PRADIP MOHANTY, J & B.K.NAYAK, J.

JAIL CRIMINAL APPEAL No.16 OF 2000 (Decided on 21.05.2010)

N.SATYANARAYAN RAO …….Appellant

.Vrs.

STATE OF ORISSA ……Respondent

(A) **EVIDENCE ACT, 1872 (ACT NO.1 OF 1872) – SEC.9.**

(B) **EVIDENCE ACT, 1872 (ACT NO.1 OF 1872) – SEC.9.**

For Petitioner – M/s. S.K.Nanda.
For Opp.Party – Mr.J.P.Patnaik
Addl. Government Advocate.

B.K.NAYAK, J. This Criminal appeal has been filed by the appellant N.Satyanarayan Rao from Jail challenging the judgment dated 04.12.1999 passed by the learned Additional Sessions Judge, Sonepur in Sessions Case No.4/13 of 1999 convicting the appellant under section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life.

2. The prosecution case, shortly stated, is that the deceased Govinda Badmali of village Sakama had come to Sonepur with his father Balabhadra Badmali (P.W.1) and some co-villagers to perform dance and seba puja in the *Bali jatra* in different temples at Sonepur in the month of Aswina in the year 1998. On 29.09.1998 at about 5.30 P.M., after offering *'Sandhyabati'* to deity Samaleswari Devi in the temple while the deceased was standing in front of the *Singhadwara* of the temple, the appellant suddenly stabbed on his chest with a knife and thereafter went away from the spot. On being stabbed, the deceased shouted "A*E BUA MARIGALI*" and having walked a few steps, fell down on the ground. The father of the deceased (P.W.1), Purna Ch. Badmali (P.W.2), Jibardhan Badmali (P.W.3) and Santosh Negi (P.W.4) took the deceased to the hospital for treatment. But, on arrival at the hospital, the Doctor (P.W.10) declared him brought dead. Thereafter P.W.1 orally reported the matter to the O.I.C., Sonepur P.S., who reduced the report to writing (Ext.1) and registered the case. The O.I.C. took up investigation, during the course of which he visited the place of occurrence, conducted inquest over the body of the deceased at the hospital and sent the same for P.M. examination and examined some witnesses. On the next day, he arrested the accused and seized the knife (M.O.IV) and full pant and shirt of the appellant. He also seized sample earth and blood stained earth from the place of occurrence and wearing apparels of the deceased. He got the T.I. parade of the appellant conducted and on completion of investigation filed charge sheet against him, where upon the appellant stood his trial under Section 302 of the Indian Penal Code.

3. The plea of the accused was denial simplicitor.

4. During trial the prosecution examined 13 witnesses whereas the defence examined three witnesses.

Believing the ocular evidence of P.Ws.1,2,3,4 and 5, the medical evidence of P.W.10 along with the evidence with regard to identification of the accused, the learned trial Court found the accused-appellant guilty and accordingly convicted and sentenced him by the impugned judgment as aforesaid.

5. The learned counsel for the appellant has raised the following contentions.

i) The T.I. parade was not conducted properly and the identification of the accused was not conclusive.

ii) The evidence on record does not clearly prove the seizure of the weapon of offence (knife).

iii) The ocular evidence of the witnesses is full of contradictions and inconsistencies for which the same cannot be believed in proof of the guilt of the accused.

6. The learned Additional Government Advocate, on the other hand contends that the learned Trial Court has properly and rightly evaluated the evidence on record and there is no illegality or infirmity in the impugned judgment.

7. The first contention raised by the learned counsel for the appellant is that the T.I. parade was not conducted properly and the identification of the accused was not conclusive. This contention has been raised because the accused was not named in the F.I.R. (Ext.1) as neither the informant (P.W.1) nor the other eye witnesses knew the name of the accused at the time of occurrence or till the filing of the F.I.R.. Therefore, the I.O. felt it necessary to get the T.I. parade of the accused conducted. In the F.I.R. however detail descriptions of the accused along with the description of the full pant and shirt which he had put on at the time of occurrence have been given. P.Ws.1 to 4 who are eye witnesses to the occurrence have stated categorically that they were present at the *Samalai Temple* when the occurrence took place at about 5.30 P.M. near the gate of the temple. P.Ws.1,3 and 4 had attended the T.I. parade and while P.Ws.3 and 4 correctly identified the accused in the T.I. parade, P.W.1 failed to identify the accused. These P.Ws identified the accused correctly in Court. P.W.2, the other eye witness who was not present in the T.I. parade also correctly identified the accused in Court. The grievance of the learned counsel for the appellant is that the T.I. parade was conducted nearly two months after the arrest of the accused and therefore, the witnesses might have seen the accused before he was put to T.I. parade and therefore, identification by P.Ws.3 and 4 of the accused in the T.I. parade has no relevancy. The submission that there is a possibility of the witnesses seeing the accused before the T.I. parade was conducted inside the jail does not hold good for the reasons that while in the T.I. parade P.Ws.3 and 4 could be able to identify the accused, p.w.1 failed to identify. In case the witnesses had opportunity to see the accused before the T.I. parade was conducted, P.W.1 could not have failed to identify the accused in the T.I. parade. The evidence of P.Ws.3 and 4 reveal that having seen the accused stabbing the deceased with knife and thereafter escaping from the place of occurrence, P.Ws.3 and 4 chased him, but failed to catch hold of him. This clearly suggests that P.Ws.3 and 4 apart from seeing the accused at the time of occurrence had also further opportunity of seeing him while they were in chase of the accused. Although in cross-examination P.Ws.3 and 4 were put several questions with regard to the conduct of T.I. parade, they were not even suggested that they had seen the accused or the Police had shown the accused to them after the arrest of the accused and before conduct of T.I. parade. No such suggestion was also given to the I.O. (P.W.13). With regard to delay in conduct of T.I. parade the I.O. has explained in his evidence that due to engagement in law and order duty he could not arrange T.I. parade earlier. There is no reason, nor anything is borne out from

the record for disbelieving this evidence of the I.O. Nothing has been shown about any illegal or improper manner of conduct of T.I. parade. In the circumstances, it cannot be said that the T.I. parade was not conducted properly. All the eye witnesses to the occurrence clearly identified the accused in court, which is substantive evidence. P.W.1 is an old man and even if his identification of the accused in Court may not be relied upon for his failure to identify the accused in the T.I. parade, the identification of accused by P.Ws.2,3 and 4 cannot be impeached. The occurrence having taken place at about 5.30 P.M. in the month of September by which time darkness had not set in, it cannot be said that witnesses had failed to recognize the accused at the time of occurrence, so that they could not have been able to identify the accused later.

For all the above reasons there is nothing to differ from the view of the trial Court that the accused was properly identified by the witnesses.

8. We have gone through the evidence on record carefully. P.Ws.1,2,3 and 4 have stated in no uncertain terms that after offering Sandhyabati to the deity inside the temple while the deceased was near the gate of the temple, the accused who was then loitering in front of the temple, suddenly stabbed on the chest of the deceased with a knife which he brought out from his pocket. It is also in their evidence that on being stabbed the deceased walked few steps ahead crying 'Marigali Marigali' and then fell on the ground. It is also in their evidence that after stabbing the deceased, the accused escaped from the place of occurrence. P.Ws.3 and 4 chased the accused, but failed to catch hold of him. It is also the consistent evidence of these witnesses that soon thereafter the deceased was taken to the hospital where he was declared dead. Except some minor contradictions and discrepancies in the evidence of the ocular witnesses nothing has been brought out to discredit their testimony with regard to the substratum of the prosecution case. It is pointed out that while in the F.I.R. it has been written that the deceased on being stabbed raised a cry *"AE BUA MARIGALI*", in the evidence it is stated that he raised a cry "MARIGALI MARIGALI". This contradiction is too insignificant to raise any doubt with regard to the veracity of the witnesses. P.W.1 is the father and P.Ws.2 to 4 are other co-villagers who were present at the Samalai Temple in connection with rendering of seba to the deity in question during the festival time. Their presence was quite natural at the temple and was also not challenged by the defence. They were neither inimical to the accused nor had any other reason to falsely implicate him. Some other minor contradictions with regard to which witness was standing at what place near the temple have been pointed out, which in no way affect the credibility of the eye witnesses.

9. Law is well settled as has been held by the Apex Court in the case of ***Bharwada Bhoiginbhai Hirjibhai –v.-State of Gujarat*** AIR 1983 SC 753 that discrepancies which do not go to the root of the matter and shake the basicversionofthewitnesses cannot be annexed with undue importance and
more so when all the important probabilities factor echoes in favour of the version narrated by the witnesses. It is also well settled as has been held by the Apex Court in the case reported in AIR 1988 SC page 696 : ***Appabhai and another –vrs.State of Gujarat*** that discrepancies which are due to normal errors of perception or observation should not be given importance whereas errors due to lapse of memory may be given due allowance. It is trite rule that the Court by calling into aid its past experience in men and matters must evaluate the entire materials on record by excluding the exaggerated version given by any witness. Falsus in uno falsus in omnibus is not a sound rule. The evidence of the eye witnesses is found to be clear, cogent and trust worthy and

therefore, we have no hesitation to hold that such evidence coupled with the medical evidence of the Doctor (P.W.10) clearly proves the guilt of the accused.

10. It is in the evidence as stated by the I.O. and P.W.7, the Town Havildar that on the next date of occurrence, the accused was arrested. From the evidence of P.W.7 it transpires that in the morning of the following day of the occurrence P.W.6 Upendra Sahu and one Radhamadhab Jugunia (P.W.11) told P.W.7 that the person who killed the deceased was sleeping on the Mandap of Gokarneswar temple of Sonepur with the knife. On receipt of such information, P.W.7 rushed to the Gokarneswar temple along with P.W.6 and Radhamadhab Jugunia (P.W.11) and found the accused sleeping there with the knife in his possession. P.W.7 snatched the knife from the accused and thereafter brought him to the P.S. and produced the accused and the knife before the O.I.C. and the knife was seized by the O.I.C. under the seizure list Ext.5/1 in presence of P.Ws.6,7 and 11. It is in the evidence of P.W.7 that while bringing the accused to the P.S. from the Mandap of Gokarneswar temple, a large number of persons followed them to the P.S. and in their presence the accused admitted to have killed the deceased. However, there is no evidence that he used the knife which was seized for killing of the deceased. The admission of the accused, as per the evidence of P.W.7, though amounts to confession which is not admissible being made to a police officer, it does not contain any additional statement which might be relevant under section 27 of the Evidence Act. P.Ws.6 and 11 though admitted their signatures on the seizure list Ext.5/1, they did not admit in their evidence that the seizure was effected in their presence. The learned trial Court believed the seizure of the knife on the basis of evidence of P.W.7 and the seizure list. However, there being no evidence that the knife which was seized was used for killing of the deceased, the same cannot be accepted as the weapon of offence. The non-recovery of the weapon of offence, however, does not affect the veracity of the prosecution case in view of the clear, cogent and trustworthy ocular testimony of the eye witness to the occurrence.

11. A further contention was raised by the learned counsel for the appellant that there was no motive on the part of the accused to kill the deceased. Of course the prosecution has not proved any motive. However, proof of motive is not a sine-qua-non for establishment of guilt of the accused, particularly when the evidence on record proves the guilt.

12. Lastly, the learned counsel for the appellant submits that since the accused dealt a single blow by a knife the case would fall under section 304 of the Indian Penal Code as it is covered under Exception-4 to Section 300 of the Indian Penal Code. Exception-4 to Section 300 of the Indian Penal Code runs as under:

> "Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

13. On perusal of the evidence on record, nowhere it is found that the occurrence took place in course of a sudden quarrel, in a sudden fight in the heat of passion and without any premeditation on the part of the accused. Keeping in view the gravity of the injury as found from the medical evidence even though it resulted out of a single blow by a knife, the appellant has been rightly convicted under section 302 of the Indian Penal Code by the learned trial Court.

14. In the light of the discussions made above, we find no infirmity in the impugned order of conviction and sentence. The appeal is therefore, dismissed.

Appeal dismissed.