
(2009) 07 OHC CK 0032
In the Orissa High Court

Hrusikesh Jagat

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 104, 164, 313
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2009) 108 CLT 697 : (2009) 2 OLR 657 Supp

Hon'ble Judges : S.C. Parija, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Parija, J.—This appeal by the accused-Appellant is directed against the Judgment slated 13.08.2004, passed by the Additional Dist. & Sessions Judge, Nuapada, in S.C. Case No. 61/6 of 2003, holding him guilty for the offence u/s 302 IPC & convicting him thereunder."

2. The case of the prosecution, in brief is that on 11.07.2002, father of the deceased (P.W.15) returned from his paddy field at about 3 P.M. & after taking his lunch took rest. The deceased, who was aged about ? years, returned from her school & took her lunch with her mother (P.W. 10) & accompanied her to the tube well of their village for cleaning the utensils. At that time, the sister-in-law of the informant Kusum Jagat (P.W.2) raised hulla that the accused after committing murder of the deceased near "Doli" was running away by holding a "kati" (M.O.VII) towards Kumbharpada. P.W. 15 went to the land of Paban Jagat & found the deceased was lying at the spot with cut injuries on her head, neck & shoulder & there was profuse bleeding. The informant took the deceased to a private Doctor & was given first-aid. Thereafter P.W.15 shifted the deceased to Misson Hospital, where she was declared dead. P.W.15 lodged a written report at Khariar Police Station, which was treated as an FIR & registered as Khariar P.S. Case No. 84/ 2002 u/s 302 IPC.

During investigation, the I.O. (P.W. 19) examined the witnesses, prepared the

spot map, collected the blood stained earth, sample earth, chopped hair of the victim stained with blood, three numbers of "godus" from the spot & on return to the police station at 8.30 P.M., seized the weapon of offence (M.O.VII) & the wearing apparels of the accused & arrested the accused. The I.O. held inquest over the dead body of the deceased & despatched the dead body for post-mortem examination & also sent the accused & the weapon of offence "kati" & the wearing apparels of the accused & the deceased to the Doctor for examination & opinion. On receipt of the postmortem report & completion of the investigation, charge sheet was submitted against the accused u/s 302 IPC.

3. The plea of the defence was one of complete denial. In his examination u/s 313 Cr.P.C., the accused stated that he has been falsely implicated in the case.

4. The prosecution, in order to substantiate the charge of murder against the accused, examined as many as 19 witnesses, out of whom, P.W.15 is the father of the deceased & P.W. 10 is the mother of the deceased, who are post-occurrence witnesses. P.Ws 1 & 4 are witnesses to the seizure of sample earth, blood stained earth, silver "godu" & hair of the deceased from the spot. P.W.2 had witnessed the accused running away from the spot holding a kati (M.O.VII). P.W.3 had seen the deceased, one Laiban & Khira were going to attend the call of nature to the land of Paban Jagat & she had also seen the accused running away holding a kati (M.O.VII). P.Ws. 5 & 9 have stated about the arrival of the accused at the police station with kati (M.O.VII) & seizure of the same & the wearing apparels of the accused by the OIC, Khariar Police Station. P.W.6 is the witness regarding seizure of frock, chadi & napkin of the deceased along with gaz cotton. P.W.7 is a witness to the inquest & P.W.8 accompanied the dead body of the deceased to the hospital for post-mortem examination & produced the wearing apparels of the deceased before the OIC, which were seized under Seizure List (Fxt.3). P.Ws.11, 12 & 14 are the occurrence witnesses, who had seen the accused catching hold of the tuft of the deceased & giving the kati blow on the left side neck of the deceased & also had seen the accused running away towards Ranapada by holding the kati (M.O.VII). P.W.13 was the Doctor, who had conducted the post-mortem examination over the dead body of the deceased & had examined the weapon of offence (M.O.VII) & had also examined the accused. P.W.17 is the Revenue Inspector, who had demarcated the spot. P.W.18 is the J.M.F.C., Khariar, who had recorded the statement of P.W.14 u/s 164 Cr.P.C. P.W.19 is the I.O. & P.W.16 had submitted the charge sheet against the accused.

5. The post-mortem examination report revealed that the deceased had sustained the following injuries:

(1) Incised wound of 5" x 2.5" x 3" situated horizontally on the lower part of neck extending from posterior border of left sternocleido mastoid muscle left side of neck, posterior half of neck to the right side of neck up to posterior border of right sternocleido mastoid muscle passing through the body of 5th cervical vertebra.

- (2) Incised wound 2" x 1/2"x 1/4" situated 1 C.M. below left angle of mandible.
- (3) Incised wound 2 1/2" x 1/2" x 1/2" on middle part of left side neck.
- (4) Incised wound 4" x 1" x scalp thickness situated horizontally on middle part of occipital region of head.
- (5) Incised wound 4 1/2" x 2" 1" situated horizontally on middle part of left supra scapular region.

6. The Doctor (P.W.13) on dissection of external injury No. 1 found the structure cut thoroughly (a) both left & right common carotid artery (b) both left & right internal jugular & left & right external jugular vein (c) larynx & pharynx (d) spinal cord (e). body of the 5th cervical vertebra. On disSection of external injury No. 2, P.W.13 found there was cutting of left platysma muscle & on disSection of external injury No. 3, it was found that there was cutting of middle part of left sternocledo mastoid muscle. On disSection of external injury No. 4, it was found that underlying bone was in tact & on dissection of external injury No. 5, it was found that there was cutting of middle part of left supra scapular muscle. P.W.13 further found the tissues underlying external injury No. 1 to 5 were stained with blood which could not be removed by washing with water & the margins of all the wounds were sharp.

7. The Doctor (P.W.13) opined that all the injuries, both external & internal, were caused by sharp cutting weapon & all the injuries are ante-mortem in nature. He further opined that the death was instantaneous & caused by cutting of large vessels i.e. left & right common carotid artery, left & right external jugular vein, vital structure i.e. spinal cord & larynx & that the death was homicidal. With regard to the weapon of offence, i.e., kati (M.O.VII), the Doctor (P.W.13) opined that the external injuries Nos. 1 to 5 found on the dead body of the deceased were possible by the iron blade of the said weapon "(kati)".

8. The evidence of P.W.11 reveals that on 11.07.2002 at about 2.30 P.M., he had been to attend the call of nature to Juda Bandha & while returning, near the barbed fence of Ghutu Meher, he saw the accused was catching hold of the tuft of the deceased & was holding the kati in his right hand & giving kati blows on the left side neck of the deceased. He had seen the accused giving three blows with the kati (M.O.VII) on the neck of the deceased & identified the kati in the Court. He also identified the lungi & the shift of the accused (M.Os. VIII & IX). P.W.11 further stated that as the accused came towards him, he left the spot out of fear. Thereafter the accused ran towards Ranapada, which is otherwise known as Kumbharpada. P.W.11 again returned to the spot after some time & found the father of the deceased was lifting the deceased girl & he noticed blood was oozing out from the left side neck of the deceased girl. P. W. 11 & others had shifted the deceased girl to the Mission Hospital, where the Doctor declared the deceased girl to be dead.

9. P.W.12 in his evidence has stated that on 11.07.2002 (Thursday) at about 3

P.M., she had been to the tube well of their village to fetch water & after keeping the water in her house she again went to the tube well for bringing more water & found Sufala Sunani, Laxmi Jagat, Kusum Jagat near the tube well. P.W.12 further stated that she found the wife of the accused raising hulla & on hearing the same, she went towards the spot & found the accused was giving kati blows on the neck of the deceased, both on its right & left side, by catching hold of the tuft of the deceased. P.W.12 identified the kati (M.O.VII). She further stated that on seeing her, the accused left the spot holding the kati & proceeded towards Kumbharpada. P.W.12 further stated that the father & mother of the deceased girl & one Kusum Jagat went to the spot & found the deceased girl was lying on the spot & blood was oozing out from her neck. P.W.12 stated that she had seen three to four cut injuries on the neck of the deceased girl.

10. P.W.14 in her evidence stated that on the date of occurrence at about 3 P.M. she herself, Laibani & the deceased had gone to attend the call of nature to the "Doli" of their village & at that time the accused came there & caught hold of the tuft of the deceased took her to another "Doli" & gave three blows on the neck of the deceased by a kati (M.O.VII). Thereafter, she & Laibani went towards the house of one Mukta. P.W.14 identified the kati (M.O.VII) & she also stated to have given her statements before the Magistrate at Khariar in the Court & admitted to have given her L.T.I. in her said statement.

11. The evidence of P.W.2 revealed that on the date of the incident, she had been to tube well to fetch water along with one Khema Sunani, Suphala Jagat, Laxmi Jagat & others & the found the deceased girl along with Khira @ Rinki & Laibani were going to attend the call of nature holding "godus" towards the land of Paban Jagat. P.W. 2 returned to her house after taking water from the tube well & again went to the tube well & found the accused running away from the land of Paban Jagat by holding a kati towards Kumbarpada. P.W. 2 identified the kati (M.O.VII). Thereafter P.W. 2 proceeded to the land of Paban Jagat & found the deceased girl was lying with out injuries on the left side of her neck, back & head A blood was oozing out from the wounds. P.W.2 further stated that the had been the father of the deceased on the spot holding the deceased girl & that the deceased was shifted to Tukla PHC from where the was shifted to Khariar. In the evening, P.W.2 came to know that the deceased had succumbed to the injuries.

12. P.W.3 had stated in her evidence that on the date of the incident, she had gone to the tube well to fetch water & at that time she had seen Laibani & the deceased were going to the land of Paban Jagat for attending the call of nature. P.W.3 returned to her house with water & on hearing hulla, she again went to the tube well & saw the accused was running away holding a kati. She identified the kati (M.O. VII) in the Court.

13. P.W.10, who in the mother of the deceased, has stated in her evidence that on the date of the incident, at about 3 P.M. while she proceeded to the tube well of their village for cleaning utensils, one Laibani & Khira called the deceased for attending the call of nature, so P.W.10 allowed the deceased to accompany

Laibani & Khira for going to attend the call of nature. While P.W.10 was returning to her house after cleaning the utensils, on the way, she heard hulla that the accused committed murder of her daughter. P.W.10 had seen Laibani & Khira were coming & the accused was running away holding a kati towards Kumbharpada. She went to the spot, which is the land of Paban Jagat & found her husband was holding their deceased girl & crying. P.W.10 further found that blood was oozing out from the neck of the deceased & there was cut injury on the left side neck of the deceased girl. On seeing the blood & the condition of her daughter she lost her consciousness. After regaining sense, she came to know that the deceased succumbed to the injuries in the Hospital. She identified the kati (M.O.VII) in the Court.

14. The father of the deceased (P.W.15) had stated in his evidence that on 11.07.2002 he returned from his paddy field to his house for lunch & at that time his daughter (deceased) also returned from the school & both of them took lunch. After taking the lunch, P.W.15 took rest & his wife & the deceased went to the tube well of their village for cleaning utensils. At that time Kusum Jagat, who is the wife of his brother, raised hulla & on hearing the same he ran to the tube well & being asked, Kusum Jagat told him that the accused had committed murder of the deceased girl & running away towards Kumbharpada by holding a kati (M.O.VII). P.W.15 had seen the accused running towards Kumbharpada by holding kati (M.O.VII). He went to the spot, which is the paddy land of Paban Jagat & lifted the deceased & found cut injuries on the back side, head, left side neck & left shoulder of the deceased girl & there was profuse bleeding. P.W.15 took the deceased to a private Doctor & from there she was taken to Mission Hospital, where the deceased succumbed to the injuries/Thereafter P.W.15 lodged written report at Khariar P. S. He further stated that during investigation by the police, inquest over the dead body of the deceased was done in his presence.

15. From the evidence of P.W.5 it revealed that on 11.07.2002 he was attached to Khariar P.S. as a Constable & he along with the ASI (P.W.9) were present at the police station at about 5 P.M., when the accused came to the police station holding a blood stained kati. P.W.5 has stated in his evidence that the OIC came & seized the kati & the wearing apparels of the accused & prepared the seizure list (Ext.2). The ASI (P.W.9) had stated in his evidence that on 11.07.2002 he was present in the police station along with constable (P.W.5) & at about 8.30 P.M. the accused came to the police station armed with one kati & disclosed to have committed murder of the deceased by means of the said kati. P.W.9 detained the accused in the police station & after some time, the OIC & the Second Officer came to the police station. The arc interrogated the accused & seized the kati (M.O.VII) along with wearing apparels of the accused. P.W.5 identified the kati (M.O.VII) in Court.

16. The plea of the defence was that the prosecution has not been able to establish the motive of the accused for committing the murder of the deceased &

that the name of P.Ws.11 & 14, who were stated to be the eye witnesses to the occurrence, do not appear in the body of the FIR. It was further pleaded that P.W. 14 being a child witness, her evidence is to be strictly scrutinized & that there are material contradictions in the evidence of P.Ws. 5, 9, 11, 12 & 14 & that the identification of the accused & the weapon of offence (M.O.VII) by the witnesses is doubtful.

17. Learned Sessions Judge was of the view that mere absence of the motive for committing a crime cannot be a ground for acquittal of the accused when there are sufficient materials on record to establish that the accused was the author of the crime. Moreover, absence of any specific motive for committing the crime cannot be a ground to discard the clear, consistent & cogent evidence of P.Ws.2, 3, 5,9, 10, 11, 12, 14 & 15. Learned Sessions Judge further found that even though P.W.14 was a child witness, her statement has been amply corroborated by the evidence of P. Ws. 2, 3 & 10 to the effect that P.W.14 had accompanied the deceased for attending the call of nature. Moreover, there is no material contradictions in the evidence of P.W.14 given in Court & her statement recorded by the Magistrate u/s 164 Cr.P.C, there is no ground to disbelieve the statement of P.W.14. Accordingly, Learned sessions Judge came to find that though there are some minor Contradictions in the evidence of the witnesses, but they do not affect the basic version of the prosecution case.

18. On an analysis of the oral evidence of P.Ws. 2,3,5,9,10, 11, 12, 14 & 15, the seizure of the weapon of offence {M.O.VII) at the Police Station on production by the accused & its disclosure as per Ext. 2 , the post-mortem report & the opinion of the Doctor (P.W.13), Learned Sessions. Judge came to hold that the prosecution has been able to establish the charge of murder against the accused beyond all reasonable doubt. Accordingly, Learned Sessions Judge found the accused guilty of offence u/s 302 IPC & convicted him there under.

19. Learned Counsel for the Appellant has vehemently argued that there being contradictions in the evidence of the witnesses & further the name of P.Ws. 11 & 14 having not been mentioned in the FIR, Learned Sessions Judge erred in holding the accused-Appellant guilty u/s 302 IPC. It is further submitted that no reliance should have been placed on the evidence of the child witness (P.W.14), as there was every possibility that she had been tutored to give statement in a particular manner so as to indict the accused. Accordingly, it is submitted that there being material contradictions in the evidence of the witnesses & especially with regard to the involvement of the accused in the alleged offence, the accused-Appellant was entitled to the benefit of doubt, especially when the prosecution has failed to establish any motive for the accused to commit such a heinous offence.

In the alternate, it has been submitted by the Learned Counsel for the Appellant that the accused being of unsound mind & suffering from mental disorder, he is entitled to the benefit of Exception-1 of Section 300 IPC. In this regard, our attention has been drawn to the evidence of P.W. 11, who in his cross-

examination has stated that the accused had not quarreled with any of the villagers including the family of the deceased & that he had heard from the father of the accused regarding the mental derangement of the accused prior to the occurrence. It is further stated that the accused has been in custody for the last 7 years.

20. On a perusal of the evidence of the witnesses, especially P.Ws. 2, 3, 6, 9, 10, 11, 12, 14 & 15, we do not find any material contradictions, to as to disbelieve the version of the witnesses. On the contrary, the evidence of the child witness (P.W.14) & her statement recorded u/s 104 Cr.P.C. is clear & consistent in establishing the involvement of the accused in the crime. Further, the evidence of the Doctor (P. W .13) clearly reveals that all the injuries on the body of the deceased could have been caused by kati (M.O.VII). Further, the chemical examination report (Ext. 21) clearly shows the presence of human blood on the kati (M.O.VII) & also on the wearing apparels of the accused (M.Os. VIII to X). Hence the finding of the Learned Sessions Judge in that regard cannot be faulted.

21. Coming to the question of lack of motive on the part of the accused for committing such a heinous crime, it is now well settled that motive for committing a crime is only known to the accused & the absence of a motive cannot be the basis for acquittal. However, as regard the plea that the accused was of unsound mind, we find that P.W.11 in his cross-examination had stated that he had heard from the father of the accused regarding the mental disorder of the accused prior to the occurrence. There is no medical evidence to show that the accused was mentally unsound or insane. There is also no evidence on record to show that the accused had any previous enmity or even a grudge against the deceased or her family members. On the contrary, some of the witnesses have stated in their evidence that the accused used to give chocolates to the deceased girl on different occasions. Moreover, the prosecution has not been able to establish any strong motive or any intention of the accused for committing the murder of the deceased girl. In absence of any premeditation or previous planning by the accused to commit murder of the deceased, we feel, the interest of justice would be best served, if the conviction u/s 302 IPC is modified & converted to one u/s 304 Part-II IPC. Accordingly, the accused is sentenced to undergo R.I. for ten years & the period of imprisonment already undergone by him shall be set off.

The Criminal Appeal is allowed to the extent indicated above.

A.S. Naidu, J.

22. I agree.