

ORISSA HIGH COURT, CUTTACK

JCRLA No.22 of 2004

From the judgment dated 11.02.2004 passed by the learned Sessions Judge, Sundargarh in Sessions Trial No.141 of 1998.

Routa Munda @ Mathura Appellant

Versus

State of Orissa Respondent

For Appellant : M/s. B.L. Tripathy, Miss B.P.Tripathy
and Miss N.Tripathy

For Respondent : Mr. Bishnu Prasad Pradhan,
(Addl. Government Advocate)

P R E S E N T:

**THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY
AND
THE HONOURABLE SHRI JUSTICE BISWAJIT MOHANTY**

Date of Judgment: 30.04.2014

Biswajit Mohanty, J. This Jail Criminal Appeal is directed against the judgment dated 11.02.2004 passed by the learned Sessions Judge, Sundargarh in Sessions Trial No.141 of 1998 convicting the appellant under Section 302 of I.P.C. and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo R.I. for a further period of one year.

2. The prosecution case in brief is that the appellant and deceased were having strained relationship; as a result of which, there

was a quarrel between them. On 3.1.1998, a meeting was held on the thrashing floor of P.W.6 to settle the dispute. In that meeting the deceased started shouting and abused the villagers present there for which there was altercation between the appellant and the deceased. After the meeting, the village gentries went away and the deceased being drunk slept in the agricultural yard (khala) of P.W.6. Later on, the appellant came and assaulted the deceased by means of blunt side of the axe, as a result of which, the deceased sustained severe bleeding injuries and died. Thereafter, the appellant along with P.W.5, his brother-in-law proceeded to Koida Police Station and surrendered before P.W.15, the S.I. of Police along with blood-stained axe. Accordingly, the appellant was taken into custody and the act of his surrender and production of weapon of offence was noted down in the Station Diary. Later on, P.W.1 orally reported the incident and the same was reduced to writing and was treated as F.I.R. Accordingly, the investigation started. During course of investigation, the I.O. examined the witnesses, visited spot, held inquest over the dead body and commanded the Havildar (P.W.10) to escort the dead body to P.W.16 for autopsy. The I.O. also seized the wearing apparels of the appellant as well as the deceased, sample blood stained earth from the spot and got the weapon of offence examined by the doctor (P.W.16) and despatched all material objects for chemical examination. Upon completion of investigation, the police submitted charge sheet against

the appellant under Section 302 of I.P.C. The plea of the appellant was of complete denial.

3. The prosecution in order to bring home charges examined as many as 16 witnesses including the doctor and two investigating officers and exhibited around 17 documents and produced Budia as M.O.I. P.W.1 is the informant and also a witness before whom the appellant had confessed his crime. P.Ws.2, 3 and 4 are formal witnesses. P.W.5 is the brother-in-law of the appellant before whom he made confession. P.Ws.6, 7, 8 and 9 are the witnesses who turned hostile during their examination in the court. P.W.10 is the Havildar, who escorted the dead body and produced the same before P.W.16, the doctor, who conducted the autopsy. P.Ws.11 and 12 are the witnesses to the seizure of the wearing apparels of the deceased. P.Ws.14 and 15 are the investigating officers in this case. In the examination under Section 313 of Cr.P.C., the appellant denied all the questions put to him. From the side of defence, nobody was examined nor any document was marked as exhibit. On completion of trial, the appellant was found guilty for commission of offence punishable under Section 302 of I.P.C.

4. Miss Tripathy, learned counsel for the appellant submitted that learned court below had gone wrong in relying on extra judicial confession made by the appellant before P.Ws.1 and 5. She submitted that confession before P.W.1 and P.W. 5 could not be believed on account of plea of denial taken by the appellant during course of his

examination under Section 313 of Cr.P.C. with regard to the so-called confession. She further submitted that no conviction could lie only basing upon the extra judicial confession. Secondly, she submitted that scanning of entire evidence would show that no case was made out against the appellant under Section 302 of I.P.C. At best it could be said that prosecution had made out a case under Part-I of Section 304 of I.P.C.

5. Mr. B.P. Pradhan, learned Addl. Government Advocate, on the other hand, vehemently, defended the judgment of the learned court below and contended that here was a case, where the chain of circumstances was so complete that the learned court below had rightly convicted the appellant under Section 302 of I.P.C. and the same required no interference by this Court. According to Mr. Pradhan, the extra judicial confession of the appellant coupled with medical evidence of P.W.16 and the subsequent act of the appellant surrendering before the police custody along with the blood-stained weapon of offence clearly warranted conviction under Section 302 of I.P.C.

6. At the outset, it may be noted here that the defence has not challenged the finding of the learned court below that the death of the deceased was/is homicidal in nature.

7. Perused the L.C.R.

P.W.1 is the cousin brother of the deceased. In the examination-in-chief, he has stated that there was previous dispute

between the appellant and deceased. A meeting was convened in the village over such a dispute. After the meeting the deceased went to the thrashing floor of P.W.6 and was sleeping there. When he went to bring the deceased-brother back, he saw the appellant holding a Budia stained with blood and at that place the appellant declared that he committed the murder of his elder brother, i.e., Budhu Munda. Saying so, he left the place. In that thrashing floor, P.W.1 found his brother lying dead with bleeding injuries on his head. He intimated this fact to all his relations and then proceeded to Koida Police Station and orally reported the matter. Such oral report was reduced to writing by the Thana Babu which was read over and explained to P.W.1, who then put his L.T.I. on the said report. He further stated that appellant was one of his cousins and he had good relationship with him. He identified Budia as M.O.I, which the appellant was carrying on the date of occurrence. In the cross-examination, he stated that the deceased was in the habit of picking up quarrel with others after consuming liquor. On many occasion, P.W.1 had requested him not to quarrel with others in the village. Thana Babu called him and informed that his brother was dead, then only, he could know about the death of the brother and proceeded to the thrashing floor of P.W.1 and found his brother lying dead. He further submitted that the weapon of offence like Budia, marked as M.O.I was commonly available in the village and that the deceased had assaulted

the appellant on his nose for which reason, the appellant had committed his murder.

P.W.2 is another brother of the deceased. In the examination-in-chief, he has stated that on the date of occurrence, the deceased and appellant fought each other and later he came to know from P.W.1 that the appellant had committed the murder of the deceased. He also stated that when he went to see the dead body of the deceased, he noticed that he had sustained injury on his head. In his cross-examination, P.W.2 admitted that he had not seen the occurrence and that he and the appellant pulled on well. By the time of his arrival, the appellant was not present at the spot. Nothing much has been elicited in his cross-examination.

P.W.3 proved the inquest report under Ext.1 and in the examination-in-chief, he stated that he had written in his own handwriting in the inquest report that the deceased died as a result of blow given by the appellant on his head by means of an axe. He also stated that police has seized blood-stained earth in his presence and prepared seizure list under Ext.2. In the cross-examination, he admitted that he had not seen the occurrence and wrote his opinion in the inquest report as per the instruction given by the police officer. He further stated that he was never called to any meeting either on the date of occurrence or on any other date prior to date concerning any dispute between the appellant and deceased.

P.W.4 in his examination-in-chief has stated that no meeting was convened prior to the death of the deceased. On the date of occurrence, he himself along with appellant, deceased and P.W.5 had taken liquor and went separately to their respective houses. He further stated that he knew nothing more. In the cross-examination, he admitted that he had no knowledge about the dispute between the appellant and the deceased. Further on that date no dispute took place between the appellant and the deceased.

P.W.5 is the brother-in-law of the appellant. In the examination-in-chief, he deposed that on the date of occurrence the appellant came to his house, woke him up and stated before him that he had committed the murder of the deceased by means of a Budia on the thrashing floor of Shankar. After making the confession, the appellant asked P.W.5 to take him to the Police Station and then both of them went to Koida P.S. When the appellant went to the Police Station in his company, he had taken axe with him. In the cross-examination, he stated that his village was situated in a jungle area and so whenever villagers moved out in the night, generally, they take Budia. He further stated that villagers were alleging that he had committed the murder of the deceased and if he would be caught by the villagers he would be assaulted. He has also stated that the appellant stated before him that he should accompany himself to the Police Station. Accordingly, P.W.5 took him to the Police Station.

P.Ws.6, 7, 8 and 9 were declared hostile. However, P.W.8

and 9 proved Ext.3 in their examinations-in-chief. Ext.3 is the seizure list pertaining to weapon of offence, i.e., M.O.I. When confronted with previous statements, P.Ws.6, 8 and 9 denied having made such statements. However, P.W.7 when confronted with his previous statements while denying some of them admitted that he has stated before the I.O. that the deceased shouted in that meeting due to drunkenness and there was dispute between the appellant and the deceased. He further admitted that he had stated before the I.O. that the deceased was threatened by the appellant.

P.W.10 is the Havildar. In the examination-in-chief, he has stated that he accompanied the I.O. to the village-Tentulidihi. After arrival in the village, the I.O. made inquest over the dead body and then commanded him to escort the dead body to Koida P.H.C. for autopsy by issuing command certificate and dead body challan, i.e., Exts. 4 and 5 respectively. Accordingly, he accompanied the dead body to Koida C.H.C., where he identified the same to the doctor (P.W.16). P.W.16 after completion of postmortem examination, gave him wearing apparels of the deceased and also handed over a sealed packet containing sample hairs of the deceased. He carried all those articles to Koida Police Station and produced the same before the I.O. along with command certificate. I.O. prepared seizure list under Ext.6. In cross-examination, he stated that while handing over the sealed packet, P.W.16 stated that it contained the sample hairs of the

deceased. Nothing has been elicited in the cross-examination to discredit the version of P.W.10.

P.W.11 also proved Ext.6. In his examination-in-chief, P.W.11 has stated that on 6.1.1998, the I.O. seized one Station Diary in his presence and prepared seizure list, Ext.7. In cross-examination, P.W.11 admitted that sealed packet containing the nails and hairs of the deceased were opened at the time of seizure at the Police Station. After verification, those articles were again re-sealed in the Police Station. Nothing has been elicited in the cross-examination to discredit the version of this witness.

P.W.12 also proved Ext.6 and in the cross-examination, he stated that at the time of incident, he was the V.H.F. operator at Koida P.S. and that seizure was made in his presence.

P.W.13 in his examination-in-chief has stated that he knew the deceased and the occurrence took place about three years back. As there was dispute between P.W.6 and P.W.7, a meeting was convened on the thrashing floor of Shankar Naik, i.e., P.W.6. In that meeting an altercation took place between the appellant and the deceased and seeing such altercation, he left the spot. Later, he heard that appellant committed the murder of the deceased by means of a Tangia. In the cross-examination, he stated that he could not say whether his statement was reduced to writing by the I.O. Nothing much has been elicited in the cross-examination to discredit his version.

P.W.14 is one of the I.Os, who took over charge of the investigation from P.W.15 and conducted preliminary investigation of the case. He sent the weapon of offence, i.e., M.O.I, which was stained with blood and hairs to the medical officer for examination by issuing requisition. On the same date, he forwarded the appellant to the Medical Officer with a written requisition to collect his blood sample. He visited the spot, tested the witnesses already examined and forwarded the appellant to the court. He received the weapon of offence from P.W.16 along with his written opinion. He seized the Station Diary under seizure list, Ext.7. He also examined the other I.O., P.W.15 and recorded his statement. In course of investigation, he enquired about the dispute between P.W.6 and P.W.7. On 4.2.1998, on his prayer, the S.D.J.M., Bonai had forwarded all material objects to the Deputy Director, Regional Forensic Science Laboratory, Ainthapali, Sambalpur for chemical examination vide Ext.11. Ext.12 is the chemical examination report. On 26.2.1998, he received postmortem examination report and on 18.3.1998, he submitted the charge sheet against the appellant under Section 302 of I.P.C. In his examination-in-chief he also referred to his examination of P.Ws.6 and 7, who later turned hostile in the court. In his cross-examination, he stated that it was not a fact that he had not examined the witnesses and that he had no material with him to submit charge sheet under Section 302 of I.P.C. Thus, nothing much has been elicited during cross-examination to discredit this witness.

P.W.15 is the I.O., who practically completed the entire investigation of the case. On 5.1.1998, while working as A.S.I. attached to Koida P.S., at about 6.10 A.M., the appellant appeared at the Police station along with P.W.5 and revealed that he had committed the murder of the deceased by means of an axe. At that time, the appellant was holding a blood stained axe and some hairs were stuck to the axe. He reduced the gist of statement of the appellant in Station Diary Book, marked as Ext.13. Then he seized the axe in presence of independent witnesses as per the seizure list, Ext.3/1. He also seized the wearing apparels of the appellant under that seizure list. Then he proceeded to the spot. There, P.W.1 orally reported about the murder of the deceased by the appellant. Then he reduced the statement of P.W.1 to writing in a plain paper. Then it was read over and explained to P.W.1, who affixed L.T.I. in his presence. Ext. 14 was the F.I.R. Then he went to the spot, held inquest over the dead body and prepared inquest report under Ext.1. He commanded P.W.10 to escort the dead body to P.W.16 for postmortem examination. He also sent a requisition to P.W.16 for collection of sample hairs of the deceased by mentioning it in the dead body challan. He proved the spot map under Ext.15. He seized the blood stained earth and examined some witnesses. At about 5.00 P.M., he returned to the Police Station and drew up a formal F.I.R. by registering P.S. Case No.2 of 1998. Then he arrested the appellant. He also stated to have examined P.W.8, who had turned hostile. In his cross-examination, he

has stated that before lodging F.I.R. by P.W.1, he was already armed with information about the commission of a cognizable offence. He also stated that houses of P.Ws.6, 7 and Laxmidhar Gouda were situated near the spot of occurrence. He had not directed the investigation to ascertain whether P.W.6 and two other persons named above were present at the spot of occurrence during the relevant time as during course of investigation, he could not contact them.

P.W.16 is the doctor, who conducted the autopsy over the dead body of the deceased. In his examination-in-chief, he stated that he found the deceased was about 34 years old average built male. Rigor mortis had already developed and decomposition had already started. On further examination, he found the following injuries:

- “1. Laceration of the size 3” x2” x brain depth over right temporal region.
2. Laceration of the size 1”x1/2”x1” over right forehead.
3. Laceration of the size 2”x2”x brain depth over left parietal region.
4. Laceration of the size 2” x2”x brain depth over sagittal suture.

On internal examination, he found the following injuries:

- (i) Right and left parietal bones, occipital bones and right temporal bone were found to be fractured.
- (ii) All the lairs of the meninges were found to be lacerated over right temporal, both parietal and occipital area.
- (iii)Both cerebral hemisphere were found completely lacerated.
- (iv) Stomach contained semi solid food materials with alcoholic smell.”

In his examination-in-chief, he found that all the injuries were ante mortem in nature and were sufficient in ordinary course of nature to cause death of the deceased. He opined the cause of death was due to cerebral laceration and hemorrhage. Further, he stated that he collected the hair sample of the deceased and preserved those hairs by wrapping the same with a piece of paper, sealed them by using lycoplast and handed over the same to the escorting constable. He proved postmortem report under Ext.16 and his report under Ext.17. With regard to weapon of offence, he opined that the injury found on the dead body of the deceased could be possible by weapon of offence, i.e., M.O.I. With regard to this, he proved his report under Ext.8/1. On police requisition, he also collected sample blood of the appellant, sealed it and handed over the same to the escorting constable. Accordingly, he prepared the report, which he proved under Ext.9/1. In his cross-examination, he admitted that injuries found on the dead body of the deceased were the result of multiple strokes and further he denied a suggestion that no weapon of offence was produced before him for his examination and as per the requisition of the I.O. he had prepared the report. Nothing much has been elicited to disbelieve the version of P.W.16.

8. An analysis of evidence shows that present is a case of circumstantial evidence and the prosecution evidence broadly shows the following features.

(i) On the date of occurrence, there was an altercation between appellant and the deceased at a meeting. As a result, appellant had threatened the deceased.

(ii) Later on that date the appellant made extra judicial confession before his cousin brother (P.W.1) and his brother-in-law (P.W.5) to the effect that he committed the murder of the appellant.

(iii) As per evidence of P.W.5 and P.W.15, the appellant surrendered before P.W.15 along with blood stained axe.

(iv) P.W.16, the doctor in his evidence has made it clear that all the injuries were ante mortem in nature and said injuries were possible by axe (M.O.I). He further stated that all these injuries were sufficient in the ordinary course of nature to cause death of the deceased.

(v) Lastly, the appellant has offered no explanation as to how axe (M.O.I) and napkin seized from his possession and wearing apparels of the deceased were stained with same blood group.

9. Let us now examine the contentions of appellant in the background of the above scanning of evidence. As indicated earlier, Miss. Tripathy, learned counsel for the appellant contended that there existed no legal proof of extra judicial confession, as confession by the appellant before P.W.1 and P.W.5 was doubtful in view of statements made by the appellant in course of questions put to him under Section

313 Cr.P.C. denying the factum of extra judicial confession. Further, she submitted that the evidence of P.W.1 being full of inconsistencies, it was unsafe to rely on him and accordingly the story of appellant confessing before him about commission of crime ought not to be believed. According to her, an analysis of evidence of P.W.1 would show that there existed inconsistencies with regard to from whom the appellant had received the information about the murder of his brother first. At the time of examination-in-chief, P.W.1 stated that while he was going to bring back his elder brother from the thrashing floor of Shankar Naik, he saw the appellant holding the blood stained Budia where the appellant declared that he had committed the murder of the deceased. However, in the cross-examination, P.W.1 stated that when the Thana Babu had called and informed him that his brother was dead, then only he could know about the death of his brother and then proceeded to the concerned thrashing floor. According to Miss Tripathy, this clearly raised doubt about the version of P.W.1 as to how and from whom he actually came to know about the murder of his brother. But a careful analysis reveals that P.W.1 being a rustic witness, much cannot be read into his so-called inconsistencies. It can be deduced that after getting information from Thana Babu about the death of the deceased, he (P.W.1) proceeded to the spot and before reaching the spot, he met the appellant with blood stained Budia, when the appellant declared that he had committed murder of the deceased. It is important to note here that P.W.1 nowhere stated that

Thana Babu called and informed him about the murder of his brother by appellant. Thus, it is clear that the information relating to murder clearly came from the appellant only. In such background, there exists no inconsistency with regard to extra judicial confession made by the appellant before P.W.1. Further, this extra judicial confession before P.W.1 finds corroboration from the evidence of P.W.5. It may be noted here that appellant is a relation of both P.W.1 as well as P.W.5. Thus, it was/is normal for the appellant to confess about commission of crime by him before these two relatives. With regard to extra judicial confession, the evidence of both P.W.1 and P.W.5 appears to be generally credible and the confession appears to be voluntary and spontaneous. There is nothing on evidence of both P.W.1 and P.W.5 to show that they are/were inimically disposed towards the appellant. On the contrary, P.W. 1 has stated that he had good relation with appellant and with regard to P.W.5, the appellant not only confessed before him but also asked P.W.5 to take him to the Police Station. With regard to retracted confession, law is well settled that the same can form the basis of conviction if the Court is satisfied that it was true and was made voluntarily. However, a Court shall not base conviction on such a confession without corroboration. (See (1973) 4 SCC 17 (***Abdul Ghani v. State of U.P.***)). Here, there exists a host of other circumstances as indicated in para-8 (supra), which corroborate the confessional statement of the appellant in order to convict him under Section 302 of I.P.C. P.W.16 in his evidence has clearly stated

that all the injuries were ante mortem in nature and were sufficient in ordinary nature to cause death and that such injuries were possible by the weapon of offence, i.e., axe (M.O.I). Apart from this, the chemical examination report under Ext.12 reveals that the axe produced by the appellant, napkins of the appellant, blood stained seized from the spot, wearing apparels of the deceased were all stained with blood of human origin of Group-B. This fact shows that the blood group that was found on the wearing apparels of the deceased was also found on the belongings of the appellant, i.e., axe and napkins. The appellant has offered no explanation as to how such blood stain came on to his wearing apparels. This objective determination and finding of blood stain on the wearing apparels of the appellant enhances the probative value of the prosecution case by way of corroborating the retracted extra judicial confession of the appellant made before P.W.5. Further, the learned court below has correctly indicated another circumstance in the chain of circumstances, i.e., the conduct of the appellant in proceeding to Police Station and presenting himself before P.W.15 with the blood stained axe. Though the confession of the appellant before the police with regard to having committed the murder is not admissible in evidence, however, the very conduct of the appellant proceeding to the concerned P.S. along with blood stained axe is very relevant piece of circumstantial evidence. In such background, the contention of Miss Tripathy that there existed

no legal proof of extra judicial confession and in any case a retracted extra judicial confession should not be accepted, is devoid of merit.

10. Now, coming to the second contention of Miss Tripathy that a scanning of evidence would show that no case was made out against the appellant under Section 302 of I.P.C. and at best from proved circumstances, a case under Section 304-I of I.P.C. was made out, we are of the view that such a contention is also without any merit. This is because there exists no evidence to make out any case under either Exception-1 or Exception-4 of Section 300 of I.P.C. In the entire evidence, there is nothing to show that the appellant assaulted the deceased on account of grave and sudden provocation being deprived of the power of self control or that the appellant assaulted the deceased without premeditation on sudden fight in the heat of passion upon a sudden quarrel. None of the prosecution witnesses has deposed with regard to the same.

Rather as indicated earlier, a scanning of evidence would show that the appellant confessed to his crime before P.W.1 and P.W.5. After such confession before P.W.5, the appellant requested P.W.5 to take him to the Police Station and accordingly both went to Koida Police Station. While going to the Police Station along with P.W.5, the appellant had taken the axe with him. The desire to go to the P.S. along with P.W.5 has been reiterated by P.W.5 in his cross-examination. As indicated earlier, the evidence of doctor, P.W.16 also corroborates the prosecution story by establishing the link between

the weapon of offence, i.e., M.O.I and the injuries sustained by the deceased. Coupled with above, non-explanation of existence of human blood on the axe and the wearing apparels of the appellant becomes another link in the chain of circumstances.

11. In such background, we hold that the court below has made correct appreciation of evidence and has arrived at right conclusion by convicting the appellant under Section 302 of I.P.C. Therefore, the JCRLA is without any merit and the same is hereby dismissed. The appellant is directed to surrender to custody for undergoing remaining period of sentence as imposed against him by the learned Sessions Judge, Sundargarh in Sessions Trial No.141 of 1998.

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Biswajit Mohanty, J.

Pradip Mohanty, J. I agree.

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Pradip Mohanty, J.