

IN THE HIGH COURT OF ORISSA: CUTTACK

JCRLA No. 19 of 2005

From the judgment and order dated 22.12.2004 passed by the Addl. Sessions Judge, Titilagarh in Sessions Case No.69(B)/25 of 2003.

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Dutia Putel

.....

Appellant

-Versus-

State of Orissa

.....

Respondent

For Appellant

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Miss A.K. Dei

For Respondent

-

Mr. Dillip Kumar Mishra
(Addl. Govt. Advocate)

.....

P R E S E N T:

THE HONOURABLE SHRI JUSTICE S.K. SAHOO

AND

THE HONOURABLE SHRI JUSTICE B.P. ROUTRAY

Date of Hearing and Judgment: 29.02.2020

By the Bench : The appellant Dutia Putel has preferred this appeal as he has been found guilty under section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life by the learned Additional Sessions Judge, Titilagarh in Sessions Case

No.69(B)/25 of 2003 vide judgment and order dated 22.12.2004 for committing uxoricide on 25.02.2003 at about 02.30 p.m. in village Malpada.

2. The prosecution case, as per the first information report lodged by Dhaneswar Chhatria (P.W.4) before the officer in charge of Bangomunda police station on 25.02.2003 is that on that day while Yajna was going on in his village Malpada, at about 2.30 p.m. hearing the hullah of Budhabari Putel (hereinafter 'the deceased'), wife of the appellant from the side of her house, the informant along with others rushed to the house of the appellant and found the deceased lying with bleeding injuries and the appellant was standing at the door. The appellant being confronted by the villagers confessed that he had committed murder of the deceased and thereafter he tried to run away from the spot holding a knife. It is the further prosecution case as per the first information report that the appellant was chased by the villagers and was caught hold off by them. At that point of time, the blood stained knife was not with him and on being confronted, the appellant told that he had thrown the knife on the way. Thereafter the appellant was brought to the village and it was found that the deceased was lying dead with cut injuries on her neck.

On the basis of such first information report, Bangomunda P.S. Case No.12 of 2003 under section 302 of the Indian Penal Code was registered against the appellant.

3. P.W.15 Kirati Chandra Mishra, S.I. of Police and officer in charge of Bangomunda Police Station, on receipt of the written report, registered the case and took up investigation. During investigation, he visited the spot, examined the witnesses, conducted inquest over the dead body and prepared the inquest report (Ext.1/5), sent the dead body for post mortem examination to Community Health Centre, Kantabanjhi, seized the blood stained earth and sample earth from the spot and also effected some seizures. The appellant was taken into custody and while in police custody, he confessed his guilt and also disclosed to point out the place where he had thrown the knife and accordingly, he led P.W.15 and others to a cow-shed and gave recovery of the blood stained knife, which was seized under the seizure list (Ext.8/2). The appellant was then sent to the Medical Officer of Bangomunda C.H.C. where his nail clippings were collected and the requisition was also made for collection of his blood sample. The wearing apparels of the appellant were seized and the dead body was sent for post mortem examination and the seized knife was also sent to the Medical Officer, C.H.C.,

Kantabanji for examination and to give opinion regarding possibility of injuries on the deceased by such weapon. The incriminating seized articles were sent for chemical analysis and the chemical analysis report (Ext.18) was received and on completion of investigation, charge sheet was submitted against the appellant under section 302 of the Indian Penal Code.

4. After commitment of the case to the Court of Session, charge was framed against the appellant under section 302 of the Indian Penal Code on 15.12.2003 by the learned trial Court to which the appellant pleaded not guilty and claimed for trial and accordingly, the sessions trial procedure was resorted to establish his guilt.

5. During course of trial, the prosecution examined as many as fifteen witnesses.

P.W.1 Jamu Putel is the brother of the deceased. He stated about the previous dispute between the appellant and the deceased. He stated to have reached at the spot getting news of the murder of the deceased and found the dead body lying with bleeding injuries. He is a witness to the inquest report.

P.W.2 Harishankar Jal was the Havildar attached to Bangomunda police station. He is a witness to the seizure of nail

clippings and hand wash of the appellant under seizure list Ext.2 and blood of the appellant under seizure list Ext.3.

P.W.3 Pramod Kumar Patra was the constable attached to Bangomunda police station who is a witness to the seizure of wearing apparels of the deceased under seizure list Ext.4.

P.W.4 Dhaneswar Chhatra stated about the presence of the appellant near his house with a knife and his wearing apparels being stained with blood. He further stated about the extra judicial confession made by the deceased at the spot.

P.W.5 Gopinath Putel stated about the presence of the appellant on the village road with a knife in front of his house and he was having blood stains on his wearing apparels and body. He further stated about the extra judicial confession made by the deceased at the spot.

P.W.6 Trilochan Bhoi is a witness to the seizure of wearing apparels of the deceased and also seizure of nail clippings and hand wash of the appellant.

P.W.7 Budu Putel is a witness who not only stated about the presence of the appellant inside his house with a knife and having blood stains on his wearing apparels and body but also stated about the extra judicial confession made by the

appellant. He is a witness to the inquest report and also seizure of knife at the instance of the appellant.

P.W.8 Nareswar Sagra is a witness who stated about his presence at Prahari Mandap at about 3.00 p.m. and hearing hullah from the side of the appellant's house, he along with others came there and saw the appellant running away holding a knife. The appellant was chased and caught hold off by the villagers and brought to the village where he confessed to have committed murder of his wife and requested the villagers not to assault him.

P.W.9 Akhila Putel did not support the prosecution case for which he was declared hostile by the prosecution.

P.W.10 Dr. Gourisankar Panda was attached to C.H.C., Kantabanji who conducted post mortem examination over the dead body of the deceased and noticed injuries as per his report Ext.9. He also gave opinion about the query made by the investigating officer relating to possibility of injuries sustained by the deceased with the knife as per his report Ext.10. He also collected sample of blood from the appellant as per his report Ext.11.

P.W.11 Chamaru Barge was the constable attached to Bangomunda police station who escorted the dead body to

Kantabanji C.H.C. for post mortem examination and after the post mortem examination, he brought the wearing apparels of the deceased to the police station and produced for seizure by the I.O.

P.W.12 Dharanidhar Putel was the A.S.I. of Police attached to Bangomunda police station who stated about the seizure of nail clippings of the appellant and the seizure of hand wash of the appellant in sealed condition as per seizure list Ext.2 and also the seizure of blood sample of the appellant and command certificate no.17 in his presence in sealed condition as per seizure list Ext.3.

P.W.13 Mayadhar Bari was the Home guard of Bangomunda police station and he is a witness to the seizure as per seizure list Ext.3.

P.W.14 Dr. Asit Kumar Mohanty was attached to C.H.C., Bangomunda as Medical Officer who collected the nail clippings and hand wash of the appellant on police requisition on 25.02.2003 and kept them in two separate vials and sealed them in presence of the witnesses and sent them to the O.I.C., Bangomunda police station as per his report marked as Ext.14.

P.W.15 Kirati Chandra Mishra was the O.I.C. of Bangomunda police station who is the investigating officer of the case.

The prosecution also exhibited eighteen documents. Ext.1 is the inquest report, Ext.2 is the seizure list of nail clippings and hand wash of the appellant, Ext.3 is the seizure list of blood bottle, Ext.4 is the seizure list of command certificate, Ext.5 is the first information report, Ext.6 is the seizure list of seized pant and ganjee, Ext.7 is the seizure list of seized blood stained earth, sample earth and shawl, Ext.8/2 is the seizure list of knife, Ext.9 is the post mortem examination report, Ext.10 is the report of P.W.10 on examination of M.O.VIII, Ext.11 is the blood collection report of the appellant by P.W.10, Exts.12 and 13 are the command certificates, Ext.14 is the report of collection of nail clippings and hand wash of appellant by P.W.14, Ext.15 is the spot map, Ext.16 is the dead body challan, Ext.17 is the copy of the forwarding letter of material objects to S.F.S.L. and Ext.18 is the chemical analysis report.

The prosecution also proved ten material objects. M.O.I is the full pant, M.O.II is the ganjee, M.O.III is the shawl, M.O.IV is the saree, M.O.V is the saya, M.O.VI is the blouse, M.O.VII is the broken bangles, M.O.VIII is the knife, M.O.IX is

the nylon core seat of cot and M.O.X is the loin cloth of deceased.

6. The defence plea of the appellant was that the deceased was having illicit affair with one Suresh Sagaria who was visiting the deceased in the absence of the appellant in his house. It is further pleaded that on account of yajna in the village, he had brought the deceased to the village who was staying at her father's place. On the date of occurrence at about 3.00 p.m. while he was taking feast, he heard hullah in the village and came to his house and found the deceased lying dead with bleeding injuries.

Neither any witness has been examined in support of defence plea nor has any document been exhibited by the defence.

7. The learned trial Court even though held that there are no eye witnesses to the occurrence, but basing on the circumstantial evidence, particularly the extra judicial confession of the appellant before P.Ws.4, 5, 7 and 8 and also the evidence relating to the leading to discovery of the knife at the instance of the appellant found him guilty under section 302 of the Indian Penal Code.

8. Miss A.K. Dei, learned counsel appearing for the appellant contended that since there is no direct evidence in the case and the circumstantial evidence appearing on the record is not clinching, it cannot be said that the prosecution has successfully established the charge under section 302 of the Indian Penal Code against the appellant. She placed reliance on a decision of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda -Vrs.-. State of Maharashtra reported in A.I.R. 1984 S.C. 1622.**

Mr. D.K. Mishra, learned Additional Government Advocate, on the other hand submitted that the circumstantial evidence is clinching and it forms a complete chain and there is no escape from the conclusion that it is the appellant, who has committed the murder of the deceased. He further submitted that presence of the appellant inside the house at the relevant point of time with knife, seizure of blood stained wearing apparels from the possession of the appellant, extra judicial confession made by the appellant before the villagers and leading to discovery of the weapon of offence, i.e. knife so also the chemical examination report finding forms the complete chain and therefore, there is no illegality or infirmity in the impugned judgment.

9. Adverting to the contentions raised by the learned counsel for the respective parties, there is no dispute that there is no direct evidence as to who committed the murder of the deceased and how and the prosecution case hinges on circumstantial evidence. It is well established rule of criminal justice that fouler the crime, the higher should be the degree of proof. A moral opinion howsoever strong or genuine cannot be a substitute for legal proof. When a case is based on circumstantial evidence, a very careful, cautious and meticulous scrutinisation of the evidence is necessary and it is the duty of the Court to see that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature and all the links in the chain of events must be established clearly beyond reasonable doubt and established circumstances should be consistent only with the hypothesis of guilt of the accused and totally inconsistent with his innocence. Whether the chain of events is complete or not would depend on the facts of each case emanating from the evidence. The Court should not allow suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed away by emotional consideration.

In the case in hand, the conviction of the appellant is based mainly on the acceptability or otherwise of the evidence of the four witnesses to the extra judicial confession, presence of the appellant with knife at the spot as well as recovery of the weapon of offence at the instance of the appellant.

It is a settled principle of criminal jurisprudence that extra judicial confession is a weak piece of evidence and requires appreciation with a great deal of care and caution. Extra judicial confession must be established to be true and made voluntarily and that to in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra judicial confession can be accepted, if it passes the test of credibility and inspires confidence. The Court should find out whether there are other cogent circumstances on record to support it. If an extra judicial confession is surrounded by suspicious circumstances or comes from the mouth of the witnesses who appear to be biased or inimical to the accused or in respect of whom it is brought out which may tend to indicate that they may have a motive of attributing an untruthful statement to the accused, needless to say that its credibility becomes doubtful and consequently it loses its importance.

P.W.4 Dhaneswar Chhatria stated that on the date of occurrence, he heard hullah from the house of the appellant and went there and found the appellant holding a knife. His wearing apparels were stained with blood and he was standing near the door of his house. The appellant told that he had committed murder of his wife. This witness is the informant in the case and he has further stated that the police conducted inquest over the dead body in his presence and he has put his signature on the inquest report. He has also stated about the seizure of the wearing apparels of the appellant, which were stained with blood as per seizure list vide Ext.6. In the cross-examination, P.W.4 has however stated that the appellant was present on the village danda, which was at a distance of fifty cubits away from his house and out of fear, he himself left the place. According to P.W.4, he was the ward member of the village at the relevant point of time.

The learned counsel for the appellant contended that since in the chief examination, P.W.4 has stated that he saw the appellant at his door step but in the cross-examination, he has stated to have noticed him in the village danda at a distance of fifty cubits and has not stated about anything relating to the extra judicial confession, the evidence should not be accepted.

The learned counsel for the State, on the other hand, submitted that no questions have been put relating to the extra judicial confession in the cross-examination and therefore, it cannot be said that whatever has been stated in that respect in the chief examination has been demolished in the cross-examination.

After analysing the evidence of P.W.4 carefully, we are of the view that the presence of the appellant either near the door or at a few distances away from his house as stated by P.W.4 by itself cannot be a ground to discard the entire evidence. There is no animosity between P.W.4 and the appellant to implicate him falsely rather his evidence inspires confidence and has remained unchallenged.

10. Coming to the evidence of P.W.5 Gopinath Putel, he has stated that he noticed the appellant standing with a knife on the village danda in front of his house and there was blood stain on his hands, pant, ganjee and other parts of the body and there he disclosed "Mo Shtri ku mu mari deichi". This witness has further stated about seizure of the wearing apparels of the appellant under seizure list Ext.6/2 as well as seizure of blood stained earth and sample earth. In the cross-examination, however he has stated that he found the appellant near the

Yajna Mandap where he was standing with knife and being surrounded by about two hundred people and that he had not gone to the house of the appellant and he cannot say what happened then.

Relying on the statement made by P.W.5 in the cross-examination, the learned counsel for the appellant contended that this witness cannot be said to be a witness to the extra judicial confession part.

The learned counsel for the State on the other hand submitted that even if the witness has been declared hostile by the Addl. Special Public Prosecutor, but his evidence relating to the extra judicial confession has remained unchallenged.

However, we find that since P.W.5 has stated that he had seen the appellant near the Yajna Mandap where he was surrounded by about two hundred people and he himself had not gone to the house of the appellant and also cannot say what happened thereafter, the version of this witness that near the house of the appellant, an extra judicial confession was made by the appellant cannot be accepted.

11. Coming to the evidence of P.W.7 as well as P.W.8, we find that both of them not only stated about the extra judicial confession of the appellant, but also about holding of the inquest

over the dead body by the investigating officer in their presence. Nothing has been elicited in the cross-examination to discard their evidence.

Both the witnesses have stated as to how they found the appellant came out of his house and was holding a knife, which was stained with blood and his hands were also stained with blood and there was blood stain on his face, pant and ganjee and the appellant also disclosed to have committed murder of the deceased. Therefore, from the evidence of at least P.W.7 and P.W.8, it appears that at the relevant time, the appellant was present inside the house, which was closed and there was nobody else and when he came out of his house, he was having blood stain on the different parts of the body including his wearing apparels and he was holding a knife which was also stained with blood. The appellant disclosed before the villagers to have committed the murder of the deceased and ran away from the spot. The dead body of the deceased was lying inside the house with bleeding injuries on her neck. Thus it is established that the dead body of the deceased was found inside the house of the appellant and the appellant was present inside the house and he was standing at the door holding the knife with stains of blood on his body and wearing apparels. The burden of

proof lies on the appellant in view of section 106 of the Evidence Act to explain as to how the deceased sustained those injuries and how she died.

Section 106 of the Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving such fact is upon him. This section is an exception to section 101 of the Evidence Act which lays down the general rule that in a criminal case, the burden of proof is on the prosecution. Section 106 certainly not intended to relieve the prosecution of its burden of proof. It is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish facts which are especially within the knowledge of the accused & which he could prove without difficulty or inconvenience. The word 'especially' stresses the facts that are pre-eminently or exceptionally within his knowledge (**Ref:- A.I.R. 1956 S.C. 404, Shambhu Nath -Vrs.- State of Ajmer**).

In the case of **Vikramjeet Singh -Vrs.- State of Punjab reported in (2007) 1 Supreme Court Cases (Criminal) 732**, it is held as follows:

"14. Section 106 of the Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution

case has been proved, the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule i.e., where burden of proof may be imposed upon the accused by reason of a statute.

15. It may be that in a situation of this nature where the Court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt."

In the case of **State of Rajasthan -Vrs.- Kasiram** reported in **A.I.R. 2007 S.C. 144**, it is held as follows:

"23. The provisions of section 106 of the Evidence Act itself are unambiguous & categoric in laying down that when any fact is especially within the knowledge of a person, the burden of the proving that fact is upon him. Thus if a person is last seen with the deceased, he must offer an explanation as to how he parted company. He must furnish an explanation which appears to the Court to be probable &

satisfactory. If he does so, he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden case upon him by section 106 of the Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provide an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge & which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as additional link which completes the chain."

The appellant has failed to offer any explanation as to how the deceased died a homicidal death inside the house where both of them were living together. Nothing has been stated in that respect in the accused statement, rather a plea has been taken that the deceased was having illicit relationship with one Suresh Sagadia and that the appellant was absent at the relevant point of time and came to his house on hearing

hullah and found that the deceased was lying dead. When all the relevant witnesses, particularly, the witnesses to the extra judicial confession have stated about the presence of the appellant at his house at the relevant point of time, the plea taken by the appellant that he was absent at the house cannot be accepted. The explanation offered by the appellant appears to be neither probable nor satisfactory.

The investigating officer has categorically stated that after the appellant was arrested from the occurrence village, while he was in police custody, he not only confessed his guilt, but also stated that he can point out the weapon of offence and accordingly he led the police party and also the villagers to a cow shed of one Gajin Putel from where the blood stained knife was recovered under seizure list Ext.8/2. This knife was sent to the Medical Officer for examination and P.W.10, who has conducted the post mortem examination, not only noticed injury on the neck of the deceased and opined that the cause of death was on account of hemorrhage due to cut injury in the neck involving left carotid vessels and shock, but he has also stated on a query made by the investigating officer that the injury sustained by the deceased is possible with the weapon (M.O.8).

The wearing apparels of the appellant were seized and those were also sent for chemical examination and the chemical examination report indicates that human blood of group 'O' was noticed on the same. The seized knife was also containing human blood even though no group was detected.

Therefore, from the evidence on record, we are of the view that the appellant was very much present in his house when the occurrence took place. The dead body of the deceased was found inside the house and she had sustained neck injury possible by knife which was her cause of death. The appellant's blood stained wearing apparels were also stained with human blood and the appellant made the extra judicial confession before the witnesses to have committed the murder of the deceased. The weapon of offence i.e. the knife was also recovered by the investigating officer from a cow shed as per seizure list Ext.8/2 at the instance of the appellant. All the circumstances, which have been established by the prosecution, according to our view, form a complete chain and there is no escape from the conclusion that it is the appellant and appellant alone, who has committed the crime.

Therefore, we find no infirmity or illegality in the impugned judgment. Accordingly, we uphold the conviction of

the appellant under section 302 of the Indian Penal Code and sentence of imprisonment of life as awarded by the learned trial Court.

Accordingly, the JCRLA stands dismissed.

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S.K. Sahoo, J.

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B.P. Routray, J.

Orissa High Court, Cuttack
Dated 29th February, 2020/CRB/BKB