

**IN THE COURT OF 2ND ADDL.SESIONS JUDGE, KHURDA.**

Present:

Sri A.K.Sahoo, LL.M.,

2<sup>nd</sup> Addl. Sessions Judge, Khurda.

**S.T 140 of 2013**

( Arising out of G.R. No. 213/13 corresponding to Banpur P.S.Case No.  
135/13 )

**S T A T E**

.....

**Prosecution.**

...Vrs...

Surendra Sabar, aged about 35 years,

S/o Kirtan Sabar, vill. Mandar

P.S. Banpur, Dist. Khurda.

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.....**Accused**

**OFFENCE U/S. U/s. 302 of the I.P.C**

Counsel for the prosecution : Sri H.K.Swain, Addl. P.P

Counsel for the defence : Sri B.C.Mohanty, Adv.

Date of argument : 21.8.2014

Date of Judgment: 28.8.2014

**J U D G M E N T**

The above named accused stands charged U/s. 302 of the Indian Penal Code.

2. This is the case of a husband who is stated to have murdered the lover of his wife on dtd. 21.6.2013. The accused had been to Chhatrapur for admission of his son in a school by his motorcycle. He returned from there in the night and knocked the front door of his house, but his wife did not open it.

Thereafter he moved to the backside of the house and peeped through the window and saw that his wife and the deceased were sleeping being naked. Being called, his wife and the deceased woke up and while the deceased Mitu Sabar was moving away of the house putting on his pant, the accused caught hold of him, throttled his neck, for which he died. Thereafter, the accused threw the dead body at the backyard of the house of Asit Sabar. On 22.6.13 the mother of the deceased lodged F.I.R at Banpur P.S alleging that there was prior dispute between the deceased and the accused, and in village Panchayat, it was decided that Mitu shall not go to the house of accused Surendra. Since Mitu Sabar did not return in the night, on the next morning the informant searched for her son and found him lying dead at the backyard of the house of Asit Sabar, suspecting the accused, she lodged F.I.R. During investigation police seized the earlier Panchayat compromise petition between the deceased Mitu and Susila the wife of the accused, and also the wearing apparels of the deceased, nail clippings of the accused, sent those for chemical examination and on completion of investigation submitted charge-sheet against the accused U/s.302 I.P.C, hence this case.

3. The plea of the accused is denial simplicitor.

4. The points for determination in this case are;

i) Whether accused committed murder of Mitu Sabar?

5. Prosecution has examined 9 witnesses in this case, out of them P.w. 5 is the informant in this case, who is the mother of the deceased , P.ws.8 and 9 are the I.Os in this case and other witnesses are stated as independent witnesses to the case of prosecution.

6. P.ws.1 and 2 have stated that in one morning mother of the deceased detected the dead body of her son lying in the backside house of Asit Sabar, but they stated nothing corroborating the case of prosecution. P.w.2 is a witness to the inquest over the dead body of Mitu Sabar vide Ext.2. P.w.6 Asit Sabar

testifies that in one morning hearing crying of Gurubari he alongwith villagers went to his bari and found the dead body of Mitu Sabar lying there. He says to have scribed the F.I.R vide Ext.3 at the dictation of police at the spot. He is also a witness to the inquest vide Ext.2. P.w.5 the informant says that she had lodged F.I.R putting her L.T.I on it. As regards the incident she testifies that in one night after taking dinner they were sleeping in their house and on the next morning she saw her son lying dead on the bari of Asit Sabar and that she can not say how he died. She even failed to say as to who had scribed the F.I.R, even denies to have been examined by police. P.ws.3 and 4 Kailash Sabar and Arkhita Sabar respectively did not whisper anything corroborating the case of prosecution. P.w.7 only says that Mitu died about one and half years back. At the same time it has been elicited from him that there was a village meeting in which a Panchayat Patra was prepared on 12.7.10 and he has signed on it vide Ext.1/5. P.w.3 has proved the Panchayat Patra vide Ext.1/1 which indicates that on 12.7.10 in the village meeting the deceased had paid fine of Rs.3551/- for having relationship with Susila Sabar, the wife of accused. At the same time Susila had also paid fine of Rs. 2551/- for committing the wrong. The document contain signature of villagers. It indicates that there was some relationship between the deceased Mitu and the wife of accused. Inquest report vide Ext.2 indicates that there was three black marks on the neck and one black mark on the right side chest of the deceased and one abrasion on his left side chest. The P. M report vide Ext.5 marked on admission indicates that the cause of death is due to asphyxia, due to throttling and it is ante mortem and homicidal in nature. Therefore, it can be inferred that the death has been caused due to throttling of the neck of the deceased causing asphyxia. Now it is to be seen as to who is the author of the alleged crime.

7. All the witnesses including the mother of the deceased have stated nothing impleading the accused with the alleged crime, rather it is forthcoming that the F.I.R was scribed at the dictation of police. There is no

eye witness to the alleged occurrence. Therefore it is based on circumstantial evidence.

8. Lying of the dead body of deceased Mitu Sabar in the bari of Asit Sabar, identified by local R.I is not disputed. Black marks found on the neck and chest of the deceased, so also one abrasion on the left side of his back is clear from the P.M report. Prior relationship between the wife of accused and the deceased is also apparent from the document Ext.1/1. The I.O has seized Ext.1/1 on production by the mother of the deceased. Prosecution has failed to prove the C.E report of the nail clippings of the accused to draw any conclusion in favour of the case of prosecution. The I.O says that he had examined the prosecution witnesses and had recorded their statements. He says that P.w.1 had stated before him that on asking accused Surendra Sabar himself had disclosed the circumstances of the case admitting that he had killed the deceased Mitu by throttling his neck while he was fleeing away from his wife, but p.w.1 has denied to it. Admittedly extra judicial confession is a weak piece of evidence, but if the same is found to be trust worthy conviction can lay. In the case *Kulwinder Singh Vrs. State of Punjab 2007 (3) Criminal Court Cases 626 (S.C)* Hon'ble Apex Court held that the evidentiary value of extra judicial confession must be judged in the fact situation of each cases. It would depend not only on the nature of circumstances but also the time when the confession had been made and the credibility of the witness who testifies there to .But in the present case there is no admissible evidence in record, regarding extra judicial confession of the accused admitting guilty. P.ws.3 and 4 have not also whispered anything in this regard to draw a conclusion regarding complicity of the accused in killing deceased Mitu Sabar. There is no evidence in record regarding the date and time of extra judicial confession of the accused, so also no body has seen the accused near the dead body of Mitu Sabar. The wife of the accused has not been examined by prosecution, who could have unfold the real story. The mother of the deceased also did not whisper anything.

9. In view of such evidence in record the court can not jump to a conclusion basing on Ext.1/1 that the accused is the author of the alleged crime. It is incumbent on prosecution to prove its case beyond all reasonable doubt. When there is no evidence, basing on Ext.1/1 the source of which has not even proved, it can not be definitely concluded that the accused is the author of the crime.

10. Having regard to the analysis of such evidence available in record, it is held that prosecution has failed to prove the charge U/s.302 I.P.C against the accused, consequently the accused is held not guilty U/s.302 I.P.C and acquitted there from U/s.235(1) Cr. P.C.

He be set at liberty and be discharged from his bail bond.

The seized articles if any be destroyed after four months expiry of appeal period if no appeal is preferred, and as per the order of appellate court if an appeal is preferred.

2<sup>nd</sup> Addl. Sessions Judge, Khurda.

The judgment is dictated, corrected and pronounced by me in the open court today i.e 28th day of August,2014 under my hand and seal of this court.

2<sup>nd</sup> Addl. Sessions Judge, Khurda.

List of P.ws examined for prosecution.

P.w.1	Banabasi Sabar
P.w.2	Subash Chandra Mahakud
P.w.3	Kailash Sabar
P.w.4	Arakhita Sabar
P.w.5	Smt.Gurubari Sabar
P.w.6	Asit Sabar
P.w.7	Abhiram Sabar

P.w.8 Prasant Kumar Malla

P.w.9 Sanjaya Kumar Jena.

List of Dws examined for defence.

N i l.

List of exhibits marked for prosecution.

Ext.1 Signature of P.w.1 on the agreement.  
 Ext.2 Inquest report.  
 Ext.2/1 Signature of P.w.1 on Ext.2  
 Ext.2/2 Signature of P.w.2 on the inquest report.  
 Ext.1/2 Village Panchayatnama.  
 Ext.1/2 Signature of P.w.3 on the Panchayatnama  
 P.w.1/3 Signature of P.w.4 on the Panchayatnama.  
 Ext.3 F.I.R  
 Ext.3/1 Signature of P.w.6 on F.I.R  
 Ext.2/3 Signature of P.w.6 on Inquest report.  
 Ext..4 Signataure of P.w.6 on the seizure list.  
 Ext..5 P.M report.  
 Ext. 6 Report of Tahasildar  
 Ext.7 Letter of R.I report.  
 Ext.3/2 Signature & endorsement of P.w.9 on F.I.R  
 Ext.3/3 Formal F.I.R.  
 Ext.3/4 Signature of P.w.9 on formal F.I.R  
 Ext.8 Spot map.  
 Ext.2/4 Inquest report.  
 Ext.4/1 Seizure list.  
 Ext.4/2 Signature of P.w.9 on seizure list.  
 Ext.9 Dead body challan.

- Ext.9/1            Signature of P.w.9 on dead body challan.  
Ext.10            Seizure list.  
Ext.10/1          Signature of P.w.9 on the seizure list.  
Ext.11            Seizure list.  
Ext.11/1          Signature of P.w.9 on the seizure list.

List of Exhibits marked for defence.

N i l.

List of M.Os marked for prosecution.

N i l.

2<sup>nd</sup> Addl. Sessions Judge, Khurda.