IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA NO. 89 OF 2007

From the judgment and order dated 21.08.2007 passed by the learned 1st Additional Sessions Judge, Puri in S.T. Case No.6/216 of 2006/2005.

Laxmidhar Acharya …….. Appellant

-Versus-

State of Orissa …….. Respondent

For Appellant: - Mr. Sidhartha Swain

For Respondent: - Mr. Janmejaya Katikia
Addl. Govt. Advocate

P R E S E N T:-

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing- 26.05.2016 Date of Judgment- 26.05.2016

S. K. SAHOO, J. The appellant Laxmidhar Acharya faced trial in the Court of learned 1st Additional Sessions Judge, Puri in S.T. Case No.6/216 of 2006/2005 for offence punishable under section 302 of the Indian Penal Code for committing murder of Bihari Acharya (hereafter 'the deceased') on 2.4.2005 at about

8.30 a.m. in village Bandala under Konark Police station in the district of Puri.

The Learned Trial Court vide impugned judgment order dated 21.08.2007 held that the prosecution has failed to establish the charge under section 302 of the Indian Penal Code and accordingly acquitted the appellant of the said charge. However, the learned Trial Court found that the prosecution has proved the case against the appellant beyond all reasonable doubt under section 304 Part-II of the Indian Penal Code and accordingly found him guilty of such offence and sentenced him to undergo rigorous imprisonment for ten years.

2. The prosecution case, as per the First Information Report lodged by Lingaraj Acharya (P.W. 2) on 2.4.2005 before the Inspector in charge, Konark Police Station is that on that day at about 8.30 a.m., the appellant who is the cousin brother of the informant quarreled with his own mother Smt. Umamani Acharya (P.W.7) and pressed her neck. At that time, another son of Umamani Acharya namely Pratap Acharya called others for help and hearing such hulla, the deceased who was the father of the informant came to the spot and objected to the appellant for his activities. The appellant all on a sudden dealt a blow by means of a sickle on the chest of the deceased as a result of

which the deceased sustained bleeding injury and fell down at the spot and died. When the appellant came to know about the death of the deceased, he tried to escape from the spot with the sickle but the co-villagers Santosh Barik, Raghunath Khedual, Laxmidhar Mohapatra (P.W.8) and Ashok Khedual (P.W.9) chased the appellant and caught hold of him and recovered the sickle from him. The Gram Rakshi Dhaneswar Mallick was sent to the police station to intimate about the incident which stated to have taken place in the courtyard of the appellant near Tulasi chaura. At the time of incident, the informant was not present at the spot but on getting information about the incident, he came to his house and after ascertaining about the incident from his wife and co-villagers, he lodged the F.I.R.

P.W. 12 Umakanta Mallick who was the Inspector in-charge of Konark police station getting telephonic message about the incident on 2.4.2005, proceeded to the spot and on arriving there, he received a written report from P.W.2 which was scribed by P.W. 1 Prafulla Kumar Acharya, who is the brother of the P.W. 2. On the basis of such First Information Report, Konark P.S. Case No. 28 of 2005 was registered under section 302 of the Indian Penal Code. P.W. 12 took up investigation of the case and during course of investigation, he examined the informant

and other witnesses, visited the spot and prepared the spot map Ext.8. He conducted inquest over the dead body in presence of the witnesses and prepared inquest report Ext.6. He detected blood stains at the spot and collected blood stained earth, sample earth from the spot and also seized the sickle which is the weapon of offence under seizure list Ext.2. The wearing apparels of the appellant containing blood stains were also seized under seizure list Ext.3. The dead body was sent for post mortem examination along with the weapon of offence for opinion of the doctor through constable. The appellant was arrested on 2.4.2005 and forwarded to Court on 3.4.2005. The mother of the appellant namely Umamani Acharya was also sent for medical examination.

P.W. 6 Dr. Surendra Kumar Mohanty conducted post mortem examination over the dead body on 2.4.2005 and found a stab wound on the chest and opined the death to be homicidal in nature and the cause of death was due to injury to the vital organ such as heart producing shock and hemorrhage. P.W. 6 also gave his opinion vide Ext. 5 which indicates that the injury sustained by the deceased was possible by the sickle.

The Investigating Officer received the post mortem report and made a prayer to the J.M.F.C., Nimapara to send the

seized articles for chemical examination to S.F.S.L., Rasulgarh, Bhubaneswar and accordingly seized articles were sent for chemical examination. He received the chemical examination report Ext.12. After completion of investigation, P.W.12 submitted charge sheet against the appellant on 29.07.2005 under section 302 of the Indian Penal Code.

3. After observing due committal formalities, the case of the appellant was committed to the Court of Session for trial where the learned 1st Addl. Sessions Judge, Puri framed charge against the appellant under section 302 of the Indian Penal Code on 25.04.2006 and since the appellant denied the charge, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and to establish his guilt.

4. In order to prove its case, the prosecution examined twelve witnesses.

P.W.1 Prafulla Kumar Acharya is the son of the deceased and cousin brother of the appellant and he is a post occurrence witness who was present at the time of inquest. He was the scribe of the F.I.R.

P.W.2 Lingaraj Acharya is the informant of the case who is the son of the deceased and a post occurrence witness.

He stated that he was present at the time of inquest over the dead body and when the dead body was sent for post mortem examination.

P.W.3 Meena Acharya is the daughter-in-law of the deceased and she is an eye witness to the occurrence.

P.W.4 Madhusudan Acharya is also an eye witness to the occurrence.

P.W.5 Upendra Nayak is a post occurrence witness who stated about the seizure of a sickle, blood stained earth and sample earth under seizure list Ext.2 and napkin of the deceased under seizure list Ext.3.

P.W.6 Dr. Surendra Kumar Mohanty was the Asst. Surgeon in the District Headquarters Hospital, Puri who on police requisition conducted the post mortem examination over the dead body on 2.4.2005 and found a stab wound on the chest of the deceased and opined the cause of death was due to injury to the vital organ such as heart producing shock and hemorrhage. He further opined the injury on the deceased to be possible by sickle (M.O. I).

P.W.7 Umamani Acharya is the mother of the appellant who did not support the prosecution case for which she was declared hostile by the prosecution.

P.W.8 Laxmidhar Mohapatra and P.W.9 Ashok Khedual Singh are the post occurrence witnesses who stated to have chased the appellant while he was escaping from the spot and caught hold of him and also recovered the weapon of offence i.e. sickle (M.O. I) from the possession of the appellant.

P.W.10 Bansidhar Mohapatra is a witness to the seizure of blood stained earth, sample earth from the spot and the sickle under seizure list Ext.2 and also seizure of the blood stained napkin of the appellant under the seizure list Ext.3. He is also a witness to the inquest over the dead body as per inquest report Ext.6.

P.W.11 Krupasindhu Pradhan was the Constable attached to the Kakatpur Police station who produced blood stained dhoti, check napkin stained with blood and one 'Paita' (sacred thread) of the deceased after post mortem examination before the I.O. which were seized under seizure list Ext.7.

P.W.12 Umakanta Mallick was the Inspector in charge of Konark police station who is the Investigating Officer.

The Prosecution exhibited as many as thirteen documents. Ext.1 is the F.I.R., Exts.2 and 3 are the seizure lists, Ext.4 is the post mortem report, Ext.5 is the opinion of the doctor who conducted the post mortem examination, Ext.6 is

the inquest report, Ext.7 is the seizure list of blood stained apparels of the deceased, Ext.8 is the Spot map, Ext.9 is the prayer made by I.O. to the J.M.F.C., Nimapara to send the seized articles for chemical examination, Ext.10 is the forwarding report, Ext.11 is the Command Certificate, Ext.12 is the Copy of chemical examination report and Exts. 13 to 13/4 are the photographs.

The prosecution also proved six materials objects. M.O.I is the sickle and M.O.II and III are the napkins and M.O.IV is the blood stained dhoti, M.O. V is the blood stained napkin and M.O.VI is the sacred thread.

No witness was examined on behalf of the defence. No document was also proved on behalf of the appellant.

5. The learned Trial Court on analysing the evidence on record came to hold that the evidence of the doctor (P.W.6) along with the post mortem report (Ext.4) and his opinion on examination of M.O.I vide his report Ext.5, leaves no room for doubt that the deceased suffered homicidal death due to shock and hemorrhage. The learned Trial Court further held that except P.Ws. 3, 4 and 7, others are post occurrence witnesses and though the post occurrence witnesses have not seen the actual assault by the appellant, yet they have seen the deceased with

injury on his chest which lent support to the evidence of P.Ws. 3 and 4 that the deceased succumbed to the injury on the spot due to injury on his chest. The learned Trial Court further held that evidence of P.Ws. 3 & 4, the eye witnesses to the occurrence find support from the evidence of P.Ws. 5, 8, 9 and 10. The learned Trial Court observed that the evidence of P.Ws. 1 to 5, 8, 9 and 10 are consistent, clear and in tune with the probabilities of the case, which clearly shows that the appellant dealt the fatal blow to the deceased, when he interfered to pacify the quarrel with his mother. Learned Trial Court further held that the evidence of the eye witnesses and the post occurrence witnesses like P.Ws. 1, 2, 5, 8, 9 and 10 are found to be consistent clearly pointing to the guilt of the appellant as to the commission of the offence.

The learned Trial Court, however, found that the appellant was quarreling with his mother and when the deceased interfered, he got annoyed and dealt a blow by the sickle which he was holding and there is no evidence to show that the appellant was holding the sickle only to assault the deceased or that he knew the deceased was going to intervene in the quarrel. The learned Trial Court further held that "the intention to cause death" was conspicuously absent and whatever the appellant had

done, it was on the spur of the moment and there was no pre-meditation to cause the death of the deceased. The learned Trial Court though acquitted the appellant of the charge under section 302 of the Indian Penal Code but held that the prosecution has proved the case beyond all reasonable doubt under section 304 Part-II of the Indian Penal Code and accordingly found him guilty of such offence.

6. Learned counsel for the appellant Mr. Sidhartha Swain contended that the evidence of the eye witnesses i.e. P.W.3 and P.W.4 are not clinching and therefore, the learned Trial Court should not have accepted their evidence to convict the appellant. He further contended that P.W.3 was related to the deceased and a highly interested witness and there are contradictions in her evidence which have not been taken into account in its proper prospective and therefore, it is a fit case where the appellant should be given benefit of doubt.

Mr. Janmejaya Katikia, learned Additional Government Advocate on the other hand contended that the evidence of eye witnesses are clinching and it gets corroboration from the medical evidence and the approach of the learned Trial Court in convicting the appellant under section 304 Part-II of the Indian Penal Code is quite reasonable and justified and since

there is no infirmity in the impugned judgment and order of conviction, the appeal should be dismissed.

7. The case of the prosecution is mainly based on the evidence of two eye witnesses to the occurrence i.e. P.W.3 and P.W.4.

P.W.3 Meena Acharya is the daughter-in-law of the deceased and she has stated that on the date of occurrence while the deceased was looking at a horoscope, the brother of the appellant namely Pratap Kumar Acharya raised alarm that the appellant was assaulting his mother and hearing such shout, the deceased went there and she also followed him. She further stated that when the deceased asked the appellant as to why he was quarreling with his mother, the appellant all on a sudden stabbed on the chest of the deceased by means of sickle and the deceased fell down with profuse bleeding. P.W.3 further stated that she raised hulla and the villagers arrived at the spot and the appellant tried to escape from the spot with the sickle but the villagers caught hold of him and detained him. She further stated that P.W.1 and P.W.2 were not present at the time of occurrence. After the occurrence, she sent information to her husband (P.W.2) as well as P.W. 1 over telephone and all of them arrived at the village.

In the cross-examination, P.W.3 has stated that the appellant inflicted one stab injury and when the deceased was trying to pacify, the appellant protested and stabbed the deceased. The minor contradictions brought out in the cross-examination do not affect the credibility and reliability of her evidence.

Even though P.W.3 is related to the deceased as daughter-in-law but only on the ground that she was related to the deceased, her evidence cannot be thrown away particularly when her evidence appears to be clear, cogent and trustworthy and the same has not been shaken in the cross-examination. Related witness is not necessarily a false witness. Unless the evidence of such witness suffers from serious infirmity or raises considerable doubt in the mind of the Court, it would not be proper to discard his/her evidence straightaway.

P.W. 4 Madhusudan Acharya is another eye witness who stated that on the date of occurrence he saw that the deceased was trying to pacify the quarrel between the appellant and his mother and at that time, the appellant stabbed the chest of the deceased by means of a sickle and thereafter, the appellant escaped from the spot but he was caught hold by the villagers and the sickle was recovered. Nothing has also been

elicited in the cross-examination of P.W.4 so as to discard his version.

Thus the evidence of eyewitnesses P.Ws. 3 & 4 have remained unshaken and from their evidence, it is sufficient to arrive at a conclusion that it is none else but the appellant who committed the crime and stabbed the deceased by means of a sickle on the chest as a result of which the deceased sustained bleeding injury and fell down on the spot and died.

P.W.6 who conducted post mortem examination has categorically stated that he found a stab wound vertically placed 3'' below and medial to left nipple slight left of sternum. The size of injury 2''x1/2'' communicating to the thoracic cavity. He further stated that the heart was completely punctured and the cause of death was due to injury to the vital organ such as heart producing shock and hemorrhage. The doctor has given his opinion that the death is homicidal in nature. He has also stated that the injuries are possible by M.O.I vide his report Ext.5.

Thus, the ocular evidence of P.Ws.3 & 4 gets ample corroboration from the evidence of the doctor who conducted the post mortem examination. The weapon of evidence i.e. sickle (M.O.I) was sent for chemical examination and the chemical

examination report which has been marked as Ext. 12 indicates that human blood was detected in the sickle.

The other post occurrence witnesses who arrived at the spot immediately after the occurrence have stated about the presence of the appellant at the spot with the sickle and further stated that while the appellant was trying to escape from the spot, he was apprehended at the spot and the sickle was recovered from his possession. The conduct of the appellant immediately after the occurrence in trying to escape from the spot with the weapon of offence is also admissible under section 8 of the Evidence Act. Recovery of the weapon of the offence from the possession of the appellant also lends support to the evidence of P.Ws.3 & 4.

The statements of the eye witnesses coupled with the medical evidence as well as the corroborating evidence of the witnesses who arrived at the spot immediately after the occurrence, apprehension of the appellant at the spot and seizure of the weapon of offence from his possession and finding of the human blood stains from the sickle are sufficient to establish the culpability of the appellant. Thus, the prosecution has established beyond all reasonable doubt that the appellant is the author of the crime.

The learned Trial Court has rightly held that the deceased was a peaceful intervener and when the appellant was quarreling with his mother, the deceased intervened and protested for which the appellant got annoyed and on the spur of the moment, the appellant dealt a single blow on the chest of the deceased by means of a sickle and there was no attempt to dealt any second blow and there was also no pre-meditation to cause the death of the deceased. The learned Trial Court was justified in acquitting the appellant of the charge under section 302 of the Indian Penal Code and convicting the appellant under section 304 Part-II of the Indian Penal Code. The substantive sentence imposed by the learned Trial Court cannot be said to be excessive or out of proportion and therefore, I am not inclined to interfere with the sentence.

Accordingly, the impugned judgment and order of conviction of the appellant under section 304 Part-II of the Indian Penal Code and sentence of rigorous imprisonment for ten years as was imposed by the learned Trial Court is hereby upheld.

It appears from the record that the appellant was taken into custody since 3.4.2005 and he was never released on bail either during trial or during pendency of this appeal and

therefore, he has already undergone the sentence which was imposed by the learned Trial Court. The appellant should be set at liberty forthwith from jail custody if he has not yet been released from jail, if his detention is not otherwise required in any other case.

Lower Court Records with a copy of this judgment be sent down to the learned Trial Court forthwith for information and necessary action.

In the result, the Jail Criminal Appeal stands dismissed.

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S. K. Sahoo, J.

Orissa High Court, Cuttack
The 26th May, 2016/Kabita