

ORISSA HIGH COURT,CUTTACK

CRA NO. 5 OF 1998

From the judgment and order dated 11.12.1997 passed by Shri N.Prusty, 2nd Additional Sessions Judge, ,Cuttack in Sessions Trial No.476 of 1996 arising out of G.R.Case No.818-A of 1995 committed by the learned S.D.J.M.,Sadar,Cuttack.

Potal @ Jagadish Dora

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Appellant

-versus-

State of Orissa

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Respondent

For appellant - M/s B.N.Panda,S.R.Mohapatra,
S.C.Mishra,R.K.Lenka,
G.P.Panda,A.Das & S.K.Das

For respondent - Additional Standing Counsel.

PRESENT:

**THE HONOURABLE SHRI JUSTICE L.MOHAPATRA
AND
THE HONOURABLE SHRI JUSTICE B.K.PATEL**

Date of hearing & date of judgment-25.11.2011

B.K.Patel,J. This appeal is directed against the judgment and order dated 11.12.1997 passed by the learned 2nd Additional Sessions Judge, ,Cuttack in Sessions Trial No.476 of 1996 convicting the appellant and sentencing him imprisonment for life under section 302 of the Indian Penal Code (for short, the I.P.C.) for having committed murder of deceased Tukuna @ Sanyasi Dora.

2. Appellant is deceased's brother's son. P.W.5 is deceased's son. P.Ws. 6 and 7 are two wives of the deceased. Occurrence took place on 21.5.1995.

3. Prosecution case is that about a month prior to the occurrence appellant had burnt a motorcycle belonging to the deceased for which appellant agreed to pay Rs.2000/- towards damage. On the date of occurrence at about 2 P.M. when the deceased asked the appellant to pay the amount, appellant refused to oblige for which both of them quarreled and thereafter appellant left. At about 5 P.M. when appellant's father Rama Chandra Dora returned home, deceased wanted him to pay amount and again there was quarrel between the appellant's father and the deceased. At this juncture, appellant came from his house situated nearby being armed with knife M.O.I and dealt blows on the deceased's neck, belly, chest and back. Deceased fell down on the ground and succumbed to the injuries. On the basis of written report submitted by P.W.5 at Purighat Police Station, F.I.R. was registered and investigation as taken up. On completion of investigation, charge-sheet was submitted against the appellant and his father co-accused Rama Chandra Dora for commission of offence under section 302 read with 34 of the I.P.C.

4. It appears that case against co-accused was split up and trial against him in Sessions Trial No.28 of 1996 was conducted analogously with Sessions Trial No.476 of 1996.

5. Appellant took the plea of denial and false implication.

6. In order to substantiate the charge, prosecution examined nine witnesses. P.Ws.5,6 and 7 have already been introduced. P.W.1 is witness to inquest and certain seizures. P.W.2 is an inquest witness. P.W.3 is the doctor who conducted post mortem examination over the dead body of the deceased. P.W.4 is the Scientific Officer. P.W.8 is the Investigating Officer. P.W.9 is the doctor who had medically examined P.W.7. Prosecution also relied upon documents marked Exts.1 to 17/2 and material objects M.Os. I to IV. No defence evidence was adduced.

Placing reliance on the evidence of eye witnesses P.Ws.5, 6 and 7 stated to have been corroborated by medical evidence and other incriminating circumstances, trial court held the prosecution to have proved the charge under Section 302 of the I.P.C. against the appellant. However, in the common judgment, co-accused was acquitted of the charge.

7. It is submitted by the learned counsel for the appellant that considering the nature of evidence available from the three eyewitnesses which finds corroboration from the medical evidence, there is no scope to assail the findings that death of the deceased was homicidal in nature and that the appellant was the author of fatal injuries on the deceased. However, it is urged by the learned counsel for the appellant that considering the fact that the occurrence was preceded by quarrel between the deceased on the one hand and

appellant's father on the other, appellant should not have been convicted under section 302 of the I.P.C. Appellant assaulted the deceased on the spur of the moment being provoked by conduct of the deceased. Therefore, it is argued, the case comes under Part-I of Section 304 of the I.P.C.

8. In reply, learned counsel appearing for the State submits that the occurrence was not immediately preceded by quarrel between the appellant and the deceased. On the contrary, when appellant's father and deceased were engaged in verbal altercations, it was the appellant who went to the spot being armed with knife and dealt stab and cut blows on the deceased indiscriminately causing his instantaneous death. Therefore, there is no infirmity in the impugned judgment.

9. Evidently, deceased was brutally assaulted to death by means of sharp cutting weapon. P.W.3 testified to have found as many as 23 cut and stab wounds apart from two abrasions on the deceased. All the injuries were ante-mortem in nature. P.W.3 opined that all the injuries combined together were fatal in ordinary course of nature, and that some of the injuries along with their corresponding and consequential internal injuries were fatal in ordinary course of nature both individually and combinedly. Cut wounds could have been caused by any moderately heavy sharp cutting weapon and stab wounds could have been caused by any

sharp edged pointed weapon. Death of the deceased was due to hemorrhage and shock as a result of the injuries.

10. Informant P.W.5 is deceased's son. It is in his evidence that one month prior to the date of occurrence appellant had burnt deceased's motorcycle for which appellant had agreed to pay Rs.2000/-. P.W.5 testified that on the date of occurrence deceased demanded Rs.2000/- from the appellant for which there was exchange of hot words. However, appellant went out and deceased took rest after lunch. At 5.00 P.M. appellant's father came and quarreled with the deceased when the deceased was standing on the front door of his house. At that time, appellant arrived there and attacked the deceased with knife from his back side as a result of which the deceased fell down. Appellant stabbed the deceased with the knife on his neck, chest, belly, left hand wrist and some other parts of the body. When P.W.5's mother P.W.6 came to rescue the deceased, appellant dealt kick blow on her. When P.W.5 tried to prevent the appellant from dealing knife blow on the deceased, the knife struck on his left hand index finger causing injury. The deceased died subsequently. Thus, P.W.5 portrays a graphic account of the occurrence which finds corroboration from the contents of F.I.R. Ext.10.

P.W.5 is also corroborated by his mother P.W.6 as well as P.W.7 another wife of the deceased. Both P.Ws. 6 and 7 deposed that dispute between the appellant and the deceased in connection with

the burning of deceased's motorcycle had been amicably settled on the promise of the appellant to pay Rs.2000/- towards damage. Both of them also testified that on the date of occurrence at about 2.00 P.M. deceased asked the appellant to pay that amount but the appellant refused and there was quarrel. However, appellant left and deceased slept. It is in their evidence that appellant's father came to the house of the deceased subsequently at about 5.00 P.M. and quarreled with the deceased by shouting. P.W.6 deposed that she reached at the spot hearing hullah and saw that the deceased was lying on the ground and the appellant was stabbing him by means of knife. When P.W.5 came to the spot to rescue the deceased and protested, appellant dealt knife blows on him causing bleeding injury on his finger. Appellant threw away the knife near the spot and escaped. P.W.7 testified that during hot altercation between the deceased and the appellant's father, appellant came from behind the deceased and dealt blows on the back side. When the deceased tried to escape, appellant dealt kick blow and the deceased fell down on the ground. On her arrival P.W.7 saw that her husband was lying on the ground. The co-accused had caught hold of her husband whereas appellant was dealing knife blow on his neck. When P.W.7 protested and tried to prevent, appellant dealt knife blow on her left arm causing bleeding injury. Appellant also dealt kick blow on P.W.7's belly as a result of which she fell down on the ground. Evidence of P.Ws. 5,6 and 7 has not been discredited in any manner.

11. Learned counsel for the appellant made an attempt to invoke exception (4) to provision under section 299 of the I.P.C. to urge that the appellant committed the offence without premeditation on the spur of the moment in course of sudden quarrel. However, it is obvious that it was appellant's father who went to and quarreled with the deceased immediately before the occurrence. Occurrence was not preceded by any fight or quarrel between the appellant and the deceased. In fact, there was no quarrel between the appellant and the deceased after 2.00 P.M. on the date of occurrence. The appellant went to the spot being armed with knife M.O.I and dealt knife blows on the deceased indiscriminately. Prosecution has adduced unimpeachable medical evidence through P.W.3 to the effect that as many as 13 cut and stab wounds on the deceased were fatal in ordinary course of nature both individually and combinably. Therefore, it is obvious that appellant brutally assaulted the deceased by dealing fatal knife blows in a cruel manner without any provocation. Therefore, trial court has rightly held the appellant to be guilty of commission of offence under section 302 of the I.P.C. There appears no ground to interfere with the impugned judgment.

12. There is no merit in the appeal and the same is dismissed.

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L.Mohapatra,J.

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B.K.Patel,J

Orissa High Court, Cuttack,
Dated 25th Nov.,2011/***Palai***