

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA NO.650 OF 2014

In the matter of an Appeal under section-374(2) of the Code of Criminal Procedure, 1973 and from the judgment of conviction and order of sentence dated 2nd June, 2014 passed by the learned Sessions Judge, Cuttack in Sessions Trial No.315 of 2012.

Anji @ Ranjit Naik

....

Appellant

-versus-

State of Odisha

....

Respondent

Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode:

For Appellant

Mrs. Bharati Dash,
Advocate.

For Respondent

सत्यमेव जयते
Mr. G.N. Rout,

Additional Standing Counsel.

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE A.C. BEHERA

DATE OF HEARING :26.09.2023 : DATE OF JUDGMENT: 09.10.2023

D.Dash,J. The Appellant by filing this Appeal has assailed the judgment of conviction and order of sentence dated 2nd June, 2014 passed by the learned Sessions Judge, Cuttack in Sessions Trial No.315 of 2012 arising out of G.R. Case No.621 of 2012

corresponding to Choudwar P.S. Case No.73 of 2012 of the file of learned Judicial Magistrate First Class (J.M.F.C.)(Rural), Cuttack.

The Appellant (accused) thereunder have been convicted for commission of offence under section-302 of the Indian Penal Code, 1860 (for short called as the IPC). Accordingly, the Appellant (accused) has been sentenced to undergo imprisonment for life and pay fine of Rs.2,000/- in default to undergo rigorous imprisonment for three (3) months for the offence under section-302 of the IPC.

2. **Prosecution Case:-**

On 14.05.2012 around 7 pm, when one Bhima Nayak was there near the underpass (Gala Pola) situated near the Paper Mill of Choudwar; the accused came and assaulted him on his head by a laterite stone, which resulted his fall. And it is said that at that time, Kalia Naayak (P.W.2), Pravakar Behera (P.W.3) and Bijaya Nayak (P.W.8), were very present nearby as they were returning to their village through that underpass. The son of deceased namely, Hemanta Nayak (P.W.1) thereafter having lodged a written report with the Inspector-In-Charge (IIC), Choudwar Police Station, he treated the same as the F.I.R. and on registering the case, took up investigation.

In course of investigation, the I.O. (P.W.10) examined the informant (P.W.1). He then proceeded to the spot and seized the incriminating articles such as blood stained earth and sample earth, bloodstained gauge cloth, one small laterite stone stained

with blood and the same were sent to SFSL, Bhubaneswar for chemical examination. He also prepared the spot map, Ext.8. He then examined other witnesses and arrested the accused. He also held inquest over the dead body of the deceased and prepared inquest report and marked Ext.2. The I.O. (P.W.10) then sent the dead body of the deceased for postmortem examination and received the postmortem report, Ext.4. On completion of investigation, the I.O. (P.W.10) submitted the Final Form, placing this accused-Anji @ Ranjit Naik to face the trial for the offence under section-302 of the IPC.

3. The learned J.M.F.C. (Rural), Cuttack having received the Final Form as above, took cognizance of said offence and after observing the formalities, committed the case to the Court of Sessions. That is how the Trial commenced by framing the charge for the said offence against the accused.

4. In the Trial, the prosecution has examined in total ten (10) witnesses. Out of whom, as already stated, the Informant who had lodged the F.I.R. (Ext.1) is P.W.1. P.W.2, P.W.3 and P.W.8 are the eye witness to the occurrence; whereas P.W.6 is the Doctor, who had conducted autopsy over the dead body of the deceased. The I.O. has come to the witness box at the end has been examined as P.W.10.

5. The prosecution besides leading the evidence by examining the above witnesses has also proved several

documents, which have been admitted and marked as Exts.1 to 10. Out of those, as already stated the F.I.R. is Ext.1 whereas the inquest report is Ext.2 and the postmortem examination report is Ext.4. The spot map had been admitted in evidence and marked Ext.9, whereas chemical examination report is marked as Ext.6.

6. The plea of the accused is that of the complete denial. However, no evidence has been tendered from the side of the accused during the trial.

7. The Trial Court upon analysis of evidence on record and placing reliance upon the evidence of P.W.2, P.W.3 and the medical evidence falling from the lips of P.W.6 has concluded that the prosecution has established its case against this accused as to have intentionally caused the death of Bhima (deceased) by causing injuries on his head by means of laterite stone beyond any reasonable doubt. Accordingly, the accused having been convicted for commission of offence under section-302 of the IPC, he has been sentenced as aforestated.

8. Learned Counsel for the Appellant (accused) from the very beginning instead of questioning the finding of the Trial Court as regards role played and act done by the accused in causing injuries upon the deceased by means of laterite stone, placing the surrounding circumstances which has emanate from the evidence on record including which had fallen from the lips of P.W.2, P.W.3 and P.W.8, as well as the evidence of the Doctor

(P.W.6) and his report Ext.4 contended that the Trial Court ought not to have convicted the accused for commission of offence under section-302 of the IPC and instead the conviction ought to have recorded for commission of the offence under section-304-II of the IPC. Accordingly, she urged for modification of the conviction and appropriate reduction of the sentence.

9. Learned Counsel for the Respondent-State while supporting the conviction of the accused for commission of offence under section-302 of the IPC, inviting our attention to the evidence of P.Ws. 2, 3, 8 as well as the evidence of the Doctor (P.W.6), contended that the accused having assaulted the deceased on his head to be the seat of the injuries that he intended to inflict and that too by means of laterite stone, all these facts are enough to hold that the accused is liable for intentionally causing the death of Bhima and the offence committed by the accused would thus stand categorized under section-302 of the IPC.

10. Keeping in view the submissions made; we have carefully gone through the judgment passed by the Trial Court and we have also extensively travelled through the depositions of the prosecution witnesses i.e. P.Ws. 1 to 10 and have perused the documents which have been admitted in evidence and marked as Exts.1 to 10.

11. In order to address the rival submission, first of all the evidence of P.W.2 as well as the F.I.R. (Ext.1) being gone through, it is seen that what have been suppressed in the F.I.R. was that the happening prior to the actual assault, which have been stated by this P.W.2. He has stated that he saw that the accused and the deceased were quarreling and then in course of that, the deceased had fall on the ground and accused assaulting him; thereafter when he made shout, the accused lifted a laterite stone and threshed on the head of the deceased.

P.W.3 has stated that when he arrived, Bhima was on the ground, he saw accused lifting a laterite stone and threshing same on the head of the deceased. This P.W.3 is not stating anything about the quarrel to be going on between the accused and deceased. At this stage, turning our attention to the evidence of the Doctor (P.W.6), we find him to have stated that he had noticed de-pressed communicating fracture over an area of 8cm x 5cm on the left parietal head underneath. The external injury of little curved laceration of size 5cm x 0.5 cm injury scalps deep on the left temple of head adjoining the parietal eminence with infiltration of red bloods. It is not there in the evidence that the accused had caused any assault on the deceased after the first one. The evidence of P.W.6 is also silent. It appears from the evidence of P.Ws.2 and 3 that there was no prior planning for the incident and it happened in course of quarreling between the

accused and the deceased. The parties hail from the rural background and earned their livelihood by working as labourers. The judicial notice of the fact can be taken that was temper run high amongst such persons who were working as labourer hailing from the villages run high and for the silly reasons, they often behave and respond unexpectedly and aggressively.

Having carefully considered all above circumstances emerging from the evidence, we are of the considered view that the offence can be properly categorized as one punishable under section 304-I of IPC. Therefore, we are inclined to modify the impugned judgment of the Trial Court in convicting this accused for the offence punishable under section-304-I of IPC. Accordingly, the accused is sentenced to undergo rigorous imprisonment for a period of ten (10) years.

12. The Appeal is accordingly allowed in part. With the above modification of the judgment of conviction and order of sentence dated sentence dated 2nd June, 2014 passed by the learned Sessions Judge, Cuttack in Sessions Trial No.315 of 2012, the Appeal stands disposed of.

*(D. Dash),
Judge.*

Mr. A.C. Behera, J. I Agree.

*(A.C. Behera),
Judge.*