

ORISSA HIGH COURT,CUTTACK

JCRA NO. 57 OF 2002

From the judgment dated 10.4.2002 passed by Sri Md. Abdul Majid, Additional Sessions Judge, Sonepur in Sessions Case No.84/92 of 2001.

Kandarpa Rana @ Jhankarbudha ... Appellant

-versus-

The State ... Respondent

For appellant - M/s B.K.Ragada, N.K.Das,
and B.Sethi.

For respondent - Mr. Anupam Rath,
Additional Standing Counsel

PRESENT:

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

Date of hearing- 5.7.2011 :: Date of judgment- 30.8.2011

B.K.Patel,J By the judgment and order dated 10.4.2002 passed by the learned Additional Sessions Judge, Sonepur in S.C.No.84/92 of 2001 the appellant has been convicted and sentenced to undergo imprisonment for life under section 302 of the I.P.C. for having committed murder of deceased Padulochan.

2. Prosecution case in brief is as follows:

Occurrence took place on 19.3.2001. At about 10 A.M. on that date P.W.4 Bharat, P.W.10 Rupalal and another boy went inside the bari

of the appellant in order to see a parrot in the nest. Seeing them appellant went there abused them, and chased the boys with lathi M.O.I in his hand. However, P.W.4 and his companions ran away. Appellant having failed to catch them, started shouting abuses at Bharat P.W.4 in front of his house. Deceased, an immediate neighbour of P.W.4 along with his wife P.W.2 Padma, sister P.W.3 Khada and other family members came out of their houses and tried to persuade the appellant not to abuse P.W.4. Being enraged appellant dealt a blow by means of lathi M.O.I on the deceased's head causing bleeding injury. Deceased fell down on the ground. Apart from P.W.2 and P.W.3, P.W.4, P.W.4's mother P.W.5 Khira, P.W.6 Kusha and P.W.11 Dhanmali saw the occurrence.

On being informed about the occurrence deceased's father informant P.W.1 Hara came and found the deceased lying senseless with bleeding injury on his head. Deceased died while being taken to hospital by P.W.1 and others.

On the basis of first information report Ext.1 submitted by informant, P.W.14 O.I.C. of Tarva Police Station registered the case and took up investigation. P.W.13 Surgery Specialist attached to the District Headquarters Hospital, Sonapur conducted post-mortem examination over the dead body of the deceased and submitted post-mortem examination report Ext.7. He also examined lathi M.O.I and submitted report Ext.8. Witnesses were examined. P.W.14 brought the appellant,

who surrendered in court, on police remand on 24.3.2001. While in custody appellant made disclosure statement Ext.5 and led to the recovery of lathi M.O.I. which was seized by P.W.14 under seizure list Ext.2 in presence of witnesses including P.W.7. On completion of investigation, charge sheet was submitted against the appellant by P.W.15 C.I. of Police, Sonapur who had taken charge of investigation from P.W.14.

3. Appellant took the plea of denial.

4. In order to substantiate the charge, prosecution examined 15 witnesses. P.Ws. 1 to 7, 10, 11 and 13 to 15 have already been introduced in course of narration of the prosecution case. P.W.8 is a witness to inquest whereas P.Ws. 9 and 12 were working as police constables. Prosecution also relied upon documents marked Ext.1 to 12 and material exhibits M.Os. I and II.

No defence evidence was adduced.

5. Placing reliance upon evidence of eye-witnesses P.Ws. 2 to 6 and P.W.11, found to have been corroborated by medical evidence and the circumstance of seizure of lathi M.O.I, learned trial court held that the prosecution has proved the charge against the appellant.

6. P.Ws. 4 and 10 testified regarding the origin of the occurrence. It is in their evidence that they along with another boy were chased by the appellant from his bari when they tried to find out the

parrot which was producing sound. Out of fear they left the place. It is the consistent testimony of not only deceased's wife P.W.2 and sister P.W.3 but also co-villagers P.Ws. 4, 5, 6 and 11 that appellant came in front of the house of P.W.4 and yelled lot of abusive words at P.W.4. Deceased as well as P.W.2, P.W.3 and others tried to persuade the appellant to keep quiet. The appellant being enraged at such intervention, all on a sudden, dealt blow by means of M.O.I on the deceased's head. Deceased sustained injury and fell down. It has been elicited from P.W.3 in course of cross-examination that appellant left the scene of occurrence after assaulting the deceased leaving M.O.I at the scene of occurrence. P.W.5 corroborated P.W.2 on this aspect. P.W.5 further deposed that subsequently appellant took away lathi M.O.I from the scene of occurrence. Evidence of eye-witnesses P.Ws. 2 to 6 and P.W.11 has not been discredited by the defence in course of their cross-examination in any manner. They corroborate each other in all material particulars. P.W.1 the informant happens to be deceased's father. He is the post-occurrence witness. He testified to have heard regarding assault by the appellant on the deceased soon after the occurrence from P.W.2, P.W.3 and many others. Contents of F.I.R. Ext.1 lodged without delay corroborate evidence of informant P.W.1.

7. Evidence of eye-witnesses as well as evidence of informant P.W.1 is corroborated by evidence of P.W.13 who conducted post-mortem examination over the dead body of the deceased. P.W.13 found

that there was a lacerated wound on the left side of the head over parietal eminence with projection of the brain matter from the wound site. Underlying the aforesaid injury, membrane of the brain was torn and pieces of bone were present in the brain matter. Brain was congested. Parietal lobe of the brain was lacerated and bleeding. Injury was ante-mortem and sufficient to cause death in ordinary course of nature.

8. P.W.14 testified that while in custody appellant led him as well as P.W.7 and another witness to his house and gave recovery of lathi M.O.I. P.W.7 testified that appellant made disclosure statement Ext.5, led to recovery of lathi M.O.I from his house upon which M.O.I was seized under seizure list Ext.2 in his presence.

9. Learned counsel for the appellant did not assail finding of the learned trial court to the effect that it was the appellant who caused homicidal injury on the deceased head causing death. It was fairly submitted that prosecution has adduced cogent and unimpeachable evidence which establish beyond reasonable doubt that the appellant was the author of fatal injury on the deceased's head.

10. Sri B.K. Ragada. learned counsel for the appellant, however, contended that it is evident from proved circumstances that the occurrence took place on the spur of the moment. Appellant never intended to cause death of the deceased. He did not make any

preparation to commit the offence. It was the deceased who intervened when the appellant in a fit of anger was abusing P.W.4 for trespassing into his bari. Thereby deceased precipitated the occurrence by giving provocation to the appellant. Appellant having lost his self control due to uncalled intervention by the deceased dealt a single blow without intention or knowledge to cause death. It was argued that the offence committed by the appellant does not come within the purview of culpable homicide amounting to murder punishable under section 302 of the I.P.C. It was contended that at the worst appellant may be held to have committed offence under section 304 Part-II of the I.P.C.

11. In reply, it was contended by Sri Anupam Rath, learned counsel for the State that intervention by the deceased to stop the appellant from use of abusive words does not amount to provocation. Nature of injury on the deceased goes to show that the appellant dealt lathi blow with full force. It was argued that the appellant intentionally caused injury which was sufficient in ordinary course of nature to cause death for which the appellant has been rightly convicted and sentenced under section 302 of the I.P.C.

12. Admittedly, appellant is not alleged to have any prior motive to do away with the life of the deceased. Proved circumstances do not indicate that the assault on the deceased was a result of pre-mediation. On the contrary, appellant came to the spot chasing P.W.4. His anger was not directed against the deceased. He was abusing P.W.4 in a fit of

anger. When he was asked to keep quiet by the deceased, appellant is found to have got enraged and dealt lathi blows on deceased's head on the spur of the moment. Appellant dealt a single blow and fled away. Under somewhat similar circumstances, when accused procured knife and dealt fatal blow on the deceased being enraged by the conduct of the deceased in forbidding him to assault a little boy, Hon'ble Supreme Court in **Kalamban Suna -vrs- State of Orissa** : (1998)14 OCR 517 held that there was grave and sudden provocation. In such circumstances, it would not be prudent to hold that appellant dealt lathi blow on the deceased either intending to cause the deceased's death or with intention to cause bodily injury knowing to be likely to cause death or with intention to cause injury sufficient in ordinary course to cause death. Though it would be fallacious to observe that when death is caused by single blow it would not amount to murder, the totality of the circumstance in the present case do not establish that appellant had required degree of intention or knowledge required to constitute offence under section 302 of the I.P.C. However, considering the seat and nature of injury, nature of weapon of offence, and attending circumstances, and placing reliance on the ratio of the decision in **Kalamban Suna**(supra) this Court is of the considered view that there is no scope to escape from the conclusion that the appellant is liable to be convicted and sentenced under Section 304, Part-II of the I.P.C.

13. In view of the above discussions, the appeal is allowed in part. Impugned judgment and order are modified to the extent indicated above. Appellant is convicted under Section 304, Part-II of the I.P.C. instead of Section 302 of the I.P.C. and sentenced to undergo rigorous imprisonment for eight years.

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B.K.Patel

Pradip Mohanty,J.

I agree.

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Pradip Mohanty

Orissa High Court, Cuttack,
 Dated 30th August,2011/**Palai**