IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.103 of 2001

AFR

Pradeep Kumar Nath and another .... ***Appellants***
Ms. Deepali Mohapatra, Advocate &
Mr. Satya Narayan Mishra, Advocate

-Versus-

State of Odisha .... ***Respondent***
Mr. J. Katikia, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT :21.04.2022

R.K. Pattanaik, J.

1. Instant appeal under Section 374(2) Cr.P.C. is at the behest of the above named Appellants assailing the legality and judicial propriety of the impugned judgment dated 13th March, 2001 passed in S.T. Case No.334 of 1999 by the learned Sessions Judge, Sambalpur for having found both guilty for an offence punishable under Section 302 read with 34 IPC and convicted and sentenced them thereunder on the grounds *inter alia* that it is contrary to law and against the weight of evidence on record and therefore, deserves to be set aside.

2. For the alleged occurrence dated 12th May, 1999, an FIR was lodged alleging therein that Appellant No.1 assaulted the deceased by means of a knife along with Appellant No.2. The circumstances under which it all happened stood described in the FIR. The informant is the husband of the victim. After FIR was

lodged, Sason P.S. Case No.43 was registered under Section(s) 302, 324 and 323 read with 34 IPC which corresponds to G.R. Case No.613 of 1999. On completion of investigation, the Appellants were charge sheeted under Section(s) 302 and 323 read with 34 IPC for them to stand trial in the court of law. After the case was committed, the learned court below framed the charges and conducted trial. The prosecution in support of its case adduced evidence. But, no evidence was led by the Appellants. The statements of the Appellants were recorded under Section 313 Cr.P.C. Thereafter, the learned court below, considering the evidence and hearing both the sides, passed the order of conviction and sentence dated 13th March, 2001. As stated earlier, the Appellants were convicted and sentenced under Section 302 read with 34 IPC, however, both stood acquitted for the other offence. The learned court below directed the Appellants to undergo imprisonment for life under Section 302 read with 34 IPC and to pay a fine of Rs.1000/- each with a default sentence of R.I. of one month each.

3. Heard Ms. Deepali Mohapatra, learned counsel for the Appellants and Mr. J. Katikia, learned AGA for the State.

4. The defence plea is that the learned court below ought to have disbelieved the evidence with regard to recovery of weapon of offence. It is claimed that the prosecution failed to adduce evidence on the seizure of knife and also to prove that the weapon of offence belonged to the Appellants. According to the Appellants, the chemical examination report did not disclose presence of the blood stains of the deceased on their wearing

apparels and also knife. As pleaded, simply relying on the evidence of spot witnesses, the learned court below should not have held the Appellants responsible for the incident when both sides were not in good terms. On the above grounds, the Appellants have sought to set aside the order of conviction and sentence.

5. According to the informant husband, he was not present at the spot when the occurrence took place. On a reading of the FIR, it is revealed that Appellant No.2 had a quarrel with the deceased sister-in-law and in course of the events, Appellant No.1 on being called by her arrived and by means of a knife gave the victim a blow. The informant reached at the spot shortly thereafter and with the help of his in-laws family shifted the victim wife to the hospital. However, while being taken to the hospital, the deceased succumbed to the injury which she had received on her neck. The other details of the incident have been narrated in the FIR.

6. The defence plea of the Appellants is one of denial and false implication besides the death of the victim to be accidental.

7. The evidence of the prosecution is to be analyzed to find out and ascertain whether the Appellants did commit the alleged mischief which resulted in the death of the victim. Let us first examine the evidence of the informant and also his parents-in-law. According to P.W.1, the incident took place on 12th May, 1999 at about 11 A.M. and on that day, he and the victim had been to his in-laws house, where the deceased stayed back but he

returned and after some time, was informed about the incident regarding the assault on the deceased by Appellant No.1, where after, he rushed to the spot and shifted her wife to the hospital. P.W.1 further deposed that on inquiry, his father-in-law informed him that Appellant No.2 caught hold of the victim during the incident, whereas, Appellant No.1 stabbed on her neck. P.W.1 who lodged the FIR proved it as Ext.1 and also proved the inquest report as Ext.2. P.W.1 identified the wearing apparels of the deceased wife proved as M.Os. I, II and III. During cross-examination of P.W.1, it was elicited that he did not find the presence of the Appellants the spot when reached there. In fact, P.W.1 arrived at the scene of occurrence after the alleged assault. But, from the evidence of P.W.1, while under cross-examination, it was elicited that P.W.2 and P.W.5 being present at the spot when he reached. In that case, the entire incident happened in the absence of P.W.1 who was informed about it by an outsider named in Ext.1. P.W.2 is the mother-in-law of the victim and she deposed that during the incident, the deceased and Appellant No.2 had altercation and scuffle and in course of events, Appellant No.1 was called to the spot by Appellant No.2. P.W.2 further deposed that while the deceased was leaving the spot, Appellant No.2 came from behind and caught hold of her and at that time, Appellant No.1 stabbed on her neck with a knife and she intervened and as a result sustained injuries. P.W.2 also deposed that she was assaulted by Appellant No.2 with a stick. In cross-examination, P.W.2 revealed that the deceased and P.W.1 were pulling on well with the Appellants. P.W.2 during cross-examination revealed that Appellant No.2 had falsely alleged her

husband, namely, P.W.5 of sorcery and admitted that she was not in good terms with her daughter-in-law. It was reiterated by P.W.2 while under cross-examination that Appellant No.1 was called to the spot by Appellant No.2, where after, the alleged incident happened. Although, P.W.2 was cross-examined by the defence but nothing substantial could be elicited to discredit her testimony. Such evidence of P.W.2 received corroboration from P.W.5 who is her husband. P.W.5 also deposed that Appellant No.2 had abused the deceased alleging that she was interfering in their household affairs and during the incident, both of them had a scuffle and thereafter, Appellant No.1 was called by Appellant No.2, who stabbed her with a knife. The incident has been narrated by the P.W.5, who witnessed it along with P.W.2. Likewise, P.W.5 was subjected to cross-examination but in no way, his testimony could be discredited. Due regard to such evidence of P.W.2 and P.W.5, the Court finds that they have described the incident with great detail, as to the circumstances under which, it all happened. In fact, P.W.1 with the help of P.W.2 and P.W.5 shifted the victim from the spot to the hospital. However, as deposed by P.W.1, the deceased succumbed to her injury while on her way for treatment. The Court does not find any discrepancy in the evidence of P.W.2 and P.W.5. That apart, P.W.3, the scribe of Ext.1 deposed that the inquest was conducted over the dead body of the deceased in his presence and proved his signature on the inquest report as Ext.2/2. P.W.3 also claimed that the victim had a stab injury on her neck. P.W.3 admitted during cross-examination that though he had not witnessed the incident but was informed about it by P.W.2 and

P.W.5. In fact, P.W.3 is the half-brother of Appellant No.1. P.W.4 deposed that the I.O. seized the wearing apparels, such as, M.Os. I, II and III and prepared a seizure list in his presence and proved it as Ext.3. P.W.4 also proved a seizure list as Ext.4 in respect of a saree. P.W.4 also proved one more seizure list as Ext.5 vis-a-vis M.Os.V and VI. Apart from above, P.W.4 also proved two other seizure lists as Exts.6 and 7 which included the weapon of offence i.e. knife. All the material objects are appeared to have been collected from the spot by the I.O. in the immediate presence of P.W.4, a seizure witness having acquaintance with the deceased and the Appellants.

8. The M.O. who conducted the postmortem over the body of the deceased has been examined as P.W.7. According to P.W.7 on examination of the body of the deceased, he found external as well as internal injuries. As per P.W.7, the deceased had a stab wound on the right side of her neck of the description described and number of internal injuries detailed in the PM report. The opinion of P.W.7 was that the death of the victim was due to Asphyxia and all the injuries were *ante mortem* in nature and sufficient to cause death in ordinary course of nature. P.W.7 also deposed that the external injury on the person of the victim might be possible by the knife i.e. M.O.IV and death was homicidal. P.W.7 proved the P.M. report as Ext.9. In cross-examination, P.W.7 clarified that the external injury on the body of the deceased could be possible by any weapon like M.O.IV. P.W.2 was medically examined by P.W.6, who noticed some injuries on her person but all to be simple in nature except injury No.iii on

which the opinion was reserved. On being suggested by the defence, P.W.6 admitted that the injuries of P.W.2 may be possible by fall on a hard and blunt/rough surface. The evidence of P.W.6 corroborates the testimony of P.W.2 who claimed to have been assaulted by Appellant No.2 while trying to intervene during the incident. P.W.8 medically examined Appellant No.2 and found one abrasion of simple nature and had opinion that such injury could be received by hard and blunt object. Similarly, P.W.8 examined Appellant No.1 and also noticed a single abrasion near his left hand wrist joint which one can sustain while being in contact with blunt side of a weapon like M.O.IV at a time when it was tried to be snatched away. The medical examination reports of the Appellants stand proved as Exts.11 and 10 respectively. The cross-examination of P.W.8 was declined by the defence. The evidence of P.W.8 assures the claim of P.W.2 that she received injuries while trying to intervene during the incident. The receiving of injuries by P.W.2 and the Appellants stands proved by medical evidence led through P.Ws.6 and 8. Regarding the recovery of M.O. IV, it was made in the presence of P.W.9, according to whom, the same was recovered at the instance of Appellant No.1. P.W.9 deposed that M.O. IV was recovered from the spot. In cross-examination P.W.9 claimed that though Appellant No.1did not disclose the place of concealment of knife while he was present but led them to the spot wherefrom the recovery was made. The evidence of P.W.9 before the learned court below suggested that when M.O. IV was retrieved, he was present and Appellant No.1 had led the police party to the recovery. The IO, namely, P.W.10 deposed

that at the instance of Appellant No.1, M.O. IV was recovered. P.W.10 further deposed that M.O.IV was seized by him after recovery as per Ext.7. P.W.10 was cross-examined exhaustively. If the above evidence is appreciated properly, it would suggest that the Appellants did commit the mischief during the incident and Appellant No.1 appeared to have assaulted the deceased with a knife which proved to be fatal. It is also made to appear that P.W.2 received injuries as she had intervened protesting the actions of the Appellants. The material witnesses are the own family members and not outsiders. If there is any claim of ill-feeling existing between Appellant No.2 and P.W.2 and P.W.5 for certain reasons, it cannot be a ground to disbelieve the latter's version. In fact, P.W.2 and P.W.5 being the parents of Appellant No.1 could not be said to have any reason to falsely implicate him. Thus, there is nothing on record to disbelieve the prosecution story, inasmuch as, the alleged incident has been well proved through P.W.2 and P.W.5, who were very much present at the spot. So the contention of the Appellants that the evidence of P.Ws.2 and 5 are discrepant is totally misconceived.

9. The learned court below held both the appellants guilty of having committed murder of the deceased, hence imposed the sentence of life imprisonment. The circumstances under which the alleged incident took place have been narrated by P.W. 2 and P.W.5, who are the parents of the deceased. If the events as unfolded by referring to the testimony of P.W.2, the mother -in-law of P.W.1, it would clearly reveal that Appellant No.2 had a quarrel with the deceased and had even a scuffle and thereafter,

she called her husband, namely, Appellant No.1, who reached there with a knife and gave a blow on the neck of the victim which resulted in her death shortly, thereafter. A question may be asked, whether, in the facts and circumstances of the case, the Appellants could be held guilty of culpable homicide and not murder? In fact, on a proper reading of the evidence on record, it would appear that on being called to the spot, Appellant No.1 arrived and with the assistance of Appellant No.2 inflicted the knife blow on the neck of the deceased. Without any doubt, the Appellants said to have committed an act of culpable homicide. But then, the question is, if such culpable homicide amounts to an offence of murder? As a matter of fact, there is a subtle distinction between culpable homicide and murder as defined in Section 299 and 300 IPC respectively. As it is understood, the real distinction between culpable homicide and murder is only the difference in degrees of intention and knowledge. A greater degree of intention and knowledge would fall in the category of murder and lesser would result in culpable homicide not amounting the murder. Perhaps, the distinction between culpable homicide and murder has been lucidly explained through an illustration in the oft repeated judgment in the case ***Reg v. Govinda (19877) ILR 1 Bombay 342*** which on many occasions has been quoted with approval by the Supreme Court**.**

10. In the aforesaid decision, it was held and observed that whether the offence is culpable homicide or murder depends upon the risk to human life; if death is a likely result, it is culpable homicide and if it is most probable result, it is murder.

Further clarified therein that the offence is culpable homicide, if the bodily injury intended to be inflicted is likely to cause death; but it is murder, if such injury is sufficient in the ordinary course to cause death.

11. In the instant case, Appellant No.1 assaulted the deceased by means of a knife causing an injury on her neck which can be said to be such an act with full knowledge that it would in all probability cause her death. From the evidence on record, it appears that there was no provocation from the side of the deceased, who had a quarrel and fight with Appellant No.2. It is also revealed that Appellant No.2 prevented the victim from leaving the spot and then, Appellant No.1 assaulted her with the knife. In other words, the evidence shows that Appellant No.2 facilitated the assault by catching hold of or intercepting the deceased, who was preparing to leave and thus, in a way assisted Appellant No. 1 to execute it. Again, it is a case of absence of any provocation from the side of the victim but the Appellants took undue advantage of the situation and acted in a most unusual or cruel manner, albeit without premeditation, as result of which, a precious life was lost. That apart, the Court finds that none of the exceptions enumerated in Section 300 IPC to be applicable to the present case. The victim though received a single injury but it was on a vital part. If it had been an injury on any other part of victim's body with no imminent danger of death, things would have been different, even if she had succumbed to it. Any ways, on a detailed examination of the material evidence, it unerringly suggests that the Appellants are

guilty of having committed an offence of murder and not culpable homicide of a lesser degree.

12. Thus, the Court arrives at a logical conclusion that the learned court below did not commit any wrong and rightly held the Appellants responsible for the death of the deceased and convicted them under Section 302 read with 34 IPC and therefore, the impugned judgment calls for no interference.

13. Accordingly, it is ordered.

14. In the result, the appeal stands dismissed. As a necessary corollary, the impugned judgment dated 13th March, 2001 passed in S.T. Case No.334 of 1999 by the learned Sessions Judge, Sambalpur is hereby affirmed. Consequently, the bail bonds of the Appellants stand cancelled and they are directed to surrender forthwith to serve the sentence.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

TUDU