



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.209 of 1999

(From the judgment and order dated 26.7.1999 passed by learned Addl. Sessions Judge, Jharsuguda in S.T. Case No.94/3 of 1993-99)

(1) Bhusan Sahu (dead)
(2) Rambabu Sahu ... **Appellants**

State of Odisha *-versus-* **Respondent** ...

Advocates appeared in the case through hybrid mode:

For Appellants : Ms.Agnisikha Ray,
Advocate

For Respondent *-versus-* : Mr. Debaraj Mohanty,
A.G.A.

CORAM:
THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

JUDGMENT
12.2.2026



Sashikanta Mishra, J. The appellants question the correctness of judgment dated 26.7.1999 passed by learned Addl. Sessions Judge, Jharsuguda in S.T. case No.94/3 of 1993-99 whereby they were convicted for the offence punishable under Section 302 I.P.C. and sentenced to undergo rigorous imprisonment for life.

2. Prosecution case, briefly stated, is that on 6.8.1992 at about 9.00 P.M., while the informant Sighasan Yadav was returning home after supplying milk to one Maheswar, the owner of Satya Vijay Hotel, Jharsuguda in his factory, he went to the said hotel near the Station Square to collect money. While he was returning after collecting money, he saw several persons gathered near Prince Hotel. When Rambabu Sahu saw him, he said 'MARA A MADORCHOOD KU'. Hearing this, accused Bhusan Sahu, Trilok Yadav, Sudarsan Yadav, Muna Yadav and other Ghasia persons, whom he could not identify, chased him. They caught hold of him in front of Tiwari Hotel (Jalpan) and severely assaulted him. Triloknath Yadav assaulted him with a bhujali on his left elbow and left leg causing bleeding



injuries and thereafter, they left the spot. When the informant was returning home, he saw Satyendra, a resident of his Pada, coming on Scooter to whom he said that the assailants had assaulted him with bhujali and requested him to give him a lift. Satyendra took him to his home and from there took him to the hospital, where he was treated. The assailants had also shot Srinivas, a resident of his Pada, who was also treated in the hospital. While being treated at Jharsuguda hospital, the informant orally submitted the complaint to the OIC of Jharsuguda P.S., which was reduced to writing. Subsequently, Jharsuguda P.S. Case No.142/1992 was registered under Sections 341/324/326/294 of IPC and Section 27 of the Arms Act and investigation commenced. In course of investigation, the statements of the witnesses including that of the informant and the other injured Srinivas, were recorded. Since the condition of Srinivas subsequently became critical, his dying declaration was also recorded. Soon thereafter, Srinivas succumbed to his injuries. Upon completion of investigation, charge sheet was submitted against the present accused persons under Sections



147/148/324/307/302/149 of IPC, Section 27 Arms Act and Section 9B of the Indian Explosives Act.

3. The plea of the accused persons was of denial and of false implication.

4. To bring home the charges, prosecution examined twenty witnesses and proved twenty-three documents. Defence did not adduce any evidence, either oral or documentary.

5. Learned Sessions Judge found that the evidence of P.Ws.7 to 12 is material to the case, they being eye-witnesses to the occurrence. As such, their evidence was meticulously analyzed and found to be consistent and in corroboration of each other.

6. The defence arguments with regard to contradictions were brushed aside as inconsequential. The medical evidence was found to corroborate the ocular evidence. As regards the dying declaration, the prosecution projected two statements, one marked Ext-7 being recorded by the treating doctor and the other, Ext-19, the statement



recorded by the I.O. under Section 161 of Cr.P.C. Though there was some discrepancy in both statements as regards the names of the assailants, the trial Court felt persuaded to accept both as the same was fully consistent with the eye-witnesses' accounts. On such evidence and findings based thereon, the trial Court held the charges proved against the accused persons under Section 302 of I.P.C. and therefore convicted them. As regards sentence, the trial Court, after hearing the convicts, imposed imprisonment for life. Be it noted that another accused, who faced trial with the present appellants namely, Triloki Yadav for assaulting the informant was convicted under Section 324 of I.P.C. and was sentenced to rigorous imprisonment for there months. Being aggrieved, the appellants namely, Bhusan Sahu and Rambabu Sahu have filed the present appeal.

7. Heard Ms. A. Ray, learned counsel for the accused-appellants and Mr. Debaraj Mohanty, learned Addl. Government Advocate for the State.



8. Before delving into the rival contentions of the parties, we feel it proper to analyze the evidence independently. As already stated, P.Ws.7 to 12 are eye witnesses. We have carefully perused their deposition. As regards the occurrence, we find that it is the consistent case of all these witnesses that they had seen both the accused persons firing at Srinibas Yadav (deceased), causing bullet injury on his abdomen and right leg. There is consistency as regards the place of occurrence i.e. near Prince Hotel and Durga Mandap as also the weapons used by the assailants. It is stated by them that accused Bhusan was holding a small gun while Rambabu Sahu was holding a pistol. Their testimonies are well supported by medical evidence i.e. of P.Ws.4, 5 and 6 as also the injury report Ext-8. Two dying declarations have been pressed into service, one purporting to be a statement recorded under Section 161 Cr.P.C. by the I.O. (Ext-19) and the other, recorded by the doctor (Ext-7). Learned counsel for the appellants has raised serious objections in this regard, which we shall advert to later. But it *ex facie* appears that there is cogent evidence through eye witness accounts



showing the complicity of the accused persons with the crime, which is what the trial Court has held.

9. Coming to the defence objections, Ms. Ray has assailed the impugned judgment on the following grounds;

(i) There is suppression of F.I.R. and the F.I.R. marked Ext- 11 is manufactured.

(ii) There is delay in lodging of F.I.R.

(iii) Independent witnesses have not been examined.

(iv) The evidence of the eye witnesses is contradictory to each other.

(v) Two dying declarations vide Exts-7 and 19 are doubtful.

(vi) The ballistic test report disproves the case of prosecution.

(vii) There is evidence of enmity between the accused persons and the so-called eye witnesses for which their version becomes interested.

10. Per contra, Mr. Debaraj Mohanty, learned Addl. Government Advocate, submits that the objections raised are not strong enough to demolish the direct evidence



available in the case through the version of the eye witnesses. All eye witnesses have consistently deposed about the presence of the accused persons at the spot, the weapons used by them, the injuries sustained by the deceased resulting in his death etc. There may be minor contradictions, but the Trial Court has rightly brushed aside the same as the witnesses being examined more than five years after the occurrence cannot be expected to render versions of the occurrence parrot-like and with precision.

11. Coming to the grounds raised by Ms. Ray as noted above, it is argued that according to the informant (P.W.10), he submitted report orally to the police at the hospital and that he signed on it after it was reduced to writing and he gave his signature thereon. Said F.I.R. is marked Ext-11. There is, however, evidence on record of the OIC that after receiving information about the firing, he made a Station Diary Entry and directed the S.I - A.C. Rana to take up investigation. The time of lodging of F.I.R. has not been mentioned in the formal F.I.R., but it



mentions that it was received at the spot. This, according to Ms. Ray, implies that Ext-11 was manufactured and the earlier F.I.R. was suppressed. On the above context, Ms. Ray relies on a judgment of the Supreme Court passed in the case of ***Nand Lal and Ors. v. The State of Chhattisgarh.***¹

12. Mr. Debaraj Mohanty submits that the informant (P.W.10) clearly deposed that he orally lodged the report when police came to the hospital where he was being treated. This was subsequently reduced to writing and the case was registered.

13. After going through the materials on record, including the F.I.R. marked Ext-11 and the deposition of informant (P.W.10), we are satisfied that there is no material worth the name to hold that Ext-11 is a manufactured document. P.W.10 categorically stated that when police came to the hospital, he gave the report orally and after it was written and read over to him, he put his signature. He also identified his signature on the F.I.R. (Ext.11/1). The

¹ 2023 LiveLaw (SC) 186



contention of Ms. Ray is therefore, untenable. The case law cited by her is distinguishable on facts and hence, not applicable.

14. As regards delay, Ms. Ray contends that though P.W.10 says that he lodged the F.I.R. orally in the hospital on 6.8.1992, which was registered on 07.8.1992 at 10.30 A.M. yet investigation had already begun prior to that. Mr. Mohanty submits that investigation had commenced basing on the oral report and therefore, it cannot be said that there was any delay.

15. We are of the view that there is no evidence to show that there was delay in lodging of the F.I.R. inasmuch as the occurrence took place around 9.30 P.M. while the oral report was submitted at 11 P.M. at the hospital itself. It was as prompt as it could be. True, it was registered on the next day at 10.30 A.M. but then delay in registration of the F.I.R. is not the same thing as delay in lodging F.I.R. We therefore, do not accept the contention of Ms. Ray in this regard.



16. Ms. Ray has contended that the occurrence, according to prosecution, having taken place in a public place, it was incumbent upon the prosecution to examine the nearby shop owners or at least the owners of the hotel. Mr. Mohanty would submit that the I.O. has explained in his evidence why he could not examine any independent witness because none came forward to talk about the occurrence. This plea was raised by the defence also during trial. The trial Court held, and according to us rightly so, that the nearby shop owners did not come forward to speak about the occurrence before the I.O. out of fear. This is a very natural reaction. It would have assumed significance had there been no direct evidence, but not so in a case as the present one, where there are eye-witnesses to the occurrence.

17. Ms. Ray has pointed out some contradictions in the statements of P.Ws.8 to 12. Mr. Mohanty, on the other hand, fairly submits that there are some contradictions but the same are not material enough to discard their testimonies altogether.



18. We have also noticed certain discrepancies in the statements of the witnesses. For instance, P.W.8 stated that the accused persons first started pelting stones and thereafter Ram went to the Durga Mandap with a gun and Bhusan was holding a pistol whereas P.W.9, stated that his brother P.W.8 came to the spot with a cycle and stood near them and when they wanted to go near Prince Hotel, stones and brickbats were pelted at them. Thereafter, Ram went to Durga Mandap and Bhusan was standing near the Prince Hotel. P.W.9 stated that he, P.W.8 and others came out of Ananda Bhawan, but P.W.8 never said anything about it. P.W.9 also did not say that Srinivas came there by his cycle and stood near them. P.W.10 has not stated anything about the firing of the gun and pistol by the accused persons and admitted that he came to know about it only in the hospital. These are minor contradictions which the trial Court has rightly brushed aside as the witnesses being basically illiterate persons were deposing more than five years after the occurrence. It is but natural for them to be a big sketchy in their description of the occurrence,



where, leaving out minor details can only be expected. If the core of their testimony is found to be consistent and reliable, these minor contradictions would have no consequence.

19. Ms. Ray has forcefully argued that the findings of the trial Court basing on the two dying declarations are entirely untenable. She submits that the first dying declaration was recorded by P.W.17, the JSI and marked Ext-19. He admitted in cross-examination that the condition of the deceased was serious when he arrived and that he had not taken any permission from the doctor to examine him. The doctor (P.W.20) stated that when the deceased was admitted to the hospital, his condition was serious for which he was referred to VSS MCH, Burla. He also stated that he had received requisition to record the dying declaration but as the patient was not in a fit condition, he was not able to record it. Therefore, the statement recorded under Ext-19 cannot be relied upon. As regards the other dying declaration recorded vide Ext-7, the doctor (P.W.5) clearly admitted that the condition of the



patient was critical and that he had been administered certain injections. Ms. Ray points out that Ext-7 was not recorded in question-answer format and the exact statement given by the deceased has not been mentioned verbatim. Moreover, in the subsequent statement, the deceased stated about the involvement of some other persons as opposed to his own statement recorded vide Ext-19. In the above context, Ms. Ray relies on a judgment of the Supreme Court passed in the case of ***Irfan@ Naka v. The State of Uttar Pradesh.***²

20. Mr. Mohanty, on the other hand, would submit that there is no discrepancy in the evidence at all for the reason that on the first occasion (Ext-19), the condition of the deceased was critical for which the Police Officer thought it proper to question him about the case. Since he clearly mentions the names of the appellants as being the assailants and subsequently died, it has to be treated as a dying declaration. As regards the other discrepancy pointed out in respect of Ext-7, Mr. Mohanty would argue that the

² 2023 LiveLaw (SC) 698



deceased had clearly mentioned the name of accused Bhusan and Puranbabu, who is also known as Rambabu Sahu as per the evidence of P.W.9.

21. A dying declaration is a statement given by a person who is apprehending death. It is an exception to hearsay rule and is therefore, relevant as per Section 32 of the Indian Evidence Act. There is no dispute that the deceased having received gunshot injuries was in a serious condition. The Police Officer therefore, thought it proper to record his statement, which according to us, was the right thing to do at that point of time. Though it is not stated that the deceased was apprehending death, yet the same is not *sine qua non* for his statement to be treated as a dying declaration in view of the proximity of the time of recording of the said statement (Ext-19) and of his death which was on 10.8.1992. It is well settled that unlike the English Law, Section 32 does not require that the dying declaration would be admissible in evidence only when the same is made in expectation of death. Reference in this regard may be had to the judgment of the Supreme Court in the case of



B. Shashikala v. State of A.P.³. It is also well settled that for a statement to be treated as a dying declaration, it must relate to the cause of his death or to any of the circumstances of the transaction which resulted in his death. Reference in this regard may be had to the judgment of the Supreme Court in the case of **Jayendra Saraswathi Swamigal v. State of T.N.**⁴. In the first statement (Ext-19) the deceased clearly named the assailants (present appellants) as having fired at him. This is enough. So far as the other statement is concerned, the same was recorded by the doctor (P.W.5) in presence of another doctor who was of course not examined. We do not accept the objection that the same was not recorded in a question-answer format. According to our considered view, form is not important, substance is. As regards the discrepancy in the name of the assailants in Ext-7, we find that the trial Court has also addressed the point correctly. The name of Bhusan finds place in both the statements. The name of one Puranbabu is also mentioned. P.W.9 in his statement has stated that Rambabu is also known as

³ (2004) 13 SCC 249

⁴ (2005) 2 SCC 13



Puranbabu, which has gone unchallenged in cross-examination. The name of one Shyambabu has been mentioned only to be discarded by the trial Court and according to us, rightly so. Thus barring this single discrepancy, there is nothing to disbelieve the dying declaration vide Ext-7, which is consistent with Ext-19.

22. Ms. Ray has forcefully argued that the ballistic report being contrary to the prosecution case, the finding of guilt could not have been arrived at. Mr. Mohanty would submit that in a case resting on direct evidence, the ballistic evidence cannot assume any significance. We have perused the ballistic report marked Ext-18. It does not support the case of the prosecution. The person conducting the ballistic test was not examined, but then this would go down as a lapse in investigation, if at all and nothing more. In any case, it is well settled that non-examination of the ballistic expert on the face of direct evidence cannot be fatal to the case of prosecution as held by the Supreme Court in the case of **Gurcharan Singh v. State of Punjab**⁵. As regards

⁵ 1962 SCC OnLine SC 42



the mismatch between the ballistic report and the prosecution case, all that can be reasonably interfered therefrom is that possibly the actual weapons used in the occurrence were not recovered or sent for examination. It could have been lapse in investigation also. Even otherwise, it is well settled that when there is direct and acceptable eye witness version of the crime, merely because of mismatch between the ballistic report and the gun/bullets recovered, the eye witness account cannot be rejected. Such a view was taken by the Supreme Court in the case of ***Rakesh v. State of U.P.***⁶

23. Ms. Ray argues that there is clear evidence that on the same day of occurrence a case was registered against P.Ws.8 to 12 and they were facing trial in a Sessions Case under Sections 148/336 and 426 of .P.C. They are supporters of Dhirendra Singh while the accused persons are supporters of Meena Singh between whom there is a land dispute pending. Ms. Ray therefore, argues that the evidence of these witnesses ought to be disbelieved as they

⁶ (2021) 7 SCC 188.



are interested. In the above context, Ms. Ray relies on a judgment of the Supreme Court passed in the case of ***Nand Lal (Supra)***.

24. Mr. Mohanty, on the other hand, would argue that enmity is treated as a double-edged weapon and as per the settled position of law, the interested witnesses cannot be expected to blame a person not connected with the crime and thereby allow the actual offender to go scot free.

25. We find that the trial Court has addressed this issue meticulously and took the view as raised by Mr. Mohanty referred above. We are also of the view that only because the witnesses could be said to have some interest in the matter cannot and does not mean that they were shielding the real offender. Even otherwise, when the deceased himself has identified the assailants, the version of these witnesses only goes to corroborate such statement.

26. Thus, we find that none of the grounds urged to challenge the impugned judgment are valid enough to persuade us to take a different view than what was taken



by the trial Court. On the other hand, we have carefully gone through the impugned judgment and the evidence on record to be independently satisfied that the trial Court has recorded the conviction correctly. We are therefore, not persuaded to interfere with the impugned judgment and sentence.

27. In the result, the appeal fails and is therefore, dismissed. The accused-appellants being on bail, their bail bonds be cancelled and they be taken to custody forthwith to serve the sentence imposed.

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Sashikanta Mishra, J.

Manash Ranjan Pathak, J.

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(Manash Ranjan Pathak, J.)

Signature Not Verified

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