

**ORISSA HIGH COURT,
CUTTACK**

JAIL CRIMINAL APPEAL NO. 294 OF 1998

From the judgment dated 29.10.1998 passed by Sri Niranjana Nayak,
Additional Sessions Judge, Titilagarh in Sessions Case No.123/20 of 1997.

Sitaram Pradhani & Another	Appellants
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Versus

State of Orissa	Respondent
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For appellants - Mr. Arunendra Mohanty.

For respondent - Miss S. Mishra,
Additional Standing Counsel

PRESENT:-

**THE HON'BLE MR. JUSTICE PRADIP MOHANTY
AND
THE HON'BLE MR. JUSTICE B.P. RAY**

Date of hearing & judgment : 23.02.2010

PRADIP MOHANTY, J. This appeal is directed against the judgment and order dated 29.10.1998 passed by the learned Additional Sessions Judge, Titilagarh in Sessions Case No.123/20 of 1997 convicting the appellants under Sections 302/201, IPC and sentencing them to undergo imprisonment for life for the offence under Section 302, IPC and rigorous imprisonment for three years and to pay fine of Rs.500/- in default to undergo rigorous imprisonment for one month for the offence under Section 201, I.P.C with a direction to run the sentences concurrently.

2. The prosecution case in brief is that on 16.11.1997 at about 11.00 AM at village-Rahenbhata the appellants committed murder of deceased Raibari, the first wife of appellant no.1, in their house giving blows with Bamboo lathi and buried the dead body in their nearby Bandhanbahali

land with a view to cause disappearance of evidence. On the death of the deceased in suspicious circumstances and subsequent absconding of the appellants, a meeting was held in the village and on the verbal report of the informant (P.W.1), a local villager, at the Titilagarh P.S. the case was registered, the matter was investigated into, locked house of the appellants was searched and from their cultivable land dead body of the deceased was recovered on digging the earth. On completion of investigation, charge-sheet was filed against the appellants under Sections 302/201/34 I.P.C.

3. The plea of the appellants is complete denial of the allegation.

2. Prosecution in order to prove the charge examined as many as ten witnesses including the I.O. and the doctor and exhibited 12 documents. Defence examined none.

3. The trial court basing upon the circumstantial evidence convicted the appellants under Section 302/201, IPC with the finding that the chain of events led to the conclusion that in furtherance of their common intention both the appellants committed murder of the deceased assaulting her by lathi and buried the dead body to cause disappearance of evidence and absconded to save them from their criminal liabilities.

4. Mr. Mohanty, learned counsel for the appellants assails the impugned judgment on the following grounds :

- (i) There is no direct evidence to connect the appellants with the crime. The case entirely depends upon circumstantial evidence and the prosecution has failed to establish that the chain of circumstances is complete.
- (ii) P.W.1, who lodged the FIR, is in inimical term with the appellants.
- (iii) The trial court illegally has not accepted the evidence of P.W.5, who stated that the deceased died of diarrhoea, and discarded

his evidence on flimsy ground that he is the brother of appellant no.1.

- (iv) The so-called leading to discovery has not been proved by the prosecution.
- (v) Motive behind the crime has not been established by the prosecution.

5. Miss Mishra, learned Additional Standing Counsel vehemently contends that the circumstances clearly prove that the appellants were the assailants of the deceased. On the date of occurrence, there was a quarrel between the deceased and appellant no.1 for which appellant no.1 assaulted her with a bamboo lathi and caused her death. P.W.7, the brother of the deceased, also corroborates the statement that there was a quarrel between appellant no.1 and the deceased. Since the chain of circumstances is complete and there is no missing link, the trial court is justified in convicting the appellants for commission of offence under Sections 302/201 I.P.C.

6. Perused the LCR. P.W.1 lodged the FIR. He stated that four days after the occurrence a meeting was held in his village in connection with the death of the deceased. In that meeting, he could know from the villagers that appellant no.1 after committing murder of his first wife Raibari Pradhani buried the dead body in his land and absconded with his second wife Draupadi (appellant no.2). He further stated that out of fear the villagers were reluctant to lodge FIR at the P.S. On 28.11.1996, he went to Titilagarh P.S. along with Manful Bag (P.W.2) and orally reported the matter before the Inspector in-charge, Titilagarh Police Station, who reduced the same to writing and read over and explained the contents of the same to him and Manful Bag. He proved the FIR (Ext.1) and his signature as Ext.1/1. In cross-examination, he admitted that on 28.11.1996 he lodged another written report which is not Ext.1. The contents of Ext.1 were not read over and explained to him before he gave his signature Ext.1/1. He could not say the name of particular villager from whom in the meeting he could know that

appellant no.1 after committing murder of the deceased, buried the dead body in his land. He also admitted in his cross-examination that on 26.06.1995, which was a Saturday, appellant no.1 and Satrugghana (father of P.W.1) while returning from Titilagarh to their village, near village-Laxmipadar on the road his father expired and since appellant no.1 was with his father, his elder brother Mohan Chhura reported to the Police against appellant no.1. P.W.2 who accompanied the informant (P.W.1) corroborated the evidence of P.W.1. He stated that he went with P.W.1 to Titilagarh Police Station and orally reported about the occurrence. He specifically stated that F.I.R. was reduced to writing in Oriya and its contents were read over and explained to them. Thereafter, he put his signature thereon along with P.W.1. But in cross-examination he admitted that he was not in visiting term to the house of appellants. From the villagers he had heard that appellant no.1 and the deceased were quarrelling with each other. But he had no personal knowledge about the same. Both P.Ws.1 and 2 corroborated the F.I.R. story. P.W.3 is a co-villager who had a tea shop adjacent to the house of appellant no.1. In cross-examination he admitted that he had never heard about any quarrel between the deceased and appellant no.1. P.W.4 is a witness to inquest and seizure of bamboo lathi and sample earth. He is also a witness to leading to discovery. He specifically stated that Chhinu Padhani, Parsuram Padhani (P.W.5) and other villagers accompanied the police to the cultivable land of appellant no.1 which was previously ploughed. Chhinu and P.W.5 in their presence dug the earth and recovered the dead body of the deceased. He saw that the deceased was wearing Baigani colour (deep blue) saree and one yellow colour saree was covered on her body. The sarees were seized. After some days while appellant no.1 was in police custody, he led him, Chhinu, Parsuram (P.W.5) and the police to his cultivable land and the police seized one bamboo lathi in his presence and prepared the seizure list (Ext.3). Police also seized some sample earth from the place of recovery of dead body. In cross-examination, he admitted that he could not say wherefrom police brought the bamboo lathi which was seized in his presence. P.W.5 stated in his evidence that on the date of occurrence during day time there was hullah in the village that Raibari (deceased) died. Thereafter, he rushed to the house

of appellant no.1 and saw that the dead body of the deceased Raibari was lying on a cot inside the house. The deceased was wearing one Baigani colour saree. Being asked, appellant no.1 told him that deceased died due to dysentery. In that evening both the appellants buried the dead body in their land and on the next day absconded from the village. Police seized sample earth (M.O. VI) and prepared the seizure list (Ext.4) in his presence and he put his signature (Ext.4/2) thereon. In cross-examination, he admitted that the deceased suffered from diarrhoea and thereafter died. He also admitted that in their locality if somebody dies of diarrhea, generally people do not touch the dead body. After the death of the deceased he observed the funeral ceremony or Dasaha ceremony. By the time of Dasah ceremony appellant no.1 was at the police station. It is also admitted by him that P.W.1 had inimical term with him and appellant no.1. P.W.6, the doctor, who conducted autopsy over the dead body of the deceased, did not find any external injury nor legature marks on dissection of the putrefied soft tissues of the neck of the deceased. He also did not find any injury or fracture of skull and vertebrae. He stated that the cause and nature of death could not be ascertained due to gross putrefaction of the entire body. He specifically stated that the death of the deceased was never due to hanging or any kind of asphyxia. Since the dead body was in highly decomposed stage, the internal or external injuries could not be detected. He has also stated that he could not find anything to suggest that the death of the deceased was due to dysentery. P.W.7 is the brother of the deceased who narrated about the assault to the deceased by appellant no.1 prior to the occurrence. He specifically stated in his examination-in-chief that appellant no.1 was frequently quarrelling with his deceased sister. In cross-examination, he admitted that in the year of occurrence the deceased only once had come to his house. P.W.8 is the I.O. who registered the case, investigated into the matter and examined some of the witnesses. In cross-examination, he admitted that P.W.1 orally reported before him about the occurrence. After registration of the case basing on the oral report, which was reduced to writing by him, he investigated into the matter. He also admitted that P.W.5 and Chhinu identified the spot, dug the earth and discovered the dead body

of the deceased. P.W.9 is a seizure witness. He stated in his examination-in-chief that nothing was seized in his presence and at the instance of police he put his signature. In cross-examination, he admitted that police did not show the seized articles such as Charpoi (Cot) M.O.III & IV, M.O. I & II (two sarees), M.O.V (some bangles) and lathi (M.O.VII). But prosecution did not declare him hostile. P.W.10, the investigating officer, who submitted charge-sheet against the appellants, specifically stated that appellant no.1 while in police custody gave information about the concealment of the dead body of the deceased by burying it in his Bandhanipahali Kheta and throwing of the lathi in the grass field. Appellant no.1 led him and witnesses and gave recovery of the lathi. He seized the lathi, prepared the seizure list and obtained his signature thereon.

7. On scanning of the evidence, it is crystal clear that P.Ws.1 & 2 were inimical towards the appellants. They had no personal knowledge about the occurrence. They have not disclosed the name of the villagers who were present in the meeting. They had put their signatures on Ext.1 at the instance of the police. Therefore, it is unsafe to believe the evidence of P.Ws.1 and 2 with regard to quarrel between the deceased and appellant no.1. Rather the evidence of P.W.5 that the deceased was suffering from diarrhoea and as a usual practice her dead body was buried appears to be more probable. The grounds on which the trial court has discarded the evidence of P.W.5 are not only unjust but also improper and cannot be accepted because (i) evidence of the post-mortem doctor that he could not find anything to suggest that the death of the deceased was due to dysentery is contradicted by his own evidence that cause and nature of death could not be ascertained due to gross putrefaction of the entire body, and (ii) it is well settled that mere relationship of the witness is no ground to discard his testimony. Surprisingly, this P.W.5 has not been declared hostile by the prosecution also. The trial court alluded directly or indirectly to the principle that in a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In the instant case, leading to discovery has not been proved

because P.W.4, who is said to be a witness to the seizure of lathi, has specifically stated in cross-examination that he could not say wherefrom police brought the bamboo lathi. It is well settled that in a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In other words, it is the duty of the prosecution to establish a complete chain of circumstances in proof of guilt of the accused. Taking into consideration all the materials available on record including the medical evidence, this Court comes to the conclusion that the prosecution has not established a complete chain of circumstances pointing at the guilt of the appellants and the benefit of doubt has to be extended to them.

8. In the result, the appeal is allowed. The conviction of the appellants under Sections 302/201, I.P.C. passed by the learned Addl. Sessions Judge, Titilagarh in Sessions Case No.123/20 of 1997 is set aside. Both the appellants be set at liberty forthwith, unless their detention is required otherwise.

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PRADIP MOHANTY, J.

B.P. RAY, J.

I agree.

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B.P. Ray, J.

Orissa High Court, Cuttack
 The 23rd February, 2010/**Alok**