

**ORISSA HIGH COURT  
CUTTACK**

**CRIMINAL APPEAL NO.158 OF 2001  
AND  
CRIMINAL APPEAL NO.159 OF 2001**

From the judgment dated 04.07.2001 passed by Shri S.K. Mishra,  
Addl. Sessions Judge, Jeypore in Sessions Case No. 37 of 1999.

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Dibakar Daleya	(Crl. A.158/2001)	
Suman Ratnakar Daleya and others	(Crl. A.159/2001)	..... Appellants

Versus

State of Orissa	(in both cases)	..... Respondent
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For Appellants : M/s J.K. Panda, S.K. Joshi  
and S. Panigrahi.

For Respondent : Mr. A.K. Mishra,  
Standing Counsel.

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**PRESENT :**

**THE HONOURABLE SHRI JUSTICE P.K. TRIPATHY  
AND  
THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY**

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Date of hearing & judgment : 17.07.2007  
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Both the criminal appeals arise out of the common judgment and order of conviction and sentence dated 04.07.2001 passed by the learned Addl. Sessions Judge, Jeypore in Sessions Case No.37 of 1999. Therefore, they were heard together and are disposed of by this common judgment.

2. Case of the prosecution is that on 02.05.1998 at about 8 P.M. in village Janiguda, Dibakar Daleya (appellant in Crl.

Appeal No.158 of 2001) picked up a quarrel with Sunadhar regarding a previous dispute. With an intention to take his life, Dibakar gave an axe blow on the head of Sunadhar, as a result of which the latter fell down sustaining bleeding injury. Hearing his cries, his relation Somdas, Khirosindhu, Gurubandhu and deceased Guru Gonda rushed to the spot. Seeing them, Dibar Daleya left the place by taking the axe with him. While Somdas and others were shifting the injured Sunadhar, the other three accused persons, i.e., Shantipurna, Suman Ratnakar and Prem Bhushan, came there armed with lathis and iron rods. First accused Purna @ Shantipurna assaulted Gurubandhu by means of an iron rod. He also assaulted Guru Gonda (the deceased) by means of the rod while the other two accused persons, viz., Suman Ratnakar and Prem Bhushan, assaulted the deceased by means of 'thenga'. The deceased was first shifted to his house and later in that night he was shifted to Boriguma hospital. Somdas Gonda lodged a report before the Boriguma P.S., on receipt of which a case was registered under Sections 307/325/324/294/34 IPC. During the course of investigation, as Guru Gonda succumbed to the injuries, the case was converted to one under Section 302 IPC. Accordingly, after completion of investigation charge sheet was filed and the appellants were charged under Sections 302/34, 294/323/307 IPC.

3. The plea of the accused-appellants was of complete denial and false implication due to previous dispute. Further plea of the appellants was that on the relevant day, a panchayat was convened in the village where Sunadhar and Dibakar quarreled. Somdas and others chased Dibakar, for which he concealed himself. Mistaking Guru Gonda (deceased) to be Dibakar, Somdas and others assaulted him, which was witnessed by Soleman Dhanphul, Chandrasai Bhoinsa and others.

4. In order to prove its case, the prosecution examined as many as 20 witnesses including the I.O. and the doctors and

proved 27 exhibits in evidence. The appellants examined two witnesses in support of their plea.

5. The learned Addl. Sessions Judge, Jeypore, who tried the case, by his judgment dated 04.07.2001 has convicted appellant Dibakar Daleya under Section 307/294 IPC. For the offence under section 307 IPC, the trial court has sentenced him to undergo rigorous imprisonment for five years and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for a further period of six months. No separate sentence has, however, been imposed for the offence under Section 294 IPC. So far as the other three appellants are concerned, appellant-Shantipurna has been convicted under Section 302 IPC and appellants Suman Ratnakar and Prem Bhushan have been convicted under Section 302/34 IPC. Each of them has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/-, in default to undergo rigorous imprisonment for one year.

6. Mr. Panda, learned counsel for the appellants submits that non-examination of the injured Sunadhar Das, casts a grave doubt on the prosecution story. Prosecution has miserably failed to examine any independent witness, for which the trial court should have acquitted the appellants. Next criticism made by Mr. Panda is that at the time of occurrence, though Manoranjan Nag, Chandrasekhar Bhoinsa, Iswar Paatiasha and Solemn Dhanphul were also present at the spot, none of them has been examined as a witness. Non-examination of the above persons is fatal to the prosecution. He lastly submits that there are major contradictions in the evidence of the ocular witnesses.

7. Mr. Mishra, learned Standing Counsel submits that no irregularity or illegality has been committed by the trial court in convicting and sentencing the appellants. He further submits that though there are some minor contradictions in the evidence of the ocular witnesses, the fact that the deceased died due to several

lacerated injuries on his parietal prominence, fracture of scalp and the corresponding internal injury which were caused by the iron crow-bar remains undisputed. The evidence of the prosecution is very cogent and clear to the extent that appellants Shantipurna, Suman Ratnakar and Prem Bhusan came together and they were all armed with different weapons. They assaulted the deceased and left the spot together.

8. Perused the judgment of the trial court and the deposition of the witnesses. In the instant case, prosecution has established its case beyond all reasonable doubt that the deceased-Guru Gonda in fact met with a homicidal death. As per the post mortem report (Ext.27) and the evidence of the doctor (P.W.20), injury no.V, i.e., the lacerated injury situated on the parietal prominence having a corresponding fracture of the scalp, which can be possible by the iron crow-bar, was the cause of the death of the deceased. Evidence of P.Ws.1, 2, 3 and 6 is crystal clear that the accused-appellant Santipurna dealt such fatal blow on the head of the deceased by means of an iron crow-bar and thereafter other accused-appellants, namely, Suman Ratnakar Daleya and Prem Bhusan Daleya dealt lathi blows to the deceased. Regarding the assault by accused-appellant Dibakar Daleya on Sunadhar Gonda by means of an axe, P.W.3 is an important witness because the said occurrence took place near her house. She also stated about the assault on the deceased. On scanning of the evidence of P.Ws.1, 3 and 6, though this Court finds some minor contradictions in their evidence, P.W.2 is very specific that accused-appellant Santipurna assaulted on the head of the deceased Guru Gonda by means of an iron crow-bar. However, on careful assessment of the evidence of the prosecution witnesses it is gathered from the circumstances that accused-appellant Santipurna dealt a single blow to the head of the deceased. There is no enough evidence to show that other accused-appellants, namely, Suman Ratnakar Daleya and Prem Bhusan Daleya had the

common intention for committing murder of the deceased. There was also no prior meeting of mind or pre-arranged plan. The cause of death of the deceased was due to excessive bleeding, brain haemorrhage and oedema. The doctor (P.W.20) in his cross-examination admitted that the deceased would have survived had timely specialized neuro surgery treatment been given to him. P.W.15, the doctor, who treated injured- Sunadhar Gonda, found one lacerated injury of size 1½” x ½” x ½” over the vertex and opined that the injury was simple in nature. The injured himself has not been examined. Therefore, the prosecution has miserably failed to establish that the accused-appellant Dibakar Daleya assaulted injured – Sunadhar Gonda by an axe with an intention of committing his murder.

9. For the reasons indicated above, we find that conviction of accused- appellants, Suman Ratnakar Daleya and Prem Bhusan Daleya for the offence under Section 302/34 IPC is not sustainable. On the other hand, for the death of the deceased, only accused-appellant Santipurna is responsible. Since it is not proved on record that accused Santipurna had an intention to kill the deceased and apart from that as a single blow was dealt on the head, taking into consideration the medical evidence and the evidence of the eye witnesses, we are of the opinion that it is a case of culpable homicide not amounting to murder which is punishable under Section 304 Part-I IPC. Accordingly, while convicting the accused-appellant Santipurna under Section 304 Part-I IPC, we acquit rest of the accused appellants, namely, Suman Ratnakar Daleya and Prem Bhusan Daleya of the charge under Section 302/34 IPC.

10. So far as the offence under Sections 307/294 IPC is concerned, keeping in view the medical evidence and the sole injury on the body of the injured, we do not find it to be a case of attempt to murder but causing a simple hurt by a dangerous weapon like axe. We also do not find a case under Section 294 IPC having been

substantiated notwithstanding utterance of words in course of exchange of words between the parties. Therefore, accused-appellant Dibakar is convicted for the offence under Section 324 IPC and accordingly his conviction under Sections 307/294 IPC is set aside. For the offence under Section 324 IPC, accused-appellant Dibakar is sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- (two thousand), in default, to undergo rigorous imprisonment for a further period of six months. In the event the fine amount is realized, the same be paid to the injured.

11. For the offence under Section 304 Part-I IPC, accused-appellant Santipurna is sentenced to undergo rigorous imprisonment for ten years. Any period in detention as Under-Trial Prisoner or during pendency of the appeal be set off in accordance with the provision of Section 428 Cr.P.C.

The Criminal Appeals are accordingly allowed in part to the extent indicated above.

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

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**Pradip Mohanty, J.**