

IN THE HIGH COURT OF ORISSA AT CUTTACK
JCRLA No.10 of 2012

(From the judgment of conviction and order of sentence dated 20.08.2005 passed by the learned Additional Sessions Judge, Khurda, Circuit at Banpur in Sessions Trial Case No.1/1 of 2003)

Gouri @ Gouranga Pradhan *Appellant*

-versus-

State of Odisha *Respondent*

Advocates appeared in the case:

For Appellant : *Mr. Amrut Baral, Amicus Curiae*

-versus-

For Respondent : *Ms. Samapika Mishra, ASC*

CORAM:

MR. JUSTICE D. DASH

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-29.11.2022

DATE OF JUDGMENT:-17.05.2023

Dr. S.K. Panigrahi, J.

1. In this JCRLA, the convict/ Appellant (Gouri @ Gouranga Pradhan) challenges the judgment of conviction and order of

sentence dated 20.08.2005 passed by the learned Additional Sessions Judge, Khurda, Circuit at Banpur in Sessions Trial Case No.1/1 of 2003, whereby the Petitioner was convicted and sentenced to undergo imprisonment for life for commission of offence under Section 302 and 201 of the Indian Penal Code, 1860 (hereinafter referred to as "the I.P.C." for brevity).

I. CASE OF THE PROSECUTION:

2. The case of the prosecution is that on the intervening night of 16/17.06.2002, at about 4 am, the accused /appellant Gouri @ Gouranga Pradhan, due to previous animosity, committed murder of deceased Naba Pradhan, by slitting his throat by means of a knife on the eve of Ramalila opera exhibition during Raja festival at Saliadam colony Domuni Thakurani.
3. On the basis of the aforesaid allegation, the brother of the deceased Kabiraj Pradhan, (P.W.22) lodged a F.I.R, before the Banpur Police station vide Banapur P.S Case No.113 dated 17.06.2002 and accordingly investigation was conducted against the accused appellant and subsequently thereafter on 18.06.2002, the appellant was arrested.
4. After completion of investigation, the investigating officer submitted charge sheet under Section 302 I.P.C and the accused was committed to the Court of the learned Additional

Sessions Judge, Khurdha, Circuit at Banpur in S.T Case No.1/1 of 2003 to face the trial and finally convicted and sentenced to undergo imprisonment for life for commission of offence under Sections 302 and 201 of the I.P.C.

II. SUBMISSION OF THE APPELLANT:

5. Learned Counsel for the Appellant strenuously argued that the appellant is innocent. The plea of the defence is one of complete denial and false implication. The specific case/plea of the defence as it borne out from the statement of the accused under Section 313 of the Cr.PC. is that he (accused) is in no way connected or concerned with the death of the deceased. He had further deposed that he cannot say who has killed the deceased, however, he was not involved in the incident.
6. Learned Counsel for the Appellant has contended that, in the present case, the order of conviction has been awarded basing on the sole testimony of the P.W.5. But close scrutiny of the statement of the P.W.5 would show that he has actually not witnessed the role played by the appellant by cutting the throat of the deceased. P.W.5 has himself contradicted his own statement by stating in Para.10 of his cross examination that after the shout "SAPA" "SAPA", people shouted that the throat of a person was cut and he then got up and saw that Naba Pradhan was running towards the stage with profused

bleeding from his neck and fell down. In addition, P.W.5 has exaggerated the fact that the appellant followed deceased to the place of jatra and was sitting behind him. After some time, appellant asked for a BIDI to deceased and the latter complied the request and there after appellant again asked for a matchbox and when deceased was about to hand over a match box, appellant caught hold of the head of deceased in one hand and cut the throat of deceased by means of a knife. The P.W.5 has admitted that he had made the aforesaid exaggerated statement for the first time before the learned trial Court without having stated the same before the investigating officer at the time of recording of his statement under section 161 of Code of Criminal Procedure. P.W.5 has further deposed that Sukumari Dei (P.W.11), Subash Pradhan (P.W.12) and Dinabandhu Pradhan (P.W.13) had seen this incident. However, surprisingly, scrutiny of the evidence of the aforesaid prosecution witnesses goes on to show that they are post-occurrence witnesses and also they have not stated that they witnessed that the appellant has committed murder of the deceased by cutting his throat. So, the statement of P.W.5 suffers from serious infirmity which raises a reasonable doubt regarding complicity of the appellant in the commission of the crime.

7. Learned Counsel for the Appellant has contended that Section 145 of the Evidence Act prescribes that for the purpose of contradicting the statement of a witness, his/her attention has to be drawn to the contradictory part appearing in the previous statement or statement recorded under Section 161 of Cr.P.C by giving him / her reasonable opportunity to explain the same and subsequently thereafter the contradiction part has to be proved through investigating officer. If the attention of the witness to his previous statement was drawn to which the witness denied but the same was not proved through investigating officer, then the contradiction available in the deposition of the witness remained not proved. The law is well settled that the non-examination of the investigating officer would not ipso facto discredit the entire case of prosecution. However, it is needless to point that the right of the accused to bring on record, the contradictions in the statement of witnesses as made before the investigating officer during investigation, is a very valuable right. By way of questions put to the investigating officer, the defence demonstrates that the witness has deposed contradictory to his earlier statement made before the investigating officer as such the defence is able to satisfy the Court that the said witness is not reliable.

8. Learned Counsel for the Appellant has contended that the right of bringing contradictions in the statement of prosecution witnesses made before the investigating officer is a very valuable right of the accused. It is by showing that the witness has made improvements or given evidence which contradicts his earlier statement, the accused is able to satisfy the court that the witness is not a reliable witness. The non-examination of the investigating officer is a serious infirmity in the prosecution case which results in serious prejudice to the accused.
9. Learned Counsel for the Appellant has further contended that P.W.2 and P.W.4 has stated in their deposition that the deceased uttered that the accused had cut his neck and died but aforesaid statements of the P.W.2 and P.W.4 are neither find place in the F.I.R vide Ext.1 nor was it corroborated by the informant (P.W.22), (P.W.5) and other prosecution witnesses who are allegedly to be very much present at the spot of occurrence. So, on the aforesaid background of the case, especially when the investigating officer is not examined by the prosecution, the statement of P.W.2 and P.W.4 that the deceased has made the dying declaration by allegedly demonstrating the culpability of the appellant cannot be relied upon.

III. SUBMISSIONS OF THE STATE/ RESPONDENT

10. The prosecution has examined as many as 24 witnesses, including the brother of the deceased as P.W.23. P.W.1 (Gantayat Pradhan), P.W.5 (BijayKumer Pradhan), P.W.6 (Bijay Kumar Pattnaik), P.W.12 (Subash Ch. Pattnaik), P.W.13 (Dinabandhu Pradhan), P.W.19 (Bipra Charan Pradhan) &P.W.23 (Debaraj Pradhan) are all eye witnesses to the occurrence and all of them were present when the alleged incident took place.
11. Learned Counsel for the prosecution has submitted that from the report of P.W.14, Dr. Basudev Mohapatra, it is found that on 17.6.2002, while he was attached as Specialist, O& G, Banpur C.H.C., on that day, at 4.30 pm, on police requisition, he had conducted post- mortem examination over the dead body of Naba Pradhan, and found one incised wound of size 2" x 4" x 3/4" bone deep, extending from 1" below the border of left ear upto the centre of the neck, just below the thyroid cartilage. The wound was boldly cut. Left carotid artery, left jugular vein, left sterno mastoid muscle were cut and the injuries were sufficient in the ordinary course of nature to cause death. This shows that it is a homicidal case, involving the death of the deceased, Naba Pradhan.
12. Learned Counsel for the prosecution has further provided that P.W.5, Bijay Kumar Pradhan, is an eye witness to the occurrence. He has stated in his deposition that the accused

came to Domuni Thakurani in the night when jatra for Raja festival was going on. The accused followed the deceased to the place of jatra and was sitting just behind him. After some time, the accused asked for a 'BIDI' to the deceased and the latter complied the request. The accused once again asked for a match-box and when the deceased was about to hand over the match-box, the accused caught hold of the head of the deceased in one hand and cut the throat of the deceased by means of a knife. This act could be facilitated simply since at that point in time, the accused was sitting behind the deceased. It is further found from the testimony of this P.W.5 that at that time the accused shouted, "SAPA", "SAPA" and then as the people witnessing the opera got up and tried to set dispersed, getting opportunity, the accused escaped to the nearest jungle. This witness has seen that the deceased died at that place due to profused bleeding. This witness has been duly cross-examined; but, nothing has been elicited that this witness was otherwise inimically inclined towards the accused.

13. Learned Counsel for the prosecution has also contended that such eye witness account of witnesses cannot be thrown out and these witnesses are found wholly reliable. This Court should not have any difficulty in coming to a conclusion that the accused is guilty of the offence.

IV. COURT'S REASONING AND ANALYSIS:

14. The case of the prosecution rests upon the evidence of the eye-witnesses P.W.5 and 23 and the medical evidence. However, it is pertinent to mention here that the Trial Court has not conducted a thorough analysis and scrutiny of the depositions of the prosecution witnesses. The prosecution has adduced P.W.1 (Gantayat Pradhan), P.W.5 (Bijay Kumar Pradhan), P.W.6 (Bijay Kumar Pattnaik), P.W.12 (Subash Ch. Pattnaik), P.W.13 (Dinabandhu Pradhan), P.W.19 (Bipra Charan Pradhan) & P.W.23(Debaraj Pradhan) as eye witnesses to the occurrence stating all of them were present when the alleged incident took place. However, on perusal of the depositions and cross-examinations, it is clear that only P.W. 5 and P.W.23 are eyewitnesses whereas P.W.1, P.W.6, P.W.12, P.W.13 and P.W.19 are all post occurrence witnesses considering they never saw the accused slitting the throat of the deceased.
15. Before moving on to the deposition of the prosecution witnesses, it is pertinent to determine whether the death of the deceased was homicidal in nature.P.W.14, Dr. Basudev Mohapatra, while he was attached as a Specialist, O & G, Banpur C.H.C., on the day of occurrence at 4.30 pm, on police requisition, he conducted post- mortem examination over the dead body of Naba Pradhan, and found one incised wound of

size 2" x 4" x 3/4" bone deep, extending from 1" below the border of left ear up to the centre of the neck, just below the thyroid cartilage. The wound was boldly cut. Left carotid artery, left jugular vein, left sterno mastoid muscle were cut and the injuries were sufficient in the ordinary course of nature to cause death. This shows that it is a homicidal case, involving the death of this deceased.

16. Now, coming to the important determination, whether the accused has caused the death of the deceased intentionally. P.W.5, Bijay Kumar Pradhan, is an eye witness to the occurrence. He has stated in his deposition that the accused came to Domuni Thakurani in the night when jatra for Raja festival was going on. The accused followed the deceased to the place of jatra and was sitting just behind him. After some time, the accused asked for a 'BIDI' to the deceased and he handed over the same. The accused again asked for a 'match-box' and when the deceased was about to hand over the match-box. The accused caught hold of the head of the deceased in one hand and cut the throat of the deceased by means of a knife. This act could be very easy because at that point of time, the accused was sitting behind the deceased. It is further found from the testimony of this P.W.5 that at that time the accused shouted, "SAPA", "SAPA" to divert the attention at the crowd. As the people witnessing the opera got

up and tried to disperse, getting a golden opportunity, the accused escaped to the nearest jungle. This witness has seen that the deceased died at the spot due to profuse bleeding.

17. However, there are several discrepancies in his statement during cross-examination. The P.W.5 has admitted that he had made the aforesaid exaggerated statement for the first time before the trial Court without stating the same before the investigating officer at the time of recording his statement under Section 161 of Code of Criminal Procedure. P.W.5 has further deposed that Sukumari Dei (P.W.11), Subash Pradhan (P.W.12) and Dinabandhu Pradhan (P.W.13) had seen this incident but surprisingly on the scrutiny of the evidence of the aforesaid prosecution witnesses goes on to show that they are post occurrence witnesses and also they have not stated that they had witnessed that the appellant had committed murder of the deceased by cutting his throat. So, the statement of P.W.5 suffers from serious infirmity which raises a reasonable doubt regarding complicity of the appellant in the commission of the crime. Similarly, the discrepancies have been brought out during the cross-examination testimony of the P.W.23.
18. Additionally, non-examination of the investigating officer has caused serious prejudice to the appellant as he was precluded from bringing the material contradictions in the evidence of

the P.W.5 who is alleged to be the sole eyewitness to the culpability of the appellant.

19. P.W.2 and P.W.4 have stated in their depositions that deceased uttered that the accused had cut his neck and died. The non-examination of the investigating officer has precluded the appellant to bring on record the material contradictions in the statements of P.W.2 and P.W.4 to the alleged dying declaration of the deceased that has caused serious prejudice to the appellant. Moreover, stating that the deceased was able to speak when his throat had been severely cut is quite unbelievable when we look at the injury.
20. Law is settled that the right of bringing contradictions in the statement of prosecution witnesses made before the investigating officer is a very valuable right of the accused. It is by showing that the witness has made improvements or given evidence which contradicts his earlier statement. The accused is able to satisfy the court that the witness is not a reliable witness. The non-examination of the investigating officer is a serious infirmity in the prosecution case which results in prejudice to the accused.
21. P.W.2 and P.W.4 have stated in their deposition that the deceased uttered that the accused had cut his neck and died but aforesaid statements of the P.W.2 and P.W.4 neither mentioned/ indicated in the F.I.R. vide Ext.1 nor corroborated

by the informant (P.W.22) and (P.W.5) and other prosecution witnesses who were allegedly very much present at the spot of occurrence. On the aforesaid background of the case, when the investigating officer has not been examined by the prosecution, the statements of P.W.2 and P.W.4 that the deceased has made dying declaration by allegedly demonstrating the culpability of the appellant cannot be relied upon. Further, when the neck was cut, it is almost impossible to utter words to make statements.

22. The fact that the accused and the deceased used to quarrel is hearsay evidence which is inadmissible. P.W.5 and 23 have also not stated anything in detail by citing instances.
23. On a conspectus of the analysis of evidence made hereinbefore, this Court thus find that the judgment of conviction and order of sentence passed by the Trial Court in convicting the accused for commission of offence under section-302/201 of the IPC by holding the prosecution to have proved the charges against the accused beyond reasonable doubt are liable to be set aside.
24. In the result, the Appeal is allowed. The judgment of conviction and order of sentence 20.08.2005 passed by the learned Additional Sessions Judge, Khurda, Circuit at Banpur in Sessions Trial Case No.1/1 of 2003 are hereby set aside.

25. The Appellant (accused) be set at liberty forthwith in case his detention is not so required in connection with any other case.

(Dr. S.K. Panigrahi)
Judge

D. Dash, J. I agree.

(D. Dash)
Judge

Orissa High Court, Cuttack,
Dated the 17th May, 2023/B. Jhankar

