

**ORISSA HIGH COURT,
CUTTACK**

JAIL CRIMINAL APPEAL NO. 168 OF 1996

From the judgment dated 30.03.1996 passed by Sri P. C. Pathy, Addl. Sessions Judge, Bargarh in S.T. No.265/44 of 1994.

Sahadev Naik	Appellant
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Versus

State of Orissa	Respondent
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For Appellant - Mr. Anil Deo

For Respondent - Mr. D.R. Mohapatra,
Addl. Government Advocate

PRESENT:-

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

Date of hearing and judgment : 11.02.2005

The appellant challenges the order of his conviction under Section 302, I.P.C. and sentence of imprisonment for life as per the impugned judgment of learned Additional Sessions Judge, Bargarh in Sessions Trial No.165/44 of 1994.

2. Prosecution case in substance is that Baladhar Majhi (hereinafter referred to as 'the deceased') had some dispute with one Sukadev Majhi. Accused-appellant, Sahadev Nayak is the son-in-law of that Sukadev Majhi. The deceased was done to death at about 4.30 to 5.00 p.m. on 20.07.1994 when he was taking rest in the house of Baratu Pradhan(P.W.1) along with Amruta Pradhan(P.W.3). Amruta

Pradhan is the younger brother of Baratu Pradhan. According to the prosecution case, the accused came into the room where the deceased and P.W.3 were taking rest. Then the deceased was in slumber and P.W.3 was in awoken condition. Accused dealt blows by the help of the axe, which he was carrying. One of such blows was on the right side neck of the deceased causing his instantaneous death at the spot. P.W.3 shouted for help, but the accused after dealing the blows fled away. Thereafter, he intimated the fact to the Choukidar in the neighbouring village, but did not go to the Police Station in the absence of his elder brother, i.e., P.W.1. On the following morning when P.W.1 arrived at the village, P.W.3 narrated the incident to him, whereafter P.W.1 went to Atabira Police Station and lodged the report orally which was reduced to writing and treated as F.I.R.(Ext.1). Police immediately took up investigation. In course of investigation, inquest was held over the dead body of the deceased and the same was sent for post mortem examination, witnesses were examined and their statements recorded, incriminating articles were seized, accused was arrested and the the blood stained and sample articles were sent for chemical analysis and serological test to the State Forensic Science Laboratory (in short 'S.F.S.L.'). On completion of investigation, charge sheet was submitted. After receipt of the charge sheet, learned S.D.J.M., Bargarh committed the case to the court of session and learned Additional Sessions Judge, Bargarh thereafter took up the trial. Charge was framed under one head for the offence under Section 302, I.P.C.

3. To substantiate the accusation, prosecution examined altogether eight witnesses. All the witnesses, except P.W.3, are post occurrence witnesses. P.W.6, Dr. Saroj Kumar Joshi is the Medical Officer who conducted autopsy on the dead body of the deceased and proved the post mortem report (Ext.2). He also examined the weapon of offence and submitted his opinion report(Ext.3). P.Ws.4 and 5 are witnesses to the extrajudicial confession. P.W.7 is a witness to the

seizure of weapon of offence and other incriminating articles under Section 27 of the Evidence Act. P.W.8 is the Investigating Officer.

4. Accused took the plea of complete denial, but adduced no defence evidence.

5. The trial court on appreciation of above noted evidence recorded the finding that the deceased suffered a homicidal death and accused is the author of that crime. Thus, he convicted him for the offence under Section 302, I.P.C. and sentenced him to undergo imprisonment for life. Trial court rejected the contention of the defence regarding existence of material contradictions in the evidence of P.W.3 or any other doubtful circumstance so as to grant benefit of doubt in his(accused's) favour.

6. While challenging to the aforesaid order of conviction, learned counsel for the appellant argues that evidence of P.W.3, is doubtful and, therefore, not credible when he is the sole eye witness to the occurrence. He draws our attention to the evidence in paragraph 2 of the deposition of P.W.3 in which the said witness stated that while he and deceased were taking rest in the occurrence room, accused came once and that too, without being armed with an axe. Learned counsel for the appellant states that if that was the fact situation as per the evidence of the sole eye witness to the occurrence, then the allegation of murder cannot be fastened on the appellant. We are unable to accept the aforesaid argument in view of the fact that in course of the cross-examination of that witness in paragraph 5, P.W.3 stated that the accused came unarmed at the first instance and after talking with him for some time he went away and when he came for the second time, then he was armed and he assaulted the deceased. Therefore, that positive evidence cannot be ignored. If that evidence is considered, then there remains no doubt that accused committed the crime in the manner alleged by P.W.3.

7. Learned counsel for the appellant further argues that evidence of P.W.3 also suffers from contradictions. However, he is unable to point out any contradictions which can be termed as material contradiction. Under such circumstance evidence of P.W.3 cannot be thrown over board. On the other hand, we find that the trial court was justified in appreciating and accepting evidence of P.W.3 in proof of the allegation of murder. At this stage, we may also point out that the finding of the trial court relating to the homicidal death of the deceased is not disputed before us by the appellant and in that respect the evidence of P.W.6 is clear enough to show that the injury by the sharp side of the axe on the neck was sufficient in ordinary course of nature to cause the death of the deceased.

8. Learned counsel for the appellant also argues that according to P.W.3 three blows were dealt by the accused, but there is only one incised wound and, therefore, evidence of P.W.3 runs contrary to the medical evidence. On a close scrutiny of the evidence of P.W.3 we find that he has not stated that all the blows were given by using the sharp edge of the axe. The post mortem report as well as the deposition of the doctor indicates that there was only one incised wound, whereas there was another abrasion on the forehead i.e. above the eyebrow. Under such circumstance, we also do not find any contradiction between the evidence of the eye witness and the doctor so as to grant the benefit arising out of the same in favour of the appellant. In that respect, we find that the ratio in the case of *Rasananda Panda v. State of Orissa*, 1989 (II) OLR 485 is not applicable to the facts and circumstances of the present case.

9. Learned counsel for the appellant also refers to and relies on the case in *Mansoor Ansari and another v. State of Bihar*, 2000 CRI. L.J. 722, a Division Bench decision of the Patna High Court, on the contention that when the evidence of the solitary eye witness to the occurrence is doubtful, then it is not safe to rely on it to warrant a conviction against the accused. We find that the facts and

circumstances involved in that case is quite distinguishable and in this case we have found that the evidence of P.W.3, the solitary eye witness to the occurrence, is reliable and acceptable. Under such circumstance, the ratio in that case is also not helpful to the appellant.

10. No other point is canvassed while challenging to the impugned order of conviction. We also find no legal flaw or factual inaccuracy in the order of conviction. Under such circumstance, there is no merit in this appeal and the same is accordingly dismissed.

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P.K. Tripathy,J.

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Pradip Mohanty,J.

High Court of Orissa, Cuttack
 The 11th day of February,2005/Samal.