

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRIMINAL APPEAL No.556 of 2007

(From the judgment dated 29th October, 2007 passed by Shri S.N. Sahoo, learned Sessions Judge, Mayurbhanj, Baripada in S.T. Case No.91 of 2000)

Dara Singh @ Rabindra Kumar Pal *Appellant*

-versus-

State of Orissa *Respondent*

Advocate(s) appeared in this case:-

For Appellant : Mr. C.R. Sahu, Advocate

For Respondent : Mrs. Saswata Pattanaik,
Additional Government Advocate

**CORAM: THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY**

**JUDGMENT
10th January, 2022**

B.P. Routray, J.

1. A total of 38 accused persons including the present Appellant were prosecuted in S.T. Case No.91/2000 for offences under Sections 396, 435, 212 of the Indian Penal Code ('I.P.C.'). The present Appellant was additionally charged under Section 302 I.P.C. for the murder of the deceased, namely, Sk. Rahaman.

2. The learned Sessions Judge, Mayurbhanj, Baripada upon completion of the trial, acquitted all other accused persons except the Appellant,

who was convicted and sentenced to life imprisonment for commission of the offence of murder. He was acquitted of the other charges.

3. The prosecution case in short is that, on 26th August, 1999 at about 4.30 p.m. at Padiabeda weekly market under Thakurmunda P.S. in the district of Mayurbhanj, accused-Chema Ho and Dipu Behera along-with some others came to the garment shop of the deceased and demanded 'Chanda' (subscription). The deceased refused to pay. This resulted loud altercation of words and shouting. All of sudden, the Appellant emerged from Durga-Mandap side of the weekly market raising an axe (M.O.I) and approached towards the deceased. Seeing the appellant deceased started running out of panic. The Appellant chased him to a distance and dealt a blow by the axe on his back side. Suddenly a feel of terror spread in the weekly market and the crowd present there started running helter-skelter in panic. As the deceased fell down, the Appellant dealt further blows on him. Other accused persons also dealt blows. They dragged the deceased back to his shop, torched his body pouring kerosene, looted the shop and fled away.

4. The informant-Mukunda Naik (P.W.1) is a Grama Rakhi. He was purchasing rice from another shop in the same weekly market during that time. While giving blows on the deceased, the Appellant could see the informant and shouted at him raising the axe towards him. The informant also ran away in panic. He went to Thakurmunda Police Station. On the way, he heard from others that the Appellant and others blazed the deceased and his temporary garment shop. He lodged the FIR under Ext.1. P.W.33, the then OIC of Thakurmunda P.S. immediately registered the FIR and rushed to the spot with his team.

Reaching at the spot, he found the deceased was lying half burnt in his shop. He immediately arranged a mini Truck driven by P.W.9 and sent the deceased in semi-conscious state along with P.W.4 and P.W.14, the brother of the deceased. The deceased was taken to Sub-Divisional Hospital, Karanjia where he died around 9.00 p.m. in the same night.

5. P.W.33 visited the spot and found blood stains lying at a distance of 35 ft. from the shop. He requisitioned the scientific team to examine the crime scene. P.W.33 also seized some half burnt readymade dresses, the bicycle of the deceased lying near the spot. As the deceased died on the same night, the IIC, Karanjia (P.W.31) held inquest over the dead body of the deceased on the request of P.W.33. P.W.33 continued investigation till 28th August, 1999 and then handed over the charge of investigation to the Circle Inspector, Karanjia (P.W.30). Said P.W.30 continued investigation till 29th September, 1999 when State Crime Branch took charge of the investigation. P.W.32, the Inspector of Crime Branch took the charge of the investigation on 29th September, 1999 and submitted the charge-sheet on 26th December, 1999 for the offences stated above. The Appellant was absconding till then. He was arrested subsequently and taken to custody in the present case on 1st February, 2000.

6. The prosecution examined 33 witnesses in total in order to prove their case and exhibited 16 documents. The prosecution also marked 5 material objects including the axe as M.O.I. As stated earlier, the Appellant was convicted under Section 302, I.P.C. based on the evidence of the eye-witnesses and other material evidence.

7. P.W.20, the doctor attached to S.D. Hospital, Karanjia conducted post mortem examination over the dead body of the deceased on 27th August, 1999 at 2.10 p.m. and found 8 external injuries on the person of the deceased. Injury No. I, II & IV were incised wounds present over posterior part of the right elbow, over left elbow and on the right side of the chest wall. Injury Nos.III & V were two lacerated wounds present over the occipital region of the scalp and left chest wall respectively. Injury No.VI is a stab wound present at 8th inter-costal space on left side. Remaining two were burn injuries present over the anterior aspect of legs and posterior aspect of the upper limb. There were corresponding internal injuries of linear fracture of the occipital bone with extra dural haematoma and fracture of 2nd, 3rd and 4th left side ribs. In the opinion of P.W.20, the cause of death is due to multiple injuries and burn leading to haemorrhage and shock as they were sufficient in ordinary course of nature to cause the death. No challenge is raised by the Appellant towards homicidal nature of death of the deceased which is sufficiently proved as per the evidence of P.W.20, from the contents of the inquest report and the circumstances narrated by other witnesses. It is thus accepted as such that the deceased died a homicidal death.

8. P.W.1 – the informant and P.W.16 are the eye witnesses to the occurrence. Both of them are found consistent in their statements on major aspects. Both these witnesses have stated that the Appellant dealt blows on the deceased. The emergence of the Appellant at the spot of occurrence, then running of the deceased, the dealing of first blow while chasing the deceased etc, all have been stated consistently by

these two witnesses. P.Ws.1 & 16 both have stated that they ran away out of panic seeing the assault on the deceased by the Appellant. From the narration of prosecution case the assault story can be divided into two parts, i.e. the Appellant dealt the first blow on the deceased from his back while chasing him and subsequent blows after the deceased fell down. In the 2nd part of the assault, the deceased was dragged back to his temporary shop and was set ablaze with kerosene. Both these witnesses have not said anything about the 2nd part of the assault as they have not seen that.

9. There is some discrepancy in the evidence of P.Ws.1 & 16. P.W.1 has said that the Appellant dealt blows by means of axe and as per P.W.16, the Appellant dealt blows by means of a Bhala. Taking advantage of this, it is submitted on behalf of the Appellant that the weapon of offence having not examined by forensic expert or by the autopsy doctor, reasonable doubt appears in the involvement of the Appellant in the cause of assault. Further M.O.I being recovered from the house of one of the co-accused, namely, Prafulla Mahanta on 16th September, 1999, i.e. after 19 days of the occurrence, prosecution has failed to establish any connection of M.O.-I either to the alleged injuries or with the Appellant.

10. It is true that M.O.-I was seized from the house of another co-accused, Prafulla Mahanta on 16th September, 1999 along with one arrow and bow (M.O.II & III) by the Police in absence of said Prafulla Mahanta. It is also true that the prosecution has not taken any step for examination of those weapons including M.O.I by any expert. But this will not take away of the effect of direct evidence of P.Ws.1 and 16 of

witnessing the assault coupled with the nature of injuries noticed on the dead body of the deceased. The place of occurrence which is a weekly market of the village was admittedly a crowded place where many people were present. But to the misfortune of prosecution, most of the witnesses turned hostile and did not support prosecution case. The involvement of many persons including the Appellant was alleged in the occurrence, which is also apparent from the evidence of P.Ws.1 & 16. So keeping in view the large gathering of people in the market, the discrepancy pointed out in the statement of P.Ws.1 & 16 about use of axe or Bhala as the weapon of offence by the Appellant during the course of assault is found immaterial. When the lacerated and incised wounds spotted on the dead body were in the opinion of P.W.20 could be possible by an axe and the evidence of both the direct eye-witnesses are consistent in all other aspects, the discrepancy with regard to use of axe or Bhala by the Appellant is a minor one and does not affect the credibility of those witnesses because such discrepancies are normal to appear in the version of true witnesses.

11. With regard to the submission that none of the weapons seized by the Police was examined by any expert, it is to be stated that the same has hardly any consequential effect on prosecution case. This is not a case of circumstantial evidence. It is a case where direct eye-witnesses are there, who have seen the assault. The evidence of P.Ws.1 & 16 are consistent with regard to the Appellant as the assailant. Their evidences are also supported by the post occurrence witnesses, viz., P.Ws.4, 9, 12, 14 and other official witnesses. When the Appellant and all other accused persons absconded and many of them remained as such for quite a long time, no blame can be attributed to the prosecution for the

delayed recovery or seizure of the weapons. Of course, it cannot be expected for those weapons under M.O.-I, II & III to contain any blood stain after 19 days because the chance of their washing off either by natural process or by any individual impact cannot be ruled out. Since the present one is a case where the direct eye-witnesses have seen the Appellant in causing the assault, the non-examination of those weapons by the expert is inconsequential particularly keeping in view the nature of injuries and the nature of weapons.

12. It is also submitted on behalf of the Appellant that the burn injuries seen on the dead body having not been explained by the prosecution, the same has a severe impact on the credibility of prosecution version. As stated earlier most of the prosecution witnesses have turned hostile. Neither P.W.1 nor P.W.16 nor any other witness saw the 2nd part of the assault because they ran away from the spot out of panic. Out of 8 injuries sustained by the deceased, only two are burn injuries. It is not the case that other six injuries are simple in nature without having any bearing on the cause of death. As per the prosecution case, P.W.1 has stated that he heard about the burning of the deceased and his shop while he was coming to the Police Station. Of course, this is not proved by material evidence. The FIR does mention about the burning. Therefore, learned counsel for the Appellant is not correct in his submission that the burn injuries are not explained by the prosecution. However, the same could not be proved on record with material evidence. However, it does not result in anything adverse so as to doubt the prosecution case. In particular, it does not create any doubt on the involvement of the Appellant in the assault of the deceased.

13. It is next submitted that there was a delay of three days in sending the FIR to the Court. Secondly, it is submitted that the motive of the crime is not established. As stated earlier, these lacunae are inconsequential in a case of direct evidence which hinges on the credible testimonies of eye-witnesses. Once their evidence is shown by the prosecution to be consistent, trustworthy and without material discrepancies, such minor irregularity with regard to the delay in sending the FIR to the court hardly dilutes the credibility of the prosecution version. The Appellant is not correct in his submission regarding absence of a motive. It has been stated by P.Ws.1 & 16 that they saw the accused persons quarrelling with the deceased prior to his death. Further, the prosecution case is that they were extorting 'subscription' money from the deceased and he had declined to oblige them.

14. The further submission of the Appellant is that P.W.16 is a related witness and P.W.1 being a Policeman cannot be relied upon. The said contention has been elaborately dealt with and rejected by the learned trial court. We do not see any infirmity in the approach of the learned trial court. Concurring with the conclusions of the trial court on this aspect, we reject those submissions of the Appellant. Accordingly, the conviction as awarded by the trial court is affirmed.

15. It is further submitted that in the meantime the Appellant has already undergone more than 21 years inside the jail custody and considering his long custody, the punishment may be modified to such period undergone. There is no merit in the said submission. Keeping in view the nature of assault, the brutality associated therewith and the

circumstances of the crime where no prior enmity existed, and the victim was unarmed and defenceless, there is no case made out for any leniency as far as the sentence is concerned.

16. As such, taking note of the prosecution case and considering the evidence adduced in its entirety, we do not find any extenuating circumstances in favor of the Appellant. The sentence awarded to the appellant is hereby affirmed.

17. In the result the appeal is dismissed.

18. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.514, dated 7th January, 2022.

(B.P. Routray)
Judge

(Dr. S. Muralidhar)
Chief Justice

B.K. Barik/PA