2024 INSC 349

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.493 OF 2022

JASOBANTA SAHU ...APPELLANT (S)

VERSUS

STATE OF ORISSA ...RESPONDENT (S)

J U D G M E N T

B.R. GAVAI, J.

1. The present criminal appeal challenges the final judgment and order dated 17th July, 2014, passed by the Orissa High Court, Cuttack ("High Court" for short), in Jail Criminal Appeal No. 213 of 2000. Vide the impugned judgment, the High Court affirmed the judgment dated 26th August, 2000, passed by the Sessions Judge, Dhenkanal ("Trial Court" for short) in Sessions Trial No. 2-A of 1989, whereby the appellant was convicted under

Section 302 of the Indian Penal Code, 1860 ("IPC" for short) and sentenced to imprisonment for life.

2. The facts, *in brief*, leading to the present appeal, are as follows:

2.1 On 9th October, 1988, the Police Station Jarapada, Angul, District Dhenkanal, received oral information at 3 PM from Hemanta Kumar Sahu (PW-4) and Maheswar Pradhan, to the effect that Laxminarayan Sahu has been murdered. On the basis of the oral information, the Office In-Charge, Jarapada Police Station (PW22) ("I.O." for short), registered a First Information Report (Exhibit-1) vide Crime No. 40(3) of 1988 for the offence punishable under Section 302 of the IPC. On registration of the FIR, the I.O. visited the spot, held inquest over the dead body of the deceased, examined the witnesses, seized the wearing apparels of the appellant as well as the deceased. The I.O. also arrested the appellant on 13th October, 1988, and thereafter, the appellant led to discovery of weapon of offence, i.e., knife (M.O.1).

He also made a query to the doctor and sent the incriminating articles for chemical examination.

2.2 The prosecution case in a nutshell is that the appellant and deceased were having strained relationship on account of property dispute. Laxminarayan Sahu (deceased), one Brajabandhu Sahu and Bhagaban Sahu (PW-14) were brothers. The appellant is the son of Brajabandhu Sahu. There was a partition of family properties between the three brothers and their mother, in which their mother was allotted Ac.1.80 decimals of land for her maintenance. She was staying most of the times either with PW14-Bhagaban Sahu or with the deceased. After her death, about four years prior to the date of occurrence, Brajabandhu Sahu wanted to divide the landed property belonging to his mother, which was objected to by the other brothers. Disputes thus arose between Brajabandhu Sahu and the appellant on one side and the other two brothers on the other side. This led to litigations between the parties. On 9th October, 1988, Laxminarayan Sahu (deceased) went to his land to plough,

the appellant reached there at about 12:30 PM and stabbed Laxminarayan Sahu repeatedly by using a knife, as a result of which Laxminarayan Sahu died at the spot.

2.3 On completion of investigation, the I.O. submitted a chargesheet against the appellant. Since the case was exclusively triable by the Sessions Court, the same came to be committed by the Sub-Divisional Judicial Magistrate, Angul, District Angul in G.H. Case No. 509 of 1988 vide Jarapada P.S. Case No. 40 dated 9th October, 1988, to the Sessions Court.

2.4 Charge was framed against the appellant. The appellant pleaded not guilty and claimed to be tried. The prosecution examined twenty-two (22) witnesses to bring home the guilt of the accused. The prosecution also exhibited twenty-one (21) documents. It also proved seven (7) material objects including the knife (M.O.1). The defence did not examine any witness. Three (3) documents were admitted into evidence for defence. The appellant completely denied the allegations. He claimed that due to the land disputes, a case has been filed to harass him and to

grab his land. At the conclusion of the trial, the Trial Court, vide judgment and order dated 24th August, 1991, held that it is not a case under Section 302 IPC, but a case under Section 304 Part-I of IPC. Since the appellant was in custody for nearly three years at that time, considering his young age and close relationship with the deceased, the Trial Court held that a sentence of three years will meet the ends of justice. Accordingly, the appellant was sentenced to undergo R.I. for three years, with the period in custody to be set off against the period of conviction.

2.5 Aggrieved by the judgment and order of the Trial Court, the informant (PW4-Hemanta Kumar Sahu) filed a Criminal Revision bearing No. 365 of 1991 under Section 401 of the Code of Criminal Procedure, 1973, challenging the judgement and order of the Trial Court acquitting the appellant of the charge under Section 302 IPC. Vide judgment and order dated 14th January, 2000, the learned Single Judge of the High Court partly set aside the judgment of the Trial Court, so far as it relates to the acquittal of the appellant of the charge under Section 302 IPC. The matter

was remitted back to the Trial Court for consideration on the limited aspect as to whether the offence committed comes within the purview of Section 302 IPC and the Trial Court was directed to dispose of the matter by the end of April, 2000.

2.6 On the matter being remitted back, the Trial Court vide judgment and order dated 26th August 2000, came to the conclusion that the appellant committed the murder of the deceased. In result, the appellant was convicted under Section 302 IPC and sentenced to undergo life imprisonment, with the period undergone to be set off as per law.

2.7 Aggrieved by the judgment and order of the Trial Court dated 26th August 2000, the appellant filed Jail Criminal Appeal No. 213 of 2000 before the High Court. Vide the impugned judgment, the High Court dismissed the appeal and confirmed the conviction under Section 302 IPC and the sentence of life imprisonment. Since the appellant was on bail, the High Court while dismissing the appeal, directed the appellant to surrender to undergo the remaining period of sentence.

2.8 Being aggrieved thereby, the present appeal arises by way of special leave. This Court vide order dated 25th March 2022, granted leave.

3. We have heard Shri T.N. Tripathi, learned counsel for the appellant and Shri Suvendu Suvasis Dash, learned counsel for the respondent-State.

4. Shri T.N. Tripathi submits that the appellant has been falsely implicated in the crime. He submits that the so-called eyewitnesses i.e., PW1-Kirtan Sahu and PW2-Nagendra Pradhan cannot be said to be the eyewitnesses. He further submits that the so-called extra-judicial confession given by the accused-appellant to PW6-Purna Chandra Pradhan cannot be said to be voluntary, cogent and trustworthy so as to base the conviction on the same. He therefore submits that the appeal deserves to be allowed.

5. Mr. Suvendu Suvasis Dash, on the contrary, submits that both the Trial Court and the High Court, on a correct

appreciation of evidence, have found that the prosecution has proved the case beyond reasonable doubt and as such, no interference is warranted in the concurrent findings.

6. Since it is not disputed that the death of the deceased is a homicidal, it will not be necessary to refer to the medical evidence.

7. From the perusal of the evidence on record, it would reveal that the Trial Court and the High Court have basically rested the conviction on the basis of the testimonies of PW1-Kirtan Sahu, PW2-Nagendra Pradhan and PW3-Hrusikesh Sahu. The High Court has also believed the extra-judicial confession made by the accused-appellant to PW6-Purna Chandra Pradhan, who is a co-villager.

8. Another incriminating circumstance that the Trial Court and the High Court have found against the appellant is with regard to the recovery of knife, as proved in the depositions of PW5-Harihar Behera and PW20-Choudhury Sasmal.

9. PW1-Kirtan Sahu who is the co-villager, stated that on the day of the incident, he had gone to Puranpani Jungle to bring some fuel. When he was returning from the Jungle, he heard the shouts of "Marigali, Marigali, Rakhyakara". He went near the place from where the shouts were coming. He saw the accused-appellant assaulting the deceased with the knife. He stated that the occurrence had taken place at a distance of about 40-50 feet from that road. He then shouted. When the accused-appellant looked at him, he ran away out of fear. He stated that he narrated the said incident to some of his co-villagers, who had already come to know about the said incident.

10. In his cross-examination, he had admitted that after he had heard the sound of "Marigali, Marigali', he did not run to the spot, but he walked over the distance as usual. He further stated that when he came to the spot, his first vision was on the accused and the deceased and at that time the deceased was trying to get up and was falling again and again. In his cross-examination, he

had also admitted that his statement was recorded by the I.O. after 4-5 days from the date of the occurrence.

11. PW2-Nagendra Pradhan in his evidence also stated that, on the date of the incident, he was coming from Dimirihuda Taila. He heard the noise of "Marigali Marigali, Jasobanta Mote Maripakauchhi Kia Keanth Achhe Mote Rakhyara". He found the deceased Laxminarayan was lying on the ground and the accused-appellant was sitting on him and stabbing him with a knife on his chest. He also saw that the hands of the accused-appellant were stained with blood. Seeing this, out of fear, he went away from the place and came to the village. He also stated that when he reached the village, he came to know that the villagers had already come to know about the incident.

12. From the evidence of PW2, it would also reveal that, after the incident, on the next morning, he went to his Taila where there was a garden consisting of many fruit bearing trees and vegetables. He returned to his village after 5 days. He further

stated that after he returned from his Taila to his village, he voluntarily appeared before the I.O. and gave his statement.

13. He further admitted in his cross-examination that his co-villagers knew that he was in his Taila for 5 days. The village school where the I.O. was camping would be at a distance of 500 yards from his house.

14. PW2 had admitted that his son was working as Havildar in P.T.C. Angul. PW2 stated that though after seeing the incident he had shouted, but none came to the spot. He further stated that he was alone at the spot.

15. A serious doubt arises from the conduct of PW1 and PW2 as to whether they were really the eyewitnesses to the incident or not.

16. PW1 admitted that his statement was recorded 4-5 days after the date of the incident.

17. The conduct of PW2 is more abnormal, particularly, when his son himself is a Police Havildar. After seeing such a gruesome incident, he chose to go to his Taila, which is about 2 miles away from the place of occurrence, and he returned from his Taila after 5 days and voluntarily gave his statement to the I.O. PW2 stated that the villagers were knowing that he was in his Taila, which is 3 miles away from his village. If that be so, then the I.O. should have visited his Taila when the villagers were specifically knowing that that this witness (PW2) is an eyewitness. The I.O.'s not going to his Taila to record his statement casts a serious doubt on the question as to whether this witness (PW2) was really an eyewitness or not.

18. It is further to be noted that there are inconsistencies in the evidence of PW1 and PW2. PW1 stated in his evidence that when he saw the incident he was alone at the spot, away from about 40-50 feet. He stated that he shouted, but when the accused-Appellant looked at him, he ran away out of fear.

19. Similarly, PW2 also stated in his evidence that when the incident happened, he was alone there. He stated that although he raised hullah calling "Kis Kaunthi Achha Rakhyakar", but none came to the spot hearing his hullah.

20. In view of these inconsistencies, it is doubtful as to whether both these witnesses have actually witnessed the incident or not.

21. The I.O. in his evidence stated that all the 4 eyewitnesses had not come to him voluntarily to depose regarding what they had seen about the occurrence. But he called them and examined them in connection with the case. Per Contra, both PW1 and PW2 stated in their evidence that they were not called by the I.O. but they went voluntarily to give their statement. The I.O. further admitted in his evidence that both PW1 and PW2 were not available in the village till 14th October 1988. The I.O. stated in his evidence that between 9th and 14th October, 1988, none of the villagers came forward and told him that they had seen the occurrence. However, as stated herein above, PW1 and PW2, both had deposed that on the same day, they had informed

the co-villagers about the incident, but they had been informed that the co-villagers had already come to know about the incident. This fortifies the suspicion regarding the evidence of PW1 and PW2.

22. It is pertinent to note that PW15-Satyabadi Pradhan and PW16-Santosh Pradhan, who were also the eyewitnesses to the incident, had turned hostile and did not support the prosecution's case.

23. Insofar as PW3-Hrusikesh Sahu is concerned, he stated in his evidence that when he was returning after cultivation, he saw the accused-appellant coming and his hands were stained with blood. He further stated that on being asked, the accused-Appellant did not give any reply. In his examination-in-chief, he stated that though he asked Chaitan Sahu as to whether the deceased came to the village and also intimated him as to how the hands of the accused-appellant were stained with blood; he admitted in his cross-examination that he did not intimate this fact to the family members of the deceased.

24. Insofar as PW6-Purna Chandra Pradhan is concerned, no doubt that he refers to the extra-judicial confession made by the accused-appellant to him to the effect that "Sala Maa Giha Laxmi Ki Maridei Palei Asiehhi". However, on a perusal of his evidence, it would reveal that his evidence is full of improvements.

25. It will be relevant to refer to the following observations of this Court in the case of ***Harbeer Singh vs. Sheeshpal and others***[1]:

> "**22.** The High Court has further noted that there were chance witnesses whose statements should not have been relied upon. The learned counsel for the respondents has specifically submitted that PW 5 and PW 6 are chance witnesses whose presence at the place of occurrence was not natural.
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> **23.** The defining attributes of a "chance witness" were explained by Mahajan, J., in *Puran* v. *State of Punjab* [*Puran* v. *State of Punjab*, (1952) 2 SCC 454 : AIR 1953 SC 459 : 1953 Cri LJ 1925] . It was held that such witnesses have the habit of

[1] (2016) 16 SCC 418

appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

24. In *Mousam Singha Roy* v. *State of W.B.* [*Mousam Singha Roy* v. *State of W.B.*, (2003) 12 SCC 377 : 2004 SCC (Cri) Supp 429] , this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR has been very lightly discarded by the courts below. Similarly, *Shankarlal* v. *State of Rajasthan* [*Shankarlal* v. *State of Rajasthan*, (2004) 10 SCC 632 : 2005 SCC (Cri) 579] and *Jarnail Singh* v. *State of Punjab* [*Jarnail Singh* v. *State of Punjab*, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court we hold that PW 5 and PW 6 were chance witnesses and their statements have been rightly discarded."

26. The next circumstance on which the Trial Court and the High Court had placed reliance is with regard to the recovery of the weapon used in the crime. The prosecution in this respect relied on the evidence of the I.O. as well as the Panch witnesses i.e. PW5 and PW20.

27. The evidence of the I.O. and the Panch witnesses i.e., PW5 and PW20, would reveal that the recovery of weapon was made from an open place. The recovery is made from a Bhalupadi Bush of Naga Sahu Mango Tope of Village Uggi. As such, much reliance cannot be placed on such recovery. In any case, the conviction, solely based on such recovery, would not be tenable.

28. In the result, we find that the prosecution has failed to prove the case beyond reasonable doubt. The judgment and order of conviction and sentence as recorded by the Trial Court and as affirmed by the High Court are not sustainable in law.

29. Consequently, and in the light of above, the appeal is allowed. The judgment and order passed by the Sessions Judge,

Dhenkanal dated 26th August 2000 in Sessions Trial No.2-A of 1989 as well as the judgment and order dated 17th July 2014 passed by the Orissa High Court, Cuttack in Jail Criminal Appeal No.213 of 2000 is quashed and set aside. The appellant is acquitted of all the charges charged with. He is directed to be set at liberty forthwith, if not required in any other case.

.....J.
[B.R. GAVAI]

.....J.
[SANDEEP MEHTA]

NEW DELHI;
APRIL 30, 2024