

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.64 of 2016

An application under Section 374 of the Cr.P.C. against the judgment dated 8th July, 2014 passed by the learned Additional Sessions Judge, Bargarh in C.T. No.107/20/62 of 2012-13.

Milan @ Makardhwaja Khadia **Appellant**

Versus

State of Odisha **Respondent**

Advocate(s) appeared in this case :-

For Appellant : Ms. Gitanjali Majhi, Advocate
For Respondent : Mr. J. Katikia,
Additional Government Advocate

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

JUDGMENT
16th May, 2022

B.P. Roustray, J.

1. The sole Appellant has been convicted and sentenced to life imprisonment for committing murder of his wife.

2. The occurrence took place in the house of the Appellant at village Ruguditika (Sodhapali) under Atabira Police Station in the district of Bargarh. The deceased was the second wife of the Appellant and they married after death of the 1st wife. As per prosecution case, the occurrence took place on 29th March, 2012 afternoon around 3 pm. The Appellant in drunken state assaulted the deceased by means of a stick on her head and left the house after she died, and again returned back during

evening hour, took the dead body by dragging near the thrashing floor (Khala) situating at the backside of his house, set fire to it and then dumped the half burnt charred dead body in the cow-dung pit nearby to it. P.W.5, the son of the Appellant and deceased, a boy aged about 11 years reading in Class-VI is the eye-witness to the assault as well as the subsequent events. P.W.6, another son and P.W.11, the daughter are also projected as eye-witnesses to the occurrence, who are disbelieved as such by the trial court with regard to the assault part.

3. The F.I.R. (Ext.1) was lodged by P.W.1, the Gramarakhi on 31st March, 2012. The inquest was held on 1st April, 2012 in presence of the Executive Magistrate (P.W.17) and the post mortem examination was conducted by P.W.18 on the same day, i.e. 1st April, 2012.

4. The story was initially revealed by P.W.5 to other villagers. Later it came to the knowledge of P.W.1, who informed the police and lodged the F.I.R. in Atabira P.S. Case No.59 dated 31st March, 2012.

5. The charge was under Section 302/201 of the Indian Penal Code.

6. Prosecution examined 18 witnesses in total and marked 13 documents to prove the charge against the Appellant. No evidence was adduced on behalf of defense and the Appellant took the plea of false implication with complete denial of prosecution case.

7. In addition to the evidence of direct eye-witnesses, prosecution also proposed to prove the theory of extrajudicial confession and the disclosure information with regard to recovery of weapon of offence against the Appellant to prove the charge before the trial court. However, the theory of extrajudicial confession sought to be proved against the

appellant was completely discarded by the trial court stating the same as involuntary and coercive due to presence of police personnel as well as the circumstances. Further, the evidence sought to be proved by prosecution under Section 27 of the Indian Evidence Act regarding discovery of the weapon of offence at the instance of the Appellant was not sufficiently proved as per the opinion of the learned trial court.

8. Since it is a case of murder, the foremost requirement is to see the nature of death of the deceased, if the same is homicidal or otherwise. In this regard, looking to the evidence of the doctor (P.W.18) and the post mortem examination report proved under Exhibit-13, it is seen that the following features were noticed at the time of conducting post mortem examination:-

“External features:-

- i) Whole body was burnt, looking dark black, singeing of scalp hairs, charred skin, face and eye burnt and shrunken, there was pugilistic attitude, there was burst of right side abdomen, smell of putrefaction was coming, no rigor mortis.

Internal features found on dissection:-

- i) Depressed commuted fracture of temporo parietal bone of right side of skull of size 3” X 2”, one inch above the right ear, below the fracture side multiple laceration with hematoma formation of temporo parietal lobe of brain;

ii) Depressed fracture of occipital bone of left side of size 2 ½” X 2”, one inch left to occiput, below the fracture side, there was multiple lacerations with haematoma formation of occipital lobe of brain;

iii) Heart was soft, flabby and both sides of the heart chamber were empty. Mucosa soften and dark brown in colour. There was no food material inside the stomach;

iv) There were putrefaction changes of all other internal organs.

v) The above mentioned burnt injuries were post mortem in nature and other external injuries were ante-mortem in nature. No ligature mark was found on the body of the deceased.

In the opinion of P.W.18, the cause of death was probably due to injuries to the brain caused by depressed fracture of temporo parietal bone at the right side of the skull and the occipital bone on the left side due to blunt trauma. The time since death was within 3 to 5 days prior to the post mortem examination. As per P.W.18, the possibility of homicidal death of the deceased cannot be ruled out.

9. It is submitted on behalf of the Appellant that in absence of specific opinion with regard to exact time of death and nature of injuries, homicidal nature of death of the deceased is not proved.

10. It is to be remembered here that homicidal nature of death need not always be proved through direct evidence. It has to be inferred from

the circumstances and the nature of injuries noticed on the dead body. The instant case is about the death of a wife committed by the husband within four walls of the house. In absence of any other adult member in the house except the deceased and Appellant, the commission of murder revealed late to the villagers. As such, three days passed before conducting the inquest and the dead body of the deceased which was recovered from the cow-dung pit had started putrefaction by the time of holding inquest. In addition to the same, the dead body was burnt partially. The external features of the dead body as seen during inquest and post mortem examination speaks of the same. Further, those two fractures noticed on the skull over temporo parietal bone and occipital bone support the prosecution case about assault on the head of the deceased by means of any blunt object. When the assailant is the husband and he tried best to screen the evidence by attempting to burn the dead body after committing the offence, it is difficult indeed to get direct evidence on the nature of injuries. It should not be forgotten here that, the inquest and post mortem examination were conducted after clear gap of three days of the occurrence and keeping the same in mind, the features noticed on the dead body of the deceased, external as well as internal, are found supportive with the conclusion of homicidal death of the deceased. It is thus concluded that the deceased died homicidal nature of death.

11. Next coming to see the evidence of eye-witnesses, viz., P.Ws.5, 6 and 11, who are none other than the own children of Appellant, they are all child witnesses. As stated earlier, P.W.5 is a boy aged 12 years reading in Class-VI, P.W.6 is 11 years old reading in Class-V and P.W.11 is the girl child aged about 6 years. A close scrutiny of evidence of these three witnesses reveals that, the evidence of P.Ws.6 and 11 with

regard to assault part could not be believed since they have admitted to have heard the same from P.W.5. So far as the evidence of P.W.5 is concerned, the same is found clear, cogent and trustworthy. He has stated that his father (the present Appellant) under the influence of liquor assaulted his mother inside the house by means of a lathi on the backside of her head causing bleeding injuries. After the assault the Appellant went to field telling him (P.W.5) that his mother has drunk and slept and he should not disturb her. The Appellant returned to the house in the evening, dragged the dead body of his mother to the heap of straw at the backside of their house, placed it on the heap and torched. Then he buried the half burnt dead body in the pit of cow-dung. This witness though being a child witness stood confirmed to his version during his cross-examination by the defence. The other two children, P.Ws.6 and 11 have though admitted that they have heard about the assault from their brother (P.W.5) but have categorically stated in their evidence to have seen their father (the Appellant) dragging the dead body of their mother (deceased) to the backyard of their house. They corroborate the evidence of P.W.5 with regard to disposal of the dead body, i.e. second part of the occurrence.

12. Admittedly, no allegation of tutoring of those child witnesses is there. Law is well settled that while appreciating the evidence of a child witness, the court must be cautious enough to examine any possibility of tutoring of the child. Section 118 of the Evidence Act speaks that, every person is a competent witness unless the court considers them incompetent due to lack of understanding to give rational answers either by tender years or for any other reason. Whether a child is competent enough to understand the questions and answer them rationally, depends on the facts of each case.

13. Here in the instant case, the evidence of those child witnesses, more particularly P.W.5, are found corroborated by medical evidence. The internal fracture of the skull noticed in course of post mortem examination clearly supports the statement of P.W.5 about the assault by means of a stick on the backside head of the deceased. The evidence of other witnesses including the informant (P.W.1) of getting knowledge from P.W.1 about commission of offence by the appellant, further strengthens prosecution case in establishing the charge against the Appellant. The actions and conduct of the Appellant in causing the assault, dragging her dead body to the backside of the house, burning the same and dumping it in the cow-dung pit at the end, all speak of his intention to commit murder of the deceased which are found established through the evidence of P.Ws.5, 6, 11 and other witnesses.

14. In view of such direct and cogent evidence with regard to assault and subsequent conduct to screen the evidence of murder, the charges under Section 302/201 of the I.P.C. are clearly established against the Appellant beyond all reasonable doubts.

15. In the result the conviction and sentence is confirmed and the appeal is dismissed.

16. The LCRs be returned forthwith.

(B.P.Routray)
Judge

(Dr. S. Muralidhar)
Chief Justice