IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.29 of 2010

An appeal under section 374 Cr.P.C. from the judgment and order dated 10.03.2010 passed by the Additional Sessions Judge, Nayagarh in Sessions Trial No.126 of 2008.

Rankanidhi Behera ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellant: - Mr. Sobhan Panigrahi
Amicus Curiae

For Respondent: - Mr. Priyabrata Tripathy
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing and Judgment: 24.07.2024

By the Bench: The appellant Rankanidhi Behera faced trial in the Court of learned Additional Sessions Judge, Nayagarh in Sessions

Trial Case No.126 of 2008 for commission of offence punishable under section 302 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that in the midnight of 11/12.05.2008 at village Nathiapali under Odagaon police station, he committed matricide by killing his mother Heera Behera (hereinafter 'the deceased').

The learned trial Court vide impugned judgment and order dated 10.03.2010 found the appellant guilty of the offence charged and sentenced him to undergo imprisonment for life.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'F.I.R.') (Ext.1) lodged by one Duryodhan Behera (P.W.1), the President of village committee on 12.05.2008 before the Officer in-charge of Odagaon, in short, is that the appellant committed the murder of the deceased by severing her head and threw the body in the backyard of his house. Some villagers traced the headless dead body of the deceased while going to attend call of nature, for which they informed the same in the village. Upon getting such information, members of the village committee along with other villagers proceeded to the spot and noticed that the head was missing from the dead body.

Chiranjibi Dalabehera (P.W.8) A.S.I. of Police attached to Odagaon Police Station drew up the formal F.I.R. vide Ext.1/3 in the absence of Officer-in-Charge and he himself took up investigation of the case. He deputed two constables to guard the spot where the dead body of the deceased was lying and subsequently he proceeded to the spot at 8.30 a.m., which was the dwelling house of the appellant. He visited the back side of the said house locally called as Kamarapada where the beheaded body of the deceased was found. He went to the house of the appellant and after repeated calls, the appellant opened his door and came out. The I.O. recorded the statement of the appellant wherein he confessed to have committed the murder of the deceased and the said statement was recorded vide Ext.11/1. He then arrested the appellant and conducted inquest over the headless body of the deceased and after that, the appellant led him to his room and brought out a bag containing the severed head of the deceased, which was seized as per seizure list Ext.6. At about 10.30 to 10.50 a.m. on the same day, P.W.8 conducted inquest over the severed head of the deceased and prepared the inquest report vide Ext.3/3. He also conducted inquest over the dead body of the deceased by joining the

severed head to the beheaded body and prepared the inquest report vide Ext.4/2. The I.O. then sent the dead body of the deceased to Odagaon Hospital for post mortem examination and collected earth and blood stained sample earth, which were seized as per seizure list Ext.7. He searched for the weapon of offence i.e. sickle and was able to trace it out which was lying in an open field at Kamarapada and seized the same as per seizure list Ext.8. P.W.8 seized the wearing apparels of the appellant as per seizure list Ext.10/1. On the same day, at about 1.15 p.m., he searched the house of the appellant and recovered one country made pistol and seized the same. He prepared the spot map of the house of the appellant vide Ext.16 and gave requisition to doctor to collect the nail of the appellant. On 13.05.2008, he forwarded the appellant to Court and thereafter, he examined some witnesses on 17.05.2008 and he also produced the seized sickle before Medical Officer and made a query as to the possibility of the injuries by such weapon. On 23.05.2008, he received the nail scraping of the appellant and query opinion from the doctor (P.W.7). Subsequently, he handed over the charge of investigation to Bimal Kumar Mallick (P.W.9), the Officer-in-Charge of Odagaon Police Station.

After taking over the charge of investigation, P.W.9 made a prayer to the learned S.D.J.M., Nayagarh for sending the exhibits for chemical analysis and received the chemical examination report (Ext.20). Upon completion of the investigation, he submitted charge sheet against the appellant on 18.07.2008 under section 302 of I.P.C.

Framing of Charges:

3. After submission of charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed charge against the appellant as aforesaid and since the appellant refuted the charge, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

Prosecution Witnesses, Exhibits and Material Objects:

4. During the course of trial, in order to prove its case, the prosecution has examined as many as nine witnesses.

P.W.1 Duryodhan Behera was the President of the village committee and also the informant in this case. He stated that during the dawn hours, while he had gone to attend the call of nature, he saw the headless body of a woman lying at a distance of 500 feet. Seeing the same, he shouted, for which

many persons gathered at the spot and some of the persons identified the dead body of the deceased. He is also a witness to the inquest held over the headless body and severed head of the deceased.

P.W.2 Jitendra Behera is the minor son of the appellant and grandson of the deceased. He categorically stated that on the night of occurrence, the appellant strangulated the deceased for which she struggled for life but after a while, she became calm. He also stated that upon seeing this in front of his eyes, he cried but the appellant threatened him not to shout. The witness further stated that the appellant asked him to accompany and took the dead body of the deceased to Kamarapada and severed the head from the body of the deceased by means of a sickle. He further stated that the appellant brought the severed head in a bag and returned to the house but threw away the sickle outside.

P.W.3 Mini Behera is the wife of the appellant and daughter-in-law of the deceased. She stated that the appellant had assaulted her prior to the incident for which she had left for her maternal home along with her elder daughter. Upon getting the news of the death of the deceased, she returned to the marital home.

P.W.4 Kubera Behera stated that when the police asked the appellant about the severed head of the deceased, he agreed to give recovery of the same and led the police to the spot where he had kept the severed head. He is also a witness to the seizure of blood stained earth and sample earth as per seizure list Ext.7, sickle as per seizure list Ext.8 and seizure of one jacket and burnt pieces of pant and shirt as per seizure list Ext.9.

P.W.5 Chakradhar Naik stated that P.W.1 and he himself found the headless body at the dawn hours which they identified to be that of the deceased. While both of them were proceeding to the house of the appellant, they saw the appellant coming. He further stated that on being asked, the appellant informed that he was searching for the deceased but when P.W.1 insisted to know about the whereabouts of the deceased, the appellant rushed to his house and bolted the door from inside. He also stated that about 400 villagers guarded at the house of the appellant to prevent his escape. Subsequently, the police arrived and persuaded the appellant to open the door and thereafter the police took him to the place where the headless body was lying. The appellant then led the police to his house and brought out the head of the deceased kept in a polythene

bag. He is a witness to the conduct of inquest over the headless body as well as the severed head of the deceased.

P.W.6 Panu Charana Behera is a co-villager and a post-occurrence witness who stated that at about 06.00 a.m., on being called by P.W.1, he went to Kamarapada and saw the headless body of the deceased. He also stated to have seen the head of the deceased in the house of the appellant. He is also a witness to the conduct of inquest over the headless dead body of the deceased vide Ext.2 and severed head of the deceased vide Ext.3.

P.W.7 Dr. A.K. Mohapatra was posted as the Medical Officer at Kural P.H.C.(New). On police requisition, he conducted post mortem examination over the dead body of the deceased and proved his report vide Ext.12. He, vide Ext.13, responded to the query made by the I.O. as to the possibility of causing of the injuries through the recovered sickle.

P.W.8 Chiaranjibi Dalabehera was working as the Assistant Sub-Inspector of Police at Odagaon police station and he is the initial investigating officer of this case.

P.W.9 Bimala Kumar Mallick was working as the Officer-in-Charge of Odagaon police station. He took over the

charge of investigation from P.W.8 and upon completion of investigation, he submitted charge sheet against the appellant.

The prosecution exhibited twenty documents. Ext.1 is the F.I.R., Ext.2/3 is the inquest report, Ext.3/3 is the inquest report, Ext.4/2 is the inquest report., Ext.5 is the zimanama, Exts.6, 7, 8, 9, 17 and 19 are the seizure lists, Ext.10/1 is the seizure list, Ext.11/1 is the statement of accused recorded by Police, Ext.12 is the post mortem report, Ext.13 is the reply of P.W.7 on query of I.O., Ext.14 is the command certificate, Ext.15 is the dead body challan, Ext.16 is the spot map., Ext.18 is the copy of forwarding letter of S.D.J.M. and Ext.20 is the chemical examination report.

The prosecution also proved twenty material objects. M.O.I is the seized Sickle, M.Os.II & III are the Gold Nolis, M.O.IV is the Mali having 10 Gold Beads, M.O.V is the Mali without Gold Bead, M.O.VI is the an one Rupee Tamba Paise, M.O.VII is the one athana tamba Paise, M.O.VII is the Gold Naka Fulla, M.O.IX is the Gold Naka Fulla, M.O.X is the Metal Karata (Container), M.Os.XI and XIIare the sarees of the deceased, M.O.XIII is the jean pant of the appellant, M.O.XIV is the half banian, M.Os.XV, XVI, XVII, XVIII and XIX are the sample packets and M.O. XX is the nails scraping sample packet.

Defence Plea:

5. The defence plea of the appellant was one of denial. Defence has neither examined any witness nor exhibited any document to dislodge the prosecution case.

Findings of the Trial Court:

6. The learned trial Court after assessing the oral as well documentary evidence on record came to hold that the death of the deceased Heera, the sexagenarian widow, mother of the appellant on the midnight of 11/12.05.2008 was homicidal in nature. The learned trial Court also accepted the evidence of the child witness (P.W.2), who is the son of the appellant and grandson of the deceased Heera, to be wholly reliable. The statement of the appellant recorded under section 313 of the Cr.P.C., in which he has admitted his guilt, has also been taken into account so also the recovery of the severed head at the instance of the appellant and the opinion of the doctor regarding possibility of the injury caused with the weapon. Accordingly, it has been held that the prosecution evidence proves the charge against the appellant and the irresistible conclusion is that the appellant is the culprit behind the murder of his mother and he intentionally killed her. It was further held that intra-familial tension is not a satisfactory explanation for the crime and

resultantly, the learned trial Court held that the prosecution has proved the charge under section 302 of the I.P.C. against the appellant.

Contentions of the Parties:

7. Mr. Sobhan Panigrahi, learned Amicus Curiae contended that the conviction of the appellant is mainly based on the solitary evidence of the child witness (P.W.2), who is the son of the appellant and grandson of the deceased and there are contradictions in his evidence and therefore, it would be too risky to place implicit reliance on his testimony to find the appellant guilty under section 302 of the I.P.C. The learned counsel further submits that the appellant appears to have been under the influence of 'ganja' when he committed the crime and therefore, the benefit of doubt should be extended in favour of the appellant.

Mr. Priyabrata Tripathy, learned counsel for the State on the other hand submitted that the learned trial Court has rightly accepted the evidence of P.W.2, whose presence at the scene of occurrence is very natural and which is also accepted by the appellant in the accused statement and the contradictions which are appearing in the evidence of P.W.2 do not go to the root of the matter or demolish his version and his evidence is

getting corroboration from the medical evidence adduced by the doctor (P.W.7), who after verification of the weapon of the offence answered to the query made by the Investigating Officer that not only the injuries are fatal but also it could have been caused by the weapon which was produced before him. The learned counsel further submitted that at the instance of the appellant, the head of the deceased was recovered from his house and the evidence of Kabir Behera (P.W.4) in that respect is also very clear coupled with the evidence of the I.O. (P.W.8) and therefore, the learned trial Court is justified in convicting the appellant under section 302 of the I.P.C.

Whether the solitary testimony of the child witness (P.W.2) regarding culpability of the appellant is reliable?:

8. Since the case is mainly based on the evidence of the solitary eye-witness P.W.2, who was a child aged about 12 years at the time of deposition, we have to carefully go through it to see whether the same is acceptable or not. Law is well settled that in order to record a conviction on the evidence of a solitary witness, the Court has to be satisfied that the evidence is clear, trustworthy and above-board. Additionally, when the solitary witness happens to be a child, the Court has to be even more cautious so as to ensure that immature answers, influenced by

the tender age, given by the child do not affect his otherwise impeccable evidence. The Hon'ble Supreme Court so also this Court have time and again reiterated the law governing the recording of testimony of child witnesses. In the case of **Pramila -Vrs.- State of U.P. reported in (2021) 12 Supreme Court Cases 550**, while appreciating the sole testimony of an eleven-year-old child, the Hon'ble Supreme Court noted as follows:

> "5. Criminal jurisprudence does not hold that the evidence of a child witness is unreliable and can be discarded. A child who is aged about 11 to 12 years certainly has reasonably developed mental faculty to see, absorb and appreciate. In a given case the evidence of a child witness alone can also form the basis for conviction. The mere absence of any corroborative evidence in addition to that of the child witness by itself cannot alone discredit a child witness. But the courts have regularly held that where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for of the evidence so that the court is satisfied with regard to the reliability and genuineness of the evidence of the child witness. PW 2 was examined nearly one year after the occurrence. The Court has, therefore, to satisfy itself that all possibilities

of tutoring or otherwise are ruled out and what was deposed was nothing but the truth."

Since P.W.2 is a child witness, the learned trial Court put some questions to test his competency, which is also known as the *'voir dire'* test in the legal parlance. After noting down the questions put and the answers given by the witness, the learned trial Court observed that the witness understood the questions and is a competent witness to answer and accordingly, the statement was recorded. P.W.2 has stated that the appellant is his father and the deceased Heera Bewa was his grandmother and he stated that in the night of occurrence, he was sleeping with the deceased on the outer verandah of the house when the appellant woke them up and asked to come inside and after a while, he along with the deceased came back and slept in the outer verandah. After some time, the appellant strangulated the neck of the deceased for which the deceased struggled for the life and then she became calm. He further stated that when he cried, the appellant threatened him not to shout and then the appellant asked him to accompany and took the dead body of the deceased to Kamarpada which is at a distance of 100 meters and there the appellant separated the head of the deceased from the body by means of a sickle and brought the beheaded head in

a bag and returned to the house. P.W.2 also followed the appellant and the appellant threw away the sickle outside.The witness further stated that the appellant kept him inside the room and closed the door from outside and went to take bath and on the next day morning, the appellant opened the door and the villagers came and he told the villagers about the incident. In the cross-examination, the witnesses stated that he has read upto Class-V and further stated that out of fear, he could not shout during the incident and the appellant was sleeping in the Danda Ghara when he along with the deceased grandmother were sleeping in the Badi Ghara. The previous statement of P.W.2 recorded under section 161 of Cr.P.C. was confronted to him and it has been proved through the I.O. (P.W.8) that he has not stated before him that due to summer, he was sleeping outside and while he along with the deceased were sleeping on the verandah, the appellant called them to come inside and that he disclosed the incident before the villagers and he was kept inside the room and the door was closed from outside. Even though these contradiction has been proved by the defence, we are of the view that the same in no way affects the credibility of P.W.2 and his version that his father (appellant) strangulated the neck of the deceased inside the Danda Ghara and subsequently

took the dead body to Kamarapada and there he separated the head of the deceased by means of a sickle has not at all been shattered and the witness appears to be truthful and nothing has been brought out in the cross-examination to disbelieve his evidence.

The witness has further stated that the appellant was always expressing disgust over the deceased and the appellant kept the bag containing the head of the deceased in the bamboo basket of the house. The learned trial Court has noticed the demeanor of the witness and mentioned that P.W.2 continued to remain confident throughout the examination and cross-examination while the appellant was standing in the accused dock. Section 280 Cr.P.C. empowers the Presiding Judge while recording the evidence of witnesses, to also record such remarks (if any) as he thinks material, respecting the demeanour of such witness whilst under examination. The demeanour of the witness is the appearance of credibility that the witness has during testimony and examination at trial or hearing. The look or manners of a witness while in the witness box, his hesitation and doubts or confidence and calmness etc. are the facts which only the trial Judge is in a position to, and is expected to observe. Though the Court is quite free to make a note of demeanour of

the witness, it is desirable to avoid remarks of an apparently exclusive character. The observations of a trial Judge as regards the demeanour of witnesses are entitled to grant weight. When the Court has found the witness to be a competent one and he being the son of the appellant, his presence at the scene of occurrence cannot be disputed and he has narrated the incident in detail as to how the appellant committed the murder of the deceased and subsequently beheaded her and his version has not at all been shattered in the cross-examination, we are of the view that the learned trial Court has rightly placed reliance on the evidence of P.W.2.

Above all, the doctor (P.W.7), who was conducted post mortem examination over the dead body of the deceased has noticed the following injuries:-

> "On examination, externally I found one cut injury in between the chin and thyroid cartilage on the front of the neck going backwards to involve the whole, of neck leading to decapitation of head from body just below the third survicalvertebra from the posterior aspect. Margins of the injury are ragged and bruised. The injury cuts from anterior to posterior. Hyoid bone, phyranx,

muscles of neck, vessels, nerves and just below the 3rd cervical vertebrae.

(ii) Abrasion of size 2 c.m. x 1 c.m. behind the right elbow backside red-brown in colour.

(iii) Abrasion of size 1 cm. x 1 c.m. on the back of left elbow red-brown in colour.

All the above three injuries were ante-mortem in nature. Injury on neck was only grievous while two others were simple in nature. Injury on neck might have been caused by sharp cutting weapon with serrated margins (sickle like). Injury Nos. II, III might have been caused by hard and blunt weapons.

On dissection internally he found as follows:-

(I) The cut injury on neck leading to decapitation has transected the spinal cord at the level below C-3 above C-4 thyroid cartilage and hyoid bone, are cut through."

Therefore, the version of this child witness (P.W.2) is not only reliable and trustworthy but the same is also getting sufficient corroboration from the medical evidence. The backing received from the doctor's (P.W.7) evidence ramparts the evidence of P.W.2 and fortifies the prosecution case.

Whether the recovery evidence adduced by the appellant corroborates the prosecution case?:

9. P.W.4 has stated that while the appellant was in police custody, he stated before the police that he could point out the place where the severed head of the deceased has been concealed and accordingly, he led the police to the spot and gave recovery of the same.The police prepared the seizure list which has been marked as Ext.6. P.W.4 further stated about the seizure of the headless body from Nandi Bila as per seizure list Ext.9. Apart from the seizure of the sickle lying at Kamarapada, which was seized as per seizure list Ext.8 and sample earth and blood stained earth as per seizure list Ext.7, the I.O.(P.W.8) has also stated that after the appellant was taken into custody, he made a statement before him which was recorded in a separate sheet and the same has been marked as Ext.11/1. He further stated that the appellant led him to his room and brought out a bag from Kunda Doli having severed head of the deceased. The I.O. has also stated about the seizure of the weapon of offence and the beheaded body of the deceased and therefore, the versions of P.W.4 and P.W.8 also indicate that at the instance of the appellant basing on his statement recorded under section 27

of the Evidence Act, the head of the deceased was recovered from the house of the appellant.

The appellant was asked a pertinent question in the accused statement recorded under section 313 of the Cr.P.C., which is reflected under Question No.34, as to what he has to say about the case, wherein he has stated that he was under intoxication and the deceased asked him to commit her murder otherwise the villagers would create disturbance and accordingly, he took 'ganja' and killed his mother by way of strangulation and then asked his son (P.W.2) to accompany him and went to the land where he beheaded the deceased and came with the head to his house.

It is needless to mention that a person cannot seek exemption from liability for commission of murder on the ground of 'voluntary intoxication'. The Penal Code does not provide for any provision which can potentially protect an accused from liability for commission of any crime, much less a heinous crime like murder, merely because he chose to intoxicate himself before executing his culpable intention. In the case of **Paul -Vrs.- State of Kerala reported in (2020) 3 Supreme Court Cases 115**, while adjudicating criminal liability of a self-intoxicated persons, the Hon'ble Apex Court held as follows:

> "32. Section 86 IPC enunciates presumption that despite intoxication which is not covered by the last limb of the provision, the accused person cannot ward off the consequences of his act. A dimension however about intoxication may be noted. Section 86 begins by referring to an act which is not an offence unless done with a particular knowledge or intent. Thereafter, the law-giver refers to a person committing the act in a state of intoxication. It finally attributes to him knowledge as he would have if he were not under the state of intoxication except undoubtedly, in cases where the intoxicant was administered to him either against his will or without his knowledge. What about an act which becomes an offence if it is done with a specific intention by a person who is under the state of intoxication? Section 86 does not attribute intention as such to an intoxicated man committing an act which amounts to an offence when the act is done by a person harbouring a particular intention."

The instant case has exposed this Court to a very unfortunate set of facts where a son did not think twice before killing his creator, i.e. the mother. As per the above position of law, the knowledge of the appellant for commission of the crime can be well inferred, notwithstanding the fact that he was

intoxicated. Furthermore, no evidence was led from the side of the defence to show that the intoxication was so intense that it affected the ability of the appellant to form intention to commit the crime. Therefore, when the evidence is consistent and well-corroborated, the defence cannot be permitted to derail the prosecution case flippantly raising a superfluous plea of intoxication.

When Question No.35 was put to the appellant as to whether he wants to cite any evidence in defence, he responded in negative and further stated that since the murder has been witnessed by his own son (P.W.2), no further evidence remained to be adduced.

Conclusion:

10. In view of the foregoing discussions, we are of the view that the version of the child witness (P.W.2), is not only clear, cogent, reliable and trustworthy but his evidence is getting corroboration from the medical evidence and the recovery of the head of the deceased at the instance of the appellant. Therefore, the learned trial Court is quite justified in holding the appellant guilty under section 302 of the I.P.C. and accordingly, we do not find any merit in this JCRLA.

Accordingly, the JCRLA stands dismissed.

Before parting with the case, we would like to put on record our appreciation to Mr. Sobhan Panigrahi, the learned Amicus Curiae for rendering his valuable help and assistance towards arriving at the decision above mentioned. The learned Amicus Curiae shall be entitled to his professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only). This Court also appreciates the valuable help and assistance provided by Mr. Priyabrata Tripathy, learned Additional Standing Counsel.

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S.K. Sahoo, J.

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Chittaranjan Dash, J.

Orissa High Court, Cuttack
The 24th July 2024/AKPradhan/Bijay