

**HIGH COURT OF ORISSA,
CUTTACK**

JAIL CRIMINAL APPEAL No. 1 of 2001

From the judgment dated 07.11.2000 passed by Sri S.C. Mishra, Sessions Judge, Sambalpur in S.T. Case No.2 of 1999.

Dasaru Kisan Appellant

Versus

State of Orissa Respondent

For Appellant : Mr. N.Singh.

For Respondent : Mr.J.P. Pattnaik,
Addl. Govt. Advocate.

PRESENT

**THE HON'BLE SHRI JUSTICE PRADIP MOHANTY
A N D
THE HON'BLE SHRI JUSTICE B.P.RAY**

Date of hearing & judgment : 28.01.2010

PRADIP MOHANTY,J. This appeal from jail has been preferred by the appellant aggrieved by the judgment and order dated 07.01.2000 passed by the learned Sessions Judge, Sambalpur in S.T. No.2 of 1999 convicting him under Section 302, IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.1,000/- in default to undergo imprisonment for two months more.

2. The case of the prosecution is that the accused himself, the informant (P.W.2) and the deceased are three brothers. The accused had previous land dispute with the deceased. On 07.07.1998 in the evening, while the deceased was present in his house in village Barhamundi, the accused-appellant called him uttering his name, whereupon the deceased came out of the house. After sometime, the wife of the deceased (P.W.4) and the mother of the deceased (since dead) heard the cry of the deceased, rushed to the spot and found the deceased lying with bleeding injury on his left side chest. He was holding an axe, which he had snatched

away from the accused-appellant after the assault. Some time thereafter, the deceased succumbed to the injury. Getting information from one Raju Munda, P.W.2 came to the spot, heard the incident from P.W.4 and his mother, and found the deceased lying dead with bleeding injury on his left side chest. P.W.2 reported the matter on 08.07.1998 at Jamankira Police Station, which is 14 KMs away from the spot and a case was registered. After investigation, charge sheet was submitted under section 302 IPC against the appellant.

3. The defence plea is denial of the occurrence.

4. In order to prove its case, prosecution examined as many as seven witnesses including the doctor and the investigating officer and exhibited seventeen documents. Defence examined none.

5. The learned Sessions Judge after conclusion of the trial convicted and sentenced the appellant as already stated hereinbefore with the finding that the chain of circumstances which is complete in all respect without any missing link point at the guilt of the accused that it is the accused and the accused alone who has committed the murder of the deceased by assaulting him by means of an axe (M.O.I) on his left side chest.

6. Mr. Singh, learned counsel for the appellant assails the impugned judgment on the following grounds:

- (i) There is no direct evidence to establish the offence of murder and the circumstantial evidence is not of clinching nature to connect the appellant with the crime. In other words, all the circumstances do not form an unbroken chain leading to the only conclusion of the guilt of the appellant.
- (ii) Evidence of P.W.4 that on being called by the appellant the deceased came out of the house, which has been considered as an important circumstance, is not believable in absence of corroboration from any quarter.
- (iii) There is no independent corroboration to the evidence of P.W.4 that immediately after hearing the cry of the deceased, she and her mother-in-law went to the spot and found the deceased lying with bleeding injury and that he had held a blood stained axe which he had snatched away from the hands of the

appellant. As such, this cannot be construed as a circumstance to connect the appellant in the crime.

- (iv) Prosecution has failed to prove conclusively that by the time deceased came out from his house being called by the accused, no other persons were present and in absence of any motive, commission of murder by some person other than the appellant cannot be ruled out.
- (v) His alternative submission is that even if it is assumed that the appellant is responsible for the death of the deceased, the act committed by him may come under the ambit of Section 304 Part-I, IPC but not under Section 302, IPC, since it is alleged that the deceased died as a result of a single blow dealt by the appellant.

7. Mr. Pattnaik, learned Additional Government Advocate, per contra contends that evidence of P.W.4 is very clear and cogent and cannot be discarded. After hearing the cry of the deceased, both P.W.4 and her mother-in-law (since dead) rushed to the spot and found the deceased lying with bleeding injury on his left side chest. The deceased handed over the axe to P.W.4 saying that he had snatched away the same from the hands of the appellant. There is no evidence on record that any person other than the appellant was present at the spot by the time the deceased came out of the house being called by the appellant. Previous land dispute has been proved as the motive behind the commission of the crime. Therefore, no fault can be found with the trial court in convicting the appellant under Section 302, IPC.

8. Perused the LCR. P.W.4 is the widow of the deceased. She stated that the occurrence took place during the evening hour. She was present in her house. The accused called her husband uttering his name. Being called, her husband went out of the house. After some time, she heard the cry "MOTE MARI DELA GO MOR DADA ASA ASA". Hearing such cry, she (P.W.4) and her mother-in-law rushed to the spot. She found bleeding injury on the left side chest of the deceased and an axe in his hand. The deceased told to P.W.4 that the axe had been snatched away by him from the hands of the accused, and thereafter died. P.W.4 specifically stated in her evidence that when she and her mother-in-law rushed to the spot, they did not find anybody else present there, and none else

heard the statement of the deceased. In cross-examination, she specifically stated that M.O.I (axe) is commonly available in the village. But she identified M.O.I (axe) belonging to the accused. She specifically stated that she had seen M.O.I prior to the occurrence with the accused while he was cutting trees, etc. in the jungle. There is no reason to disbelieve the evidence of P.W.4. P.W.1 is a post occurrence witness. He is a witness to the inquest and seizure of the axe. He proved the seizure list and the inquest report. There is nothing in his cross-examination to disbelieve him. P.W.2 is the informant and the brother of the deceased as well as the accused. He is also a post-occurrence witness. He specifically stated in his evidence that there was land dispute between the deceased and the accused. Raju Munda informed him that the accused had killed the deceased by means of an axe. Thereafter, he rushed to the spot and found the deceased lying dead having bleeding injury on his left side chest. His mother (since dead) informed him that the accused had killed the deceased by means of an axe. Thereafter, he along with P.W.3 and one Upendra Rohidas went to Jamankira Police Station and verbally reported the matter which was reduced to writing. He proved his L.T.I in the said F.I.R. In cross-examination he specifically stated that the house of the accused and that of the deceased are adjoining to each other being intervened by a fence. He also stated that prior to the occurrence deceased had assaulted the accused and the matter was amicably settled. Nothing has been elicited through cross-examination to discredit his testimony. P.W.3 is a co-villager and a post occurrence witness. He stated that hearing the incident he went to the spot and found the deceased lying with bleeding injury on his left side chest and at that time P.W.4 was present. Thereafter, they called the Grama Rakhi, went to the police station and P.W.2 lodged the information. P.W.5, the doctor, who conducted autopsy over the dead body of the deceased, found an external incised wound of size 4" x 2" x 2" over the upper part of left anterior chest wall placed obliquely across the left clavicle. On dissection, he also found five internal injuries. He opined that all the injuries were ante mortem in nature and could cause the death of deceased in ordinary course of nature. The cause of death might be due to shock and haemorrhage as a result of such injuries. He further opined that injuries suggested that a deliberate violent blow by a sharp cutting weapon might have been given on the deceased. There is nothing in the cross-examination to belie his testimony. P.W.6 is the constable who accompanied the dead-body of the deceased to the hospital for

postmortem examination along with dead-body challan, command certificate and inquest report. He identified the dead body to the Medical Officer. P.W.7 is the Investigating Officer of the case. He stated that he registered the case, took up investigation, visited the spot, seized blood stained axe (M.O.I) and the wearing apparels of the wife of the deceased and also Duti Kisan. He also conducted inquest over the dead body of the deceased. After investigation, he submitted charge-sheet under section 302, IPC. Nothing has been elicited through cross-examination to render his evidence unreliable.

9. On scrutiny of the above evidence, it is found that deceased is the elder brother of the accused. There was land dispute between them and such fact is established through P.Ws.2 and 4. It is proved through P.W.4 that on being called by the accused, deceased went out of his house and after some time he cried saying "MOTE MARI DELA GO MOR DADA ASA ASA". P.W.4 along with her mother-in-law (since dead) rushed to the spot and found that the deceased lying on the ground having bleeding injury on his left side chest. The deceased was also holding a blood stained axe, which he had snatched away from the accused immediately after the assault. Dying declaration was made before P.W.4 by the deceased. P.W.4 also identified the axe (M.O.I) and produced the same before the I.O. She also stated in her cross-examination that M.O.I (axe) belonged to the accused and she had seen the same prior to the occurrence with the accused while cutting trees, etc. On chemical examination, M.O.I (axe) was found to have contained human blood. P.Ws.2 and 3, the post occurrence witnesses found the dead body of the deceased immediately after the occurrence. P.W.5, the Medical Officer, who conducted autopsy over the dead body of the deceased, opined that the death was due to deliberate violent blow by a sharp cutting weapon on the left side chest of the deceased. He further opined that the injuries on the deceased might have been caused by the said M.O.I. The blood group of the blood stains found on the wearing apparels of the deceased as well as P.W.4 and her mother-in-law is similar, i.e., group "AB" as per the chemical report. It is true that there is no direct eye witness to the assault given by the accused to the deceased, but all the aforesaid circumstances have formed an unbroken chain leading to a definite conclusion that it is the accused and none else has committed the murder of the deceased by assaulting him by means of an axe (M.O.I) on his chest.

For the foregoing discussions, this Court is of the opinion that there is no infirmity or illegality committed by the trial court convicting the present appellant under section 302 IPC. The judgment of conviction and sentence rendered by the trial court is accordingly upheld and the Jail Criminal Appeal is dismissed.

.....
PRADIP MOHANTY,J.

B.P. RAY, J. I agree.

.....
B.P.RAY, J.

Orissa High Court, Cuttack
*Dated 28th. Jan.,2010/**Routray***