

# ORISSA HIGH COURT CUTTACK

## **CRIMINAL APPEAL NO.220 OF 2000**

From the judgment dated 02.08.2000 passed by Mr. S.K.Nayak,  
Additional Sessions Judge, Angul, in S.T. Case No. 95-A of 1997.  
91 of 1998

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Pranabandhu Sahu ..... Appellant

Versus

State of Orissa ..... Respondent

For Appellant - Mr. A.S.Nandy and  
Ms. T.Sinha

For Respondent - Addl. Standing Counsel

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### **PRESENT:-**

**THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

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Date of hearing and judgment : 21.04.2006  
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**PRADIP MOHANTY,J.** The appellant has preferred this appeal against the judgment and order dated 02.08.2000 passed by the learned Additional Sessions Judge, Angul, convicting him under section 304, Part-II, IPC and sentencing him to undergo rigorous imprisonment for ten years in S.T. Case No.95-A of 1997/91 of 1998.

2. The case of the prosecution is that on 11.05.1997 at about 4.30 P.M. at village Ugi, Tentulinali Sahi, the accused-appellant dealt a knife blow on the belly of the deceased. On receiving the blow, the victim fell down on the ground. While being shifted to the hospital, on the way he succumbed to the injury. It is alleged that about 15 days prior to the incident, the wife of the accused-appellant

had taken shelter in the house of the deceased, as the appellant had assaulted her. Due to this, the appellant had threatened to murder the deceased. On the date of occurrence at about 12.30 P.M., when the deceased was absent from his house, the appellant abused him. On returning home at about 4.00 P.M., the deceased heard it from his wife. At about 4.30 P.M., he saw the appellant going on a cycle and questioned him about his conduct. At this, the appellant threw the cycle on the deceased, brought out a knife from his waist and dealt a blow by the same, which struck the belly of the deceased. The informant, who is the wife of the deceased, and the victim tried to catch hold of the appellant, but he fled away. Thereafter, due to the stab injury, the victim fell down on the ground. While shifting him to hospital, he expired on the way. The matter was reported to police, who took up investigation and on completion of the same submitted charge-sheet under section 302 IPC against the accused-appellant. It may be mentioned here that though the learned Additional Sessions Judge, Angul framed charge under section 302 IPC against the appellant, on considering the facts and circumstances of the case and the materials available on record, convicted him under section 304, Part-II, IPC.

3. The defence plea is a complete denial of the occurrence. In his statement recorded under section 313 Cr.P.C., the appellant took the further plea that a false case has been foisted against him.

4. In order to prove its case, prosecution examined as many as nine witnesses. P.W.3 is the informant and the wife of the deceased. P.Ws.2 and 4 are the elder brothers and P.W.5 is the son of the deceased. P.Ws.6 and 7 are co-villagers of the deceased. P.W.8 is the Doctor, who conducted autopsy. P.W.1 is the Constable, who accompanied the dead body to the hospital, and P.W.9 is the investigating officer.

5. P.W.3, the informant, has stated that on the date of occurrence at about 12.00 noon, the accused abused her husband.

At about 5.00 P.M. her husband questioned the accused about his conduct. At this, the accused threw the cycle, brought out a knife and stabbed the deceased on the right side belly. The deceased chased the accused, but failed to catch hold of him and fell down. Ultimately, he died while being taken to the hospital. P.W.4, another eye witness, has fully corroborated the statement of P.W.3. P.Ws.2, 4 and 7 have stated that while being taken to the hospital, the deceased died on the way. P.W.8, the doctor, has opined that the death was due to shock and haemorrhage resulting from the injury in the liver. The evidence of P.Ws.2 to 7 and the doctor (P.W.8) has not been shaken in any manner and such evidence goes to prove that the death of the deceased was a homicidal one. P.Ws.2 to 7 stood the test of cross-examination and nothing has been brought out from them to discredit their version. Their evidence proves that the deceased died due to the knife blow inflicted on him by the accused-appellant.

6. Mr. Nandy, learned counsel for the appellant, submits that P.W.3 is the wife and P.W.5 is the son of the deceased. Therefore, their evidence cannot be accepted without independent corroboration. Besides, there are material contradictions between the statements of P.Ws.3 and 4, who have been cited as eye witnesses. Moreover, P.Ws.2 to 7 are related to the deceased and are thus interested witnesses. Their evidence cannot be utilized to pass an order of conviction against the appellant. He further submits that non-seizure of the weapon of offence is fatal to the prosecution case.

7. On the other hand, learned Additional Standing Counsel submits that the evidence of P.Ws.2 to 7 is trust inspiring. Merely because they are related to the deceased, their evidence cannot be brushed aside.

8. Perusal of the evidence on record shows that P.Ws.5, 6 and 7 have corroborated each other with regard to the injury on the person of the deceased. Though there are some contradictions in the statements of P.Ws.3 and 4, the same are minor in nature and they do not affect the prosecution case in any manner. Though P.Ws.2, 3

and 4 have been cross-examined at length, nothing has been elicited from them to discredit their version. As to the criticism that P.Ws.2 to 7 being related to the deceased, their evidence cannot be accepted, merely because a witness is related to the deceased, that by itself cannot be a ground to throw out his evidence. Besides, a relative is normally supposed to be impartial and anxious to bring in the real culprits to face the trial and not to let loose them to rope in innocent persons. With regard to non-seizure of the weapon of offence, if the investigating officer failed to recover the same, it may be negligence on his part. But the same is not sufficient to reject the version of the eye witnesses, if such version is otherwise acceptable. In this case, the evidence of the eye witnesses is clear, cogent and categorical. Such evidence cannot be discarded merely because of non-seizure of the weapon of offence.

9. The trial court took note of the situation in which the incident happened. It observed that there was some altercation between the accused and deceased, whereafter the deceased inflicted the single blow and fled away. The blow was given in the heat of passion out of sudden provocation and the accused did not have the intention to kill the deceased. But as the blow was given by knife to a vital organ like abdomen, it can be inferred that he knew that death might be the probable result. In such situation, the trial court found the appellant guilty under section 304, Part-II, IPC. Considering the facts and circumstances of the case, this Court does not feel inclined to interfere with the impugned order.

10. Learned counsel for the appellant submits that the death was caused by a single blow due to sudden provocation. The appellant is a young man of 32 years of age and is languishing in jail custody. He, therefore, prays that a lenient view may be taken on the question of sentence. Considering the submission made, this Court feels it proper to reduce the sentence to rigorous imprisonment for seven years in place of ten years, as imposed by the trial court.

11. In the result, the appeal is dismissed subject to the modification in sentence. The term of imprisonment of the appellant is reduced from ten years, as imposed by the trial court, to seven years.

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**Pradip Mohanty, J.**

Orissa High Court, Cuttack  
April 21, 2006 / *Routray*