

# ORISSA HIGH COURT, CUTTACK

## JAIL CRIMINAL APPEAL NO. 308 OF 1996

From the judgment dated 27.09.1996 passed by Shri Alok Kumar Dutta, Sessions Judge, Koraput, Jeypore camp at Malkangiri in S.C. Case No.223 of 1995.

Rama Pujari ..... Appellant

Versus

State ..... Respondent

For Appellant - Mr. Bijay Kumar Patnaik,  
Advocate.

For Respondent - Mr. A.K. Mishra,  
Standing Counsel.

PRESENT:-

THE HON'BLE MR. JUSTICE P.K. TRIPATHY  
AND  
THE HON'BLE MR. JUSTICE PRADIP MOHANTY

-----  
Date of hearing and judgment : 02.02.2005  
-----

**PRADIP MOHANTY, J.** This appeal is directed against the judgment and order dated 27.09.1996 passed by the learned Sessions Judge, Koraput, Jeypore, camp at Malkangiri in Sessions Case No.223 of 1995 by which the appellant has been convicted under Section 302, I.P.C. and sentenced to undergo imprisonment for life.

2. Briefly stated the case of the prosecution is that one day prior to the occurrence, father of the appellant killed a goat of the deceased. So, on the date of occurrence at noon the deceased questioned him as to why he killed his goat. Over that, there was a

quarrel between them. In that night, while the deceased along with his wife and children was sleeping on the outer verandah, the appellant came and dealt Tangia blows causing injuries on his chest and left hand fingers. The wife of the deceased chased the appellant, but he ran away. She raised hullah, hearing which others came to the spot, before whom she narrated the incident. The deceased succumbed to the injuries at the spot. Next day, a Panchayat was convened in the village where the appellant confessed his guilt and produced the weapon of offence, i.e., the Tangia, which was kept with Mangaraj Dandasena (P.W.5) and subsequently seized by the police. On completion of investigation final form was submitted against the appellant under Section 302, I.P.C.

3. The defence plea is one of complete denial. The appellant also denied to have made any extra judicial confession or produced the Tangia before the Panchayat.

4. In order to bring home the charge, prosecution examined as many as seven witnesses, of whom, P.W.1 is the doctor, who conducted post mortem examination over the dead body, P.W.3 is the informant, P.W.4 is the wife of the deceased and an eye witness, P.Ws.5 and 6 were members of the Punch before whom the appellant confessed his guilt and produced the Tangia and P.W.7 is the Investigating Officer. The defence did not choose to examine any witness.

5. Mr. Patnaik, learned counsel for the appellant argued that P.W.4, the only occurrence witness, is the widow of the deceased. She being an interested witness, her testimony has to be discarded. Identification of the appellant by P.W.4 is highly improbable, as admittedly darkness was prevailing at the time and place of incident. More over, P.W.4 immediately after the incident did not disclose before any of the villagers about the involvement of the appellant in the crime. Therefore, it is difficult to place reliance on her testimony. It was further contended by Mr.Patnaik that the

Tangia (M.O.I), which is said to be the weapon of offence, having been seized from the possession of P.W.5, liability of the appellant cannot be attracted under Section 27 of the Indian Evidence Act.

6. Mr. Mishra, learned Standing Counsel, on the other hand, submitted that merely because P.W.4 is the widow of the deceased, her evidence cannot be discarded in absence of any motive to involve the appellant falsely in place of real assailant. There is also no discrepancy in her evidence. He further submitted that the incident occurred in a moonlit night. P.W.4 was sleeping along with her children by the side of the deceased on the verandah. She was lying awoken. When the appellant dealt a blow with the Tangia, she immediately stood up and while chasing, she could identify the appellant in the moon light. Mr. Mishra also submitted that the appellant confessed his guilt and produced the Tangia(M.O. I), which was ultimately seized by the I.O. from P.W.5, who had kept the same as per the decision of the Punch.

7. There is no dispute that the deceased had a homicidal death. The doctor (P.W.1), who conducted post-mortem examination over the dead body of the deceased found the following injuries :-

“(1) Punctured wound on the right chest half inch towards right over first intercostals space measuring 3” x 1½” x 2”, spindle shaped and clean edged.

(2) Cut injury on the left index finger bone deep at first phalanx cut away with tag of skin measuring ½” x ½” x ½”.”

According to him the injuries were ante mortem in nature and external injury no.1 with the internal injuries are sufficient to cause death in ordinary course.

8. It is no doubt true that Sumati @ Bati Pujari (P.W.4) is the widow of the deceased. The relationship of this witness with the deceased cannot be a sufficient ground for discarding her

testimony in the absence of any evidence and circumstance that she has made false accusation against the appellant being guided by any motive or with a view to protect the real culprit for any reason. It is widely accepted human behaviour and conduct that close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant. There is no cogent evidence on record to show that P.W.4 or her husband (the deceased) had any animus against the appellant. P.W.4 in her examination-in-chief has specifically narrated that on the fateful night she, her husband and children were sleeping on the outer verandah. She was lying awoken. The appellant came in a concealing manner and dealt a Tangia blow on the chest of her husband and hearing that sound she stood up and saw the appellant in the moonlight holding a Tangia. Although this witness (P.W.4) was subjected to cross-examination, nothing substantial was brought out to discredit her evidence. The post occurrence witnesses (P.Ws.5 and 6) corroborate to the evidence of this witness (P.W.4).

9. As regards the extrajudicial confession made by the accused-appellant, it is in the evidence of P.W.5 that on the following day of the occurrence, when they were going to convene a Panchayat, the accused came and told that since his father was severely assaulted with grievous injury by the deceased, police would mercilessly beat him and to avoid getting assaulted by police, he committed the murder and police should be informed against him. P.W.6 has also stated that the accused confessed his guilt before the Panchayat saying that he had killed Chamaru by a Tangia. These two witnesses, i.e., P.Ws.5 and 6, are the co-villagers of the accused. Their evidence, in absence of any suggestion on behalf of the defence that they were inimical towards the accused, cannot be disbelieved. Though P.W.5 has been declared hostile by the prosecution, his evidence to the above effect has remained unshaken. Therefore, the prosecution has been able to establish the fact of extrajudicial confession made by the accused.

10. It has also been alleged that the weapon of offence was recovered and seized at the instance of the accused. In this respect, there is some contradiction between the evidence of P.Ws.5 and 6 inasmuch as P.W.5 has stated that the Tangia was produced by the accused at his house and was then seized by police whereas according to P.W.6 the accused produced the Tangia before the Panchayat. But the fact remains that the Tangia was recovered and seized as per Ext.10.

11. For the reasons aforesaid, this Court is of the opinion that the prosecution has been able to bring home the charge to the accused-appellant beyond all reasonable doubt and there is no scope to interfere with the impugned judgment.

12. In the result, the appeal is dismissed. The judgment of conviction and sentence passed by the learned Sessions Judge is confirmed.

.....

**P.K.TRIPATHY,J.**

I agree.

.....

Orissa High Court, Cuttack  
February 02, 2005/ *Samal*