

HIGH COURT OF ORISSA: CUTTACK.

JCRLA NO.42 OF 2003

From the judgment and order dated 31.3.2003 passed by Shri Satrugana Pujahari, Second Additional Sessions Judge, Berhampur in S.C. No.5 of 2001 (S.C. No.447 of 2000-GDC).

Bhramara Swain Appellant

- Versus-

State of Orissa Respondent

For Appellant : M/s A.K. Dalai, P.K. Sahu-2
and N. Tripathy

For Respondent : Mr. Sangram Das,
Addl. Standing Counsel

PRESENT:

**THE HONOURABLE SHRI JUSTICE L. MOHAPATRA
AND
THE HONOURABLE SHRI JUSTICE B.K. PATEL**

Date of hearing & judgment – 29.2.2012

B.K. PATEL, J. This appeal from jail is directed against the judgment and order dated 31.3.2003 passed by learned Second Additional Sessions Judge, Berhampur in S.C. No.5 of 2001 (S.C. No.447 of 2000-GDC) convicting and sentencing the appellant to undergo imprisonment for life under Section 302 of the Indian Penal Code (for short 'the I.P.C.') for commission of murder of deceased Gandu Swain. Appellant has also been convicted under Section 324 of the I.P.C. for voluntarily causing hurt by sharp cutting weapon to P.W.7 Sajani Swain, but no separate sentence has been awarded for the same.

2. Appellant and informant P.W.1 are deceased's sons. P.W.2 is deceased's first wife and mother of appellant and P.W.1. P.W.7 is appellant's step mother. P.W.8 is deceased's brother. Occurrence took place on 14.10.1999 at about 11.00 P.M. in the house of deceased and appellant.

3. Prosecution case is that deceased and his family members including the appellant were joint in mess, residence and property. However, the appellant used to quarrel with the deceased demanding partition after his marriage which took place seven to eight months prior to the occurrence. There was a village meeting to decide the dispute. On the date of occurrence at about 9.00 P.M. all the family members of the deceased went to sleep after taking food. At about 11.00 P.M., on hearing

the sound KUCH KUCH, P.W.7 woke up and found the appellant assaulting the deceased by means of Kati M.O.I. Other inmates of the house also woke up. When P.W.7 resisted and caught hold of the appellant, the appellant assaulted her by means of M.O.I on her hand causing bleeding injury. Deceased sustained injuries and died at the spot. It is alleged that the appellant threw M.O.I at the spot and left towards the village. P.Ws.1 and 2 shouted out of fear. Hearing the shout many villagers including P.Ws.5, 10 and 12 gathered. While leaving, appellant muttered that he had killed his father. He also confessed before P.Ws.10 and 12 to have committed murder of the deceased. Gram Rakhi and others came to the spot and took the appellant to Beguniapada Police Out-Post where informant P.W.1 submitted First Information Report Ext.1. Sub-Inspector of Police, Beguniapada Out-Post P.W.16 made entry in the Station Diary Book, sent the First Information Report for registration to O.I.C., Kodola P.S. and took up investigation. On completion of investigation, charge-sheet was submitted against the appellant for commission of offences under Sections 302 and 324 of the I.P.C.

4. Appellant took the plea of denial.

5. In order to substantiate the charge, prosecution examined sixteen witnesses. Of them P.W.1 the informant and P.W.7 the injured

were eye-witnesses to the occurrence. P.Ws.5,8, 10 and 12 were examined to depose regarding extra-judicial confession made by the appellant before each of them. However, P.W.10 was declared to be a hostile witness. P.W.8 was a witness to inquest also. P.W.2 was also declared hostile. P.Ws.3, 4 and 9 were seizure witnesses. P.W.6 is a doctor who conducted post-mortem examination over the dead body of the deceased. P.W.11 is a doctor who medically examined the appellant and collected his nail clippings. P.W.15 is another doctor who medically examined P.W.7. P.W.14 deposed regarding the meeting of the village panch which was held to settle the land dispute between the appellant and the deceased. P.Ws.13 and 16 were the investigating officers. Prosecution also relied upon documents marked Exts.1 to 12 and material objects M.Os.I to V.

No oral evidence was adduced from the side of defence. However, certain signatures Exts. A,B and C were marked on behalf of the defence.

6. Placing reliance on the evidence of two eye-witnesses P.Ws.1 and 7 stated to have been corroborated by the evidence of P.W.5 with regard to extra-judicial confession made by the appellant and medical evidence of P.Ws.6 and 15 the trial court held the prosecution to have proved the charge against the appellant.

7. In assailing the impugned judgment it is contended by the learned counsel for the appellant that evidence of both the eye-witnesses P.Ws.1 and 7 suffers from inconsistencies and discrepancies. During pendency of the investigation both of them had come up with different version about the occurrence by implicating one Tika Parida to be the assailant of the deceased. The trial court has failed to take note of P.W.1's admission made in course of his cross-examination that he had given an affidavit before the court that one Tika Parida cut the throat of the deceased sitting on his chest. It is also contended that the trial court having not accepted the evidence of P.Ws.8 and 12 regarding the extra-judicial confession made by the appellant, should not have placed any reliance on the evidence of P.W.5 in order to record the finding that the appellant had made extra-judicial confession.

8. Placing reliance on the evidence of the eye-witnesses learned counsel for the State supports the impugned judgment and contends that evidence of both the eye-witnesses is corroborated by the evidence of P.W.5 with regard to extra-judicial confession as well as by medical evidence.

9. There is no dispute that death of the deceased was homicidal in nature. P.W.6 conducted post mortem examination over dead body of the deceased at 1.30 P.M. on 25.10.1999. P.W.6 testified that he found as

many as ten incised wounds and opined that cause of death of the deceased could be due to haemorrhagic and neurogenic shock. It is also in the evidence of P.W.6 that the injuries on the deceased could have been caused by seized Kati M.O.I.

10. P.Ws. 1, 2 and 7 who are close relations of the deceased as well as appellant deposed regarding ill-feeling of the deceased and the appellant. It is in their evidence that all the family members were staying in one house. P.W.1 deposed that prior to the occurrence there was quarrel between the appellant and the deceased due to demand for partition of the property by the appellant, and one month prior to the occurrence deceased called one village meeting in which it was settled that the deceased and his sons would remain in jointness till harvesting of the paddy after which paddy would be divided. P.W.2 appellant's mother, stated that wife of appellant brought some articles from her father's house but the deceased and his family members denied to wear the said articles brought by her for which appellant demanded partition of the landed property. There was a punch which decided that the appellant would stay separately from the deceased during ensuing Summer. P.W.7 testified that appellant got married 7 to 8 months prior to the occurrence. The appellant demanded share from the property of the deceased and there was dispute. Bhadrals decided that partition would be made after rainy

season and after harvesting of the crops.P.W.14, an independent witness, happened to be the President of the village during the period. He testified that there was a village punch to settle the dispute between the appellant and the deceased. As there was already crop on the paddy field, the village gentlemen decided to effect physical partition of the landed property either in the month of January or in the month of Baisakha. Thus, prosecution has led cogent evidence to substantiate the allegation that appellant was not pulling on well with the deceased.

11. Prosecution mainly relied upon direct evidence of P.Ws. 1 and 7 to establish complicity of the appellant with the murder of the deceased. Informant P.W.1 testified that in the night of occurrence appellant slept in one room whereas others slept in another room. At about 11 P.M. appellant came and assaulted the deceased by means of Kati M.O.I on the root of the ear, neck, chest, palm and elbow. At that time P.W.2, P.W.7 and his younger brother were present and had seen the occurrence. Deceased sustained bleeding injuries. Wearing apparels of the deceased and the appellant were stained with blood. His step mother P.W.7 intervened and the appellant also gave one blow on her left hand as a result of which she sustained bleeding injury and her wearing apparels were stained with blood. P.W.1 identified M.O.II and M.O.III to be the napkin and lungi respectively of the appellant and M.O.V to be the sari of

P.W.7. Evidence of P.W.1 has not been discredited in any manner in course of cross-examination. His evidence is also materially corroborated by the contents of F.I.R. Ext.1 lodged by him in the morning on 15.10.1999. P.W.7 also testified that in the night of occurrence appellant was sleeping in one room and others were sleeping in another room. Hearing sound of KUCH KUCH she woke up and found that the appellant was cutting the deceased by means of Kati M.O.I. She resisted and embraced the appellant and the appellant assaulted her and she sustained injury on her left hand left finger. P.Ws.1 and 2 also saw the occurrence. They separated the appellant and closed the door. Evidence of this witness has not been discredited in any manner in course of cross-examination. P.Ws. 1 and 7 corroborated each other in material particulars. P.W.7 is an injured eyewitness. P.W.15 medically examined P.W.7 on 15.10.1999 and found three incised wounds. It is also found that upon chemical examination the seized weapon of offence M.O.I, napkin(gamuchha) M.O.II and lungi M.O.III belonging to the appellant as well as sari M.O.V belonging to P.W.7 were found to be stained with human blood. Appellant's lungi and napkin as well as Kati M.O.I contained blood of same group with which the deceased's dhoti was found stained. All these circumstances as well as medical evidence of P.W.6 also corroborated the ocular testimonies of P.Ws. 1 and 7.

12. Though P.W.5 as well as P.Ws. 8 and 12 stated to have heard extrajudicial confession made by the appellant, trial court has not placed reliance on P.Ws. 8 and 12 on this score. P.W.5 testified that at about 11 P.M. he heard hullah and came outside from his house. He found the appellant going stating that he had murdered his father. There is nothing in the evidence of P.W.5 to disbelieve him. In such circumstances, evidence of P.W.5 also corroborated ocular testimonies of P.Ws. 1 and 7.

13. In course of his cross-examination P.W.1 admitted that he had filed an affidavit before the court that one Tika Parida sitting on the chest of my father cut his throat by means of one Kukuri. However, on a question put by court, P.W.1 stated that he had seen the appellant assaulting the deceased by Kati and he had not seen Tika Parida assaulting the deceased by any instrument. As per advice of his step-mother he had given the affidavit in court. Statement made by P.W.1 to have filed affidavit implicating Tika Parida to be assailant of the deceased is being relied upon by the learned counsel for the appellant to assail the veracity of P.W.1. However, immediately after such admission, P.W.1 testified that he had not seen Tika Parida assaulting the deceased and he had seen the appellant assaulting the deceased. That apart, there is

nothing in the evidence that at any point of time P.W.1 did not make allegation against the appellant to be the assailant of the deceased. Rather, soon after the occurrence, in the first information report Ext.1 he implicated the appellant to be assailant of the deceased. Therefore, we find no reason to disbelieve evidence of P.W.1 which finds corroboration from the ocular testimony of P.W.7 as well as other incriminating circumstances narrated above.

14. Thus, on analysis of evidence on record, it is found that the prosecution has established beyond reasonable doubt that due to dispute with his father in connection with demand for partition appellant assaulted the deceased to death. Appellant also assaulted P.W.7 by means of Kati M.O.I causing injuries on her. We find no infirmity in the impugned judgment so as to warrant interference.

15. In the result, the appeal is dismissed. The impugned judgment and order are confirmed.

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B.K. Patel, J.

L. Mohapatra, J. I agree.

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L. Mohapatra, J.

Orissa High Court, Cuttack,
The 29th Feb. 2012 / *B.Jhankar*.