

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 12th Sept '14.

Crl. Tr. No. 255 of 2013.

(Arising out of C.T. Case No.1477 of 2013, corresponding to Chandrasekharpur P.S. Case No.98 dated 18.04.2013, committed by the learned S.D.J.M., Bhubaneswar.)

S T A T E

-V e r s u s-

Sandeep Lakra, aged about 36 years, S/o. Agapita Lakra of Plot No.22, Kanan Vihar, Phase-I, P.S. - Chandrasekharpur, Dist. - Khurda.

... **Accused.**

Counsel :

For prosecution -- Shri B.B. Mohanty (P.P. in charge).

For defence -- Shri U.K. Pattnaik (SDC).

Under Sections 302, IPC & 25(1-B)(a)/27, Arms Act.

Date of argument : 18.08.2014.

Date of judgment : 12.09.2014.

J U D G M E N T

Accused stands charged under section 302 of the Indian Penal Code read with sections 25(1-B)(a)/27 of the

Arms Act.

2. The factual matrix leading to the case of the prosecution is that accused is the younger brother of deceased Naveen Roshan Lakra. Informant is their father. It is alleged, inter alia, that the informant and his wife were to leave for Rourkela on 18.04.2013. On that day, at about 9 P.M., the accused asked his mother to give him the key of the house and also abused her. The deceased protested and there was strong altercation of words between both the brothers. Threatening to kill the deceased, the accused brought out a country-made pistol from his possession and fired at the chest of the deceased following which he fell down there. When his parents protested, the accused chased them for assault. Then, the parents of accused and deceased went to Police Station and informed the matter. During investigation, police visited the spot, recorded the statements of witnesses under section 161 of the Cr. P.C., made inquest over the dead body of the deceased and sent the dead body for post mortem examination. The scientific team also visited the spot. Police seized the wearing apparels of deceased and accused. During investigation, the accused confessed before police and gave discovery of the weapon of offence, which was seized by police after observing due formalities. The seized materials were sent

for chemical and ballistic examination and report to that effect was received. During investigation, sanction order to prosecute the accused under the Arms Act was also obtained. After completion of investigation, charge-sheet was submitted against the accused. Hence the prosecution case.

3. Plea of the accused is squarely denial to the charge levelled against him, but he has admitted that he is the brother of the deceased.

4. The main points for consideration are :

- (i) Whether on 18.04.2013 at 9 P.M., the accused committed the murder of his elder brother Naveen in their house ?
- (ii) Whether the accused was in possession of one unlicensed country-made pistol ?
- (iii) Whether on the above date and time, the accused used such arms and ammunition causing death of Naveen ?

5. Prosecution, in order to bring home the charge against the accused, has examined altogether thirteen witnesses, out of whom P.W.1 is the informant; P.W.2 is his wife; P.W.3 is the scribe of FIR; P.Ws.4 & 6 are occurrence witnesses; P.W.5 is a post-occurrence witness; P.Ws.7 & 10 are seizure witnesses; P.Ws.8 & 9 are witnesses to the statement made by the accused before police; P.W.11 is the Scientific Officer; P.W.12 is a witness to leading to discovery

of weapon of offence by the accused; and P.W.13 is the I.O. In this case, the doctor, who conducted post mortem examination over the dead body of the deceased, could not be examined since he is dead. His report has been marked as exhibit at the instance of I.O. without objection. Defence has examined none.

6. So far as the death of the deceased is concerned, the defence has not come forward to challenge that it is not homicidal in nature. P.W.1 has proved the inquest report vide Ext.2 P.W.13, the I.O., has also proved the same. On going through Ext.2, it appears that the deceased was lying with fire-arm injuries on his head and left side chest. P.W.13 stated that he had sent the dead body for post mortem examination and proved the post mortem report vide Ext.3. According to him, Dr. Jatan Kumar Sarangi, who conducted post mortem examination, is not available for examination being dead. So, on going through the post mortem examination vide Ext.3, the doctor found the following external injuries :

- (i) Rounded hole on left chest;
- (ii) Rounded hole at right abdomen area entering into peritoneal deep;
- (iii) Swelled injury on right parietal area; &
- (iv) Lacerated injury on left back.

The doctor also found the following internal injuries:

- (i) Fracture of frontal bone, both parietal and occipital bones;
- (ii) Brain and piamaters were lacerated at anterior lobe, both lateral and posterior lobes;
- (iii) Intracranial vessels were lacerated;
- (iv) Fracture of both side ribs anteriorly;
- (v) Both lobes of lung were lacerated with pleura; &
- (vi) Profuse blood present on the rear cavity.

According to the doctor, the injuries are ante-mortem in nature and caused by hard and blunt object. Further, he has opined that the cause of death of the deceased is syncope due to multiple injuries. Thus, it is found from Ext.3 that the cause of death is due to multiple injuries on the person of the deceased. Therefore, I find that the prosecution has been able to establish that the deceased has met a homicidal death. But, Ext.3 does not establish that the death of the deceased was caused by fire arm injuries.

7. It is revealed from the evidence of the informant (P.W.1) that accused and deceased are his two sons. Both his sons quarrelled and there was exchange of hot arguments between them following which the accused killed Naveen. According to him, he had not seen the occurrence and, as such, he could not say how Naveen was killed. He presented the report vide Ext.1 wherein his signature is Ext.1/1. During cross-examination by the prosecution, he denied to have

stated before police that the accused scolded the wife of P.W.1 for giving key of the house and Naveen protested following which there was exchange of arguments; that the accused suddenly brought out a country-made pistol and fired aiming the head of Naveen, as a result of which he died at the spot sustaining injuries on his head. P.W.13 was confronted about such statement of P.W.1 and he confirmed such statement to have been given by P.W.1 before him. Thus, P.W.1 has contradicted his earlier statement with regard to the occurrence. During cross-examination by defence, he further stated that he does not know how to read and write Oriya and he was in a disturbed mind when the FIR was scribed and presented to the police. He also stated that the contents of the FIR were not read over and explained to him and the same were not scribed as per his instructions. Thus, he has become hostile to the prosecution and has neither proved the occurrence nor the contents of the FIR. It is only proved from his evidence that deceased Naveen is his first son and accused is his second son.

8. P.W.2 stated that her two sons had a quarrel for handing over key to her. Except that, she does not know anything about the occurrence. During cross-examination by prosecution, she denied to have stated before police that there

was exchange of arguments between accused and deceased and the accused fired from a country-made pistol aiming the head of Naveen, as a result of which Naveen died on the spot instantly having sustained bleeding injuries on his head. P.W.13 being confronted about such statement of P.W.2 has affirmed the same to have been given before him. So, P.W.2 also contradicted her earlier statement and did not prove the occurrence. P.W.4 expressed his ignorance about the occurrence. During cross-examination by prosecution, he denied to have stated before police that there was a quarrel between accused and deceased and the accused brought out a country-made pistol and fired a shot at his elder brother Naveen, as a result of which Naveen died having injuries on his head. P.W.13 has affirmed such statement of P.W.4 made before him. Thus, P.W.4 also contradicted his earlier statement by not supporting the prosecution. In cross-examination by defence, he stated that the family members of the accused belong to their community and except that he does not know anything. So, practically, P.W.4 has not proved the occurrence and culpability of the accused.

9. P.W.5, who is arrayed as a post-occurrence witness, has expressed his ignorance about the occurrence. P.W.5 denied to have stated before police that on the same

night, the informant came to his house and informed that the accused picked up quarrel with the deceased and he shot him by means of a country-made pistol, as a result of which Naveen died; that he rushed to the house of the accused and found Naveen lying in pool of blood; and that he called Ambulance 108 and escorted Naveen to hospital where he was declared 'brought dead'. The entire statement of P.W.5 was not confronted to the I.O. (P.W.13). According to P.W.13, P.W.5 has stated before him that after hearing about the incident, P.W.5 went to the spot and found Naveen lying with pool of blood, called Ambulance 108 and escorted Naveen to hospital where doctor declared him dead. Thus, this part of evidence has been contradicted by P.W.5. Even if other part of cross-examination by prosecution to P.W.5 remained non-confronted, but on the whole it is found that P.W.5 has neither supported the prosecution nor proved any part of the occurrence. P.W.6 has expressed his ignorance about the occurrence. During cross-examination by prosecution, he denied to have stated before police that he learnt about the occurrence from the informant and his wife that accused had quarrelled with Naveen and suddenly the accused shot Naveen by means of a country-made pistol; and that he rushed to their house and shifted the deceased to Capital Hospital. But, such

statement is not at all confronted to the I.O. Even if it is not confronted, the fact remains that P.W.6 has expressed his ignorance about the occurrence. Thus, P.W.6 has neither supported the prosecution story nor proved the occurrence. P.W.3 has stated that he scribed the written report as per instructions of P.W.1 vide Ext.1, but in cross-examination he did not remember what was told to him and what was scribed in the FIR. P.W.1 also did not state that he had instructed P.W.3 to scribe the FIR. Thus, P.W.3 has failed to prove the contents of the FIR and that he scribed the FIR as per instructions of P.W.1.

10. From the aforesaid discussion, it appears that there was no occurrence witness to prove the occurrence. When the occurrence is not proved by the occurrence witnesses, let me find out if at all by circumstantial evidence the case of the prosecution stands vindicated.

11. The principles on circumstantial evidence is no more *res integra*. In the case of circumstantial evidence, certain facts are to be proved from which the existence of a given fact can be inferred i.e. (a) chain of evidence must be so far complete as not to leave the reasonable ground consistent with the innocence of the accused; and (b) as to show that within all human probability, the act must have been done by

the accused. Their Lordships of the Hon'ble Supreme Court in the case of ***Govinda Reddy Vs. State of Mysore (AIR 1960 SC 29)*** and in the case of ***Swami Shraddhananda Vs. State of Karnatak (AIR 2007 SC 253)*** have observed that facts or circumstances alleged must be proved by satisfactory evidence.

12. With due respect to the above decision, I find that each and every circumstance connecting the link has to be established and proved so that they can form the chain of circumstance pointing out unerringly to the guilt of the accused. That apart, the chain of circumstances must be proved and there should not be missing link in the case. It is not essential that everyone of the link must appear on the surface of evidence, as some of the links must be inferred from the proved facts. Bearing in mind about appreciation of evidence based on circumstantial evidence, let me find out if at all the prosecution has been able to establish the charge against the accused.

13. Now, adverting to the post mortem report vide Ext.3, there is nothing suggested that those injuries sustained by the deceased were caused by country-made pistol and there were bullet injuries on the person of the deceased. So, the main ingredient that the deceased died due to injuries caused by the alleged weapon of offence is not proved.

14. P.W.11 being the Scientific Officer had gone to the spot and collected sample blood and one fired bullet lying on the floor. He took photograph of the scene of the crime, but he never stated about the presence of the accused there. He has proved his report vide Ext.10. On going through Ext.10, it appears that he has prepared the spot map; but the spot map does not suggest anything against the accused.

15. P.W.9 has expressed his ignorance about the occurrence. He denied to have stated before police that while in custody, the accused confessed before police that he had concealed a country-made pistol under the earth near his house and he had fired by that pistol to his brother causing his death. Being confronted to the I.O., he affirmed about such statement of P.W.9 before him. So, P.W.9 absolutely contradicted his earlier statement and did not prove about any confession of the accused before police. P.W.13 stated that during custody, the accused confessed that he has killed the deceased, who is his elder brother, by firing from a country-made pistol and, as such, he kept the said pistol in a bush near his house and he led them to the spot and gave recovery of one country-made pistol and one live cartridge. He stated to have reduced the confessional statement of the accused into writing vide Ext.8/1. He has proved the signature of the

accused vide Ext.8/2. Again, he has stated that witness Dillip Das has also signed vide Ext.8/3, but his whereabouts are not known at present. It is a matter of strange that the I.O. could not furnish the whereabouts of the witness in whose presence the statement of the accused was made. Thus, the evidence of I.O. is doubtful as to recording of the statement of the accused before witnesses. I also went through Ext.8/1, which speaks that the accused had given statement elaborately and admitted to have kept concealed the revolver near his house in a bushy area. Since Ext.8/1 has contained the story of the prosecution from its beginning to end, I entertain a doubt about such long statement of the accused to have been made before police when the witnesses do not lend corroboration to the I.O. of such statement of the accused. Taking everything relevant into account, I find that there is no consistent, clear and trustworthy evidence to prove the disclosure statement of the accused before police leading to discovery of the weapon of offence, as relevant under section 27 of the Indian Evidence Act.

16. It is revealed from the evidence of P.W.12 that while he was going to Big Bazar, he saw the accused brought out a country-made revolver from a bush at Kanan Vihar in presence of police and police seized the same from the

accused. Police also retrieved one live cartridge from that revolver in his presence and prepared seizure list vide Ext.7/1. He has proved his signature vide Ext.7/2, produced seized revolver vide M.O.I, and seized bullet (cartridge) vide M.O.II. During cross-examination, it is only available that since 2010, he has been serving at Keonjhar in a Company, which has got its Head Office at Bhubaneswar, and he used to visit Bhubaneswar in connection with official work. There is no fruitful cross-examination to this witness. So, the evidence of P.W.12 proves that the accused brought out a country-made revolver vide M.O.I with live cartridge vide M.O.II and police seized the same. P.W.13, who is the I.O., has also stated that the accused led them to the spot of concealment of the weapon of offence and gave recovery of one country-made pistol, one live cartridge and he (P.W.13) seized the same vide Ext.7/1. P.W.13 has proved his signature vide Ext.7/3 and signature of the accused vide Ext.7/4. In cross-examination, he has stated that the seized revolver can accommodate one bullet (cartridge). If the evidence of P.Ws.12 & 13 are taken into consideration, it would be seen that the same has only spelt out that the accused brought out the revolver and live cartridge and police seized the same. This is conduct of the accused relevant under section 8 of the Indian Evidence Act,

but it has to be seen whether such seized revolver and cartridge are relevant for the purpose of this case inasmuch as the disclosure statement by the accused has not been proved, as discussed above. But, this is an incriminating circumstance against the accused.

17. It is revealed from the evidence of P.W.11 that one fired bullet (used cartridge) was lying on the floor i.e. the spot, after the incident. He has proved his report vide Ext.10. On perusal of Ext.10, it appears that the Scientific Officer has mentioned that the fired bullet was seen on the floor near the door of the room and he collected the same. But, the evidence of the I.O. (P.W.13) does not disclose as to why it was not seized by him from P.W.11. At the same time, he has produced the said bullet in the Court vide M.O.III. If one used cartridge and another live cartridge are recovered in this case and the revolver vide M.O.I is said to accommodate only one live cartridge as per the evidence of P.W.13, it is not understood as to whether M.O.I was used for committing the offence, where one bullet is accommodated, whereas two bullets have been exhibited in the Court. Not only this, but also P.W.13 has produced the upper portion of the live cartridge (M.O.III) vide M.O.IV. Doubt is also intensified as to how the upper portion of a live cartridge is discernible. So, the recovery of

the revolver and cartridge from the spot and the place of seizure cannot be a circumstantial evidence against the accused. The conduct of the accused, as discussed above, towards recovery of the revolver and bullet is not connected to the facts and circumstances of this case. P.W.13 stated to have sent the seized revolver and bullets (cartridges) to the SFSL for chemical examination and he proved the report of the Ballistic Expert vide Ext.15. I went through such report, which shows that they have examined a country-made pistol vide Ext.B, two fired bullets vide Exts.A/1 & B/2, and one 7.62 mm rimless cartridge vide Ext.B/1. According to the report, fired bullet vide Ext.A/1 and fired bullet vide Ext.B/2 are all fired from the pistol vide Ext.B. It was also found that Ext.B/1 is a fired bullet. The report of the Ballistic Expert is not clear whether the fired bullet, as available from the spot, was fired from the seized revolver because the I.O. (P.W.13) has exhibited one live bullet and one fired bullet said to have been fired from M.O.I. But, the report vide Ext.15 is otherwise, showing three fired bullets, which can be fired from the said revolver. Thus, the circumstantial evidence that the bullet was fired from M.O.I remained far from proof.

18. P.W.13 stated to have seized the wearing apparels of deceased and accused and exhibited the same in the Court.

Ext.10 has also supported P.W.13 about seizure of those properties. P.W.13 stated to have sent the same for chemical examination and proved the chemical examination report vide Ext.14. On going through Ext.14, it appears that no opinion has been given. So, seizure of the wearing apparels of deceased and accused is not proved to be a circumstantial evidence against the accused.

19. Prosecution has not led any substantial evidence, either direct or circumstantial, against the accused to show that he was in possession of unlicensed country-made revolver and used the same for committing the offence of murder. On the other hand, the ingredients of the Arms Act could not be proved.

20. In view of the foregoing discussions, I find that prosecution has neither proved any direct evidence nor proved the chain of circumstances unerringly pointing out the guilt of the accused. In general, the circumstantial evidence against the accused has not been proved to the hilt by the prosecution. When the charges against the accused are not established, either by direct or circumstantial evidence, he cannot be held guilty thereunder.

21. Having regard to the aforesaid analysis, I find that the prosecution has miserably failed to prove the offences

for which the accused has been charged beyond all shadow of doubts and, accordingly, I find him not guilty under section 302 of the I.P.C. read with sections 25(1-B)(a)/27 of the Arms Act. Resultantly, the accused is acquitted of the said charges as per the provisions under section 235(1) of the Cr. P.C. He be set at liberty forthwith.

The seized pistol and cartridges (M.Os.I to IV) be confiscated to the concerned Government Agency and other seized articles vide M.Os.V to IX, be destroyed four months after expiry of the appeal period if no appeal is preferred; in the event of appeal, the same be disposed of in accordance with the direction of the Appellate Court.

**Sessions Judge, Khurda
at Bhubaneswar.**

12.09.2014.

Dictated, corrected by me and pronounced this day the 12th September, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

12.09.2014.

List of witnesses examined for prosecution.

P.W.1	--	Agapit Lakra,
P.W.2	--	Smt. Krishna Lakra,
P.W.3	--	Anselem Barla,
P.W.4	--	Sanjeeb Kumar Toppo,
P.W.5	--	Sanjay Kumar Toppo,
P.W.6	--	Sunil Kumar Toppo,

P.W.7	--	BijayKumar Naik,
P.W.8	--	Dipti Ranjan Swain,
P.W.9	--	Pranab Kishore Dwibedi,
P.W.10	--	Golam Ahmmed Khan,
P.W.11	--	Prasanna Kumar Senapati,
P.W.12	--	Arun Kumar Jena, &
P.W.13	--	Sisir Kumar Das.

List of witnesses examined for defence.

Nil.

List of documents admitted in evidence for prosecution.

Ext.1	--	FIR,
Ext.1/1	--	Signature of P.W.1 in Ext.1,
Ext.2	--	Inquest report,
Ext.2/1	--	Signature of P.W.1 in Ext.2,
Ext.3	--	P.M. Report,
Ext.1/2	--	Signature of P.W.3 in Ext.1,
Ext.4	--	Seizure list,
Ext.4/1	--	Signature of P.W.7 in Ext.4,
Ext.5	--	Command Certificate,
Ext.5/1	--	Signature of P.W.7 in Ext.5,
Ext.6	--	Dead body challan,
Ext.6/1	--	Signature of P.W.5 in Ext.6,
Ext.7	--	Signature of P.W.8 in seizure list,
Ext.8	--	Signature of P.W.9 in seizure list,
Ext.9	--	Seizure list,
Ext.9/1	--	Signature of P.W.10 in Ext.9,
Ext.10	--	Report of P.W.11,
Ext.10/1	--	Signature of P.W.11 in Ext.10,
Ext.10/2	--	Signature of ASI in Ext.10,
Ext.1/3	--	Endorsement and signature of SI Smrutirekha Sarangi,
Ext.7/1	--	Seizure list,
Ext.7/2	--	Signature of P.W.12 in Ext.7/1,
Ext.11	--	Spot Map,
Ext.11/1	--	Signature of P.W.13 in Ext.11,

Ext.12	--	Seizure list,
Ext.12/1	--	Signature of P.W.13 in Ext.12,
Ext.2/2	--	Signature of P.W.13 in Ext.2,
Ext.6/2	--	Requisition,
Ext.6/3	--	Signature of P.W.13 in Ext.6/2,
Ext.7/3	--	Signature of P.W.13 in Ext.7/1,
Ext.7/4	--	Signature of accused in Ext.7/1,
Ext.8/1	--	Statement of accused,
Ext.8/2	--	Signature of accused in Ext.8/1,
Ext.8/3	--	Signature of P.W.13 in Ext.8/1,
Ext.9/2	--	Signature of P.W.13 in Ext.9,
Ext.4/2	--	Signature of P.W.13 in Ext.4,
Ext.13	--	Forwarding report,
Ext.13/1	--	Signature of P.W.13 in Ext.13,
Ext.14	--	C.E. Report,
Ext.15	--	Report of the Ballistic Expert,
Ext.16	--	Sanction Order,
Ext.16/1	--	Signature of Sunil Roy in Ext.16 &
Mark 'X'	--	Xerox copy of Sanction Order.

List of documents admitted in evidence for defence.

Nil.

List of M.Os. marked for prosecution.

M.O.I	--	Revolver,
M.O.II	--	Bullet (cartridge),
M.O.III	--	Used cartridge (bullet),
M.O.IV	--	Upper portion of live cartridge,
M.O.V	--	Pant,
M.O.VI	--	Shirt,
M.O.VII	--	Banion,
M.O.VIII	--	Chadi &
M.O.IX	--	Pant.

List of M.Os. marked for defence.

Nil.

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at Bhubaneswar.

12.09.2014.

