

**(2023) 05 OHC CK 0095**

**In the Orissa High Court**

**Case No :** Criminal Appeal No. 658, 659 Of 2022

Gangadhar Pangi & Others

APPELLANT

Vs

State Of Odisha

RESPONDENT

**Date of Decision :** 05-05-2023

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 374(2)  
Indian Penal Code, 1860 — Section 34, 201, 302  
Evidence Act, — Section 27

**Citation :** (2023) 05 OHC CK 0095

**Hon'ble Judges :** D.Dash, J;Dr. S.K. Panigrahi, J

**Bench :** Division Bench

**Advocate :** Arijit Mishra, S.K. Nayak

**Final Decision :** Allowed

## Judgement

D.Dash, J

1. Since in both these Appeals as at (A) & (B), the judgment of conviction and order of sentence dated 3rd August, 2022 passed by the learned Additional Sessions Judge-cum-Special Judge, Jeypore in Criminal Trial No.13 of 2015 arising out of G.R. Case No.451 of 2014 corresponding to Boipariguda P.S. Case No.73 of 2014 of the court of the learned Sub-Divisional Judicial Magistrate (S.D.J.M.), Jeypore are under challenge; those had been heard together and are disposed of by this common judgment.

The Appellants (accused persons) of both the Appeals as at (A) & (B) have been convicted for commission of offences under sections 302/201/34 of the Indian Penal Code, 1860 (for short, 'the IPC') and each of them has been sentenced to undergo imprisonment for life and pay fine of Rs.50,000/- (Rupees fifty thousand) in default of fine to suffer rigorous imprisonment for a period of two years for the offence under section 302, I.P.C. They have also been sentenced to undergo rigorous imprisonment for five years and fine of Rs.10,000/- in default to undergo rigorous imprisonment for a period of four months for the offence

under section 201, I.P.C. with further stipulation that the substantive sentences would run concurrently.

2. The prosecution case in short is that on 13.07.2014 there was a quarrel between Nanda Hantal and Mana Singrabi(deceased) at Bhaluguda Chhak and the ill-feeling between the two was there for quite some time before. The wife of Nanda Hantal had threatened to kill Mana Singrabi, the husband of Jamuna Singrabi (Informant-P.W.23). On 16.07.2014 around 2 p.m., Mana Singrabi after attending a feast at village Kenduguda had gone to village Aduanguda for arranging some labours. He reached Bhaluguda chhak around 6 p.m. Mana Singrabi with his friends, namely, Somanath Kaudia (P.W.17) and Dama Pangi took liquor near that Bhaluguda Chhak and there they met these accused persons of their village. As Mana Singrabi did not return home in the night, a report with regard to missing of his father was given by Samaru Singrabi, the son of Mana Singrabi (P.W.13) at Boipariguda Police Station on 20.07.2014. Then the wife of Mana Singrabi lodged a written report with the Inspector-in-Charge (IIC) of Boipariguda Police Station raising suspicion against Nanda Hantal, Damai Hantal, Damu Pangi of village Badaguda and Somanath Kaudia of village Dhanapuraguda to be involved in the killing of her husband and concealing his dead body somewhere as they too threatened her and her son with dire consequence like her husband if the matter would be reported at the Police Station. The I.I.C. having received this report immediately registered a case and took up investigation.

In course of investigation, the Investigating Officer (I.O.-P.W.24) came to know that accused Gobardhan Mathapadia had illicit relationship with the Informant (P.W.23) and on 16.07.2014 around 8.30 p.m. at Bamanaguda, these four accused persons had assaulted Mana Singrabi (deceased) with liquor bottle, fist blows, kicks and to have caused injuries by means of sharp edged weapon on his head leading to his death and that they had somewhere thrown the dead body in the dense forest inside Nala.

On completion of investigation, Final Form was submitted placing the accused persons to face the trial for commission of offence under section 302/201/34, I.P.C.

3. Receiving the final form, learned S.D.J.M., Jeypore took cognizance of said offences and after observing the formalities, committed the case to the Court of Sessions. That is how the trial commenced against these accused persons by framing the charges for the above mentioned offences.

The plea of the defence is that of complete denial and false implication.

4. The prosecution, during Trial, in total has examined fourteen (24) witnesses. Out of them, P.W.1 and 4 are the younger brothers of the deceased whereas P.W.6 is the owner of the liquor shop at Bhaluguda Chhak and P.W.7 is the Sarpanch of the village. The seizure witnesses relating to the seizure of skeleton and other articles of the deceased are P.W.2 and 3. P.W.5,8 and 9 are the co-

villagers of the deceased. The brother-in-laws of the deceased are P.W.10 and 11 whereas P.W.12 is another relation of the deceased. The son of the deceased is P.W.13 whereas the wife of the deceased who is the Informant is P.W.23. The person who had scribed the F.I.R. has come to the witness box as P.W.15 and the friend of the deceased, namely, Somanath Kaudia, who was initially suspected to be involved in committing the crime with others has been examined as P.W.17. The Investigating Officer has come to the witness box at the end as P.W.24.

Besides leading the evidence, by examining the above witnesses, the prosecution has also proved several documents which have been marked Ext.1 to Ext-P/9; important of those are the FIR (Ext.5), the statement of the accused, namely, Gobardhan Mathapadia is Ext.P-3/2 and the spot map Ext.P-6.

From the side of the Defence, no evidence has been tendered.

5. The Trial Court on examination of evidence and their evaluation has recorded the finding that the charges against the accused persons for commission of offence under sections 302/201/34, I.P.C. have been established beyond reasonable doubt. Accordingly, these accused persons have been convicted for the offence under sections 302/201/34, I.P.C. and sentenced as aforesaid.

6. Learned counsels for the Appellants (accused persons) submitted that the entire case of the prosecution is based upon the evidence of P.W.17 and the Trial Court has placed implicit reliance upon his evidence in fastening the guilt upon the accused persons. He submitted that the Trial Court has not appreciated the evidence of P.W.17 in the touchstone of the surrounding circumstances which have emanated from evidence and are not at all in dispute. He submitted that the conduct of P.W.17 has not at all been taken into account and the explanations given by the Trial Court to ignore the inherent infirmities and improbabilities are untenable on the face of the facts and circumstances. He further submitted that the highly belated disclosure of the incident by P.W.17 when the disclosure also vary beyond the point of conciliation with the evidence of P.W.23, the evidence of P.W.17 ought to have been held to be highly unsafe to be relied upon moreso when he was initially suspected by P.W.23 to be one of the authors of the crime and his conduct at later point of time also run in that direction. He further submitted that the circumstances which are projected against the accused persons in pointing the finger of guilt at these accused persons are too fragile and those too have not been established through clear, cogent and acceptable evidence. He thus submitted that the finding of guilt returned by the Trial Court is vulnerable.

7. Learned counsel for the Respondent-State supporting the finding of guilt returned by the Trial Court as against these accused persons contended that the Trial Court did commit no mistake in relying upon the evidence of P.W.17 who is the eye-witness since no such material is surfacing in his evidence despite cross-examination so as to entertain any doubt on his testimony either as to his presence at the relevant time in seeing the incident especially as to the role of

the accused persons as against the deceased standing corroborated by his immediate disclosure before the wife of the deceased, i.e., P.W.23. He further submitted that evidence of P.W.17 having received corroboration from other quarters, the Trial Court has rightly convicted the accused persons for commission of offence of offence under section 302/201/34, I.P.C.

8. Keeping in view the submissions made, We have carefully read the impugned judgment passed by the Trial Court. We have also extensively travelled through the depositions of the prosecution witnesses (P.W.1 to P.W.24) and have perused the documents admitted in evidence and marked exhibits Ext.1 to Ext-P/9 from the side of the prosecution.

9. Before going to undertake the exercise of appreciation of evidence in addressing the rival submission, it would be apposite to place some facts which have emanated from the evidence of the prosecution witnesses which are not under dispute.

The deceased left the house on 16.07.2014 around 2 p.m. and thereafter, did not return. His skeleton has been recovered twenty days thereafter from the jungle. The son of the deceased (P.W.13) on 16.07.2014 has given a report about the missing of his father (deceased). It had been registered as M.M.R. Case No.11 of 2014. However, the I.I.C. (P.W.24) pursuant to that report had caused an inquiry and then visited the spot and finding that at some place the earth were stained with blood, he had collected those blood stained and sample earth from the spot and seized those along with one beer bottle, broken glass pieces and four empty jari pouches. On 17.08.2014, P.W.13 intimated P.W.24 over telephone that some skeleton is found near a Nala of the village and near the skeleton the wearing apparels of the deceased and his umbrella were lying. So P.W.24 again visited the place and collected some skeleton parts including skull of the deceased, one black colour T-Shirt, one white check colour full shirt, cement colour full pant, brown colour underwear, belt, one pair chappal, umbrella and two empty plastic gunny bags which he seized. The wife of the deceased who happens to be the mother of the P.W.13 and examined in the case as P.W.23, then lodged a written report on 08.08.2014 before the I.I.C. (P.W.24) which being treated as F.I.R., the missing report case was closed and investigation commenced in the regular case. The F.I.R. admitted in evidence and marked Ext.5 has been proved through P.W.23. It has been written by P.W.15. In the F.I.R. lodged on 08.08.2014 as against the missing of the deceased from 16.07.2014, persons, namely, Nanda Hantal, Damai Hantal, Damu Pangi and Somanath Kaudia were suspected to be the culprits. It be stated that this Somanath Kaudia who was suspected to be one of the culprits having the involvement in causing the murder of the deceased has come as the star witness for the prosecution. He (P.W.17) deposes to have seen the incident in his eyes being very much present at the place of incident. When the F.I.R. has been lodged on 08.08.2014 raising suspicion as against this P.W.17 and others, it is not the evidence of P.W.24 that thereafter he had made any attempt to apprehend those persons and interrogate them when he is also not

stating that those persons named in the accused column of the F.I.R. were not in the village and for that it was not possible to apprehend them and interrogate. P.W.24 says that he examined P.W.17 on 12.09.2014 and then on that day, he conducted raid to apprehend these accused persons but they were absent. So, the next day, he apprehended all those four accused persons. P.W.17 says that the occurrence took place in the weekly market at village Baliguda. He being a daily labourer was also working under the deceased who was a mason. It is his evidence that when they were in the village market, accused Damu Pangi joined them and then all the three went to one Jai to take liquor. It was around 7 p.m., other accused persons, namely, Gobardhan, Ghana and Gangadhar came to the shop and sometime thereafter accused Damodar also came. He further states that suddenly accused persons dragged the deceased and there was a push and pull when he as well as Damu interfered and separated them and the accused persons left the spot. He further states that he along with the deceased Damu came out of that shop and Damu went to his village. It is his evidence that he along with the deceased came to Bamanguda Chhak and accused persons came to that Chhak, dragged the deceased and assaulted him. It is his specific evidence that in the process of assault, accused Gobardhan assaulted the deceased by a liquor bottle on his head and the deceased shouted out of pain by saying 'Marigali Marigali' where after since those accused persons threatened this witness to take away his life, he out of fear left the spot. It is his further evidence which is noteworthy is that on the next day, he went to the house of the deceased and did not find him. If that is so, the witness was sure on the next morning that something serious had happened to the deceased and, therefore, he having told about the incident to the family members of the deceased, left the place. But then his evidence that out of fear of death, he with the family left the village and went to the in-laws place, appears to be absolutely unacceptable as there was no reason for the same. It is also interesting to note that this witness after having stated about the incident to the family members of the deceased has not told the same to anyone else and if on the next day, he had told about the incident to the family members of the deceased; how could it be that the son of the deceased (P.W.13) who lodged the missing report at the Police Station on the next day and then again much later P.W.23 in her F.I.R. have raised suspicion about the involvement of this P.W.17 and three others but have not stated anything against these accused persons.

P.W.13 says that on the next day, he, his mother, brother and uncle searched for his father at different places and asked several people and then again in the evening the search was made with the help of Damu Pangi and Somanath Kaudia (P.W.17) and then he states to have asked P.W.17 as well as Damu (not examined) when they had disclosed before him as well as others that they along with his father purchased liquor, consumed the same when these accused persons were also taking liquor and at that time accused Ghana and Gobardhan were saying 'Magia Jeta Mada Peichu pi tote aji jibanare Maridebu' and, therefore, there was altercation and the accused persons left the place whereas

his father and two others proceeded to Bodaguda Chowk. He is totally silent about what PW.17 states to have told to the family of the deceased and the place where it was stated also greatly varies. P.W.23, the wife of the deceased says that during search, P.W.17 told her that on the same night, he had seen the deceased in the company of accused Gobardhan, Ganga, Damu and Ghana and they after consuming liquor were giving pushes to the accused. This limited version of P.W.17 before him has been said by P.W.23. On the other hand, P.W.17 says to have gone to the house of the deceased in the morning and told the family members about the incident. P.W.1, the younger brother of the deceased has said a completely different story and nothing about the disclosure of P.W.17.

With all such highly suspicious features emerging in the evidence, we are absolutely at a loss to understand as to how the Trial Court by giving some reason with which we wholly disagree could accept the version of P.W.17 as the gospel truth in concluding that these accused persons are the authors of the crime and have intentionally caused the death of Mana Singrabi (deceased). Having said above, when we go to the evidence of I.O.(P.W.24), who has stated about the recovery of the cycle of the deceased at the instance of the accused-Gobardhan pursuant to his statement, we find that the independent witnesses P.W.9 and 10 have not supported the said fact and if their version is taken with the version of P.W.24, the evidence are not found to be successfully passing through the test of admissibility of that portion of statement of said accused Gobardhan as to the fact discovered as required under section 27 of the Evidence Act. Thus we are of the view that the judgment of conviction and the order of sentence passed by the Trial Court cannot be sustained.

10. In the result the Appeals are allowed. The judgment of conviction and order of sentence passed by the learned Additional Sessions Judge-cum-Special Judge, Jeypore in C.T. Case No.13 of 2015 are hereby set aside. The Appellants be set at liberty forthwith if their detention is not required in connection with any other case.

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