

(2012) 08 OHC CK 0021
In the Orissa High Court
Case No : JCRLA No. 19 of 2006

Ardha Mandangi and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 313, 34

Citation : (2013) CriLJ 348

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Advocate : Saswata Patnaik, for the Appellant; Sangram Das, Additional Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Patel, J.—This appeal from jail is directed against judgment dated 8.2.2006 passed by the learned Additional Sessions Judge, Rayagada in C.T. No. 68 of 2005 convicting the appellants under sections 302 and 201 read with 34 of the I.P.C. and sentencing each of them to undergo imprisonment for life and to pay fine of Rs. 5000/-, in default to undergo R.I. for six months u/s 302 read with 34 of the I.P.C. and to undergo R.I. for seven years and to pay fine of Rs. 1000/-, in default to undergo R.I. for two months, u/s 201 read with 34 of the I.P.C. Allegations in the case relate to commission of murder of deceased Okila Mandangi. Informant P.W. 5 is deceased's brother. P.W. 4 is P.W. 5's wife. Appellants Jujha and Ardha happen to be agnetics of the informant and the deceased. Occurrence took place in the evening on 4.5.2005.

2. Prosecution case is that long back father of the informant P.W. 5 and deceased purchased three acres of land from appellant Ardha Mandangi by giving him one pair of buffaloes and one bullock. Informant's father along with the informant and deceased were in joint cultivating possession of the purchased land. However, the deceased demolished his own house and abandoned his village. Therefore, he used to occasionally come to the occurrence village.

Fifteen days prior to the occurrence appellants Ardha and Jujha sold the land to P.W. 8 without informing the informant and the deceased. When informant and the deceased asked regarding the same to appellants Jujha and Ardha, they picked up quarrel with them. Deceased left for village Kuting where he was residing.

On the date of occurrence deceased came to the occurrence village and sat in front of house of P.W. 3 on a rock. Seeing the appellants sitting in front of their houses deceased told them that even though he had abandoned the village, his brother informant was very much present in their village. He asked the appellants as to why they did not give him the amount received towards sale of land which they had purchased. On this the appellants went to their respective houses and procured weapons. Appellant Ardha assaulted the deceased by means of Thenga (M.O. I), appellant Jujha assaulted the deceased by means of crowbar (M.O. III) and appellant Madan assaulted the deceased by means of axe (M.O. II). When the deceased fell down due to assault by the appellants, appellant Jujha pierced the crowbar on his abdomen with force as a result of which intestines of the deceased came out from the stomach. Deceased died there. Though the informant as well as P.W. 2, P.W. 3 and other co-villagers saw the occurrence, they could not interfere and rushed into their houses out of fear. Appellants took away dead body of the deceased from the spot. On the following day, informant searched for the dead body of the deceased but he could not find it. It is only on 6.5.2005 after a prolonged search dead body of the deceased was found in the bushes at Kudurubandha Jhola. Intestines were found coming out and the right forearm was missing from the elbow joint. There were injuries all over the deceased's body. Informant got written report Ext. 1 scribed by P.W. 1 and submitted at Kumbhikota police Out Post. P.W. 10 A.S.I. of Police made station diary entry regarding receipt of the report and sent it to Rayagada Police Station where P.W. 11 S.I. of Police registered the case and took up investigation. After completion of investigation, P. W. 11 submitted charge-sheet under sections 302/201/34 of the I.P.C. against the appellants.

3. Appellants took plea of complete denial.

4. In order to substantiate the charge, prosecution examined eleven witnesses. P.Ws. 3, 4, 5, 8, 10 and 11 have already been introduced. P.Ws. 3, 4 and 5 as well as P.W. 2 were examined as eye-witnesses to the occurrence. P.W. 1 scribed the first information report Ext. 1. P.W. 6 was a witness to the inquest of the dead body of the deceased. P.W. 7 is a doctor who conducted post-mortem examination over the dead body of the deceased. P.W. 8 was examined to depose regarding transfer of land which had been previously sold to informant's father. P.W. 9 is a police constable who assisted in investigation. P.Ws. 10 and 11 were Investigating Officers. Prosecution also relied upon documents marked Exts. 1 to 22 and material objects M.Os.I to M.O. VII.

No defence evidence was adduced.

5. On appraisal of evidence on record, placing reliance mainly on the evidence of eye-witnesses P.Ws. 2, 3, 4 and 5, stated to have been corroborated by medical evidence available from P.W. 7 and other incriminating circumstances, trial court held the prosecution to have proved the charge against the appellants.

6. In assailing the impugned judgment it was contended by the learned counsel for the appellants that out of four eye-witnesses P.Ws. 4 and 5 are close relations of the deceased. P.Ws. 2 to 5 have deposed with regard to the occurrence in parrot like manner. Though the eye-witnesses are stated to have witnessed the assault on the deceased as a result of which he sustained fatal injuries and died at the spot on 4.5.2005, there was inordinate delay in lodging of the first information report till 6.5.2005 which remained unexplained. Therefore, in view of the infirmities in the prosecution evidence conviction of the appellants is not sustainable.

7. Learned counsel for the State in reply submitted that each of the four eye-witnesses is consistent with regard to the role played by each of the appellants in assaulting the deceased to death. In the first information report itself it has been explained that delay in lodging the first information report occurred as the dead body of the deceased could not be located till 6.5.2005. It was argued that the occurrence took place in a remote village of tribal district of Rayagada. Informant and other witnesses are tribal. In such circumstances, in view of explanation contained in the first information report itself for delay in lodging the first information report, no adverse inference can be drawn with regard to veracity of the prosecution case solely on the ground that first information report was not lodged on the date of occurrence.

8. It is well settled that relationship with the deceased itself is not a ground to discard evidence of a witness. Informant P.W. 5 cannot be termed as an interested witness on the ground that he happens to be deceased's brother. His evidence is required to be appreciated on the basis of its intrinsic worth and value. P.W. 5 testified that his father had purchased a piece of Kotlaguda land from appellant Ardha by giving one buffalo and one bullock and they were cultivating the land and enjoying the crops though patta of the said land stood recorded in the name of Phagu, appellant Ardha's father. Since two years prior to recording of his evidence in court, P.W. 8 was cultivating the said land as appellant Ardha sold the land to him. It was further deposed by him that his brother, the deceased was residing at village Kuting since about one year after demolishing his own house in their village Sanamanadhara. On the date of occurrence, in the evening, deceased came to occurrence village Sanamanadhara and sat over a stone in front of P.W. 3's house. P.W. 5 was sitting in his front verandah at that time. Appellant Jujha was present in front of his house situated at a distance of 15 cubits from the deceased. Seeing him deceased told him to give at least Rs. 1000/- to P.W. 5 towards selling of Kotlaguda land. Hearing this, the appellants rushed to the deceased. Appellant Ardha dealt blow on his back and leg by means of a Thenga, appellant Jujha dealt a blow on the deceased's

belly by means of a crowbar and appellant Madan dealt blow on his right hand near the elbow by means of an axe and the deceased died at the spot. Out of fear P.W. 5 went inside his house. He testified that when he came out he saw dead body of the deceased had already been removed from the spot. He searched for the dead body of the deceased but could not trace it. The dead body of the deceased was located at Kutrabandha Jhola forest on Friday. Having located the dead body of the deceased P.W. 5 got first information report scribed by P.W. 1 and submitted it to P.W. 10 at Kumbhikota Out Post. It has been elicited by defence in P.W. 5's cross-examination that about 15 days prior to the date of occurrence there was quarrel between him on the one hand and the appellants on the other. Evidence of P.W. 5 has not been discredited in course of cross-examination in any manner. Also evidence of P.W. 5 is materially corroborated by the contents of first information report Ext. 1. In the first information report, Ext. 1 it has been explicitly mentioned that there was delay in lodging the first information report due to delay in locating dead body of the deceased. Admittedly, occurrence took place in a remote village in the tribal district of Rayagada. Though, technically, there is some delay in lodging of the first information report, in view of explanation contained in the first information report itself, it cannot be said that either the delay was inordinate or the delay remained unexplained. In his testimony P.W. 5 deposed to have lodged the first information report after locating dead body of the deceased. On the face of it evidence of P.W. 5 is cogent and consistent. Therefore, on his own P.W. 5 appears to be a reliable witness.

9 Evidence of P.W. 5 gets independent corroboration from the evidence of each of the other three eye-witnesses P.Ws. 2, 3 and 4. P.W. 4 stated that the deceased had left the village and was residing in village Kuting. On the date of occurrence, he came to their village and sat on a stone near house of P.W. 3. Appellants came there. Seeing them deceased told that why they could not give any money to P.W. 5 regarding sale of a piece of land. Immediately, appellant Ardha dealt a Thenga blow on his right hand, appellant Jujha dealt a blow by means of a crowbar on his belly and appellant Madan dealt blow on his right hand by means of an axe. Deceased died at the spot. Appellants removed the dead body of the deceased and threw the same at Kodrubandha forest. P.W. 4 testified that out of fear he did not go to the spot.

P.W. 2 testified that on the date of occurrence which was a Wednesday in the evening the deceased came to their village from Kuting and sat over a stone lying in front of the house of P.W. 3. At that time P.W. 2 was present outside his house. All the three appellants were sitting near him. Deceased told the appellants as to why they sold the land to P.W. 8 without his knowledge and knowledge of P.W. 5. Deceased further told that said land was purchased by giving one pair of buffaloes and one bullock, and that if they had sold it to P.W. 8 they must pay price of buffalo and bullock to his brother P.W. 5. Appellants told that they would neither give land nor money and assaulted the deceased. Accused Ardha first dealt a blow by means of a Thenga on his right side back and

right leg, appellant Jujha dealt a blow by means of a crowbar on his belly and appellant Madan dealt a blow on his left hand by means of axe. The deceased died at the spot. Out of fear, P.W. 2 could not go to the spot. Thereafter, appellants carried dead body of the deceased and threw it inside the forest. It has been elicited in P.W. 2's cross-examination that appellants dragged and took the dead body of the deceased towards forest and out of fear he did not go behind their back.

P.W. 3 testified that the occurrence took place in front of his house where the deceased was sitting over a stone. At that time P.W. 3 was sitting on his verandah. The three appellants came there. Appellant Ardha was holding a Thenga, appellant Jujha was holding a crowbar and appellant Madan was holding an axe. They assaulted the deceased. Appellant Jujha dealt a blow on his belly by means of a crowbar, appellant Ardha dealt blows on his right back and right leg by means of a Thenga and appellant Madan dealt a blow by means of an axe on his right hand. Deceased died at the spot and thereafter appellants removed his dead body. Out of fear, P.W. 3 did not go to the spot.

10. Evidence of none of the three eye-witnesses has been discredited in any manner in course of cross-examination. Evidence of each of them is cogent and consistent with regard to the role played by each of the appellants in assaulting and removing dead body of the deceased from the spot towards forest.

11. P.W. 8 deposed that appellant Ardha had mortgaged Kotlaguda land with him for Rs. 4000/-. Thus, evidence of P.W. 2 provides support to the prosecution case of the origin and genesis of the occurrence that the disputed Kotlaguda land was transferred to P.W. 8 though the said land had earlier been transferred to informant-P.W. 5's father.

12. Ocular testimonies of P.Ws. 2, 3, 4 and 5 were squarely corroborated by medical evidence of P.W. 7 who conducted post-mortem examination over the dead body of the deceased. At the time of post-mortem examination on 8.5.2005 the dead body was completely decomposed. There were penetrating and punctured wounds on the dead body. Right hand below elbow joint was absent. Internally there were punctured wounds on the upper lobe of right and left lungs apart from peritoneum and spleen, etc. P.W. 7 opined that cause of death was due to puncture of the lungs on both the sides leading to anoxia and shock. Injuries were homicidal in nature. On examination of weapons of offence P.W. 7 opined that crowbar M.O. III could cause puncture injuries on the lungs as well as penetrating injuries on the abdomen. Amputation of hand could be caused by axe M.O. II. Other external injuries on the dead body of the deceased could be caused by lathi M.O. I.

13. P.W. 11 testified to have seized weapons of offence M.Os. I, II and III from the houses of appellants. This part of evidence has not been discredited in any manner. It appears from the chemical examination report Ext. 22 that human blood of "A" group was detected on Thenga M.O. I and crowbar M.O. III. None of

the appellants has explained presence of human blood on M.Os. I and III in course of examination u/s 313, Cr.P.C.

14. Thus, the prosecution case stands established by ocular evidence of as many as four eye-witnesses which is further corroborated by other incriminating circumstances leaving no room to entertain any doubt that it was the appellants who were the perpetrators of the offences. Therefore, there is no infirmity in the impugned judgment. There is no merit in the appeal.

Accordingly, the appeal is dismissed.

L. Mohapatra, J.

I agree.