IN THE HIGH COURT OF ORISSA, CUTTACK Jail Criminal Appeal No. 150 of 2005

An appeal from judgment and order dated 23.08.2005 passed by the Adhoc Additional Sessions Judge, Bonai in Sessions Trial No.24/67 of 1999-2004.

Prafulla Patra **Appellant** -Versus-State of Odisha Respondent For Appellant Mr. Samvit Mohanty Amicus Curiae For Respondent Mr. Arupananda Das Addl. Govt. Advocate PRESENT: THE HONOURABLE MR. JUSTICE S.K. SAHOO AND THE HONOURABLE MR. JUSTICE S.K. MISHRA Date of Hearing and Judgment: 12.02.2024

By the Bench: The appellant Prafulla Patra faced trial in the Court of learned Adhoc Additional Sessions Judge, Bonai in Sessions Trial No.24/67 of 1999-2004 for offence punishable under section 302 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation

that 29.08.1998 at 4 p.m. at Malarbasa Badajor Nala situated near village Sarsara under Tikayatpali police station in the district of Sundargarh, he committed murder of his wife Subhadra Patra (hereinafter 'the deceased').

The learned trial Court, vide impugned judgment and order dated 23.08.2005, found the appellant guilty of the offence charged and sentenced him to undergo imprisonment for life under section 302 of the I.P.C. and to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for six months.

Prosecution Case:

2. The prosecution case, as per the first information report (Ext.2) lodged by Tikeswar Patra (P.W.2), the paternal uncle of the deceased, on 29.08.1998 before P.W.14, the Circle Inspector of Police, Bonai, in short, is that the deceased was the daughter of his younger brother. Three years prior to the occurrence, the deceased married to the appellant and they were staying together. The appellant used to assault the deceased and in the morning hours of 26.08.1998, the appellant assaulted the deceased, for which she came to her father's place and complained before the Secretary of the village, namely Lingaraj Patra (P.W.3). On 29.08.1998, when the deceased had been to attend call of nature to Badajor Nala, the appellant followed her

and killed her by stabbing with a knife. At about 2 p.m. on that day, while P.W.2 was in his house, one Natha Patra came and informed him that the appellant had committed murder of the deceased and that the dead body was lying at Badajor Nala at Malarbasa. Getting such information from Natha Patra, P.W.2 rushed to the spot and found that the deceased was lying dead in the water channel at Malarbasa and stab wound was visible on her right side abdomen and a number of persons had congregated at the spot. When P.W.2 confronted Kunti Patra (P.W.4), Rebati Patra (P.W.5) and Minati Patra, they told that on that day at about 1.30 p.m., while they were engaged in weeding out grass in the land of one Sribacha Patra, all on a sudden they heard "Maridela Maridela" and noticed that the appellant stabbed the deceased and the dead body of the deceased was lying in the water channel. When they rushed to the spot, the appellant fled away towards jungle holding the knife and they also noticed stab wound on the belly of the deceased. It is further stated in the F.I.R. that P.W.2 along with P.W.13 Basanta Kumar Nayak came to the police station and orally reported the incident to the police.

P.W.14 Kalu Charan Pati, the Circle Inspector of Police, Bonai reduced the oral version of P.W.2 into writing, read

over and explained the contents thereof to him, who admitted the same to be correctly recorded and accordingly, his signature was taken and it was treated as F.I.R. and P.W.14 registered Tikayatpali P.S. Case No.15 dated 29.08.1998 under section 302 of the I.P.C. against the appellant and himself took up investigation of the case.

During the course of investigation, P.W.14 examined the informant (P.W.2) and the accompanying witnesses, recorded their statements, visited the spot and prepared the spot map (Ext.11). He also held the inquest over the dead body in presence of the witnesses and prepared the inquest report (Ext.3). He seized sample earth and blood stained earth from the spot in presence of the witnesses and then sent the dead body for post mortem examination to Sub-Divisional Hospital, Bonai through constable. On 29.08.1998, P.W.14 seized a letter written by the deceased, which was kept in the custody of P.W.3 Lingaraj Patra on his production as per seizure list Ext.4. On 30.08.1998, P.W.14 seized the wearing apparels of the deceased production by the constable after the post mortem examination, which was seized as per seizure list Ext.10. The appellant was arrested on 05.09.1998 and while he was in custody, he confessed his guilt and on the basis of his statement, recorded under section 27 of the Evidence Act, in the presence of witnesses and on being led by the appellant, the weapon of offence i.e. knife (M.O.I), which was concealed near a rock inside Jagyanhudi hill, was seized as per seizure list Ext.6. The appellant also disclosed the place of concealment of the wearing apparels, which he had worn at the time of occurrence and took the police party to his house and produced the wearing apparels i.e. one ganjee, check lungi and one napkin, which were seized in presence of the witnesses as per seizure list Ext.7. Requisition was sent by the I.O. (P.W.14) to the Medical Officer, Sarsara for collection of sample blood and nail clippings of the appellant and on the same day, it was produced before him and seized as per seizure list Ext.1 and on 05.09.1998, the appellant was forwarded to Court. After receiving the post mortem examination report, P.W.14 made a query from the S.D.M.O., Bonai by sending the weapon of offence i.e. knife for seeking an opinion regarding possibility of the injury sustained by the deceased with such weapon. He also made a prayer before the learned S.D.J.M., Bonai to send the seized articles for chemical examination to R.F.S.L., Ainthapalli, Sambalpur and received the chemical examination report vide Ext.16. On 19.10.1998, P.W.14 examined some more witnesses and recorded their statements

and on 01.12.1998 on completion of investigation, he submitted charge sheet against the appellant under section 302 of the I.P.C.

After complying with the due committal procedure, the case was committed to the Court of Session where the trial Court framed the charge against the appellant as aforesaid. As the appellant pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to establish his guilt.

Prosecution Witnesses, Exhibits & Material Objects:

- 3. In order to prove its case, the prosecution examined as many as fourteen witnesses.
- P.W.1 Sankar Ghasi was working as a sweeper at Sarsara P.H.C. He is a witness to the seizure of blood sample and nail clippings as per seizure list Ext.1, which were kept in different vials in a sealed condition.
- P.W.2 Tikeswar Patra is the informant in this case and he is the uncle of the deceased. He narrated the incident as it unfolded on the fateful day and also supported the prosecution case.
- P.W.3 Lingaraj Patra, was the Secretary of the community to which the deceased belonged to and he stated

that the deceased had given a written complaint alleging therein that she had frequently been assaulted by the appellant. He further stated that on the basis of such written complaint, he along with the President of their community had decided to convene a meeting after two days to decide the matter but unfortunately, the deceased was killed by the appellant on the same day. He is a witness to the seizure of the written complaint of the deceased as per seizure list Ext.4.

P.W.4 Kunti Patra and P.W.5 Rebati Patra are the eye witnesses to the occurrence. They stated that while they, along with one Minati Patra, were weeding out grass from the cultivable land of one Sribacha Patra, they heard the deceased crying "MARIGALI BUA". They further stated that when they rushed to the spot, they found the deceased lying dead on the spot with profuse bleeding injury on her right side belly. They also saw the appellant fleeing away towards jungle holding a knife.

P.W.6 Tankadhar Dalai is a post-occurrence witness who stated that seven to eight days after the death of the deceased, the police called him to Jagyanhudi hill. He further stated that the police arrested the appellant from that jungle and while under arrest, the appellant confessed his quilt to have

killed the deceased. He also stated that the appellant led the police team as well as witnesses and gave recovery of a knife which he had concealed in the jungle.

P.W.7 Dhananjay Dalai is a witness to the seizure of wearing apparels of the appellant, i.e. one half ganji, one lungi and one napkin as per seizure list Ext.7.

P.W.8 Dr. Debadutta Mohanty was posted as the Assistant Surgeon at Sub-Divisional Hospital, Bonai. On police requisition, he held post-mortem examination over the dead body of the deceased and proved his report vide Ext.8.

P.W.9 Arikhita Patra was the President of Patra community, to which the deceased and the appellant belonged to and he stated that one day prior to the occurrence, the deceased had given him a written complaint which he had handed over to P.W.3 with an instruction to settle the matter after two days.

P.W.10 Sudam Charan Atti is a witness to the seizure of blood-stained wearing apparels of the appellant, i.e. one half ganji, one lungi and one napkin as per seizure list Ext.7.

P.W.11 Nityananda Badnaik stated that the police asked him to accompany them to Jagyanhudi hill. He also stated that one knife was lying on a piece of rock in the hill which was

seized by the police in his presence. However, he denied knowing anything more about the case for which he was declared hostile by the prosecution.

P.W.12 Dasamati Patra is the mother of the deceased who stated that the appellant used to assault the deceased repeatedly during her lifetime. One day before her death, the appellant had assaulted the deceased by means of a stick for which she had come to her house. She further stated that the deceased had given a written complaint to the village committee for resolving the matter. However, on that very day, the appellant killed the deceased by stabbing on her abdomen.

P.W.13 Basanta Kumar Nayak is the Grama Rakshi who is a witness to the seizure of the wearing apparels of the deceased as per seizure list Ext.10.

P.W.14 Kalu Charan Pati was working as the C.I. of Police, Bonai and he is the investigating officer of this case.

The prosecution exhibited sixteen documents. Exts.1, 4, 6 and 10 are the seizure lists, Ext.2 is the F.I.R., Ext.3 is the inquest report, Ext.5 is the confessional statement, Ext.7 is the seizure list of wearing apparels of appellant, Ext.8 is the post mortem report, Ext.9 is the opinion of the doctor (P.W.8), Ext.11

is the spot map, Ext.13 is the command certificate, Ext.14 is the requisition to doctor, Ext.15 is the office copy of the forwarding memo and Ext.16 is the chemical examination report.

The prosecution proved six material objects. M.O.I is knife, M.O.II is Sando ganjee, M.O.III is cheque lungi, M.O. IV is napkin, M.O.V is the Sambalpuri saree and M.O.VI is the blouse.

Defence Plea:

4. Defence plea is one of complete denial. However, the defence neither examined any witness nor proved any document to dislodge the prosecution case.

Findings of the Trial Court:

The learned trial Court, after assessing the oral as well as the documentary evidence on record, came to hold that from the inquest report (Ext.3), the post mortem report (Ext.8) and the evidence of the doctor (P.W.8), who conducted post mortem examination, it was evident that the deceased suffered homicidal death. The learned trial Court assessed the evidence of two eye witnesses to the occurrence i.e. P.W.4 and P.W.5 and found that nothing was elicited to discredit the testimonies of these two witnesses and that there are no contradictions in the evidence of these two eye witnesses. The learned trial Court

further held that though one Minati Patra was in the company of P.W.4 and P.W.5 while weeding operation was going on and she has not been examined during the trial but the same cannot be a ground to disbelieve the prosecution case. The evidence of P.W.4 and P.W.5 was held to be reliable and trustworthy and leading to discovery of the weapon of offence i.e. knife (M.O.I) on the basis of the statement made by the appellant was also held to be corroborative to the direct evidence of P.W.4 and P.W.5 coupled with the evidence of the doctor (P.W.8). The learned trial Court further held that even if the motive of the appellant is not established, since there is overwhelming evidence on record that the appellant caused the fatal injury on the deceased resulting in her death, it is sufficient to convict the appellant. Accordingly, the learned trial Court concluded that basing on the testimony of the informant and eye witnesses to the occurrence i.e. P.W.4 and P.W.5, which gets ample corroboration to the evidence of Medical Officer, the prosecution has been able to prove its case beyond all reasonable doubt against the appellant that it is none else than the appellant, who committed the murder of the deceased. Accordingly, the appellant was found guilty under section 302 of the I.P.C.

Contention of the Parties:

6. Mr. Samvit Mohanty, learned Amicus Curiae appearing for the appellant contended that the presence of the two witnesses i.e. P.W.4 and P.W.5 at the time of occurrence is very much doubtful. He submitted that from the place where the two witnesses were weeding out grass i.e. from the cultivable land of one Sribacha Patra, they could not have marked the appellant leaving the spot in view of the distance, as has been brought from the evidence of the Investigating Officer. It is further argued that according to the evidence of these two eye witnesses, the occurrence took place at about 1 to 2 p.m. on 29.08.1998 whereas the doctor (P.W.8), who conducted post mortem examination on the very next day i.e. on 30.08.1998 at 11.30 a.m., stated that time since death was more than 36 hours of his post mortem examination as the rigor mortis had passed off. Since the post mortem was conducted within 22 hours of the time as stated by the two witnesses, therefore, in view of the post mortem report finding, the death could have occurred much prior to the date and timing stated by the eye witnesses and therefore, their version that the occurrence took place in between 1 to 2 p.m. on 29.08.1998 is not acceptable. Learned counsel further argued that though one knife was stated

to have been seized at the instance of the appellant, but the chemical examination report indicates that no blood was noticed on it and therefore, the recovery of the knife becomes inconsequential. The learned Counsel further submits that in view of the absence of motive behind commission of the offence and when the evidence of eye witnesses are doubtful, particularly taking into account the time of death as stated by the doctor conducting post mortem examination, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Arupananda Das, learned Addl. Government Advocate, on the other hand, submitted that rigor mortis cannot be the determinative factor for ascertaining the exact time when the assault took place on the deceased and she died as it upon varieties as per the medical of factors depends jurisprudence. Since the only reason assigned by the doctor P.W.8 that time since death was more than thirty six hours as rigor mortis had passed off is against the medical jurisprudence, on the basis of such expert's evidence, the evidence of two eye witnesses i.e. P.W.4 and P.W.5 cannot be discarded particularly when nothing has been brought out in the cross-examination to disbelieve their evidence. The learned counsel further argued that the witnesses were at a distance of just 100 feet from the place of occurrence and the land, in which they were working, was at a higher level than the Nala where the dead body was found and it was an open field and thus, there would have hardly any difficulty on the part of P.W.4 and P.W.5 in seeing the appellant running away from the spot holding a knife after hearing the shriek of the deceased. Learned counsel further drew attention of this Court to the evidence of witnesses which indicated that the deceased had complained against the conduct of the appellant in assaulting her few days prior to the date of occurrence and therefore, a complaint was lodged before the headman of the community and a meeting was supposed to be held on Monday, but the occurrence in question took place on Saturday and therefore, in view of the eye witnesses' account coupled with the medical evidence and the previous conduct of the appellant, it can be said that the prosecution has successfully established its case against the appellant and there is no infirmity in the impugned judgment.

Whether the deceased met with a homicidal death?:

7. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine whether the prosecution has successfully established that the deceased

met with a homicidal death or not. Apart from the inquest report (Ext.3) prepared by P.W.14, the doctor (P.W.8), who conducted the post mortem examination over the dead body of the deceased at Sub-Divisional Hospital, Bonai on 30.08.1998 at 11.30 a.m., gave the following findings:-

- "(i) On external examination, she was average body built, eye closed, face pale, rigor mortis disappeared.
- (ii) External wounds: (a) stab wound size 5 c.m. X 2 c.m. x 7 c.m. (on right side of abdomen, grievous in nature/oblique in direction) (b) incised wound 2 c.m. X 1 c.m. below right breast, simple in nature.
- (iii) On internal examination: The stab wound was directed oblique upwards and was penetrated in right side liver. Muscle and peritoneum below the wound was cut. Abdomen was filled with clotted blood. The margins of the wound showed gaping. Liver was pale and penetrated. Spleen and kidney were pale. Heart contracted both chambers empty. Right lung and left lung were pale.
- (iv) Presence of bleeding and gaping of margin of wounds indicate that both the wound were ante mortem in nature."

P.W.8 opined the cause of death to be haemorrhagic shock resulting from stab wound and the time since death was more than thirty six hours as rigor mortis had passed off at the time of post-mortem examination. He has proved the post mortem examination report marked as Ext.8. On 10.09.1998, on police requisition and query made by the I.O., P.W.8 examined the weapon of offence i.e. knife (M.O.I) and opined that the injury sustained by the deceased could be caused by the knife produced before him and the injury no.1 i.e. the stab wound could cause death of a person in ordinary course of nature.

Therefore, in view of the inquest report as well as the evidence of the doctor (P.W.8) and the findings as per the post mortem report (Ext.8), we are of the view that the learned trial Court has rightly come to the conclusion that the deceased met with a homicidal death.

Whether the evidence adduced by P.W.4 & P.W.5 is trustworthy and reliable?:

8. P.W.4 Kunti Patra has stated that at the time of occurrence which was in between 1 to 2 p.m., she along with P.W.5 and one Minati Patra was weeding out grass from the cultivable land of one Sribacha Patra and Malarbasa Nala was at a distance of 100 feet from the place where they were working.

She further stated that upon hearing the cry of the deceased "Marigali Bua", they rushed to the spot and found the deceased was lying dead at the spot with profuse bleeding injury on the right side belly and they also found that the appellant was running away from the spot holding a knife towards the jungle. They raised alarm for which the villagers came to the spot. In the cross-examination, P.W.4 has stated that the land, where they were working, was at a higher level than the Nala, which was visible to their kiari and in between that land and the Nala, the land of one Sada Patra lies. She further stated that she along with P.W.5 and Minati Patra simultaneously came running to the spot. She further stated that nobody was at the spot by the time of their arrival and it was a rainy season. However, at the relevant time, it was not raining. She further stated that she had not seen the assault on the deceased by the appellant. Though 161 Cr.P.C. statement was confronted to P.W.4 that she had not stated before the I.O. about hearing the cry of the deceased, raising alarm, villagers coming to the spot and that the appellant was running away from the spot holding the knife and it was also proved through the I.O. (P.W.14), however, the learned counsel for the State drew our attention to the 161 Cr.P.C. statement of P.W.4 and submitted that in fact there are no such contradictions

in the 161 Cr.P.C. statement vis-à-vis the evidence adduced by P.W.4 in Court. When the statement recorded under section 161 Cr.P.C. was confronted to P.W.4 by the learned defence counsel, it was the duty of the Public Prosecutor so also the learned trial Court to verify such statement as to whether the confrontation was correctly made or not. Similarly when the I.O. was examined and the confrontations made to P.W.4 were sought to be proved, at that time also both the Public Prosecutor and the Court should have been careful to make necessary verification. In this case, had the Public Prosecutor and the Court been vigilant, the learned defence counsel would not have been permitted to make such confrontations regarding absence of some specific statements as given in the trial, in the statement recorded under section 161 Cr.P.C.

When an accused is facing criminal trial on murder charge, the Public Prosecutor should be aware about processes of such trial and perform his duties in presenting the prosecution case with utmost sincerity and to the best of his ability. The learned trial Judge should also display vigil and alertness and not remain as a silent spectator or a mute observer. A criminal trial is not to be conducted in a casual manner which would display negligence on the part of the prosecution and the trial Court. It

is the duty of the Court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding.

To arrive at the truth and in order to overcome the error of record, if any, the appellate Court in the interest of justice can look into 161 Cr.P.C. statement, but its use is restricted and should be in accordance with law. We find that there are no such contradictions in the evidence of P.W.4 vis-àvis her 161 Cr.P.C. statement and nothing has been brought out in the cross-examination to disbelieve the evidence of P.W.4. It has been brought out from the evidence of the I.O. that there is no passage to the stream from the land of Sribacha Patra and one has to come to the Nala through the field. From this evidence, we are not in a position to accept the contention of the learned Amicus Curiae that by the time P.W.4 and P.W.5 reached at the spot, the appellant would not have been there. When both the eye witnesses were at distance of just 100 ft. and hearing the shout of the deceased, they rushed to the spot, it cannot be said that they would not have been in a position to notice the appellant running away from the spot holding a knife.

The evidence of P.W.5 Rebati Patra corroborates the evidence of P.W.4 and she has also stated that she along P.W.4

and Minati Patra were weeding out grass from the land of Sribacha Patra and upon hearing the cry of the deceased, they rushed to the spot and found the deceased was lying with bleeding injury on her belly and at that time the appellant was running away towards the jungle holding a knife. She further stated that they noticed profuse bleeding from the injury caused to the belly of the deceased. She has also stated in the crossexamination that she had not seen the actual assault on the deceased and further stated that the place where the dead body was lying was not visible to the place where they were working. However, the position of the field is such that if someone comes to one end of the field after hearing the noise, he can easily see the place where the deceased was lying in view of the distance of just 100 ft. so also the fact that the it was situated at a upper level. Nothing further has been elicited in the cross-examination to disbelieve the evidence of P.W.5. Merely because the other witness, namely, Minati Patra was not examined by the prosecution, the same cannot be a ground to discard the evidence of these two eye witnesses. Moreover, quantity of evidence was never considered to be a test for deciding a criminal trial and the emphasis of Courts is always on quality of evidence.

Whether findings of the doctor (P.W.8) regarding rigor mortis can dislodge the ocular version of P.Ws.4 & 5?:

9. As per the version of both P.Ws. 4 and 5, the timing of occurrence was in between 1 to 2 p.m. on 29.08.1998. The doctor (P.W.8) conducted post-mortem examination on 30.08.1998 at 11.30 a.m. and thus it can be said that the post-mortem was conducted within twenty two hours of the death of the deceased. The doctor has stated that the time since death was more than 36 hours of his post mortem examination as rigor mortis had passed off.

At this juncture, it would be beneficial to refer to the Journal of Forensic Sciences and Criminal Investigation [ISSN: 2476-1311] in which in a research oriented article titled as 'Time Since Death from Rigor Mortis: Forensic Prospective', it is observed that there are several factors which affect the process of rigor mortis, such as (i) age, sex and physical condition of the body; (ii) biochemical changes in the body; (iii) mode of death; (iv) surrounding environmental temperature; (v) humidity and movement of air around the body etc. The period of onset, lasting and passing off rigor mortis varies from case to case.

Therefore, in our humble view, no straight jacket formula can be laid down that in every case, the rigor mortis

would appear at a particular point of time and disappear after a particular time irrespective of the age, the surroundings, the type of assault made to the deceased etc. Further it is an admitted position of law that exact time of death cannot be established scientifically and precisely, only because of presence of rigor mortis or in the absence of it. [Ref: Baso Prasad -Vrs.-State of Bihar, (2006) 13 Supreme Court Cases 65].

In the case in hand, since the reason assigned by the doctor is not in consonance with medical jurisprudence and when the evidence of two eye witnesses are clear, trustworthy and reliable, on the basis of the expert's opinion with respect to the time since death, we cannot disbelieve the evidence of the two eye witnesses.

The weapon of offence was seized from a open place inside the jungle after a few days and it was a rainy season as stated by the witnesses and therefore, non-finding of the blood on the knife as per the chemical examination report (Ext.16) cannot be a factor to doubt the prosecution version that knife was used in assaulting the deceased.

Coming to the motive part, P.W.2 has stated that the appellant used to assault the deceased off and on, as a result of

which she was frequently visiting her parents' place. P.W.12, the mother of the deceased has stated that the appellant assaulted the deceased with a stick and as it was unbearable, she came to her paternal house, showed the assault part of the body and reported the matter before the village committee. From the evidence of P.W.3 and P.W.9, it appears that a written complaint was made by the deceased relating to the assault made on her by the appellant and P.W.9 handed over the written complaint to P.W.3 with instruction to settle the matter and the meeting was supposed to be held on Monday, but unfortunately the occurrence took place on 29.08.1998 i.e. Saturday. Therefore, the prosecution has also established the motive behind the commission of the crime.

In view of the foregoing discussions, when the eye witnesses account are acceptable, which is getting corroboration from the medical evidence and the motive factor is also present in the case, we are of the humble view that the learned trial Court has rightly held the appellant guilty under section 302 of the I.P.C. We find no merit in this Jail Criminal Appeal, which is accordingly dismissed.

It appears that the appellant was granted bail by this Court as per order dated 04.05.2010. He shall surrender before

the learned trial Court within four weeks from today, failing which the trial Court shall take necessary steps in accordance with law for his arrest to serve out the remaining sentence.

Before parting with the judgment, we put on record our appreciation to Mr. Samvit Mohanty, learned Amicus Curiae for rendering his valuable assistance in arriving at the above decision. The learned Amicus Curiae shall be entitled to his professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only). We also appreciate Mr. Arupananda Das, learned Additional Government Advocate for ably and meticulously presenting the case on behalf of the State.



Orissa High Court, Cuttack Dated The 12th February, 2024/Padma