

(2023) 07 OHC CK 0183
In the Orissa High Court
Case No : Criminal Appeal No. 511 Of 2023

Shri Tribikram Sai & Others

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 24-07-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 164, 374(2)
Indian Penal Code, 1860 — Section 34, 302

Citation : (2023) 07 OHC CK 0183

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

Bench : Division Bench

Advocate : D.P.S. Mallick, S.S. Mohapatra

Final Decision : Allowed

Judgement

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D.Dash, J

1. The Appellants by filing this Appeal have assailed the judgment of conviction and order of sentence dated 27.03.2023 and 28.03.2023 respectively passed by the learned Sessions Judge, Balangir in Sessions Case No.80 of 2014 arising out of G.R. Case No.601 of 2013 corresponding to Balangir Town P.S. Case No.217 of 2013 of the Court of learned Sub-Divisional Judicial Magistrate (S.D.J.M.), Balangir.

The Appellants (accused persons) have been convicted for commission of offence under section-302/34 of the Indian Penal Code, 1960 (for short 'the IPC') accordingly each of them have been sentenced to undergo imprisonment for life and pay fine of Rs.10,000/-in default to undergo rigorous imprisonment for six month.

2. The prosecution case as it reveals from the written report submitted by one Surendri Sai, wife of late Krupasindhu @ Krupa Sai of village Kandhapalipada

that she had been informed by her son namely, Amit Sai that her husband Krupa was lying with bleeding injuries at Kandhapali Chowk. Having received the said information, she (Informant) had rushed to the place and saw her husband lying there with severe bleeding injuries on his mouth and legs. She having made all such efforts to wake him up found no response. That Surendri Sai (Informant-wife of the deceased-P.W.22) then also had noticed some brick stones lying near the body of her husband-Krupa. Thus, raising suspicion in her mind that some culprits have intentionally caused the death of her husband, she lodged the report, Ext.1 and prayed for necessary action against those culprits by tracing them out. In the absence of the Inspector-In-Charge (IIC) of Balangir Town P.S.; the written report was presented to the Sub-Inspector (S.I.) of Police (P.W.27), who has In-Charge of the IIC. He then treating the same as F.I.R., immediately registered the case and took up investigation.

3. In course of investigation, he first of all examined the Informant (P.W.22) and other witnesses. Having held inquest over the dead body of the deceased, he prepared the report vide Ext.2 in presence of the witnesses. He also prepared the spot map (Ext.25) by visiting the spot. He sent the dead body for postmortem examination by issuing necessary requisition. He further seized the incriminating articles found from the spot as also the wearing apparels of the deceased on production by the Police Constable after postmortem examination under seizure list. He further examined the witnesses including the informant (P.W.22) and others after few days and on completion of investigation submitted Final Form placing these five accused persons to face the trial for commission of offence under section-302 of the IPC in intentionally causing the death of Krupasindhu @ Krupa Sai.

3. Learned S.D.J.M., Balangir having taken cognizance of the above noted offences and after observing the formalities committed the case to the Court of Sessions. That is how the Trial commenced by framing charge for offence under section-302/34 of the IPC against these accused persons.

4. In the Trial, the prosecution had examined in total twenty eight (28) witnesses as P.Ws.1 to 28. As already stated P.W.22 is the wife of the deceased and she is the Informant in the case who had lodged the F.I.R. (Ext.1). The son of the deceased who has been projected by the prosecution to be the sole eye witness to the occurrence in implicating the accused persons as the author of the crime has been examined as P.W.23. The scribe of the F.I.R. (Ext.1) lodged by the P.W.22 who is none other than the nephew of the deceased has been examined as P.W.1; whereas P.Ws. 2 and 3 are two brothers of the deceased and P.W.4 is the sister-in-law of the deceased. Uncle and Aunt of the Informant (P.W.22) have come to the witness box as P.Ws. 21 and 20 respectively. Few seizure witnesses have also been examined. The Doctor who had conducted autopsy over the dead body of the deceased has been examined as P.W.27; whereas the Investigating Officer (I.O.) has come to the witness box at the end as P.W.28. The prosecution besides leading the evidence by examining the above noted witnesses, has also

proved several documents which have admitted in evidence and marked Exts.1 to 27. Important of those are the F.I.R., Ext.1, inquest report, Ext.2, postmortem report, Ext.23 and the spot map Ext.25.

5. The defence has not adduced any evidence either oral or documentary in support of their plea of denial and false implication.

6. The Trial Court on going through the evidence of the Doctor (P.W.27), and his report Ext.23 as also his subsequent opinions to the queries made by the I.O. (P.W.28) which have been admitted in evidence and marked Ext. C, Ext.D and Ext.E and further taking into account the evidence of the I.O. (P.W.28), who had held inquest over the dead body of the deceased and other witnesses, who had seen the deceased with the injuries being inflicted upon him has arrived at a conclusion that the nature of death was homicidal. In fact, this aspect of the case was not under challenge before the Trial Court and that is also the situation before us.

The evidence of P.W.27, the Doctor, who had held autopsy over the dead body of Krupasindhu @ Krupa is to the effect that he had noticed several serious injuries, mainly on the head and face. It has been stated by P.W.27 that the brain, skull and spinal cord of the deceased were found to have fractured and the membranes was ruptured at multiple sites of cranium when there were multiple spots of haemorrhage along with clots and the rib cage too was found to have fractured. He has stated that all such injuries noticed are antemortem in nature and according to him; the death was on account of severe brain haemorrhage and internal bleeding, following multiple injuries. All these features which she noticed on the dead body of the deceased have been noted down in her report, Ext.23. Subsequently, queries being made by the I.O. (P.W.28) by sending the bricks with cement and blood stains, one black coloured broken stick for their examination at his level. His report is that the injuries were possible by means of all those bricks and wooden stick.

The Investigating Officer (P.W.28) having held inquest over the dead body of the deceased has noted all such injuries in his own language in the inquest report Ext.2. The wife of the deceased (P.W.22) as well as other witnesses have also stated to have seen the deceased with all such injuries on head, face and other parts of the body. All these evidence have not been impeached from the side of the defence in the Trial. Therefore, keeping in view the overwhelming evidence as above discussed, we are wholly in agreement with the finding of the Trial Court as regards nature of death of Krupasindhu @ Krupa to be homicidal.

7. Learned Counsel for the Appellants submitted that the entire case of the prosecution is based upon the solitary testimony of P.W.23, which is said to have received corroboration from P.W.22 and others. According to him, the evidence of P.W.23 is not at all believable. He submitted that the Trial Court has gone completely wrong in relying upon the solitary testimony of P.W.23 in returning the finding of guilt against these accused persons for the offence under

section-302/34 of the IPC; by holding them to be the authors of the crime. He further submitted that when P.W.22 has said to have heard about the occurrence from her son, P.W.23 and then to have lodged the F.I.R.; since the F.I.R. is silent as regards name of the culprits, much less to say even raising doubt against any one that itself is sufficient to totally push the evidence of P.W.23 into the thick cloud of suspicion being not acceptable even in part. He submitted that when these witnesses P.Ws. 23 and 22 have not stated anything during their first examination in course of investigation and that is shortly after the incident, their later version said to have been reduced into writing by the I.O. (P.W.28) long after the incident ought to have been taken to be the later developments by making a plot against these accused persons to somehow harass them simply for the reason that they at some point of time had some enmity with the deceased and these witnesses which is also not stated to be of that degree to be taken note of for the purpose. He further submitted that the finding of guilt returned by the Trial Court holding the accused persons guilty of committing the murder of Krupasindhu @ Krupa is wholly untenable and it's a case for holding that the prosecution has failed to establish the charge against the accused persons beyond reasonable doubt by leading clear, cogent and acceptable evidence.

8. Learned Counsel for the State submitted all in favour of the finding returned by the Trial Court holding the accused persons guilty for committing the murder of Krupasindhu @ Krupa. He submitted that the delayed version of P.W.22 and 23 are with definite explanation and those have been rightly accepted by the Trial Court. According to him, they having stated to have not disclosed the names of the accused persons at the initial stage out of fear and in course of investigation, they having mustered the courage, when have so stated and remained firm during Trial and as that part of their evidence has neither been shaken nor can be doubted, The Trial Court has rightly held the accused persons guilty of commission of the offence under section-302/34 of the IPC. He further stated that the disclosure of occurrence made by the P.W.23 before others including P.W.22, who happens to be his mother being immediately after the occurrence and all having remained under severe mental stress due to fear, the Trial Court when having taken that into account has relied upon the version of P.W.23 which is receiving support from the evidence of other witnesses, there is no scope to say that ultimate conclusion arrived by the Trial Court is not the outcome of just and proper appreciation of evidence.

9. Keeping in view the submissions made; We have carefully read the judgment passed by the Trial Court and we have also extensively travelled through the evidence adduced by the prosecution witnesses i.e. P.Ws. 1 to 28 and marked Exts.1 to 27 from the side of the prosecution have been perused.

10. Admittedly, the solitary eye witness to the occurrence who has been examined from the side of the prosecution is none other than the son of the deceased and he is P.W.23 namely, Amit Sai. He had deposed in Court on 08.09.2017. He was initially examined by the I.O. (P.W.28) on 27.09.2013 and

thereafter was further examined on 18.11.2013 i.e. after about one and half months more specifically after fifty one (51) days. During their examination at the first instance neither P.W.22 had stated that before his eyes, these accused persons assaulted his father (deceased) to death nor told to have disclosed before his mother P.W.22 whose written report (Ext.1) scribed by the nephew (P.W.1) of the deceased also does not find mention of the name of any of the accused persons nor any hint is even given towards them as regards their hands therein. Rather, it is stated in the F.I.R. (Ext.1) in clear terms that the culprits being unknown, they be traced out and booked.

P.W.23 who is the son of the deceased has stated that the accused persons assaulted his father by means of badi, stone and bricks, causing injuries on his head, face and legs. He has further stated that at that time, when he had shouted for help and requested the accused persons not to assault his father was threatened by them that if he would disclose the matter to the police or anyone else, he would face dire consequences. But this witness has stated that on coming back home, he has disclosed everything including the role played by this accused persons in assaulting his father to death before his mother who has been examined as P.W.22 and then also the threat given. P.W.22 basing upon the said information has lodged the F.I.R. Ext.1. He has further stated his mother (P.W.22) having got the information from him went to the spot with Harekrushna Patel and Urbashi Patel, who have been examined as P.Ws. 21 and 20 respectively.

P.W.20 has stated that P.W.23 having come home had disclosed before them that it is the accused persons who had assaulted his father to death and hearing that she with P.W.22 and P.W.21 had gone to spot. That she had not stated before the Police when was examined first and it was not in his statement recorded under section-161 of the Cr.P.C. The witness has been confronted with said total omission with regard to the implication of these accused persons being stated by P.W.23 before them; that has been proved through the I.O. (P.W.28). The same is the position in case of the evidence of P.W.21. These P.Ws. 20 and 21 are the aunt and uncle of P.W.22 (Informant) respectively. They do not state that there being a threat, it was decided amongst them that would not name the accused persons to have committed the crime and therefore, in the F.I.R. (Ext.1) it was not indicated by the scribe (P.W.2) being not so purposely disclosed by P.W.22 keeping the threat perception in mind.

The evidence of P.W.22 is to the effect that her son had told her and P.Ws. 20 and 21 who were present in the house that the accused persons assaulted her husband to death and that P.W.23 was threatened with dire consequences by the accused persons, if he would disclose their names. She has further stated that out of fear because of the threat received by Amit Sai (P.W.23), she did not mention the name of the Accused persons in the F.I.R. and after two months it was so disclosed. But when she was reexamined by the I.O. (P.W.28), she has not stated as to how and for what reason after fifty one (51) days she could

master the courage and gathered confidence in mind that if then the names of the accused persons would be disclosed, there would be no difficulty or as to who stood by them to provide adequate scrutiny. The statement of this witness has been recorded by the Judicial Magistrate under section-164 of the Cr.P.C. at the request of the I.O. (P.W.28). His evidence is that he was examined by the I.O. (P.W.28) after to 15 days of the occurrence and thereafter for the second time by the I.O. (P.W.28) after about one and half months of the occurrence. He is also silent as to how and under what circumstance after lapse of time; he could gather the courage and confidence in mind that then nothing would happen if the names of the accused persons were disclosed and thus why he changed his earlier decision to be bold. Here is a case where P.W.23 has been projected by the prosecution to be the solitary eye witness to the occurrence and his evidence is said to be provided with the corroboration through the evidence of P.Ws. 20, 21 and 22. But then the conduct of all these witnesses are highly suspicious and are wholly irreconcilable. The stray conversation of P.W.23 at the place of occurrence that he was threatened by the accused persons for which he did not disclose the names is also unspecific and vague. Nothing is stated by these witnesses that they had seen the accused persons after the incident and then they had also been threatened. In such state of affairs in the evidence of important prosecution witnesses i.e. evidence of P.W.20, P.W. 21, P.W.22 and P.W. 23; we are of the view that the Trial Court has committed grave error in accepting their version by holding the accused persons guilty for committing murder of Krupasindhu @ Krupa. The appreciation of evidence as has been made by the Trial Court is not at all just and proper as is required in a criminal trial where the prosecution is under the legal obligation to establish the facts constituting the offences as against the accused persons facing the Trial beyond reasonable doubt by leading clear, cogent and acceptable evidence. We therefore; conclude that the judgment of conviction and order of sentence under challenge in this Appeal are liable to be set at naught.

11. In the wake of aforesaid, the Appeal stands allowed. The judgment of conviction and order of sentence dated 27.03.2023 and 28.03.2023 respectively passed by the learned Sessions Judge, Balangir in Sessions Case No.80 of 2014 are hereby set aside.

Since the Appellants-(accused persons) namely, Tribikram Sai, Ananta Sahu, Rakesh Pradhan, Prakash Pradhan and Brahma Bagarty are in custody, they be set at liberty forthwith, if their detention in custody is not so required in connection with any other case.

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