

**ORISSA HIGH COURT
CUTTACK**

CRIMINAL APPEAL NO. 357 OF 1989

From the judgment dated 10.11.1989 passed by Sri R.C. Pattnaik,
Sessions Judge, Balangir, in Sessions Case No.22 of 1989.

Rahasa Meher	Appellant
	Versus	
State of Orissa	Respondent

For Appellant - M/s B. Panda, S.R. Mohapatra,
A. Das, G.P. Panda,
S.C. Mishra, B.R. Mohanty,
M. Sahu, R.K. Dalai

For Respondent - **Addl. Standing Counsel**

PRESENT:-

THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 23.08.2006

PRADIP MOHANTY, J. This appeal is directed against the judgment and order dated 10.11.1989 passed in S.C. No.22 of 1989 by which the learned Sessions Judge, Balangir while convicting the appellant under Section 313, IPC and sentencing him to undergo rigorous imprisonment for three years.

2. The case of the prosecution, as unfolded during trial, is that the informant-Teva @ Anusuya had married to the appellant on 11.04.1988. After marriage she came with the appellant to her father-in-law's house and stayed there for 12 days. Thereafter, she went to her father's house with her parents-in-law as per the custom prevalent in

their caste. After staying for four days in the house of her father, she came back to the house of her father-in-law. After staying there for 15 days, she again came to her father's house with her husband and stayed there for 15 days. Her husband also stayed with her there for two days and thereafter left for his house. It was alleged that when she came to her father-in-law's house for second time, her father-in-law Chandramani, mother-in-law Surjya Meher, her husband's elder brother Tanka Meher and her husband-Rahas Meher told her to bring one T.V., one Luna motorcycle, cash of Rs.2000/- and one bhari of gold while returning from her father-in-law's house, otherwise she will be illtreated. It was also alleged that as the parent of the informant could not fulfil the demand, she was ill-treated by the aforesaid persons. It was further alleged that the informant became pregnant and her husband, the present appellant, persuaded her for abortion but she did not agree. The appellant compelled the informant to accompany him to Patnagarh for causing miscarriage and under coercion she accompanied the appellant to Patnagarh where the appellant took her to a doctor who gave her two injections on a Saturday. On that day, they returned to their house and on the next date again the appellant took her to the same doctor who gave two injections in her abdomen and one injection in her hand as a result of which the informant became unconscious and when she regained sense, she felt pain in her belly and waist. On the next date, i.e., on Monday, there was abortion. On 19.08.1988 the appellant took the informant in a cycle to her father's house and while going in the bicycle the informant fell down from the bi-cycle and sustained injuries on her person. Appellant left the informant in her father's house and thereafter did not bring her back. On 20.08.1988 informant orally reported the matter before Padamapur Police Station and the Officer in-charge reduced into writing the same and made entries in the station diary vide entry no.629 dated 29.08.1988. But on the ground of jurisdiction he sent the report to the Officer in-charge of Patnagarh Police Station for taking necessary action. The Officer in-charge, Patnagarh Police Station registered the case, took up investigation and after closure

of the investigation submitted charge-sheet against four accused persons including the appellant.

3. The plea of the defence was complete denial of the charge.
4. In order to prove its case, prosecution examined as many as seven witnesses including the victim and the doctor and proved six exhibits. Appellant chose not to examine any witness, but proved a letter dated 27.06.1988 marked Ext.A
5. Learned Sessions Judge after considering the evidence and materials available on record found that the prosecution has been able to prove the charge under Section 304 Part-II read with Section 34, IPC against accused Ratnakar (since dead), Michhu (son of Ratnakar) and Lokanath and accordingly convicted and sentenced them to undergo rigorous imprisonment for five years by his judgment dated 23.03.1987. He, however, found that the prosecution has failed to prove the charges under Sections 148, 302/149, 325/149, 337, IPC against all the accused persons including the appellants, under Sections 302/34, IPC against accused Ratnakar (since dead), Michhu (son of Ratnakar) and Lokanath, under Section 325 IPC against accused Akhaya, Michhu (son of Ratnakar), Gurubari, Baghha, Michhu (son of Pari) and Duryodhan and under Section 323, IPC against accused Raghab and acquitted all of them of the said charges.
6. Counsel for the appellant contended that in the instant case the prosecution suppressed the genesis and origin of the occurrence and did not present the true state of affairs. He further contended that non-explanation of the injuries on the person of the accused is fatal to the prosecution. Improvements were made during the stage of trial in order to suit the medical evidence. Therefore, the testimony of the eye witnesses is completely unreliable and unacceptable. P.Ws.1 to 4 and 6 are accused in the counter case and their evidence can be discarded as they have suppressed the assault on the accused. The members of the prosecution party are the aggressors and the appellants in exercise of their right of private defence have assaulted the deceased. Therefore, they cannot be held guilty. In support of his contentions, he has placed

reliance on the decisions in **Lakshmi Singh -v- State of Bihar**, AIR 1976 SC 2263, **Krushna Podha -v- State of Orissa**, (1992) 5 OCR 260, and **Mahendra Singh -v- State of Rajasthan**, AIR 1989 SC 982.

7. Mr. Pattnaik, learned Addl. Standing Counsel, submitted that P.Ws.1 to 6 are reliable witnesses. Nothing has been elicited from them in course of cross-examination to discredit their version. He also contended that the learned Addl. Sessions Judge has rightly convicted the appellants basing upon the evidence of the eye witnesses.

8. Perused the depositions of the eye witnesses, namely, P.Ws.1 to 6 and the FIR. Deceased himself is the informant in the present case. There is no mention in the FIR that the occurrence took place because the appellants started ploughing the Anabadi land. On the other hand, it has been simply stated that while the deceased was working in his field, all on a sudden the accused persons assaulted him. The FIR was written by P.W.4 in presence of some other villagers, and the deceased put his LTI thereon. Admittedly, P.W.4 is also an ocular witness, but he has not ascribed any specific role to the appellants and accused persons. In the FIR there is no specific overt act ascribed to appellant no.2 that he assaulted on the head of the deceased by lathi. Though P.W.2 in his examination-in-chief stated that appellant no.2 gave the lathi blow to the deceased, the I.O., on being confronted, stated that P.W.2 had not made such a statement during investigation. Similar is the situation in case of P.Ws.3, 4, 5 and 6. Thus, all the eye witnesses to the occurrence have suppressed the true story and developed the fact in court after seeing the medical evidence. In other words, improvements were made to suit the medical evidence after seeing the same and prosecution witnesses have changed their version. Therefore, the eye witnesses cannot be said to be reliable or trustworthy witnesses. In this connection, reference may be made to the case of **Mahendra Singh** (supra). Admittedly, the prosecution case is that only some accused persons from out of those who were ploughing the Anabadi land assaulted the deceased. But such story against the deceased appellant Ratnakar is nothing but a subsequent development during the trial.

9. The second contention of the appellants is with regard to non-explanation of the injuries on the person of the accused. D.W.1 examined the injured-accused including the appellants and found some fatal/grievous injuries on their person. It appears from the evidence of D.W.2 that he treated appellant no.2-Michu as an indoor patient from 31.08.1985 till 13.09.1985 and found dislocation of right shoulder joint and fracture of neck of right humerus and those injuries were grievous in nature. Likewise D.W.3 also treated appellant Ratnakar (since dead) in the S.C.B. Medical College, Cuttack and found fracture in his left humerus and fracture of head of proximal phalanx of left hand. No explanation has been given by the prosecution with regard to the injuries sustained by the accused persons, thereby suppressed the genesis and origin of the occurrence and has thus not presented the true version. Omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance. Admittedly, there was a counter case in S.T. No.123 of 1986 in which most of the present witnesses including P.Ws.1 to 4 and 6 are accused. There, some of the accused persons have been convicted by the trial court and such conviction has been confirmed by this Court in Criminal Appeal No.65 of 1987. This shows that the accused persons received the injuries in course of the same transaction. The details of the injuries sustained by the accused persons are as follows-

<u>Name of the injured accused</u>	<u>Description</u>	<u>Nature</u>	<u>Weapon used</u>
Accd.Duryodhan	Swelling,lacerated bruise.	Simple	Hard & blunt
Accd. Michhu	Lacerated(2 nos.)	-do-	-do-
Accd.Gurucharan	One swelling 2 lacerated	-do-	-do-
Accd. Lokanath	One scratch	-do-	-do-
Accd. Raghab	Incised wound	-do-	Sharp end of a weapon.
Accd. Akhaya	One laceration	-do-	Hard & blunt
Accd. Ratnakar	Two lacerated injuries Five nos. of swelling One incised wound	Simple/ Grievous	-do-

Accd. Michhu(son of Ratnakar)	3 nos. laceration 2 nos. swelling 1 scratch	-do-	-do
Accd.Sarbeswar	2 lacerated injuries 1 swelling	-do-	-do-

The above injuries are not superfluous or minor. The injuries were serious and some of them have been inflicted by sharp cutting weapons. In the above circumstances, it was the bounden duty of the prosecution to give reasonable explanation for the injuries sustained by the appellants. It is not the case of the prosecution that the injuries sustained by the appellants are by way of self-infliction. Non-explanation of injuries on the accused persons in the same transaction assumes much greater importance. In this regard, reference may be made to the cases of **Lakshmi Singh** (supra) and **Krushna Podha** (supra)

10. In view of the above discussion, this Court is of the view that the appellants are entitled to acquittal as the prosecution has suppressed the true story and genesis of the case, has not offered any explanation for the injuries sustained by the appellants, and the witnesses are not trustworthy.

11. In the result, the appeal is allowed and the order of conviction and sentence passed by the trial court against the appellants is set aside.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
August ,2006 / *Samal*