

**indra Singh Vs. State of Orissa**

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**Court :** Orissa

**Decided On :** Feb-23-2005

**Reported in :** 2005CriLJ2297

**Judge :** Sujit Barman Roy, C.J. and ;Madan Mohan Das, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Jail Criminal Appeal No. 152 of 1996

**Appellant :** indra Singh

**Respondent :** State of Orissa

**Advocate for Def. :** K.C. Kar, Addl. Standing Counsel

**Disposition :** Appeal dismissed

**Judgement :**

S. Barman Roy, C.J.

1. None is available for the appellant. This appeal is pending in this Court since 1996. The impugned judgment was passed on 10-5-1996. Even prior thereto, the appellant was in custody. The occurrence in question took place in the dead of night at or about 1.30 A. M. on 23-3-1994. Some time thereafter the appellant was arrested and since then he is languishing in jail. Under the circumstances, we are constrained to take up this appeal for disposal in the absence of the counsel for

the appellant.

2. We have heard learned Additional Standing Counsel appearing for the State. He has taken us through the evidence on record.

3. Prosecution case, in brief, is that on 23-3-1994 at or about 1.50 A. M. P. W. 9 Sadhu Charan Singh lodged an oral information at Lathikata Police Station alleging, inter alia, that the mother of the appellant informed him that the accused appellant was assaulting his wife inside his room and was not opening the door of the room. The informant was called to the house of the appellant by the mother of the appellant. After reaching the house of the appellant, the informant found the deceased lying on the floor of the kitchen in a pool of blood. On the basis of the said oral information which was reduced into writing by the Officer on duty at the said Police Station, an F. I. R. under Section 302, I. P. C. was registered against the appellant. After usual investigation, a charge-sheet was filed against the appellant under Section 302, I. P. C. In course of time, the case was committed to the Court of the learned Sessions Judge, Sundargarh. The case was ultimately tried in the Court of the learned Additional Sessions Judge, Rourkela. In the trial Court the case was registered as S. T. No. 150/40 of 1994. The learned trial Court on perusal of the materials on record, framed charge under Section 302, I. P. C. against the appellant to which he pleaded not guilty. In course of trial, in all 12 P. Ws. were examined on behalf of the prosecution. None was examined on behalf of the appellant.

4. Defence of the appellant in course of trial was that of denial of the prosecution case as alleged.

5. On conclusion of trial, the appellant was convicted under Section 302, I. P. C. and was accordingly sentenced thereunder to suffer imprisonment for life.

6. As already stated P.W. 9 Sadhu Charan Singh being the neighbour of the appellant is the informant in this case. On the basis of oral information lodged by him in the very night of occurrence, an F. I. R. was registered at the Police Station. In his evidence before the trial Court P. W. 9 stated that the deceased was the wife of the appellant. House of the appellant was situated hardly 200/250 ft. away

from the house of this witness. House of the appellant had three rooms and all these three rooms were adjacent to each other. Along with the appellant his parents, his wife, his elder brother with his wife and his younger brother were living in the same house. In the night of occurrence, the elder brother of the appellant, elder brother's wife and his father were away from the house of the appellant as they had gone to attend a marriage ceremony, and in the house only the appellant with his mother and the deceased were present. The appellant and the deceased-wife were occupying one room and mother of the appellant was sleeping on the verandah. At about 12 O'clock or 1.00 A. M. in the night of occurrence he woke up from his sleep upon hearing an alarm raised by the mother of the appellant saying that the appellant was murdering his wife. Upon hearing this alarm, this witness rushed towards the house of the appellant. There was light inside the room where the body of the deceased was lying. There was heavy bleeding with blood patches on the floor. Many bleeding injuries were found on the dead body of the deceased. The dead body was lying on the floor near the door. The deceased was then already dead when this witness reached the house of the appellant. In course of the same night of occurrence, this witness went to the house of P. W. 1 Niranjan Swain for consultation. On the advice of P. W. 1 Niranjan Swain, P.W. 9 went to the Police Station. At the Police Station he lodged the F. I. R. which was reduced into writing by the Police. Subsequently, Police came to the place of occurrence and held inquest over the dead body of the deceased and as a witness he signed the said inquest report. This is, in brief, the evidence given by this witness in course of examination-in-chief. During cross examination, this witness further stated that there were only six houses including the house of the appellant in the hamlet. No other house was situated between the house of this witness and that of the appellant. He denied the suggestion that the mother of the appellant did not inform him or did not give any loud call or that he had no knowledge as to the whereabouts of the inmates of the house of the appellant in the night of occurrence. Therefore, except the aforesaid suggestion, we do not find anything during cross-examination to impeach the credibility of evidence of P. W. 9.

7. The next important witness in this case is P. W. 10 Karambati. As already stated, P. W. 10 is the mother of the appellant. In her evidence she stated that the deceased was the wife of the appellant. In the night of occurrence she was

sleeping on the verandah of her house. The appellant and the deceased were occupying one room of the house. They were married hardly a year ago. Around 1.00 A. M. in the night, while she was asleep, she could hear the deceased and the appellant quarrelling inside the room. On hearing this quarrel, she pushed the door of the room in which the appellant and the deceased were there. But, the door could not be opened as it was bolted from inside. She then rushed towards the house of P. W. 9 and called him. On being called by her, P. W. 9 came to the house of the appellant and on returning to her house she could see that the dead body of the deceased was lying inside the room with heavy bleeding and number of injuries thereon. The deceased was then already dead. Though he poured water, the deceased could not drink the same. At that time she could not see the appellant. In the night of occurrence, none except this witness, the appellant and the deceased were in their house. She further stated that her elder son with his wife, younger son and her husband had gone away from the house in the night of occurrence. However, during cross-examination for the reasons not very far to seek, this witness echoed the suggestion of the defence saying that shortly after the evening that night she fell asleep because she was suffering from fever and that she did not know as to what happened thereafter. She also could not say whether the appellant and the deceased had slept. She further echoed the defence suggestion that she did not know who killed the deceased. We do not understand as to why she echoed the suggestion of the defence. In her evidence she clearly stated that both the deceased and the appellant slept in the same room while this witness was sleeping on the verandah. She woke up hearing the deceased and the appellant quarrelling with each other. She pushed the door but could not open the same. She further stated in her examination-in-chief that apprehending danger she rushed to the house of P. W. 9 and brought him to her house and thereafter they found the door to be opened and found the deceased lying in a pool of blood on the floor of the room with number of bleeding injuries, but the appellant could not be traced out, in the house. This story as given by her in her examination in chief was reported to P. W. 9 soon after the occurrence which brought P. W. 9 to the scene of occurrence. P. W. 9 narrated the story as he had heard from P. W. 10, before the officer in duty in the police station.

8. It appears from the evidence of P. W. 12 (I. O.) that on the very next day of occurrence he got an information from a source that the appellant had returned back to his house. Soon after that he went there and arrested the appellant from his house at around 3.00 P. M. On his information, the knife in question was recovered by the I. O. and seized under a seizure memo. Further information given by the appellant led to the recovery of lungi which the appellant was wearing. The lungi was recovered from the inside verandah of his house and same was seized under a seizure memo being Ext. 18. Both the knife as well as lungi along with other material objects including the bloodstained earth were seized from the scene of occurrence and were sent, to the State Forensic Science Laboratory for chemical examination. The lungi which was seized at the instance of the appellant was found to have contained blood-stains of excessive nature. From the report of the State Forensic Science Laboratory it is seen that the blood stains found on the lungi were of human origin and the blood group thereof was 'A'. The blood-stains found on the saree and the blood-stained earth recovered from the scene were also found to be human blood and belonged to group 'A'. From this fact, it appears that the lungi which the appellant was wearing at the time of occurrence had blood-stains and this group matched with that of the blood group of the deceased. But, no explanation was furnished by the appellant as to how the lungi which the appellant was wearing came to be stained with blood of group 'A' which matched with the blood group of the deceased. In the absence of any acceptable explanation, we are bound to accept the prosecution story that the lungi was stained with blood when the appellant committed the murder.

9. It is true that there is no eye-witness to the occurrence. But, there are unimpeachable circumstantial evidence that in the night of occurrence the appellant was sleeping along with the deceased. P. W. 10 herself being the mother of the appellant heard the appellant and the deceased quarrelling in the mid-night. Apprehending danger she rushed to the house of P. W. 9 being her next door neighbour and brought P. W. 9 to the house and after coming back to the house of the appellant, they found the appellant to be absent and the deceased was lying dead in a pool of blood with multiple injuries on her body. These circumstances, irrevocably lead to the conclusion that it was none else but the appellant who could have been the author of the crime. It is needless to say that a

witness may lie but the mute circumstances appearing on the evidence on record cannot lie. The circumstantial evidence on record fully satisfy us that none except the appellant could have been the author of the crime in the facts and circumstances of the case.

10. We are therefore, of the view that the learned trial Court committed absolutely no error in holding the appellant guilty under Section 302, I. P. C. and accordingly sentencing him to suffer imprisonment for life.

11. In the result, we are constrained to dismiss the appeal.

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