:-

**THE HON'BLE MR. JUSTICE PRADIP MOHANTY
AND**

THE HON'BLE MR. JUSTICE B.K.PATEL

Date of hearing & judgment : 12.11.2009

PRADIP MOHANTY, J. This appeal is directed against the judgment and order dated 27.4.1999 passed by the learned 1st Additional Sessions Judge, Cuttack in Sessions Trial No.220 of 1997 convicting the appellant under section 302 I.P.C. and sentencing him to undergo imprisonment for life and to pay fine of Rs.25,000/- in default to undergo R.I. for two years.

2. The case of the prosecution is that on 17.10.1996 at about 3 P.M., the father of the informant (P.W.3) had been to his land to put "GARVANA STICK", but he did not return. The informant went in search of his father and found him lying in the maize field

having injuries on his head and neck. He lodged F.I.R. before the Kissannagar Police Station suspecting the present appellant and his parents to be the assailants of his father. After investigation charge sheet was filed against the present appellant and two others (parents of the appellant).

3. The plea of the present appellant is complete denial of the allegations.

4. In order to substantiate the charge, prosecution examined as many as seven witnesses including the doctor and the I.O. and exhibited 23 documents. The defence examined one witness.

5. The learned Additional Sessions Judge having regard to the facts of the case, the evidence on record, leading to recovery under section 27 of the Evidence Act and corroboration made by D.W.1 in respect of recovery of weapons of offence came to hold that the prosecution has been able to complete the chain of circumstance in order to bring home the charge against the present appellant and convicted and sentenced him as stated earlier. He, however, acquitted the other two accused persons with the finding that the prosecution has miserably failed to prove the charge against them.

4. Mr. Mulia, learned counsel for the appellant, assails the impugned judgment on the following grounds:

(i) admittedly there is no eye-witness to the occurrence and the case solely rests on circumstantial evidence;

(ii) the prosecution has not been able to complete the chain of circumstance;

(iii) there is no independent corroboration to the story relating to leading to recovery of the weapon of offence;

- (iv) the so-called confessional statement cannot be accepted as it does not contain signature of the accused or the witnesses;
- (v) the prosecution has not produced nor proved the material object before the trial court; and
- (vi) P.W.4, who is said to be a witness to the seizure of weapon of offence, has not supported the same.

5. Mr. Nayak, learned Additional Government advocate in response submits that the prosecution has been able to complete the chain of circumstances. P.Ws.2, 3 and 5 have clearly established the motive behind the murder. Ten to fifteen days prior to the occurrence, the appellant and other accused persons had assaulted the deceased. The weapon of offence, i.e., Katari, was recovered at the instance of the appellant in presence of the witnesses. The witnesses as well as the appellant have put their signature on the seizure list (Ext.3). The appellant led the Investigating Officer to the place of concealment and gave recovery of the Katari. P.W.6, the doctor, in his examination-in-chief has opined that the cut wounds as described in the post-mortem report can be caused by such a weapon, i.e., a katari. Therefore, no fault can be found in the impugned judgment convicting the appellant under section 302 I.P.C.

6. Perused the deposition of witnesses and the exhibits. P.W.1 is said to be an eye-witness but he has not supported the prosecution case. Although the prosecution declared him hostile and put leading questions, nothing has been elicited from him to support its case. P.W.2 is the wife of the deceased Sarat Chandra Das. She stated in her evidence that on the date of occurrence her husband had been to their land to fix "GARVANA STICK" as per the

tradition but till 5 P.M. he did not return. Her son went in search of his father and found him lying dead in the land. She has also stated that the appellant was absorbed in a temporary Government service at Kendrapara due to the arrangement made by her husband. Subsequently, after the appellant lost his temporary service, there was ill-feeling between the appellant and her husband. In her cross-examination P.W.2 stated that since her husband filed a case for restitution of conjugal rights, she filed a maintenance case against her husband. She also admitted that she had not informed the police about entry of the appellant and one Khirod into her house being armed with Tenta. She also admitted that there was ill-feeling between them. P.W.3, the informant, is the son of the deceased. He has corroborated the statement of her mother. It is further stated that he lodged F.I.R. Ext.2 before Kissannagar Police Station. In cross-examination he admitted that 15 days before the occurrence the appellant entered into his house with Tenta but he did not inform this fact before the police. P.W.4 is the witness to the seizure to recovery of weapon of offence, i.e., Katari. He has not supported the prosecution case. He was declared hostile and thereafter leading questions were put to him. He admitted his signature in the seizure list but in cross-examination he specifically stated that on 24.10.1996, i.e., the date preceding to the date of seizure, being shown by the police he traced the knife in the school field near the damaged latrine and seizure list was prepared and he put his signature. With regard to leading to recovery of weapon of offence by the appellant under section 27 of the Evidence Act he has not stated anything in his statement. P.W.5 is another son of the deceased. P.W.6 is the doctor who conducted autopsy over the dead body of the deceased and found the following injuries :

- (i) Cut wound of size 13 cm. long with a gap of 12 cm. on extended neck and involves up to a depth of pharynx, where the wound has cut through and through the skin underline

muscles and vessels on front and left side of neck, the 4th cervical vertebral body along with spinal cord and situated by encircling the front and left side of the neck;

- (ii) Cut wound 3 cm. x 1 cm. x superficial muscle deep situated in front of right shoulder vertically 3.5 cm. outer and below the lateral end of right clavicle.
- (iii) Cut wound 8 cm. length cutting 4 cm. in depth with a gap of 1 cm. situated transversely and little obliquely in the postero lateral aspect of right fore arm 16.5 cm. above the lower end of radius.
- (iv) Pressure abrasion of size 4 cm. x 1 cm. with black coloured skin over it situated on the ulnar boarder of right fore arm 2 cm. behind the outer end of injury no.(iii).
- (v) Cut wound 4 cm. x 0.75 cm. x bone deep situated in an antero posterior direction 4 cm. above the mid point of left eye brow little obliquely.
- (vi) Cut wound 8 cm. x 1 cm. x bone deep situated over the right parietal region of the head at the level of parietal eminence 5 cm. behind the injury no.(vii).
- (vii) Cut wound 10 cm. x 1.5 cm. x bone deep situated on right fronto parietal region of the head 8 cm. above the root of right ear.

The doctor opined that all the injuries were ante-mortem in nature and all the injuries, when considered together were fatal in ordinary course of nature. The external injuries would have been caused by any heavy or moderately heavy cutting weapon. Nothing has been elicited from his cross-examination by defence. It is specifically stated by the doctor that death of deceased occurred due to combined effect of haemorrhage, shock and complete transection of spinal cord.

7. There is no dispute that the deceased Sarat Chandra Dash was lying with cut injuries on the head and neck. Information given regarding leading to discovery should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. In the instant case, the information given by the accused has not been recorded nor proved and only the seizure list has been proved. No independent corroboration is there to support the prosecution case. Ext.16, the disclosure statement, on which much reliance has been placed by the trial court, does not contain the signature of the witness or the accused. The station diary entry has not been proved by the investigating officer. Though the conviction has been based on circumstantial evidence, the chain of circumstances is not complete. Only evidence available against the accused is that there was ill-feeling between the deceased and the present appellant. The claim of the prosecution regarding leading to recovery under section 27 of the Evidence Act has not been supported by any independent witness. No exact information has also been adduced through evidence that the accused led the police to the place of concealment and gave recovery of the weapon of offence. The weapon of offence, i.e., Katari, was not produced and also not proved by the prosecution. In the circumstances, this Court opines that no conviction can be based on the evidence adduced/produced by the prosecution.

8. In the result, this appeal is allowed and the order of conviction and sentence passed against the appellant is set aside.

B.K.PATEL,J.

I agree.

.....
Pradip Mohanty,J

.....
B.K.Patel,J.

Orissa High Court,Cuttack,
The 12th Nov. 2009/***Palai***