

IN THE HIGH COURT OF ORISSA AT CUTTACK

GCRLA No. 36 of 2007

AFR

State of Orissa *Appellant*

-versus-

Mangulu Munda and others *Respondents*

Advocates appeared in the cases:

For Appellant : Mr. Gajendra Nath Rout
Additional Standing Counsel

For Respondents : None

CORAM:

**THE CHIEF JUSTICE
JUSTICE G. SATAPATHY**

**JUDGMENT
22.06.2023**

Dr. S. Muralidhar, CJ.

1. This appeal filed by the Government is directed against the judgment dated 3rd August, 2004 passed by the learned Sessions Judge, Keonjhar in S.T. Case No.129 of 2002 acquitting the Respondent-Accused of the offences punishable under Sections 452/302/201 read with Section 34 of IPC.

2. The Respondent-Accused was charged with having committed the murder of one Dasma Munda on 23rd October, 2001 at around 9 pm suspecting her of practicing witch-craft.

3. The case of the prosecution rested essentially on the testimonies of two eye-witnesses, namely, Gardi Munda (PW-1), the nephew of the deceased and his wife- Rupi Munda (PW-2).

4. According to both PWs-1 and 2, at 9/10 pm in the night of the occurrence, i.e., 23rd October, 2001 the accused came to the house of PW-1, broke and opened the front door, entered the house and dragged out the deceased saying that she is a witch. Thereafter, she did not return to the house. After five days of the occurrence, PW-1 lodged a report (Ext.1) alleging that the deceased had gone missing. It is further the case of the prosecution that in the presence of James Samal (PW-6), Sub-Inspector (SI) attached to the Joda Police Station (PS), the three accused one by one confessed to the guilt of having killed the deceased and thrown her dead body in river Baitarani, It is the further case of the prosecution that at the instance of the accused persons, the dead body was traced and inquest the same and then the body was dispatched for postmortem. PW-6 then arrested the three accused after recording the statement, made some seizures at their instance and after completing the investigation filed the charge sheet.

5. PWs-1 and 2 were unable to support the case of the prosecution on material aspects of the case. While PW-1 claimed that the dibiri (night lamp) was burning in the house at the time of occurrence. He made no such claim in the statement previously made to the police. Moreover, PW-1 admitted that before going to sleep he would normally extinguish the dibiri. PW-2 did not support PW-1. According to her, out of fear, neither she nor her husband came out of the house when certain persons dragged the deceased outside. As rightly noticed by the trial Court although the accused and the two witnesses were perhaps known to each other, belonging to the same village, there was no means by which

on a dark night in the absence of any light, they could have identified precisely the three accused as the persons who dragged away the deceased. There was no evidence regarding the recognition of the three accused by the two witnesses either by the voice, the manner of talking, the general appearance, gait, etc. Consequently, the prosecution evidence on the point of identification of the accused by PWs-1 and 2 was indeed very weak. It was unsafe to rely upon their evidence to prove the circumstance of last seen.

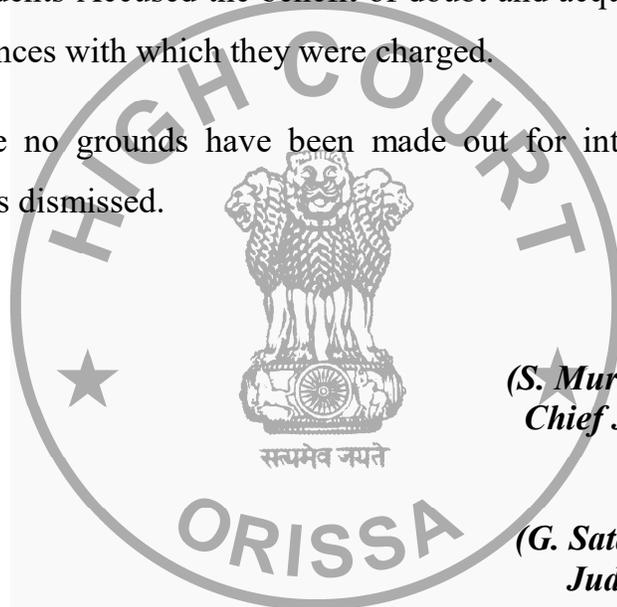
6. The trial Court also found discrepancies in the medical evidence that purported to fix the precise time of death. The postmortem was held on 30th October, 2001 and the Medical Officer (PW-5) could only offer a wide approximation as to the date of death being anywhere between 21st and 26th October, 2001. This too therefore was not a reliable piece of evidence. Moreover, the dead body was found floating in the river Baitarani for some days and that by itself could have softened the abdominal wall resulting in the stomach and intestine of the deceased bursting open. The body was also infested with maggots. Therefore, the evidence of PW-5 was unhelpful in fixing the precise time of death.

7. In a case of circumstantial evidence, each of the links of the chain has to be proved sufficiently well in order to bring home the guilt of the accused. The links must form a continuous chain and must point unerringly to the guilt of the accused and to no one else. By that yardstick, the evidence brought on record by the prosecution failed to meet the requisite standard. The statements

purportedly made by the accused leading to the recovery of the body of the deceased were made at a time when they were not in police custody and, therefore, could not be relied upon under Section 27 of the Evidence Act. This further weakened the case of the prosecution.

8. Having examined the evidence carefully with the assistance of learned counsel for the Appellant-State, the Court is satisfied that no error has been committed by the trial Court in granting the Respondents-Accused the benefit of doubt and acquitting them of the offences with which they were charged.

9. Since no grounds have been made out for interference, the appeal is dismissed.



(S. Muralidhar)
Chief Justice

(G. Satapathy)
Judge

S. Behera/ Jr. Steno.