

**HIGH COURT OF ORISSA,  
CUTTACK**

**JAIL CRIMINAL APPEAL No.189 of 1999**

From the judgment and order dated 21.07.1999 passed by Shri S.C.Chhatoi, Sessions Judge, Mayurbhanj, Baripada in S.T. No. 177 of 1997.

Gopi Chattar @ Ho ..... Appellant

Versus.

State of Orissa ..... Respondent

For Appellant - Mr. P.K. Bhuyan

For Respondent - Addl. Standing Counsel

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**PRESENT :**

**THE HON'BLE SHRI JUSTICE PRADIP MOHANTY  
A N D  
THE HON'BLE SHRI JUSTICE B.K.PATEL**

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**Date of hearing & judgment : 30.11.2009**

**PRADIP MOHANTY, J.** This jail criminal appeal is directed against the judgment and order dated 21.07.1999 passed by the learned Sessions Judge, Mayurbhanj, Baripada in S.T. No. 177 of 1997 convicting the appellant under section 302/34 I.P.C. and sentencing him to undergo imprisonment for life.

2. The case of the prosecution is that on 22.03.1997 at about evening time the present appellant along with the co-accused Duka Ho dealt stone blows to the head and other parts of the body of the deceased Duryadhana @ Mathura Dehury causing severe bleeding injuries on his head, which ultimately resulted in his death. P.W.2 Bibhisana Dehury and P.W.3 Nalia Dehury while returning from Chaturipadia hat came across the

incident of assault on the deceased by the accused persons. When they tried to intervene and rescue the deceased, both the accused persons chased them to assault and the present appellant assaulted them by means of a lathi. Out of fear they ran from the spot. Getting such information from Bibhisana and Nalia, the informant, P.W.1 Budhia Dehury along with his two co-villagers went to the spot and saw the deceased lying there. Thereafter, P.W.1 along with the Choukidar went to Jashipur police station and lodged F.I.R. The police investigated the matter and submitted charge sheet under sections 302/34 I.P.C. against the appellant and co-accused Duka Ho showing him as absconder. As the accused Duka Ho could not be apprehended, the case was split up and the appellant was committed to the court of session for trial.

3. The accused-appellant denied his complicity in the alleged offence and pleaded innocence. His specific plea was that he was not present on the spot at the time of occurrence and was working in the tile factory at village Matiagarh.

4. In order to prove its case, the prosecution examined as many as ten witnesses including the doctor and the I.Os. P.W.1 is the informant and the elder brother of the deceased. P.Ws.2 and 3 are co-villagers of the deceased and said to have been assaulted by the accused persons. P.W.4 is also a co-villager and an ocular witness. P.W.5 is a post occurrence witness who had accompanied the informant to the spot. P.W.6 is the doctor, who examined both P.Ws.2 and 3. P.W.7 is the constable and a witness to the seizure of nail clippings of the accused and lungi and banian of the deceased. P.W.8 is the police officer who took up the charge of investigation from P.W.9, sent the seized clothes for chemical examination and submitted charge-sheet. P.W.9 was the O.I.C., Jashipur police station on the date of occurrence. He reduced the oral report of the informant to writing, registered the case and proceeded with the investigation, during the course of which he examined the witnesses and seized the clothes of both accused and the deceased. On 07.04.1997, he made over the charge of investigation to P.W.8 on the eve of his transfer. P.W.10 is the doctor who

conducted autopsy over the dead body of the deceased. The defence examined none.

5. Upon conclusion of the trial, the learned Sessions Judge considering the oral and documentary evidence on record convicted the appellant under sections 302/34 I.P.C. and sentenced him to undergo imprisonment for life.

6. Mr. Bhuyan, learned counsel for the appellant assails the judgment and order of conviction on the following grounds:

- (i) The prosecution has suppressed the genesis and material facts and failed to explain the injuries sustained by the appellant.
- (ii) P.Ws.1 and 2 are related to the deceased and interested for successful termination of the prosecution case. So it is unsafe to place reliance on their testimony.
- (iii) P.W.9, the investigating officer, has specifically stated that there was a sudden quarrel between the accused persons and the deceased. In view of such statement, it cannot be said that present is a case under Section 302 IPC and at best it can be said to be one under Section 304 Part-I IPC.

7. Miss Mishra, learned Additional Standing Counsel vehemently contends that the evidence of P.Ws.2, 3 and 4, who are witnesses to the occurrence, is very clear and cogent. Their evidence is corroborated by not only P.Ws.1 and 5 but also the doctor P.W.10. The evidence of all these witnesses clearly establishes the guilt of the appellant. There is nothing on record to show that the appellant sustained injuries in course of the same transaction. So non-explanation of injuries on the person of the appellant cannot be said to be fatal to the prosecution. Furthermore, evidence of P.Ws.2, 3 and 4, the ocular witnesses, does not disclose about any quarrel between the accused persons and the deceased. So admission of P.W.9 in his cross-examination that out of a sudden quarrel the accused persons killed the deceased cannot be believed and such admission is also

hit under section 162 Cr.P.C. She also submits that relationship of the witnesses with the deceased is no ground to discard their testimony, if it is otherwise found to be reliable. Therefore, there is no scope for this Court to interfere with the judgment and order of conviction and sentence of the appellant.

8. P.W.3 is a co-villager of the deceased. He in his evidence has stated that on the date of occurrence he along with P.W.2 had been to the Hat of their village. On their way back near the house of one Jerki they saw the accused persons assaulting the deceased by means of stones. When they asked the accused persons as to why they were assaulting the deceased, at the appellant assaulted him and P.W.2 by means of a lathi. Out of fear, they fled away from the spot. On their way, they informed the incident to P.W.1. The evidence of P.W.2 is in the same line. Nothing has been elicited by the defence through cross-examination to discredit their testimony. P.W. 4 is a co-villager, who saw the occurrence from her house. She corroborated the evidence of P.W.2 with regard to assault to the deceased. She also in her evidence stated that both the accused persons assaulted the deceased at a distance of 10 to 15 cubits from the place where she stood near her house. She specifically stated that P.W.1 came to the spot and she told him about the incident of assault on the deceased by the accused persons. In cross-examination, she specifically stated that there was a dispute between Khadia people and Kolha people in the village. Nothing has been elicited through cross-examination to discard her evidence. P.W.5 is another co-villager and a post occurrence witness. He went with P.W.1 to the spot and saw the dead body of the deceased. He is a witness to the seizure of stones vide Ext.3 and also seizure of wearing apparels of the appellant vide Ext.4. His evidence has passed the test of cross-examination. P.W.6 is the doctor, who examined the present appellant and P.Ws.2 and 3. He found the following injuries on the person of the appellant:-

- (i) Contusion 3 C.M. X 2 C.M. over lower end of the radius in the lateral aspect.

- (ii) Contusion 3 C.M. x 2 C.M. over the right temporal region of the skull.
- (iii) Contusion 2 C.M. x 1 C.M. over the fore-head.

He opined that all the injuries were simple in nature and might have been caused by hard and blunt weapon. He also found a bruise of 2 C.M. X 1 C.M. over the right parito-occipital region of the skull on the person of P.W.2. No injury was however found on the person of P.W.3. In his cross examination he admitted that the injury on the person of the appellant would be possible by lathi. P.W.7 is the constable and a witness to the seizure of nail clippings of the appellant and the wearing apparels of the deceased vide Exts.8 and 9. P.Ws.8 and 9 are the I.Os. P.W.9 registered the case, investigated the matter and arrested the appellant. He also seized the stones and the wearing apparels of the deceased and the appellant, prepared the seizure list and also forwarded the appellant. P.W.8 is the subsequent I.O. who sent the wearing apparels for chemical examination and submitted charge sheet. P.W.9 in his cross-examination admitted that his investigation revealed that out of a sudden quarrel between the deceased and the accused persons, the deceased was done to death. Except the above, nothing has been elicited from him in the cross-examination. P.W.10 is the doctor, who conducted autopsy over the dead body of the deceased and found that all the injuries were ante-mortem in nature and the cause of death was due to injury to the vital organ like brain. He further opined that both the external injuries are sufficient to cause death in ordinary course of nature. On query by the I.O., he submitted his report (Ext.13) stating therein that the external injuries on the dead body of the deceased can be possible by M.Os.III and IV.

9. On careful scanning of the evidence and the materials on record, this Court found the evidence of P.Ws.2, 3 and 4 to be cogent, consistent, convincing, credible and unimpeachable, and there is nothing on record to disbelieve their evidence. The evidence of P.Ws.1 and 5, who are the post occurrence witnesses, lends sufficient support to the direct testimony of P.Ws.2, 3 and 4. P.W.2, the injured witness, in his cross-examination

stated that the present appellant assaulted him by means of a lathi. The presence of P.Ws.2 and 3 at the time of occurrence appears to be natural. There is no substance to disbelieve their presence at the time of occurrence. P.W.4, near whose house the occurrence took place, categorically narrated the occurrence and her evidence remained unshaken despite cross-examination. It is true that P.W.6, the doctor, who examined the appellant, found three contusion injuries on the lower end of the radius, right temporal region of the skull and on the forehead of the appellant as per the injury report (Ext.5). But the fact remains that neither any suggestion had been put to any of the prosecution witnesses that the appellant sustained injuries in course of the same transaction nor did the appellant utter a single word in his statement under Section 313 Cr.P.C. in that regard. Although P.W.9, the investigating officer, in his cross examination stated that out of a sudden quarrel the accused persons killed the deceased, such evidence of the I.O. does not carry any importance. The Chemical Analyst in his report (Ext.14) has opined that human blood of group 'O' was detected on the pant of the appellant and wearing apparels of the deceased. No explanation has been offered by the defence as to how such blood came to be present on those materials.

10. In view of the foregoing discussions, this Court finds no reason to interfere with the impugned judgment and order passed by the trial court. The Jail Criminal Appeal is devoid of any merit and is dismissed as such.

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**Pradip Mohanty, J.**

**B.K.Patel, J.** I agree.

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**B.K.Patel, J.**

*Orissa High Court, Cuttack*  
*Dated 30<sup>th</sup>. Nov., 2009/Routray*