

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHUBANESWAR.

Present:-

Shri M. K. Mishra, LL. B,
Addl. Sessions Judge, Bhubaneswar.

CRIMINAL TRIAL NO. 75 OF 2013

(Arising out of Nayapalli PS Case No. 324/2013,
corresponding to CT case No.4216 of 2013,
committed by the SDJM, Bhubaneswar)

Date of argument- 01.09.2014

Date of Judgment- 01.09.2014

S t a t e -

- V e r s u s -

Basanta Kumar Palei, aged about 28 years, S/o: Jogendra
Palei of village: Titipa, P.S. Krushna Prasad, Dist: Puri.

....Accused.

Advocate for the prosecution :Shri R.R. Brahma, Addl. P. P

Advocate for Accused :Shri S.Mohanty and assts. ADVs.

Offence Under Sections :302 of Indian Penal Code.

J U D G M E N T

The aforesaid accused has faced his trial being
charged U/s. 302 of Indian Penal Code (hereinafter referred as 'I.P.C.').

2. The case of the prosecution in short is that: the informant
namely: Mahendra Jena had lodged a written report before the IIC, Mahila
P.S, Bhubaneswar to the effect that his daughter Jyostnarani Jena and the
accused Basant Palai, who belong to the village of the informant, had kept

relationship with each other. He heard from others that the accused had kept physical relationship with his daughter. However, for the future of the deceased lady, it was agreed that the accused should marry the deceased lady and it was accepted by both the family members. At the instance of the accused, the victim lady resided at Bhubaneswar in a rented house and had undergone Nursing course at Prativa Devi School of Nursing, Niladri Vihar, Bhubaneswar. After completion of her course, she was engaged at Kar Clinic, Bhubaneswar since about one month prior to the lodging of the FIR. In the rented house apart from the victim lady, the sister of the accused, and the accused himself were also residing. After the marriage of the sister of the accused, the deceased lady and the accused resided together. In course of time, the accused was instructing the deceased lady to procure cash of Rs.1,50,000/- which had complied with. Moreover, at the instance of the accused, the informant had purchased a motor-cycle in the name of his own son which was given to the accused. Apart from that he was assaulting the deceased lady on a number of occasions for procuring further cash. On dtd. 9.10.2013 at about 10.30 PM while the informant was taking his dinner his son Ramakanta made a phone call informing him that accused had murdered the deceased lady. He was further informed that the accused had made a phone call to him at about 9.30 PM requesting him to proceed immediately to his house. After procuring an auto-rickshaw, he reached there and found that the room was under lock and key. He received a phone call from the accused to reach at Usti Hospital. While he reached there, he found that the accused was pleading before the doctor that he himself had committed the murder of the deceased lady, and requested the doctor to save him. He then entered into the hospital and found the victim lady had expired. He shifted the dead-body of the deceased lady to Capital Hospital where she was

declared dead. Basing on his written complaint, the IIC Mahila P.S has registered P.S case No. 324 dtd. 31.10.2013, U/s.302/34, IPC and the investigation was taken up. During course of investigation, the I.O had visited the spot, examined the witnesses, recorded statement of the complainant and other witnesses U/s.161, Cr. P. C, sent the dead body for post-mortem examination, received the post mortem report, conducted the inquest in respect of the deceased lady, seized the articles and left the same in zima of the person concerned, and examined the other witnesses and on completion of investigation submitted charge sheet against the accused U/s.302 IPC,. Hence, this case.

3. The plea of the defence is that of complete denial of prosecution story.

4. Points for determination in this case are:

i) Whether on 9.10.2013 at about 10.30 PM at Mundabastee, Saliasahi, Nayapalli, Bhubaneswar the accused committed murder of deceased lady Jyotshnarani Jena?

5. In order to prove it's case, prosecution has examined as many as 10 witnesses including the informant, his wife , their son, the neighbours of the spot house, the IO etc..

On the other hand, no witnesses is examined on behalf of the accused persons. Similarly, Ext.1 series to Ext.4 series are marked on behalf of the prosecution which include the FIR, inquest report, seizure list, PM examination report etc. On the other hand, no documentary evidence is adduced on behalf of the defence. No MO is marked in this case.

6. The evidence of P.W.1 indicates that on dtd.9.10.2013 while he was returning from his place of work, he went to the restaurant of

Ramakanta Jena who happens to be the brother of the deceased lady alongwith one Khymanidhi, who happens to be his neighbour. In that restaurant, he himself alongwith his friend and accused Basanta had taken their respective foods and returned back to their respective house. After that, accused Basant had knocked at the entrance door of his house, but the entrance door could not be opened inspite of several attempts. Then information was given to the house owner who arrived at the spot. Then, in his presence the door was broke open and they entered into the case house and found that the victim lady was hanging dead by means of her chunuri, which was hanging from a bamboo rafter of the asbestos house roof.

The P.W.2 has reiterated the evidence of P.W.1.

The P.W.3 has deposed that on 8.10.2013 since he had gone to Berehampur, in course of his duty and returned back to Bhubaneswar during the night at 10 PM. But he expressed his ignorance regarding the facts of the case.

The P.W.4 has stated that while he was present in the restaurant, the accused had made a phone call instructing him to arrive in his house immediately after procuring an auto-rickshaw. He then reached in the spot house, and did not find anybody. Then he contacted with one Suman over phone, who instructed to come to Usti Hospital at Nayapalli. Accordingly he went there, and found that the accused was weeping there. He also inquired from the accused regarding the occurrence. He also found that the accused was telling the doctor to save him since, he had committed the murder of the deceased lady. He then went near the deceased lady and found her to be dead and then he shifted the dead body to Capital Hospital for Post-mortem examination. The cross-examination of the P.W.4 on dtd.27.8.2014 indicates that basing on surmises and conjectures and

suspicion, he was under the wrong impression that the deceased lady was murdered by the accused. But in course of time, he came to know that the cause of the death of the victim lady is not attributed to the accused at all and that the accused has no role in the death of the victim lady. He has further deposed that his previous deposition is based on suspicion, and the victim lady had voluntarily committed suicide.

The P.W.5, the informant as well as the father of the deceased lady had deposed his examination-in-chief in the nature of allegation which he has made in the FIR. However, during his cross-examination on dtd. 27.8.2014 he has admitted that basing on the suspicion and apprehension, he had lodged the FIR. But lateron he came to know that the deceased lady was not murdered by the accused, and she had voluntarily committed suicide. He has further deposed that the obsequies and the death ritual of the deceased lady was celebrated in his village and there was full co-operation from the accused and his parents and other family members during that period.

The P.W.6 Anil Kumar Jena who is the uncle of the deceased lady has deposed that the accused and the deceased were in love with each other, and it was decided by both the families that the accused and deceased lady would marry each other. However, on hearing about the incident on the same night at 9AM, he went to Bhubaneswar and to Nayapalli P.S on early morning. The IO had informed him that the Post-mortem examination was to be taken up in respect of the deceased lady. In his presence, the inquest was conducted by the police and he is a witness to the inquest.

The P.W.7 had scribed the FIR as per the request of the informant. But he is not an eye-witness to the occurrence.

P.W.8 is the mother of the deceased lady. In her

examination-in-chief she has stated regarding relationship in between the deceased lady and the accused. She has further deposed that the marriage was finalized with the discussion. But about nine months back, at about 10 PM to 11 PM , P.W.4 made a phone call to her nephew and informed that the victim lady was assaulted to death by the accused and then they sent the younger brother of her husband and her nephew to Bhubaneswar. After about 21 to 22 days of occurrence, the FIR was lodged. The cross-examination of the P.W.8 on dtd.27.8.2014 indicates that basing on surmises and suspicion and misunderstanding, they were under the wrong impression that that the victim lady was murdered by the accused. But lateron she came to know that the accused is innocent and and the victim lady had voluntarily committed suicide, and the accused is not responsible for her death.

P.W.9 who happens to be the then SI of Nayapalli P.S., Bhubaneswar has deposed that he had registered UD Case No-63/2013 and conducted the inquest in respect of the deceased lady and the Post mortem report was received, and the case had turned to 302/34 of I.P.C corresponding to Nayapalli P.S.Case No-324/20-13 and ASI-G.Pradhan had taken the charge of the investigation of the case.

P.W.10 who is the IO namely: Bikram Pahadsingh had deposed in his evidence that he had investigated into the case, collected some documents, examined the witnesses including the informant and visited the spot and submitted Chargesheet against the accused on completion of the investigation. He has further stated that no incriminating substance was seized by him, as the same was not available at the relevant time.

7. The accused has denied the incriminating circumstances that appeared in the evidence against him U/s.313 of Cr.P.C. The entire case

records rests on circumstantial evidence. It is the duty of the prosecution to prove the case beyond all reasonable doubt. For conviction on circumstantial evidence, the following conditions must be fulfilled:

- 1) The circumstances from which the conclusions of the guilt is to be drawn should be fully established.
- 2) The facts so established should be consistent not only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- 3) The circumstances should be of conclusive nature and tendency.
- 4) They should exclude every possible hypothesis except the one to be proved.
- 5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused. (Sharad Birdhichand Sharda..V..State AIR 1984 SC 1622:(1984).

So considering the dictum of law as held by the apex Court to come to the conclusion of guilt of accused the above factor may be taken into consideration. But in the present case the informant, his son and his wife have all resiled from their earlier evidence by stating in their cross-examination on recall on dtd. 27.8.2014 that the accused is innocent and basing on surmises and suspicion and misunderstanding they were under the wrong impression that the deceased lady was murdered by the accused. In other words they have not supported their own version which they had stated during their examination-in-chief. Another aspect of this

case is that the occurrence took place on dtd.9.10.2013 at 10.30 PM but the written FIR was lodged on 31.10.2013 at 9 PM i.e. at inordinate delay of 20 days. The prosecution has failed to explain the cause of lodging of the FIR with inordinate delay in a reasonable manner. The delay in lodging of the FIR itself supports the version of the informant and his son and wife that basing on suspicion and surmises, they were under wrong impression that the accused had committed the murdered of the deceased lady. The evidence of other witnesses indicates that they are not the eyewitness to the occurrence and they were the post-occurrence witnesses. The house owner of the spot house has not supported the case of the prosecution, and has not whispered a single incriminating word regarding the occurrence. Moreover, no evidence is coming from any of the witnesses that at the time of the occurrence the accused was present physically in the case house. In other words, the complicity of the accused has not been established in any manner by any of the witnesses. Although, the evidence of the P.W.4 who is the brother of the deceased lady indicates that while he arrived at Usti Hospital, he found that the accused pleading before the doctor by stating that he had committed the murder of the deceased lady, still then his cross-examination on dtd.27.8.14 indicates that he came to know that the cause of the death of the victim lady is not attributed to the accused at all and the accused has no role in the death of the victim lady. Rather he has gone to the extent of saying that the accused is innocent.

7) Taking into account the oral and documentary evidence on record and the discussion made above, the prosecution has failed to establish the guilt of the accused by standing on its own leg, and that, as evidence is coming from the mouth of P.W.1, P.W.2 that the accused was present with them in a restaurant at the relevant time, and that while he came back he

found that the entrance door was locked from inside, it indicates that the accused has got no role in the murder of the deceased lady.

8) So, considering the aforesaid facts and circumstances of the case and the evidence on record both oral and documentary, I am of opinion that the prosecution has failed to prove its case U/s.302 of I.P.C. against the accused beyond all reasonable doubt, and the accused is found not guilty thereunder, and he is acquitted U/s.235(1) of Cr.P.C and set at liberty.

The seized wearing apparels be destroyed after four months of the appeal period is over in case of no appeal, in case of appeal the same be dealt with as per the decision of the appellate court.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 1st day of September, 2014 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1 : Soubhgya Ku. Nayak
P.W.2 : Kshyamanidhi Nayak
P.W.3 : Nakula Charan Lenka
P.W.4 : Ramakanta Jena

P.W.5 : Mahendra Kumar Jena
P.W.6 : Anil Kumar Jena
P.W.7 : Dhaneswar Pradhan
P.W.8 : Smt. Amulya Jena
P.W.9 : Bikram Pahadsingh

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1 : Inquest report
Ext.1/1 :Signature of P.W.4 in Ext.1
Ext.1/2 : Signature of P.W.6 on Ext.1
Ext.2 : FIR
Ext.2/1 :Signature of P.W.5 on Ext.2
Ext.2/2 : Signature of P.W.7 on Ext.2
Ext.1/3 : Signature of P.W.9 on Ext.1
Ext.1/4 : Endorsement of ACP Sri B.P.Mishra
Ext.3 : Deadbody challan
Ext.3/1 :Signature of Ramakanta Jena on Ext.3
Ext.3/2 : Signature of Amiya Kumar Mishra on Ext.3
Ext.3/3 : Requisition Certificate
Ext.3/4 : Signature of P.W.9 on Ext.3
Ext.2/3 : Endorsement and signature of IIC
Ext.2/4 :Formal FIR
Ext.4 : Seizure list
Ext.4/1 : Signature of P.W.10 on Ext.4
Ext.4/2 : Signature of Trilochan Sahu on Ext.4
Ext.4/3 : Signature of Rakesh ku. Ray on Ext.4

Ext.4/4 : Signature of ASI Bikram Pahadsingh
Ext.5 : Post mortem report.

List of Exts. Marked on behalf of the defence

Nil.

Addl. Sessions Judge, Bhubaneswar.