
(2023) 10 OHC CK 0151

Orissa High Court

Case No: Criminal Appeal No. 633 Of 2019

Krutibas Behera

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision: Oct. 19, 2023

Acts Referred:

Code of Criminal Procedure, 1973 & Section 374(2) Indian Penal Code, 1860 & Section 302

Citation: (2023) 10 OHC CK 0151

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

Bench: Division Bench

Advocate: Biswajit Nayak, B.R. Sahoo, S. Samantray, Sonak Mishra

Final Decision: Allowed

Judgement

D.Dash, J

1. The Appellant, by filing this Appeal, has assailed the judgment of conviction and the order of sentence dated 8th March, 2019, passed by the learned

Sessions Judge, Rayagada, in C.T No.46 of 2017, arising out of G.R. Case No.43 of 2017, corresponding to K. Singhpur P.S. Case No.10 of 2017 of

the Court of learned Sub-Divisional Judicial Magistrate (SDJM), Rayagada.

The Appellant (accused) has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (in short, & the IPC & ,&).

Accordingly, he has been sentenced to undergo imprisonment for life and pay a fine of Rs.1,000/- (Rupees One Thousand) in default to undergo

Rigorous Imprisonment for ten (10) days for the offence under section 302 of the IPC.

2. Prosecution case:-

Sometime in the year 1996-97, the marriage between the accused and Gouri (deceased) of village Hatimunda had taken place. Since then, they were

residing as husband and wife in that village Hatimunda and had no issue.

In the year 2012, deceased, having left the village for a year, again returned in the year 2013 and continued to stay as before. They were earning their

livelihood by cultivating some lands given by the parents of Gouri, mostly raising cereal crops. On 30.01.2017 afternoon, Gouri, having gone to the field,

situated by the side of river Nagavali, where at that time Kandula crop had been grown, did not return. When Gouri did not return home, her brothers

namely Gadeli Naga (P.W.1), Gadeli Dina (P.W.6) and other villagers went for her search and also in search of accused, who too had not returned.

They were not found in the field. In the morning, other villagers namely, Badu Tirpati (P.W.2), Alok and Rushi saw the dead body lying under a tree

near the village crematorium. It was stated that the accused then was trying to escape from village Hatimunda and therefore, he was detained. He

then stated to have disclosed before the villagers to have done Gouri to death, out of anger.

On 31.01.2017, at 9 am, a written report was lodged by Gadeli Naga (Informant-P.W.1) the brother of deceased, Gouri scribed by one Badu Dipun

with the Inspector-in-charge (IIC) of Kalyansinghpur Police Station. The said written report being treated as FIR (Ext.1), the case was registered and

the IIC (I.O.-P.W.10) took up the investigation. He recorded the statement of the Informant (P.W.1) and then visited the spot which is near the bank

of the river of Nagavali at village Hatimunda where the dead body was lying in a bushy area close to the village crematorium. The I.O (P.W.10) then

prepared the spot map (Ext.8) and seized one napkin and a pair of ladies chappal under seizure list in presence of the witnesses. The I.O (P.W.10)

held inquest over the dead body and prepared the inquest report (Ext.2) in presence of the witnesses. He also examined some other witnesses

including the scribe of the written report (Ext.1). The dead body was sent for post mortem examination by issuing necessary requisition. The wearing

apparels of the deceased were also seized by the I.O (P.W.10) along with the other incriminating articles. On that day around 3 p.m., the accused

was arrested and forwarded in custody to Court.

3. On completion of investigation, the Investigating Officer (P.W.10) submitted the Final Form placing this accused to face the Trial for committing the murder of Gouri.

4. Learned SDJM, Rayagada, receiving the Final Form as above, took cognizance of the offence and after observing the formalities committed the

case to the Court of Sessions. That is how the Trial commenced by framing charge against the accused.

5. In the Trial, the prosecution in order to bring home the charges against this accused has in total examined ten (10) witnesses. As already stated, the

informant, who had lodged the written report which was treated as FIR vide Ext.1 and the brother of deceased Gouri is P.W.1 and P.W.6 is his other

brother. P.W.2, P.W.3 and P.W.4 are the villagers of village Hatimunda. The Doctor, who had conducted post mortem over the dead body of Gouri

(deceased) has come to the witness box as P.W.5. P.W.7, P.W.8 and P.W.9 are their co-villagers and the Investigating Officer has come at the end

as P.W.10.

6. Besides leading the evidence by examining above the witnesses, the prosecution has also proved several documents which have been admitted in

evidence and marked as Ext.1 to Ext.11. Out of those, the important are; the FIR, Ext.1, Inquest Report, Ext.2, Spot Map, Ext.8, Post Mortem Report,

Ext.6.

7. The plea of the accused is that six months before the death of Gouri since P.W.1 and other villagers of village Hatimunda had driven him out of the

village, he was residing in village Chacharaguda and it was only on hearing about the death of Gouri when he had been to village Hatimunda, he was

apprehended by the police. The accused, however, not adduced any evidence in support of the said plea.

8. The Trial Court on going through the evidence of the Doctor, who had conducted the post mortem over the dead body of Gouri and his report

(Ext.6) has arrived at a conclusion that the nature of death of Gouri was homicidal. In fact, this aspect of the case was not under the challenge before

the Trial Court and that is also the situation before us.

9. The Doctor (P.W.5) has deposed to have noticed bruise over inner aspect of upper lip and lower lip just over teeth of the deceased, pressure

abrasion just below right cheek bone and left mandibular angle. Abrasion of multiple in pattern over right aspect of neck, abrasion over upper aspect of

chest bone and two pressure abrasion over right clavicle, two pressure abrasions over right clavicle, two abrasions nearly circular over mid aspect of

chest bone. He too has stated to have noticed multiple crescent scratch marks over both breast upper to downward, pressure abrasion of deep pointy

nature over both elbows multiple in number and over leg calf muscle and buttock, bluish discoloration over around right breast areola. As per his

evidence, all these injuries were ante mortem in nature and had been caused by hard, blunt and curved object. This P.W.5 has noted all his findings in

his report (Ext.6), which has been stated by him. It is his evidence that the death was on account of shock resulting from asphyxia. In addition to the

above, the I.O (P.W.10) while holding the inquest over the dead body of the deceased has also noted those injuries seen by him over the dead body in

his report (Ext.2). It is also the evidence of other witnesses, who had seen Gouri lying dead with all these injuries on her person. We find that there

has been even no attempt at all from the side of the defence to impeach any of the findings of P.W.5 when factum of death of Gouri is not in dispute.

In the above state of affair, in the evidence, we are left with no option but to concur in the findings of the Trial Court that Gouri's death was

homicidal.

10. Learned counsel for the Appellant (accused) submitted that the prosecution case is not based on direct evidence and it rests upon the

circumstantial evidence. He submitted that the circumstances, which have been projected by the prosecution through the evidence of the witnesses

and other contemporaneous documents even when cumulatively viewed, do not make the chain of events so complete to arrive at an irresistible

conclusion that it is the accused, who in all human probability has intentionally caused the death of Gouri. He also submitted that the extra judicial

confession of the accused before the villagers in the facts and circumstances emanating from the evidence is not at all believable and so also the other

circumstances as to the apprehension of the accused in the village Hatimunda and he having no such good relationship with the deceased Gouri, is not

incriminating. It was therefore, submitted that the Trial Court is not right in holding the accused guilty of committing the murder of Gouri.

11. Mr. Sonak Mishra, learned Additional Standing Counsel for the Respondent-State, while supporting the finding of guilt against the accused, as has

been returned by the Trial Court, submitted that when the evidence of the witnesses go to show that he was found near the place where the dead

body of Gouri was detected and soon thereafter, he confessed before the brother of the deceased and the villagers to have committed the crime which

they have stated, those being taken with the prior conduct of the accused, the Trial Court has rightly convicted the accused for commission of offence

under section 302 of the IPC.

12. Keeping in view the submissions made, we have carefully read the judgment of conviction impugned in this Appeal. We have also gone through

the depositions of all the witnesses P.W.1 to P.W.10. We have also perused the documents which have been admitted in evidence and marked Ext.1

to Ext.11.

13. The case of the prosecution since is based on circumstantial evidence, the settled positions of law holding the field are required to be kept in mind

while apprehending the evidence relating to the circumstances emanating therefrom and taking a cumulative view of the same so as to finally arrive at a conclusion.

14. The position is that in a case based on circumstantial evidence, the circumstances from which the conclusion of the guilt is drawn should be fully

proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in

the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent

with his innocence. Bearing the above in mind, in order to address the rival submission and judge the sustainability of the finding of guilt returned by

the Trial Court, this Court is called upon to examine the evidence let in by the prosecution.

P.W.1 is the informant, who had lodged the FIR (Ext.1) and he too is the brother of the deceased Gouri. He has stated that on one occasion, her sister

Gouri was found absent in the hut and when they frantically searched for her, the accused was also not found out. He has further stated that some

villagers in the next morning found Gouri lying dead in the graveyard with injury marks on her neck and he having gone there, saw his sister Gouri

lying dead. This P.W.1 is not stating anything more as against this accused except saying that during that period, the accused had returned to the

village and was staying with her sister Gouri. During cross-examination, this P.W.1 has, however, stated that the accused being an alcoholic, was

frequently remaining absent at home and on the date of incident. Her sister Gouri left her hut and gone to the field carrying food alone. He has further

stated that the accused although was in the village but not in the house on that day. The other witness is P.W.2 whose evidence is to the effect that on

one occasion, the deceased was found absent in her hut and during search, she could not be traced and it was only in the next morning, some villagers

saw her lying dead in the graveyard with injuries in her neck. He is introducing it for the first time that when after visiting the spot he and other came

to the village and informant (P.W.1) prepared a report and lodged the same, some of the villagers caught hold of the accused when he was escaping

from the village and they produced the accused before the police. He too has stated that the accused being an alcoholic was frequently remaining

absent from his house and that the accused although during that period was in the village was not in the house. The evidence of P.W.3 is to the effect

that after that they found the dead body of Gouri lying in the jungle, they called the accused and then the brother of the deceased meaning, P.W.1

lodged the written report. Thus, these witnesses are not stating to have seen the accused going with the deceased on that relevant day to the field or

to have found the accused and the deceased together living in the village. P.W.6, who is the other brother of the deceased has stated that after the

dead body of Gouri was found, they searched for the accused and found him near the field of Chintamani. He has stated that seeing him and the

villagers, the accused when attempted to flee away, he was caught and before them, he confessed his guilt. When none of the other witnesses, whose

evidence we have already discussed are stating about this fact of confession of the guilt, this P.W.6 for the first time is seen to be introducing the

same. That apart even if for a moment, it is said that the accused was detained by P.W.6 and others, the said act at the behest of P.W.6 and others,

as on account of entertaining of suspicion cannot altogether be ruled out. This P.W.6 states that accused confessed his guilt. Even accepting his

version as such, to us it makes no sense and therefrom the confession as to intentionally causing the death of Gouri cannot be straightway answered

when the villagers were not having good impression upon the accused, who states that they had earlier driven him from the village and when the

evidence surfaces that accused was an alcoholic and frequently remaining away from home. Furthermore, P.W.6, having stated that accused was

detained near about the field of one Chintamani, P.W.7 has stated that he was found in the hut of Chintamani. His evidence is that when the accused

was asked by the family members of the deceased regarding the whereabouts of the deceased, he admitted his guilt. This witness having stated that

by the time the accused was so asked, the dead body had already been recovered, his evidence on the score is highly unbelievable. They, having

already discovered the dead body of the deceased, there was no point in asking the whereabouts of the deceased. This witness also states that

accused then confessed his guilt which we cannot stretch to the extent that he confessed to have committed the murder of his wife-Gouri.

15. With above is the state of affair in the evidence of P.W.1 to P.W.7, we are left with the examination of the evidence of P.W.2 and other two

witnesses, P.W.8 and P.W.9. P.W.8 is a co-villager. He is stating another story that the accused used to assault the deceased under the influence of

liquor and for that reason there was a separation and one year prior to the incident, the accused having returned to the village was living with the

deceased together and earning their livelihood by cultivating some land of his father-in-law. It is his evidence that deceased used to carry lunch packet

for the accused to the field and on 30.01.2017, the deceased had been to the said field and did not return. His evidence is that in the next morning after

the dead body of Gouri was found, the accused was searched and was seen sleeping in the hut of Chintamani and seeing them, he immediately woke

up and started to flee away from the spot. The evidence of P.W.8 is not getting any support from the evidence of P.W.1 to P.W.7 and his version is

wholly inconsistent with the evidence of P.W.1 to P.W.7 as already discussed.

The entire evidence let in by the prosecution as above discussed in our view are insufficient to bring home the charge against the accused beyond

reasonable doubt.

16. In the result, the Appeal stands allowed. The judgment of conviction and order of sentence dated 08.03.2019, passed by the learned Sessions

Judge, Rayagada, in C.T No.46 of 2017 are hereby set aside.

The Appellant (accused), namely, Krutibas Behera, be set at liberty forthwith, if his detention is not warranted in connection with any other case.

