IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 78 of 2005

AFR

Maghu Hansda .... ***Appellant***

-versus-

State of Orissa .... ***Respondent***

Advocates appeared in the case:

For Appellant : Mr. D.P. Dhal, Senior Advocate

For Respondent : Mr. J. Katikia, Addl. Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE G. SATAPATHY

JUDGMENT
24.07.2023

G. Satapathy, J.

1. This appeal is directed against the judgment passed on 21.01.2005 by learned Additional Sessions Judge, Rairangpur in C.T. Case No. 52/03(S.T. Case No.285 of 2003) convicting the Appellant for offence punishable Under Section 302 of IPC and sentencing him to undergo Rigorous Imprisonment for life with payment of fine of Rs. 2,000/-(Two Thousand)only in default whereof to undergo Rigorous Imprisonment for a further period of one month, while acquitting the Appellant for offence punishable Under Sections 201/34 of IPC and the accused Gandhi Tudu for offence Under Sections 302/201/34 of IPC.

2. It is relevant to note here that this Court by an order passed on 19.11.2012 in Misc. Case No. 1638 of 2012 had directed for release of the Appellant on bail**.**

3. The prosecution case in brief was on 03.06.2003 at about 5pm while Kalia Soren(hereinafter referred to as the "deceased") and PW1 Pratap Hembram were returning to their village by riding bicycle after selling rice at Gorumahisami weekly market, on the way near Railway level crossing fatak (Gate) at village Kalimati, the Appellant and another came out by the side of a Khajuri(Date Palm Tree) and the other person caught hold of the bicycle of the deceased, who was moving little bit ahead of PW1 and the Appellant Maghu Hansda, to whom PW1 could identify, brought out a Bhujali from his towel and dealt blows on the chest of the deceased, as a result, the deceased fell down on the ground and out of fear, PW1 returned back to village Kalimati by riding his bicycle as he could not find any male persons and remained in the village Kalimati in the night. Due to assault of the Appellant and the other person by means of Bhujali, the deceased died at the spot.

4. On the following day i.e. 04.06.2003 at about 8.30am, PW1 lodged an FIR before OIC, Gorumahisami P.S. by stating therein that he can identify the other persons involved in the crime. Accordingly, the OIC, Gorumahisami registered PS Case No.21 dated 04.06.2003 and investigated into the matter. In the course of investigation, the I.O. conducted inquest over the dead body as well as got the autopsy done over the dead body of the deceased by PW7. The Appellant and one Gandhi Tudu had surrendered before the Court on different dates and after being taken on

remand from the Court, the Appellant on 29.08.2003 gave recovery of the Bhujali MOI from the place of concealment i.e a bush near Kalimathi hill, pursuant to his disclosure statement (Ext.10) and PW10 seized the MOI under Ext.6. In the course of investigation, the identity of the other person was unearthed as Gandhi Tudu. Besides, PW10 had also seized sample earth, blood stained earth, one black goggle, one half chain cover of Hero Cycle and a pair of leather chappal(footwear) from the spot under Ext.8 and sent the same along with sample blood of Appellant & MOI to SFSL, Bhubaneswar for chemical examination under the forwarding report vide Ext.11 and the Chemical Examination vide Ext.12 received by the Court. On completion of investigation, a charge-sheet was filed against the Appellant and co-accused Gandhi Tudu for offences punishable Under Sections 302/201/34 of IPC resulting in trial in the present case.

5. In support of its case, the prosecution had examined 10 witnesses in all and relied upon documents under Exts. 1 to 12 and material object MOI as against the oral evidence of sole witness DW1 Radhanath Bindhani. The plea of the Appellant was one of complete denial and false implication by PW1 on account of prior enmity.

6. After appreciating the evidence upon hearing of the parties, the learned trial Court convicted the Appellant and sentenced to the punishment indicated supra by the impugned judgment.

7. A careful glance of the impugned judgment, it appears that the learned trial Court had convicted the Appellant by mainly relying upon the evidence of eye witness PW1 and recovery of weapon of

offence-MOI containing human blood stain of B+ve group at the instance of the Appellant and the motive behind commission of crime as deposed to by PW2 and PW4.

8. Although, neither the defence nor the Appellant had challenged the homicidal death of the deceased as arrived at by the learned trial Court, but it was seriously contended that the Appellant was not the author of the crime. A scrutiny of the evidence of PW1 would reveal that he was an eye witness to the occurrence and from his evidence it transpired that on the relevant date and time of occurrence, the Appellant and accused Gandhi Tudu, who was acquitted by the learned trial Court, came out of a Khajuri bush(Date Palm) and caught hold of the Bicycle of the deceased and the Appellant brought out MOI from his Gamucha(Napkin) and assaulted the deceased by means of MOI on his chest as a result, the deceased fell down on the ground and seeing it, he returned back to village Kalimati out of fear and stayed in the house of one Budhu. It was his further evidence that on the next day morning at 8am, he came to Gorumahisami PS and lodged an FIR vide Ext.1.

9. From the evidence of IO-cum-PW10, it transpired that on 27.08.2003, he took the Appellant on remand from the Court for 2 days and on 29.08.2003 at about 6.30am, the Appellant while in police custody made disclosure statement vide Ext.10 and gave recovery of MOI from a bush near Kalimati hill which was seized under Ext.6.

10. PW7 was the Doctor, who conducted Post Mortem over the dead body of the deceased and his evidence revealed the following injuries found on the dead body of the deceased.

(i) Incised wound 2x2 abdominal depth penetrating over left lower back.

(ii) Incised wound penetrating 3x2cm lungs depth above the right nipple.

(iii) Incised wound penetrating 3x2cm lungs depth 1cm above injury No.2

(iv) Incised wound penetrating 2x2x5cm over right chest 1cm from midline.

(v) Incised wound 3x2x1cm over front of the left seen of tibia.

(vi) Incised wound 1x1/2x1/2cm over each of the right thumb and middle fingers.

(vii) Incised wound 3x1x1/2 cm over front of the left neck.

(viii) Incised wound 1x1/2 x1/2cm over each of the left thumb, index and middle finger.

(ix) Incised wound 3x1/2x1/2 cm over left lateral side of knee.

10.1. On dissection PW7 found, the right lung had collapsed, penetrating injuries were seen over the right lung below the injury no.ii and iii. Right hyler vessels were cut thorough and through. Superior venacava injured, stomach contained semi digest food hard chambers were empty. All organs were pale.

11. According to the evidence of PW7, the cause of death of the deceased was due to hemorrhage and shock and these injuries can cause death in ordinary course of nature. It is his further evidence

that he had furnished his opinion as to the query of possibility of injuries by MOI affirmatively vide Ext.5. It was elicited in cross-examination of PW7, "these injuries can be caused by one weapon like MOI or it may also be caused by several weapons."

12. On a close scrutiny of above evidence, the prosecution was considered to have established the homicidal death of the deceased which was never challenged or disputed by the appellant, but Mr. D.P. Dhal, learned Senior Counsel appearing for the Appellant has argued and criticized the impugned judgment mainly on four grounds firstly, the evidence of PW1 was not believable, secondly, the absence of names of Assailants/Appellant in the inquest report itself suggestive of FIR to be ante-timed and after thought and came to be prepared after due deliberation and consultation, thirdly, non-examination of witnesses to disclosure statement and lastly, absence of evidence of safe custody of MOI after its seizure till it reached SFSL, which had rendered the chemical examination report unreliable and the opinion made therein by the chemical examiner indicating presence of human blood of Group-B+ve on MOI cannot be said to be blood Group of the deceased.

13. Mr. J.Katikia, learned AGA, has countered the submissions of the Appellant by submitting *inter-alia* that the evidence of eye witness was corroborated by the FIR which was further strengthened by the evidence of PW7 and the chemical examination report indicating presence of human blood of Group-B+ve on MOI which the defence had failed to offer any explanation. It is further submitted by learned AGA that when the evidence of eye witness is clear, cogent and convincing, such

evidence cannot be discarded or thrown away merely because the I.O. had omitted to mention the names of Assailants in Ext.2 which was basically prepared to know the apparent cause of death and, therefore, the impugned judgment does not suffer from any infirmity.

14. Evaluating the evidence of eye witness PW1, it appears that the defence although had tried to demolish his evidence, but it only found to have explained by eliciting in the cross-examination that he saw two to three blows given by Appellant Maghu Hansda on his chest and neck region of the deceased by means of Bhujali (MOI). The testimony of PW1 was, however, assailed on two grounds, firstly, when his evidence was disbelieved by the learned trial Court in respect of co-accused Gandhi Tudu, who was identified by him in the Court during trial, how his evidence would be believed for convicting the Appellant and secondly, since he(PW1) was a signatory to Ext.2, how come the names of the Assailants did not find place in Ext.2 which was prepared subsequent to Ext.1 lodged by PW1 himself and thereby, it had rendered Ext.1(FIR) to be a product of embellishment. PW1 had of course not only identified the acquitted co-accused Gandhi Tudu in the Court, but also had described the role played by accused Gandhi Tudu, but the learned trial Court had acquitted the accused Gandhi Tudu for being neither named in the FIR nor put to TI parade to identify him and such finding of the trial Court having not challenged by the State, this Court does not wish to comment on the same. At any rate, the principle Falsus in Uno, Falsus in Omnibus does not apply to the criminal trial in our

country and the witnesses cannot be branded as liars, merely because he lied on one thing nor this maxim occupies the status of rule of law.

15. A good number of decisions are relied upon for the Appellant to contend "omission to mention the names of the Assailants in inquest report renders the FIR to be ante-timed", but the defence having got the opportunity to cross-examine PW1 and PW10 had failed to make any cross-examination in this regard, no matter it was elicited from PW10 that in column 7, 9 & 10 of Ext.2 he had not mentioned the names of accused persons, but the same columns being meant for circumstances, if any, which give rise to suspicion of foul play, opinion of witnesses and police officer as to cause of death are hardly considered to doubt the veracity of prosecution case for omission to indicate the names of assailants in the aforesaid columns. Besides, neither PW10 nor PW1 was ever suggested that Ext.1 was lodged with deliberation and consultation much after the preparation of Ext.2. On careful and anxious consideration of the decision relied upon for the Appellant in ***Meharaj Singh v. State of U.P., (1994) 5 SCC 188*** on this point**,** the same appears to be not applicable to the present case since the prosecution neither produced eye witnesses nor offered any explanation for non-examination of such eye witnesses in the relied on case, but there is eye witness account in the present case.

16. Similarly, in other decision in ***Thanedar Singh v. State of Madhya Pradesh, (2002) 1 SCC 487,*** the crime number/FIR number was not found in the inquest report, whereas in the present case it was stated in the top of Ext.2. Moreover, in another

relied on decision in the case of ***Mobarak Sk. @ Mobarak Hossain & Others v. the State of West Bengal, (2011) CRI L.J. 1677,*** there was delay in sending the FIR to the Court for nearly 11 days after the occurrence and no eye witness was found stating to police to have seen the incident on the date of occurrence and on such ground, the Calcutta High Court took the adverse view against the prosecution.

17. On the other hand, in ***Brahm Swaroop and another v. State of Uttar Pradesh, (2011) 6 SCC 288***, wherein after noticing the names of the accused persons to have not been filled up in the inquest report, the Apex Court held that omission in the inquest report are not sufficient to put the prosecution out of the Court.

18. A bare perusal of the inquest report Ext.2 in this case, all the columns found therein had been duly filled up by giving reference of Gorumahisami PS Case No. 21 dated 04.06.2003 and other necessary facts, such as opinion of witnesses and police officer as to cause of death "accused persons inflicted severe wounds on the chest and other parts of the body of Kalia Soren and committed his murder."

19. What is the true purport and object of inquest report has been reiterated by Apex Court more than once in a plethora of decisions. The fundamental purpose of holding inquest report is to know the apparent cause of death, such as whether it was suicidal, homicidal or accidental and it is never meant to ascertain the perpetrator(s)/assailant(s) of the crime or as to who was responsible for the death of the deceased. According to law, inquest report cannot be read as substantive piece of evidence nor

can it be used to discard the evidence which is otherwise clear, unambiguous and credible as well as establishes the prosecution case, but when there appears manipulation in it or it is otherwise a product of embellishment, the defence can certainly take advantage of it. Above all, when there is no column in it for recording the names of the accused persons in the State of Orissa, the veracity of prosecution case cannot be doubted for omission to indicate the names of the assailants in the inquest report.

20. Merely because the IO had committed a mistake to omit to mention the names of the assailants in the inquest report or he was not diligent in this regard, it does not necessarily mean by implication or otherwise that the reliable or clinching evidence adduced by the witnesses should be discarded by the Court on the selfsame ground**.** Hence, in the backdrop of preceding discussion, the argument advanced by the Appellant that omission to mention the names of Assailant in the inquest report to put the FIR as ante-timed and product of embellishment merits no consideration.

21. The recovery of MOI at the instance of Appellant/Convict was seriously disputed in the appeal for want of examination of independent witnesses Jadumani Sethy and Bidyapada Pahadi, but such assertion appears to be insignificant because the manner of recovery of MOI and its seizure vide Ext.6 were spoken to in evidence by PW10 the I.O. who had been thoroughly cross-examined, but nothing substantial was elicited from his mouth to disbelieve the recovery and seizure of MOI which on chemical examination was found containing human blood B+ve Group in Ext.12.

22. The late recovery and delayed chemical examination of MOI as well as its safe custody before its dispatch to SFSL were also seriously challenged in this appeal, but although it appears from the evidence of PW10 that MOI was recovered on 29.08.2003 at the instance of convict in police custody, but it was sent to SFSL, Rasulgarh on 22.09.2003, however, Ext.12 disclosed human blood stain of B+ve Group on MOI on chemical examination which was believed by the learned trial Court and this Court does not see any reason to disbelieve it inasmuch as no explanation was offered by the Appellant-Convict as to how human blood of B+ve group was found on MOI which was recovered at his instance. The decision in ***Nimai Murmu v. The State; 59 (1985) C.L.T. 488*** was relied on for the Appellant to disbelieve the chemical examination report, but what would be the consequence of defective or incomplete investigation, when there is clear and credible testimony of eye witness as was found in the form of PW1 in this case, in ***State of Madhya Pradesh v. Chhaakki Lal; (2019) 12 SCC 326***, the Apex Court in a somewhat similar situation has held in paragraphs 34 and 35 as under:-

> "34. For reversing the verdict of conviction, the High Court has pointed out that there was delay in sending the seized gun and pistol (recovered on 01.03.2006) which was sent to the FSL only on 19.04.2006. The High Court has doubted the case of prosecution by observing that apart from delay in sending the seized guns/pistol, there is no material showing as to where the seized weapons were kept during the period from 01.03.2006 to 19.04.2006. Such delay in sending the recovered weapons to FSL could only be an omission or lapse on the part of the Investigating Officer. Such omissions or lapses in the investigation cannot be a

ground to discard the prosecution case which is otherwise credible and cogent. ***In Nankaunoo v. State of Uttar Pradesh; (2016) 3 SCC 317***, it was held as under : (SCC P. 322, Para-9)

> "9. ……any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice".

"35. In ***V.K. Mishra v. State of Uttarakhand and; (2015) 9 SCC 588***, it was held as under : (SCC P.607, Para-38)

> "38. The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions".

23. After having carefully scrutinized the evidence available on record with the assistance of learned counsels for the parties, this Court on discussion made in the foregoing paragraph is unable to buy the arguments advanced for the Appellant that prosecution was unable to establish the guilt of the accused for commission of murder of the deceased Kalia Soren beyond all reasonable doubt, especially when the evidence of eye witness was found not only credible but also cogent and his evidence could not be demolished in cross-examination and such evidence when received ample

corroboration by medical evidence together with recovery of MOI containing human blood of B+ve group, for which the appellant could not offer any explanation, at the instance of appellant lends assurance to the prosecution case which was further strengthened by proof of motive of crime as deposed to by PW2, PW4 and PW6.

24. Consequently, no ground is made out for interference of the impugned judgment in this appeal.

25. In the result, the appeal being found unmerited stands dismissed on contest, but there is no order as to costs. As a necessary corollary, the impugned judgment and order of sentence passed on 21.01.2005 by learned Additional Sessions Judge, Rairangpur in C.T. Case No. 52/03(S.T. Case No.285 of 2003) are hereby affirmed.

26. Since Appellant Maghu Hansda is on bail, his bail bonds stands cancelled and he is directed to surrender to custody forthwith and in any event, not later than 20th August 2023 failing which the IIC of the concerned PS will take steps forthwith to take him into custody to serve out the remainder of his sentences, A copy of this judgment be delivered forthwith to the IIC of the concerned PS for necessary action.

(G. Satapathy)
Judge

(Dr. S. Muralidhar)
Chief Justice