

ORISSA HIGH COURT,CUTTACK

JCRLA NO. 56 OF 2002

From the judgment dated 1.11.2002 passed by Sri S.K.Nanda, Additional Sessions Judge, Nabarangpur in Sessions Case No.3 of 2001 (S.C.No.9 of 2001 of S.J.,Jeypore).

Laxman Mangali

... Appellant

-versus-

The State

... Respondent

For appellant - Mr. J.R.Dash

For respondent - Shri S.K.Nayak,
Addl. Government Advocate

PRESENT:

**THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY
AND
THE HONOURABLE SHRI JUSTICE B.K.PATEL**

Date of hearing- 1.7.2011 :: Date of judgment-29.7.2011

B.K.Patel,J

This appeal is directed against the judgment and order dated 1.11.2002 passed by the learned Additional Sessions Judge, Nabarangpur in S.C.No.3 of 2001 convicting the appellant for commission of murder and sentencing him to undergo imprisonment for life under section 302 of the I.P.C..

2. Appellant is deceased's husband. Informant P.W.5 is deceased's brother. Occurrence took place on 6.8.2000 at about 12 noon in the cattle shed belonging to P.W.4 in village Barandipara.

P.W.13 is P.W.4's daughter. The deceased after her marriage, which took place about 18 years prior to the occurrence, was residing in the house of the appellant in the occurrence village.

3. Prosecution case is that there used to be frequent quarrel between the appellant and the deceased. About 15 days prior to the date of occurrence deceased left the appellant and came to the house of her brother informant P.W.5 situated in the Indira Awas Colony due to quarrel between her and the appellant and assault on her by the appellant.

On 6.8.2000 at about 12 noon appellant came with axe M.O.X to Indira Awas Colony and found the deceased near the house of P.W.6. Appellant asked the deceased to return to his house. Deceased declined to go to his house saying that her brother P.W.5 was not in the house and she would not go until P.W.5 returned home. Appellant being enraged dealt axe blow on right hand of the deceased causing severe injury. Deceased started running shouting 'Morigali Morigali'. Appellant chased her. Deceased, out of fear, entered into the P.W.4's cattle shed. However, appellant also followed her and dealt blows on deceased's head by means of axe as a result of which deceased sustained fatal injuries on her head, fell down and died. Appellant fled away from the spot with the axe. Occurrence was witnessed by P.Ws. 6 and 13.

P.W.6 immediately informed P.W.5, who had gone to a nearby village, about the occurrence. P.W.5 disclosed the occurrence to co-villagers P.Ws. 2,3 and 4. P.W.5 found the deceased lying dead with injuries on her head and right hand at the spot. He proceeded to Jharigam Police Station with P.Ws. 2 and 4 and presented written report Ext.2 , scribed by P.W.12, to P.W.14 A.S.I. of Police. In absence of O.I.C. of the P.S., P.W.14 registered the case and took up investigation.

In course of investigation P.W.14, *inter alia*, held inquest over the dead body of the deceased in presence of P.Ws. 2 and 11 and effected seizure of blood stained earth and sample earth from the spot in presence of witnesses including P.W.1. P.W.10, Medical Officer, Zonal Hospital, Umerkote conducted post-mortem examination over the dead body of the deceased and submitted post-mortem examination report Ext.6. P.W.10 also examined the weapon of offence M.O.X and submitted opinion Ext.7. On 18.8.2000 O.I.C., Jharigam P.S. P.W.15 took charge of investigation from P.W.14. P.W.15 apprehended and arrested the appellant on 27.8.2000. While in custody, appellant made disclosure statement Ext.12 and led P.W.15 as well as co-villagers P.Ws. 7 and 9 to the recovery of M.O.X. P.W.15 effected seizure of axe M.O.X under seizure list Ext.4 and wearing apparels of the appellant under seizure list Ext.5. Witnesses were examined by both P.Ws. 14 and 15. On completion of investigation charge-sheet was submitted against the appellant.

4. Defence plea was one of complete denial.

5. In order to substantiate the charge, prosecution examined 15 witnesses, P.Ws. 1 to 15, of whom all except P.W.8 have already been introduced. Evidence of P.W.8, one of appellant's co-villagers, is inconsequential. Prosecution also relied upon documents marked Exts.1 to 13 and material exhibits M.Os. I to XI.

No defence evidence was adduced.

6. Placing reliance on direct evidence of P.Ws. 6 and 13 stated to have been corroborated by medical evidence of P.W.10 and evidence of P.Ws. 7 and 8 relating to circumstance of recovery of weapon of offence M.O.X, learned trial court held the charge to have been established by the prosecution.

7. Neither before the trial court nor in course of hearing of the present appeal finding of the learned trial court to the effect that death of deceased was homicidal in nature was assailed in any manner. In course of post-mortem examination by P.W.10 deceased was found to have sustained severe lacerated wounds on head as well as lacerated wound and bruise on the right fore-arm. Lacerated wound on the scalp in temporal and lower parietal bone area on the right side had entered into brain cavity and brain matter was coming out. Lacerated wound on the middle portion of scalp towards left over left parietal bone had cut the bone and entered into brain cavity. P.W.10 found that the injuries

were ante-mortem and sufficient in ordinary course of nature to cause death. Death of deceased was homicidal. The axe M.O.X could cause the injuries. Evidence of P.W.10 remained unassailed.

8. Learned counsel for the appellant initially made an attempt to urge that evidence of eye-witnesses P.Ws. 6 and 13 should not have been relied upon by the learned trial court. However, he failed to bring to our notice any infirmity in the evidence of either of the witnesses. P.W.6 testified that only two houses intervened between his house and house of informant P.W.5. He testified that appellant came to the deceased and asked her to go to his house when deceased was talking to P.W.6 near his house. Deceased refused and stated that she would go only after arrival of P.W.5. Appellant pulled the deceased holding her hand. Deceased threw away appellant's hand saying that she would not go. Appellant assaulted the deceased on her right hand as a result of which her right hand was broken. In order to save her life, deceased ran towards cow-shed of P.W.4 and shouted 'morigali, morigali'. Appellant chased her into the cow-shed and dealt two blows by the axe M.O.X on the head of the deceased causing bleeding injuries. Deceased's brain matter came out; and she fell down and died in the cow-shed. It was categorically stated by P.W.6 that P.W.4's daughter P.W.13 also had seen the assault by the appellant. In course of cross-examination intrinsic value of evidence of P.W.6 has not been discredited in any manner. He categorically stated in cross-examination that he saw the assault on

the deceased inside the cow-shed from a distance of 7 to 8 cubits as inside of cow-shed is visible from outside. Evidence of P.W.6 gets immediate corroboration from the evidence of P.W.5 who testified to have been told regarding the occurrence by P.W.6. Contents of F.I.R. Ext.2 corroborate evidence of informant P.W.5.

9. P.W.13 is another witness to the occurrence which took place inside the cow-shed belonging to her father P.W.4. She testified to have come out of her house on hearing deceased's shout to save her life. She found the deceased in the cow-shed. In her presence appellant dealt a blow by means of axe on the deceased's head and deceased fell down with severe bleeding injury. It is in her evidence that prior to the blow which the appellant dealt in her presence, appellant had dealt another axe blow on the deceased. After assaulting the deceased appellant fled away with the axe. It is also in the evidence of P.W.13 that P.W.6 also saw the occurrence. P.W.13's evidence has not been discredited in course of her cross-examination. On her own P.W.13 is found to be a wholly reliable and firm witness.

10. Thus, not only each of the two eye-witnesses P.Ws. 6 and 13 is found to be a reliable witness but also they corroborate each other in all material particulars. Also, their evidence is corroborated by evidence of P.Ws.4 and 5. That apart, medical evidence available from P.W.10 and post-mortem examination report Ext.6 corroborate ocular evidence. In addition, evidence of P.W.15 I.O. regarding seizure of axe M.O.X on

the basis of information disclosed by the appellant gets material support from independent witnesses P.Ws. 7 and 9. Circumstance of seizure of M.O.X also corroborates evidence of eye-witnesses and incriminates the appellant. In view of the nature of evidence of prosecution witnesses, learned counsel for the appellant was constrained to submit that there is no scope to interfere with the finding of the learned trial Judge that death of the deceased occurred due to fatal injuries inflicted by means of axe by the appellant.

11. However, learned counsel for the appellant contended that under the facts and circumstances of the case, learned trial court ought to have held that appellant committed the offence on the spur of moment due to sudden provocation and, therefore, his act squarely comes within the purview of culpable homicide not amounting to murder punishable under section 304, Part-I of the I.P.C.

12. In reply, learned counsel for the State submitted that there is no evidence on record indicating that deceased provoked the appellant in any manner. On the contrary, it is evident that the appellant came prepared with an axe. When the deceased told him that she would not go with him until her brother returned home, the appellant assaulted on deceased's hand. Though the deceased tried to save herself, appellant chased her into the cow-shed and dealt fatal blows on deceased's head. Therefore, there is no scope to hold that deceased had any role to precipitate the occurrence or that the occurrence took place on the spur

of moment. Appellant dealt at least two fatal blows on the deceased from which it can be gathered that he intended to kill the deceased.

13. Prosecution has adduced cogent medical evidence to establish that injuries on deceased's head were sufficient in ordinary course of nature to cause death. Appellant came to the spot being armed with the weapon of offence. When the appellant insisted the deceased to return, she replied that she would go to his house only after her brother P.W.5, in whose house she was staying, returned home. Appellant pulled the deceased by holding her hand. However, deceased threw away appellant's hand. Deceased's conduct in resisting appellant's endeavour to compel her to go to his house cannot be construed to amount to provocation so as to deprive the appellant of the power of self-control. Also, fatal blows on the head of the deceased were not dealt on the spur of moment. It is established beyond reasonable doubt that appellant not only assaulted the deceased on her hand but also chased the deceased into the cow-shed and dealt fatal blows on the head. Occurrence was not preceded by any fight. Therefore, there is no escape from the conclusion that appellant assaulted the deceased with the intention of causing fatal injuries which were sufficient in ordinary course of nature to cause death. Appellant has rightly been convicted for commission of offence under Section 302 of the I.P.C. There is no merit in the appeal.

14. Therefore, the appeal is dismissed. Impugned judgment and order are confirmed.

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B.K.Patel

Pradip Mohanty,J. I agree.

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Pradip Mohanty

Orissa High Court, Cuttack,
Dated 29th July,2011/***Palai***