

HIGH COURT OF ORISSA: CUTTACK.

JCRLA NO.51 OF 2003

From the judgment and order dated 15.1.2003 passed by Shri U.C.Mishra, Additional Sessions Judge, Rourkela in Sessions Trial No.176/40 of 1999.

Char Oram Appellant

- Versus-

State of Orissa Respondent

For Appellant : M/s S.Patnaik, L.Mishra,
M.Das, S.Das, and
S.K.Singh.

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

PRESENT:

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

Date of hearing and judgment -30.1.2012

B.K. PATEL, J. By the impugned judgment and order dated 15.1.2003 passed by the learned Additional Sessions Judge, Rourkela in Sessions Trial No.176/40 of 1999, the appellant has been convicted and sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code for having committed murder of deceased Buda Oram.

2. Appellant and D.W.1 are deceased's brothers. Informant P.W.3 is deceased's wife. D.W.2 is appellant's wife. Occurrence took place on 29.4.1999.

3. Prosecution case is that at about 4 P.M. on the date of occurrence when the deceased was sleeping in his house with his child, the appellant came there being armed with an axe, dealt axe blows on the deceased and ran away with the axe. Deceased sustained fatal injuries and died. Informant P.W.3 having witnessed the occurrence, orally narrated regarding the incident to A.S.I. of Police of Jareikala Outpost P.W.12 who prepared written report, sent the same for registration to I.I.C. of Bisra Police Station P.W.13 and took up investigation. On completion of investigation, charge sheet under section 302 of I.P.C. was submitted against the appellant.

4. Appellant took the plea of denial.

5. In order to substantiate the charge, prosecution examined 13 witnesses. P.W.1, a seizure witness, was declared to be hostile witness. P.W.2 is the doctor who conducted post mortem examination over the dead body of the deceased. P.W.3, deceased's wife, the informant was examined as an eyewitness to the occurrence. Though she deposed at the first instance in her examination-in-chief to have seen the appellant dealing two blows on the neck of the deceased by means of an axe, in course of her further examination, consequent upon an application under section 311 Cr.P.C. filed by P.W.3 herself, she testified that the appellant had not assaulted the deceased and that she had implicated the appellant by making statement which she had learnt from others. P.W.4 deposed regarding a meeting in the village which was held to decide a dispute between the appellant and the deceased. P.Ws. 5 and 6 deposed regarding extra-judicial confession made before them by the appellant. Out of them P.W.6 was declared hostile. P.Ws.7, 8, 9 and 10 are police constables who assisted in the investigation and witnessed certain seizures. P.W. 11 is a doctor who collected appellant's blood sample and nail clippings.

P.Ws. 12 and 13 are Investigating Police Officers. Prosecution also relied upon documents marked Exts.1 to 17.

Two defence witnesses 1 and 2 were examined on behalf of the appellant.

Placing reliance on the evidence of P.Ws. 5 and 6, the trial court held the appellant guilty of the charge.

6. In assailing the impugned judgment it is contended by learned counsel appearing for the appellant that P.W.6 having made prevaricating statements was declared to be a hostile witness. There is no evidence that the appellant was in any manner intimate to either P.W.5 or P.W.6 for reposing confidence in them. Therefore, in absence of any other circumstances their evidence with regard to extra-judicial confession cannot constitute the basis to sustain conviction.

7. Placing reliance on the evidence of P.Ws. 5 and 6, learned counsel for the state supported the impugned judgment.

8. We have scrutinized the evidence of all the witnesses. Informant P.W.3 was examined as the only eyewitness to the occurrence. However, in course of her further reexamination she totally gave a go bye to her testimony made in course of examination-in-chief implicating the appellant to be assailant of the deceased and stated that appellant had not assaulted the deceased. In course of cross-examination of P.W.3 by prosecution also nothing material was elicited to support the allegation against the appellant. Prosecution, in such circumstances, relied upon evidence of P.Ws. 5 and 6 to establish complicity of the appellant. P.W.6 was declared to be hostile witness and his attention was drawn to the statement made by him before the investigating Officer. P.W.5 stated that the appellant with an axe

came to the shop in which P.W.5 and appellant's brother were working, and enquired as to whether his younger brother was available in the shop. P.W.5 informed him that his brother had already left for home. He enquired from the appellant the reason for enquiry about his brother. On this, appellant disclosed that he murdered his brother. He further stated that he was going to police station. The axe in the hands of the appellant was stained with blood. P.W.6 deposed that appellant came to him and said that he murdered his brother. He asked the appellant to go and to report the matter before police station. Neither P.W.5 nor P.W.6 deposed regarding any previous acquaintance between them on the one hand and the accused on the other. Therefore, prosecution has not led any evidence indicating the reason for which the appellant was prompted to repose confidence in P.Ws. 5 and 6 to confess regarding the offence. No doubt, P.W.2 deposed to have found two incised injuries on the deceased's neck with corresponding internal injuries. P.W.2 opined that cause of death of the deceased was shock and syncope due to haemorrhage resulting from the two injuries. However, evidence of P.W.2 indicating homicidal death of the deceased does not implicate the appellant with commission of the offence in any manner. There is no evidence regarding seizure of weapon of offence which has not been produced in court. In such circumstances, evidence of P.Ws. 5 and 6 does not appear to be a safe basis to sustain appellant's conviction for commission of offence under section 302 of the I.P.C. Appellant is found to be entitled to benefit of doubt.

9. For the reasons stated above, the appeal is allowed. The judgment and order dated 15.1.2003 passed by the learned Sessions Judge, Rourkela in Sessions Trial No.176/40 of 1999 convicting the appellant under Section 302 of the I.P.C. and sentencing him to

undergo imprisonment for life is set aside, and he is acquitted of the charge.

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L. Mohapatra, J.

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B.K. Patel, J.

Orissa High Court, Cuttack,
The 30th Jan., 2012/***Palai***