

**ORISSA HIGH COURT  
CUTTACK**

**JAIL CRIMINAL APPEAL NO. 82 OF 1997**

From an order dated 25.02.1997 passed by Sri R.C.Pattanaik, Sessions Judge, Sundergarh in Sessions Trial No.4 of 1995.

Chamsingh Marai	.....	Appellant
	Versus	
State of Orissa	.....	Respondent

For Appellant - M/s S. Panda and  
D. Mohapatra

For Respondent - Mr. Suraj Mohanty,  
Addl. Standing Counsel

**PRESENT:-**

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

Date of hearing and judgment : 11.10.2006

**P.K.TRIPATHY,J.** This appeal is directed against the judgment and order dated 25.02.1997 passed by the learned Sessions Judge, Sundargarh in Sessions Trial No.4 of 1995 convicting the appellant under section 302 IPC and sentencing him to undergo imprisonment for life.

2. Case of the prosecution is that on 15.08.1994 at about 4.00 p.m., there was a quarrel between Chamsisngh Marai (appellant) and his sons Pitambar Marai and Rajansingh Marai (who were also accused persons before the court below) on one hand and Nanki Marai (deceased) on the other. In course of the quarrel, the aforesaid three

persons caught hold of Nanki Marai, tied his hands and legs and laid him on the ground. Accused-appellant Chamsingh Marai pressed the neck of Nanki Marai with his leg, as a result of which Nanki died at the spot. Thereafter, they removed the dead body of Nanaki to the nearby jungle and burnt the same. After the incident, Tilmet Bai (P.W.9), the widow of the deceased, was threatened by accused-appellant Chamsingh Marai with dire consequences if she reported the matter to police. Out of fear, she did not venture to inform the police about the incident. Subsequently, Ram Nath (P.W.6), who is the nephew of the deceased, came to know about the murder of Nanki, came to the deceased's village and inquired from P.W.9, who informed him that the appellant and his sons had committed the murder of her husband, but, as she had been threatened, she could not make any report to the police. Thereafter, P.W.6 approached the Gountia of the village, who convened a meeting in the village, which was attended by most of the villagers including the accused persons. In the said meeting, accused-appellant Chamsingh Marai confessed before the villagers about the commission of the offence by him and also about the cremation of the dead body. After the meeting, P.W.6 went to Lephripara police-station and orally reported the matter, which was reduced to writing. On the basis of such information, investigation was taken up, on completion of which charge sheet was submitted against the accused-appellant and his aforesaid two sons for commission of offences under sections 302/201 IPC.

3. The defence plea is one of complete denial of the allegations.

4. In order to prove its case, prosecution examined as many as twelve witnesses and proved eight exhibits. The defence also examined two witnesses to substantiate its plea. The learned Sessions Judge, Sundargarh, who tried the case, by his judgment dated 25.02.1997, convicted the appellant under section 302 IPC and sentenced him to undergo imprisonment for life. He, however, acquitted the other two accused persons of the charges.

5. Miss Deepali Mohapatra on behalf of Miss S.Panda, learned counsel for the appellant, submits that the F.I.R. was lodged three days after the occurrence. No plausible explanation has been offered by the prosecution for such delay in lodging the F.I.R. P.W.9, who is the solitary eyewitness, is the wife of the deceased and her evidence without independent corroboration cannot be believed. She also submits that the alleged extrajudicial confession is a weak piece of evidence and no independent witness has corroborated the same. Lastly, she submits that there is no material available on record to hold that the death of the deceased was homicidal in nature.

6. Mr. Mohanty, learned Addl. Standing Counsel, on the other hand, submits that there is no reason to discard the evidence of prosecution witnesses. He also submits that no illegality or infirmity has been committed by the learned Sessions Judge in convicting and sentencing the appellant under section 302 IPC.

7. We have perused the charge, deposition of witnesses, statement of the appellant recorded under section 313 Cr.P.C. and other materials available on record. Admittedly, P.dW.9, the solitary eyewitness to the occurrence, is the wife of the deceased. But, her evidence cannot be brushed aside solely on the ground of such relationship. Law is well settled that evidence of a close relation, before its acceptance, should be scrutinized with due care and caution. In the instant case, P.W.9 in her statements recorded under sections 161 and 164 Cr.P.C. as well as in her deposition before the trial court has categorically stated that the appellant Chamsingh Marai, who is the elder brother of her husband, killed her husband by pressing his neck with legs. Therefore, P.W.9 is very consistent in her evidence. Though she has been cross-examined at length by the defence, nothing has been elicited from her to discredit her version.

8. There is no dispute that immediately after the death of the deceased, the dead body was burnt. Therefore, there was no occasion for the prosecution to medically examine the dead body in order to ascertain whether he suffered a homicidal death. As to the delay in lodging the

F.I.R., P.W.9 has given sufficient explanation as to why she could not report the matter to the police. She has stated that she was threatened by the accused persons. She only disclosed the fact to her nephew (P.W.6), who resides outside Orissa. P.W.6 has stated that after being informed about the incident, he approached the Gountia of the village. There was a meeting in the village which was attended by most of the villagers including the accused persons. In the said meeting, accused Chamsingh Marai confessed his guilt. Next day, he went to Lephripara police-station, which is 35 Kms. Away from the village of the deceased, on foot and reported the matter. In view of the above, we are of the opinion that the delay in lodging the F.I.R. has been sufficiently explained.

9. It is true that P.Ws.1, 2, 4 and 5 turned hostile to the prosecution. But the defence, through D.Ws.1 and 2, has admitted that a meeting was held in the village at the instance of P.W.6, the informant, and accused Chamsingh Marai had attended the said meeting. D.W.2 in his examination-in-chief has stated that the Gountia of the village and other villagers including himself were present in the meeting. In the meeting, it was alleged that Nanki had been murdered by Chamsingh. The statement of D.W.2 to the effect that there was a meeting in the village, which was attended by the Gountia of the village and other villagers including the accused persons corroborates the prosecution story. According to P.Ws.6 and 10, in the said meeting, accused Chamsisngh Marai confessed to have committed the murder of Nanki Marai and disposed of the dead body. When the evidence of P.Ws.6 and 10 regarding holding of the meeting in the village gets corroboration from D.Ws.1 and 2, we are ;of the opinion that the evidence of P.Ws.6 and 10 regarding the extrajudicial confession made by the appellant is true.

10. The evidence of the eyewitness (P.W.9), coupled with the extrajudicial confession, as deposed by P.Ws.6 and 10, clearly establishes the fact that the appellant committed the murder of Nanki Marai. The learned Sessions Judge has rightly held the appellant guilty under

section 302 IPC and convicted and sentenced him as stated earlier, and we see no reason to interfere with the impugned order.

11. For the foregoing discussions, we see no merit in this appeal, which is accordingly dismissed.

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

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

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**Pradip Mohanty, J.**

Orissa High Court, Cuttack  
 October 11, 2006 / *Nayak*