

**HIGH COURT OF ORISSA: CUTTACK.**

**JCRLA NO.21 OF 2006**

From the judgment dated 29.11.2005 and order dated 05.12.2005 passed by Shri B.P.C. Pattanaik, Ad hoc Additional Sessions Judge, Gunupur in Criminal Trial No.03 of 2004.

Sahadev Karja ..... Appellant

- Versus -

State of Orissa ..... Respondent

For Appellant : Miss. Subha Shree Mohanty

For Respondent : Mr. Sangram Das,  
Addl. Standing Counsel

**PRESENT:**

**THE HONOURABLE SHRI JUSTICE L. MOHAPATRA  
AND  
THE HONOURABLE SHRI JUSTICE C.R. DASH**

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Date of hearing & judgment – 31.08.2012

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**C.R. DASH, J.** This appeal is directed against the judgment dated 29.11.2005 and order of sentence dated 05.12.2005 passed by learned Ad hoc Additional Sessions Judge, Gunupur in Criminal Trial No.03 of 2004 convicting the appellant under Section 302, I.P.C. and sentencing him to suffer imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer R.I. for six months more.

2. The occurrence happened on 2.11.2003. It was 3.00 P.M. then. The deceased and Jadu (P.W.5) were talking at the house of Jadu (P.W.5). The appellant came there and dealt

successive Tangia blows on the deceased as a result of which deceased sustained bleeding injuries and died instantaneously at the spot. P.W.1, widow of the deceased lodged F.I.R.. On completion of investigation, charge-sheet was filed implicating the appellant in offence under Section 302, I.P.C.

The defence plea is one of complete denial.

3. The prosecution has examined eleven witnesses to prove the charge including the eye witnesses P.Ws.3 and 5. Defence has examined none.

4. Learned trial court on the basis of evidence adduced found the appellant guilty under Section 302, I.P.C. and convicted him thereunder.

5. Learned counsel for the appellant tries to persuade us to disbelieve P.Ws.3 and 5 as eye witnesses on the ground that there being discrepancies in their evidence which are material in nature, it is not safe to rely on their evidence.

Learned Additional Standing Counsel on the other hand supports the impugned judgment.

6. P.W.5 is a co-villager and a resident of the spot village. The deceased was his nephew (Bhanaja). Before five days of the occurrence he (P.W.5) was discharged from the hospital. It is submitted by learned counsel for the appellant that as P.W.5 was not able to move and P.W.4, who is an immediate post occurrence witness, has testified that when she reached at the spot P.W.1 only was present at the spot, P.W.5 should not be believed as an eye witness. It is further

submitted by learned counsel for the appellant that P.W.5 being a close relation of the deceased, his evidence is bound to be tainted.

7. It is not disputed that the occurrence happened near the house of Jadu (P.W.5), who has testified that at the time of occurrence he and the deceased were talking by sitting on a cot at his (P.W.5's) house. At that time the appellant came and dealt blows on the back, throat and shoulder joint of the deceased as a result of which deceased sustained injuries and died at the spot. P.W.5 has further testified that he raised hullah and wife of the deceased and many others reached at the spot. P.W.1, who is the wife of the deceased has specifically testified that she went to the spot on hearing hullah of Jadu (P.W.5). P.W.2, who is a post occurrence witness is testified to have come over the spot on being called by the appellant's wife (P.W.3). P.W.4, who is also a post occurrence witness is testified to have come over the spot on hearing hullah of P.W.1. P.W.7, who is also a post occurrence witness is testified to have come over the spot on hearing about the incident from the appellant's wife (P.W.3). P.Ws.1, 2 and 4 are testified to have seen the deceased decamping from the spot being armed with a Tangia. P.W.3 who is none other than the wife of the appellant has been examined as an eye witness. She testified to have seen the occurrence. She (P.W.3) at the relevant time was inside her house as testified by her in her cross-examination. She must have come over the spot on hearing the hullah / shout of Jadu

(P.W.5) and by the time she came the assault might have been over, but it can not be denied that she (P.W.3) is an immediate post occurrence witness even if she is not held to be an eye witness. There is no cross-examination of P.W.5 to discredit his sworn testimony. He (P.W.5) is corroborated in material particulars by all the post occurrence witnesses who saw the appellant decamping from the spot being armed with an axe.

P.W.5 may be a relation of the deceased, but that alone cannot be held to be a ground to wash his evidence off the record when there is nothing to label him with interestedness.

8. Regard being had to the aforesaid facts and discussions, we do not find any justification to take a different view so far as reliability of P.W.5 as an eye witness and other post occurrence witnesses are concerned.

9. The appeal therefore, merits no consideration. Accordingly, the same is dismissed.

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**C.R. Dash, J.**

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**L. Mohapatra, J.**