ORISSA HIGH COURT, CUTTACK.

Jail Criminal Appeal No. 232 of 2000

From the judgment and order of sentence dated 29.04.2000 passed by Shri Sk. Jan Hussain, learned Sessions Judge, Koraput at Jeypore in Sessions Case No. 108 of 1997, under Section 302, I.P.C.

Pati Muduli **…** **Appellant**

Versus

State of Orissa **…** **Respondent**

For Appellant : Mr. G.B. Jena and Mrs. Sujata Jena, Advocates.

For Respondent : Addl. Standing Counsel.

P R E S E N T :

THE HONOURABLE MR. JUSTICE L. MOHAPATRA
AND
THE HONOURABLE MR. JUSTICE C.R. DASH

Date of Hearing : 25.08.2010 Date of Judgment : 25.08.2010

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1. The appellant has been convicted under Section 302, I.P.C. for the offence of Uxoricide. He has been sentenced to suffer imprisonment for life thereunder. The aforesaid judgment and order of sentence dated 29.04.2000 passed by learned Sessions Judge, Koraput at Jeypore in Sessions Case No. 108 of 1997 is impugned in this appeal.

2. Succinctly stated, the prosecution case is as follows –

The occurrence happened at about 3.00 p.m. on 29.01.1997. The informant (P.W.7), who happens to be the younger brother of the present appellant and brother-in-law of the deceased, lodged the report at about 8.00 p.m. on that day at Ranigarh Out-Post. Said report on being dispatched from Ranigarh Out-Post, the case was registered by the then O.I.C. of B.Singhpur P.S. on the same day. On the relevant day at about 4 p.m. the informant (P.W.7) returned from the nearby forest, where he had gone for collection of fire-wood and coal. On his return Padma Muduli (P.W.8), who happens to be the minor daughter of the present appellant, reported him that her father (present appellant) assaulted her mother (deceased) with a 'Tangia' at 3.00 p.m. and killed her. She (P.W.8) was crying then. The informant (P.W.7) went inside the house and saw the deceased lying near the door of the house with profuse bleeding from her wounds. He (P.W.7) called Madhu Muduli (P.W.5) and Sunadhara Naik (P.W.6), who came to the spot and saw the deceased lying in that condition. A Panchayat was called in the village. Before the Panchayat the appellant confessed his guilt and said that he killed his wife with a 'Tangia', when his wife told him to go to the house of one Maheswar Muduli, over which there ensued quarrel between them, and being furious he gave blows to his wife with a 'Tangia'. The aforesaid extra-judicial confession was made before the Panchayat in presence of P.Ws. 5, 6 and 7. The informant P.W.7 got the report scribed by P.W.3 and lodged the report in Ranigarh Out-Post. P.W.9, the then A.S.I. of Police attached to Ranigarh Out-Post, received the report, entered the facts in the Station Diary under S.D. Entry No. 347, dated 29.01.1997 and sent the report to B.Singhpur Police Station for registration of the case. Mr. Gopal Choudhury, the

then O.I.C., B.Singhpur Police Station (not examined), registered the case and directed P.W.10, the then S.I. of Police, B. Singhpur Police Station to take up investigation, who, after completion of investigation, filed charge-sheet implicating the appellant in the offence under Section 302, I.P.C.

3. Prosecution has examined ten witnesses to prove the charge. Besides the witnesses introduced supra, P.W.2 is the Medical Officer, who conducted post-mortem examination over the dead body of the deceased and P.W.4 is a witness to inquest over the dead body and seizure of blood-stained 'Tangia', shirt and 'Dhoti' on production by the appellant.

Defence plea was one of complete denial of the charge.

4. Learned trial court, in absence of eye witness account regarding the transaction of murder, has relied on the following circumstances to return the finding of guilt against the appellant.

I. Extra judicial confession by the appellant before the Panchayat in presence of P.Ws. 5, 6 and 7.

II. Production of blood-stained shirt (M.O.-II), Dhoti (M.O.-III) by the appellant before the police in presence of P.W.4, which was seized vide Seizure List (Ext.8).

III. Seizure of blood-stained Tangia from the house of the appellant in presence of P.W.4 under Seizure List (Ext.7).

IV. Conduct of the appellant in coming to the Panchayat and confessing his guilt.

5. We propose to take up circumstance nos. 2 and 3 together for discussion. From the Chemical Examination Report (Ext.16), it is found that human blood of Group-B was found on 'Tangia' (seized vide Ext.7), blood-stained earth (seized vide Ext.6) and the shirt seized on production by the appellant vide (Ext.8). However, no blood was found in the nail clippings of the appellant. Similarly, on the 'dhoti' seized on production by the appellant though human blood was found, no opinion regarding grouping of blood could be given by the chemical examiner, as it was deteriorated. On the sari of the deceased seized on production by the accompanying constable, human blood of group 'B' was found. Finding of blood of human origin of group 'B' on blood stained earth and sari of the deceased makes it clear that the blood of the deceased was of group 'B'. 'Tangia' being stained with same blood of group 'B', we do not hesitate to hold that the 'Tangia' was used for commission of the offence. On the shirt of the deceased human blood of group 'B' was found. The Investigating Officer had collected sample blood of the appellant during investigation to find out his blood group. It was sent for chemical examination, but the group of the blood of the appellant could not be found out, as the sample was decomposed. In that view of the matter, there is no evidence before us as to what is the blood group of the appellant. Further the shirt seized on production by the appellant, on which human blood of group 'B' was found, was sent for chemical examination in the same packet, in which other blood stained articles were there, as found from the chemical examination report. In absence

of blood grouping of the appellant and in view of the fact that all the blood-stained articles were sent for chemical examination in one packet, no definite conclusion can be drawn to the effect that as there was blood stain of human origin of group 'B' on the shirt seized on production by the appellant, the appellant must have committed the murder of his wife. There being also no evidence to the effect that the appellant had worn the said shirt seized vide Ext.8 at the time of occurrence, we are of the view that pressed this circumstance cannot be held to have been proved against the appellant.

Coming to the question of seizure of 'Tangia', it is found from the record that the 'Tangia' (M.O.-I) was seized from the spot and there is nothing on record to show that it was seized at the instance of the appellant. In that view of the matter, finding of human blood of group 'B' on the 'Tangia' cannot be said to be a circumstance against the appellant.

6. The conduct of the appellant, as taken into consideration by the learned Sessions Judge, does not comment to us inasmuch as learned Sessions Judge has held that had the appellant been innocent, he would not have hesitated to come to the police station or raised hue and cry to attract the attention of the villagers on seeing his wife murdered. Such a conclusion by learned trial Court is without any basis, inasmuch as there is nothing on record to show that the appellant was present in his house at the time of occurrence or he returned to his house to see his wife murdered before the informant (P.W.7) reached there. Such an inference of the learned trial court on this score is totally conjectural.

7. The only circumstance against the appellant, last remains for consideration, is, therefore, his extra judicial confession made before the Panchayat. Both P.Ws. 5 and 6, in their cross-examination, have testified that the appellant was drunk at the time of making the extra judicial confession. From the evidence of P.W.6 and the I.O. (P.W.9) it is found that before the Panchayat the appellant had stated that **"**MOTE MARAMORI KARANI, MORA MAIKINAKU MARI DEICHHI**".** Such evidence by P.W.6, as found from the cross-examination of P.Ws. 6 and 10, shows that the appellant was manhandled before the Panchayat, might be, to confess his guilt. Further P.Ws. 5, 6 and 7 in their evidence have given prevaricative testimony so far as the text of the extra judicial confession made by the appellant is concerned. For the aforesaid reasons, the alleged extra judicial confession cannot be made the basis of conviction of the appellant.

8. In view of our discussion supra, conviction of the appellant under Section 302, I.P.C. and the consequent order of sentence are set aside. The appellant be released from custody forthwith, if his detention is not required in any other case.

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L. Mohapatra, J.

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C.R. Dash, J.

Orissa High Court, Cuttack.
The 25th day of August, 2010. /*Parida.*