

**JAIL CRIMINAL APPEAL NO. 42 OF 1996**

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Respondent

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

2. On 16.02.1993 at about 6.30 p.m. there was a quarrel between Gora Munda, the deceased, and the accused/appellant. The deceased is the husband of Basumati(P.W.1). Accused is the brother of P.W.1. The quarrel ensued when the accused protested against the cow of the deceased damaging a portion of the thatch roof of his house. Altercation between the two enraged the accused. He entered into the

house, returned with an axe and dealt three random blows on the deceased which resulted in three incised wounds on the left side chest, left parietal region and right parietal region. Deceased sustained the aforesaid injuries and died instantaneously. P.W.1 failed in her attempt to intervene and she also sustained injury in course of that intervention. In proof of injury on her body, the doctor (P.W.9) has proved the injury certificate Ext.8. After the occurrence, the accused made extrajudicial confession voluntarily before his father(P.W.2) and others, i.e., P.W.3-Sukura Munda and P.W.5-Duryodhan Apat. On F.I.R. Ext.1 being lodged by P.W.1, a routine investigation was undertaken and completed and in view of the post-mortem report Ext.4 that the deceased suffered a homicidal death, the accused faced the trial for the offence under Section 302, IPC read with the offence under Section 324, IPC for causing simple hurt by dangerous weapon to P.W.1. Before the trial court, though P.W.1 did not allege against the accused about inflicting injuries to the deceased, but she stated about the quarrel between the accused and her husband. On the other hand, the above noted witnesses prove the extrajudicial confession made by the accused. The weapon of offence which had been seized was examined by the doctor (P.W.6) who conducted the post-mortem examination. The doctor (P.W.6) opined that the deceased suffered homicidal death as a result of the three external injuries together with corresponding internal injuries and that M.O.I is the weapon of offence. No cross-examination was made to the doctor to discredit that version. As such, evidence on record proves homicidal death of the deceased and in view of that the learned Sessions Judge on the basis of the extrajudicial confession found the accused guilty of the offence under Section 302, IPC.

3. In course of argument, learned counsel for the appellant argues that when P.W.1 has not supported the prosecution, the order of conviction is not maintainable and liable to be set aside. In other words, his argument is that even if the extrajudicial confession on record is accepted, since the widow of the deceased has

resiled from the from her previous statement, the benefit arising out of the same should be given to the accused.

Learned Addl. Standing Counsel, on the other hand, supports the impugned judgment in the above context.

4. As noted above, the learned Sessions Judge after taking stock of the aforesaid fact situation found that the conduct of P.W.1 in supporting her brother, i.e., the accused is of no avail on the face of the extrajudicial confession of the accused having been proved by the father of the accused together with other close relatives. Learned Sessions Judge has recorded that the confessional statement before the father and other relatives was a spontaneous and voluntary one and in absence of any coercion or compulsion, there is nothing to disbelieve the extrajudicial confession and the evidentiary value thereof. Learned Sessions Judge also recorded the finding and rightly so that such evidence is sufficient to prove that the accused is the author of the injuries because of which the deceased suffered homicidal death. After scanning the evidence, we do not find any reason to interfere with the order of conviction. Accordingly, the order of conviction is maintained and the appeal is dismissed.

5. Learned counsel for the appellant argues and the learned Addl. Standing Counsel does not dispute to the fact situation that both the accused and the deceased are tribal people. The unfortunate occurrence occurred from a trifle quarrel between the accused and the deceased who are related to each other as brothers-in-law. It is also volunteered by P.W.5 that while making the extrajudicial confession accused had also stated that he got annoyed because the deceased attacked him. That part of the evidence of P.W.5 has not been disowned by the prosecution. In such circumstance, we feel it proper to recommend that if otherwise the conduct of the accused inside the jail during the period of detention before and after the conviction is satisfactory, then it is appropriate for the State Government to invoke the discretion under Section 433(b) Cr.P.C. for his premature release on completion of 14 years of imprisonment.

Learned Addl. Standing Counsel undertakes to intimate the State Government for due action. Therefore, a copy of this judgment be handed over to Mr. S. Mohanty, learned Addl. Standing Counsel.

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**P.K.Tripathy,J.**

**Pradip Mohanty, J.** I agree.

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**Pradip Mohanty, J.**

Orissa High Court, Cuttack  
September 13, 2006 / *Samal*