



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 26 of 2002
ODHC010017832002

An appeal against the order of conviction and sentence passed by Addl. Sessions Judge, Deogarh, dated 23.11.2001 in S.T Case No.260/43 of 2000).

Laxman Oram

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Appellant

-Versus-

State of Orissa

.....

Respondent

Advocate(s) appeared in this case through hybrid mode:

For Appellant : Mr. Sudipto Panda, Advocate

For Respondent : Mr. Partha Sarathi Nayak, AGA

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing :11.08.2026 :: Date of Judgment:25.08.2026

SASHIKANTA MISHRA, J.

The appellant has preferred this appeal against judgment dated 23.11.2001 passed by the Additional Sessions Judge, Deogarh whereby he was convicted u/s 302



of I.P.C. and sentenced to undergo rigorous imprisonment for life.

2. Prosecution case, briefly stated, is as follows.

The deceased, Sankarsan Pradhan, had a longstanding land dispute with the present appellant and other accused persons, in which he had succeeded. Being aggrieved, the accused persons decided to do away with the life of the deceased. On 13.08.1999, while returning from the weekly market at Purunapani on the bicycle of his co-villager P.W.2, Ramesh Patra, accused Laxman Oram followed the deceased and assaulted him with an axe, as a result of which he died on the spot. The accused then dragged the dead body to nearby bushes, concealed it and left the place carrying the axe. Afterwards, while holding the axe, he stated before the people gathered at the spot that he had killed the deceased. Upon hearing the same, PW-10, Mohan Kumar Pradhan, son of the deceased, lodged a written report at Barkote Police Station. The Officer-in-Charge registered the case and took up investigation, during which he visited the spot, prepared the



spot map, held inquest over the dead body, seized blood-stained earth and forwarded the dead body for post-mortem examination, besides seizing the wearing apparels of the deceased. During investigation, accused Laxman Oram, while in police custody made a confessional statement leading to the recovery of the axe stained with blood from his bari. The I.O. also seized the bicycle allegedly used by the accused and his blood-stained T-shirt and full-pant, besides other articles, and sent the seized materials for forensic examination. The accused was also identified by witnesses in a T.I. parade conducted by the S.D.J.M., Deogarh. On completion of investigation, charge-sheet was submitted against accused Laxman Oram under Sections 302/201 IPC and against accused Dasarathi Pradhan, Tikeswar Sahu, Barna Oram and Barik Oram under Sections 302/109/34 IPC.

3. The plea of the accused persons was of complete denial. Further, the accused took the plea of alibi.

4. To prove its case, the prosecution examined thirteen witnesses and proved twelve documents. The defence



examined two witnesses and proved two documents. Furthermore, five material objects were also proved.

5. After analysing the evidence on record, the trial Court held that the prosecution was able to establish the charge against the accused-appellant u/s 302 of IPC but failed to establish the same u/s 201 of the IPC. The conviction of accused Laxman Oram was based on the evidence of PW-3 in view of his presence at the spot of the occurrence at the relevant time, his own failure to establish his alibi, false submission regarding knowledge of the occurrence, his subsequent conduct and confession before the police. However, none of the charges were proved against the other accused persons.

Accordingly, the learned Trial Court convicted the appellant u/s 302 I.P.C. and sentenced him as stated hereinbefore.

6. Heard Mr. Sudipto Panda, learned counsel for the appellant and Mr. Partha Sarathi Nayak, learned additional government advocate for the State.



7. Mr. Panda assails the impugned judgment of conviction on the following grounds: -

- i.** Prosecution case rests on circumstantial evidence, but the circumstances relied upon by the trial Court do not form a complete chain pointing only towards the guilt of the appellant.
- ii.** The evidence of PW- 2 and 3 relied upon to establish the circumstances immediately preceding and following the occurrence, is unreliable and suffers from material contradictions and improvements.
- iii.** Evidence of identification of the appellant and his presence at or near the place of occurrence is not trustworthy.
- iv.** The recovery of the axe u/s 27 of the Evidence Act and blood-stained wearing apparels at the instance of the Appellant is highly doubtful.
- v.** The trial Court erred in drawing an adverse inference against the appellant on the ground that no witness came forward to depose against him due to fear.



vi. The trial Court failed to properly appreciate the plea of alibi.

8. Per contra, Mr. Nayak, would submit that the evidence of PW-3 proves the presence of the accused at the spot of occurrence and his subsequent conduct of attempting to abscond and confession while in police custody regarding the commission of the offence and recovery of murder weapon point towards the guilt of the appellant. Furthermore, the chemical examination report suggests the presence of human blood on the wearing apparel of the appellant which he failed to explain and his plea of alibi is unreliable. He further submits that the appellant had a clear motive for committing the same that is, a land dispute as testified by PW-10, the informant.

9. Before delving into the rival contentions, it would be apposite to take a look at the evidence on record independently. Perusal of the evidence on record shows that there is no reliable eyewitness to the occurrence; although PWs-2 and 3 were examined by the prosecution as eye-



witnesses they turned hostile before the Court and all other witnesses are post-occurrence witnesses. The I.O. seized the weapon of offence, i.e. an axe based on confession by the accused while in police custody which was later sent for chemical examination.

10. The evidence of PW-5, the doctor who conducted the post-mortem examination over the dead body, reveals that the death was homicidal in nature and caused due to rupture of intercostal vessels and bleeding into thoracic cavity. He further opined that the wounds were possible by striking of a stone. This according to us, unequivocally shows that the death of the deceased was homicidal in nature.

11. The principal circumstance projected by prosecution is the evidence of PW-2 & 3. It is claimed that they had seen the deceased being assaulted and then the assailant leaving the spot on his bicycle shouting his confession to the offence. However, both of them having been declared hostile and cross-examined by the prosecution their evidence has to be examined with due caution. Reference in



this regard may be had to the case of **Rameshbhai Mohanbhai Koli v. State of Gujarat**¹ wherein the Supreme Court stated as follows: -

"16. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof"

12. Keeping in view the above principle; we shall now take a closer look at the evidence of PW-2 who is stated to have accompanied the deceased while returning from the weekly market on his bicycle. However, during trial he stated to have left the place and went to his house when he heard of the occurrence from others. Therefore, based on such evidence, we find that PW-2 was not present at the spot of occurrence during the relevant time and as such he cannot be treated as an eye-witness in the present case.

13. Coming to the evidence of PW-3 who, as per the prosecution, is another eye-witness to the occurrence and

¹ (2011) 11 SCC 111



claimed to have seen the appellant leaving the spot on his bicycle and shouting his confession. Upon closer examination we find that PW-3 has stated that he heard from the people near the school that someone was assaulting a person. He further stated to have heard three blows of cutting sound and then rushed towards it while calling out to the teachers. While running he saw a man going away on a bicycle and shouting. He stated to have identified the man as the appellant. However, during his cross-examination, he stated that he had not identified the person on the bicycle to be appellant on his own but ascertained the identity of the man from the teachers present there.

14. It was further submitted that the appellant was identified by PWs-2 and 3 during a Test Identification Parade conducted by the S.D.J.M., Deogarh, on the prayer of the I.O. However, PW-2 stated in his cross-examination that he had seen the accused for the first time in police custody while he too was confined with the appellant. He further stated that he made his statement before the magistrate according to the instruction of the police and in their presence. This suggests



that the evidence of PW-2 regarding identification of the appellant could have been made under the influence and as such, casts serious doubts over its reliability.

Similarly, PW-3 in his cross examination categorically stated that he would not have been able to identify the appellant during the T.I. parade had he not previously seen him in police custody. The I.O., in his evidence before the Court, denied being present during the said parade and also denied that the appellant was identified by PWs-2 and 3 during such parade. Thus, the evidence relating to identification of the appellant in the Test Identification Parade is not free from discrepancies and is otherwise, not consistent with the prosecution case.

15. Therefore, in the absence of any other independent evidence establishing the identity of the assailant, the evidence of PWs-2 and 3 cannot be treated as sufficient to link the appellant with the assault. The alleged identification in the T.I. Parade also does not furnish such a link, in view of



the evidence of PWs-2, 3 and the I.O. as discussed hereinbefore.

16. The prosecution argued that the accused had a motive to commit the offence on account of the existence of prior enmity based on the evidence of PW-10. However, law is well settled that enmity can be ground both for the assault as well as false implication. Reference in this context may be made to the decision of the Supreme Court in **State of U.P. Vs. Kishan Chand, (2004) 7 SCC 629**, where the following was held: -

“9. The submission of the counsel for the accused that the testimony of PWs cannot be acted upon as they are interested witnesses is to be noted only to be rejected. By now, it is well-settled principle of law that animosity is a double-edged sword. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence.”

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[Emphasis Added]

Furthermore, motive, by itself, can only generate a suspicion against the accused. As per the settled position of law suspicion, however strong, cannot take place of proof.



In the present case, when the evidence regarding the identity of the assailant itself is doubtful, the alleged motive cannot provide the missing link to the chain of circumstances.

17. The final argument of the prosecution is based on the alleged confession of the accused in police custody to the murder of the deceased and the recovery of the alleged weapon of offence u/s 27 of the evidence act. As mentioned earlier, the recovered weapon was sent for chemical examination. However, the chemical examination report only states the presence of human blood and hair on the weapon. It is pertinent to mention that no serology examination was conducted over the blood or hair samples. Further, no opinion was provided by the chemical examiner connecting the samples to the deceased.

18. Even assuming the recovery to be admissible to the limited extent permissible under law, the same does not advance the prosecution case, since the recovered axe has not been connected with the injuries sustained by the deceased either through medical or scientific evidence. The mere



recovery of an axe bearing human blood, without any evidence connecting such blood to the deceased, cannot by itself establish that the said weapon was used in the commission of the offence.

19. The defence has contended, based on the testimonies of DWs-1, 2, that the appellant was not present at the spot of occurrence at the time of the occurrence. As discussed above, the learned trial Court did not accept the evidence of DW-1 & 2 in support of the plea of alibi of the accused. Even assuming that the said finding does not call for interference, the failure of the defence to establish the plea of alibi cannot, by itself, furnish the missing link in the prosecution case or relieve the prosecution of its primary burden of proving the guilt of the appellant beyond reasonable doubt.

20. Similarly, the conduct of the appellant in leaving the village, consulting a lawyer and subsequently surrendering before the Court, even if accepted, cannot by itself establish that he was the assailant, particularly when



the primary evidence connecting him with the occurrence is lacking. Likewise, any false explanation or denial of knowledge given by the appellant cannot shift the primary burden of proof from the prosecution and cannot form the basis for conviction.

21. On an overall assessment of the evidence, we find that none of the circumstances relied upon by the prosecution, individually or cumulatively, establishes the identity of the appellant as the assailant beyond reasonable doubt. This link is crucial for conviction in a case like the present where all evidence is circumstantial in nature. In the absence of any reliable evidence connecting the appellant with the person who assaulted the deceased, the remaining circumstances, even when taken cumulatively, cannot be held sufficient to prove the guilt of the accused beyond reasonable doubt, the benefit of which must go to the accused.

22. Before parting with the case, we would like to place on record our dissatisfaction in the approach adopted by the



learned Sessions Judge in the matter. As already discussed, the case at hand is one in which the order of conviction cannot be legally sustained for want of evidence showing the guilt of the accused beyond reasonable doubt. Learned Sessions Judge however appears to have brushed aside the absence of evidence and proceeded by adopting a moral and ethical approach. We reproduce the observations of the learned Sessions Judge under paragraph-20 of the judgment: -

“The scenario of the prosecution case reveals that though the occurrence took place in broad day light near the weakly sandy on the main road, no witness shouldered social responsibility to speak the truth before the Court. It is the common experience that there has been erosion in human conduct and the society at large is forgetting its liability and responsibility towards its citizen and the State. In these days, it is very difficult to come across witnesses who as their social responsibility depose the truth before the Court and if the Court could wait for the standard of proof as it was there in the gone by days, I am afraid we may be disappointed. It is well known to all concern that the witnesses now-a-days are influenced by many factors and it is less spoken is better”.



23. Considering the fact that the learned Sessions Judge was a Senior Judicial Officer with years of experience, we are unable to persuade ourselves to concur with his observation quoted above. It is needless to mention that in a criminal trial it is legally accepted evidence alone that matters and no other consideration can play a part in the process of adjudication. The bemoaning of the fact that no witness shouldered his social responsibility, we are constrained to observe, is not at all within the domain of the court nor is it relevant while adjudicating a criminal trial. We reiterate that in a system governed by rule of law under the larger umbrella of the Constitution of India, there is no place for emotion, sentiment or any moral and ethical consideration for the Court presiding over a criminal trial.

24. For the foregoing reasons, therefore, we are satisfied that the prosecution has failed to prove the charge u/s 302 of the IPC against the appellant beyond reasonable doubt. The conviction u/s 302 of the IPC is, accordingly, set aside.



25. The impugned order of conviction and sentence dated 23.11.2001 of the learned trial Court are hereby set aside.

26. In the result, the appeal is allowed. The accused appellant being on bail pursuant to order dated 11.03.2008 of the appellate Court, his bail bonds be discharged.

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(Sashikanta Mishra, J)

Manash Ranjan Pathak, J. I agree.

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(Manash Ranjan Pathak, J)

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