

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 119 of 2003

Narayan Behera & Another *Appellant*
Ms. Deepali Mohapatra, Advocate
-versus-
State of Odisha *Respondent*
Mr. J. Katikia, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK**

Order No.

**ORDER
19.05.2022**

07. 1. There are two Appellants before the Court aggrieved by the judgment dated 12th February, 2003 passed by the learned Sessions Judge, Deogarh in S.T. Case No. 40/13 of 1999-2000 convicting Appellant No.2 Raghu @ Raghunath Behera under Section 325 IPC and sentencing to undergo Rigorous imprisonment (R.I) for four years, convicting Appellant No.1 Narayan Behera for the offence under Section 302 IPC for committing the murder of Gobinda Kisan and sentencing Narayan Behera to imprisonment for life.
2. At the outset it requires to be noticed that during the pendency of the present appeal Narayan Behera was enlarged on bail by an order dated 10th January, 2005. The second fact to be noted is that Appellant No.2 Raghu Behera has expired and the report to this effect has been received from the IIC, Deogarh P.S. on 21st March, 2021. The same report also refers to the fact

that Appellant No.1 Narayan Behera is bed ridden being affected with paralysis since the last three years.

3. The background facts are that both the accused and deceased are co-villagers of Village Saloi under the Deogarh P.S. A piece of land possessed and cultivated by the deceased was ploughed by accused Raghunath Behera.

4. On 8th July, 1998 about 10 a.m. the deceased Gobinda Kisan was returning from his paddy field followed by his son, Bina Kisan (informant) (P.W.10). The deceased found the accused Raghunath Behera (Appellant No.2) on the way and asked him as to why he ploughed the land belonging to him (the deceased). There was an altercation between the Gobinda Kisan and Raghunath Behera over this. They caught hold of each other. While Gobinda Kisan gave accused Raghunath a blow with the blunt side of the axe, accused Raghunath also dealt a blow with the blunt side of the axe on the forehead of the deceased. The handle of the axe was broken and the tussle went on. In the meanwhile, Appellant No.1 Narayan (A2) crossed a fence and came running and snatched the axe from the hands of the deceased Gobinda Kisan and gave him blows to the sharp side of the axe on the right side of the chest. A witness Bhutulu Kisan (P.W.4) and Gobinda Kisan's son Bina Kisan (P.W.10) try to intervene to stop the assault. Both the accused are stated to have then run away.

5. There are four eye witnesses examined by the prosecution viz., P.Ws. 4, 10, 11 and 12. The trial court on examining their evidence found it to be reliable and consistent in proceeded to

convict the accused persons for the offences already mentioned and sentenced them in the manner indicated hereinabove.

6. This Court has heard submissions of Ms. Deepali Mohapatra, learned counsel for the Appellant and Mr. Katikia, learned Additional Government Advocate for the State.

7. Both from the evidence of P.Ws. 4 as well as the P.W.10 the sequence of the events clearly emerges. It indicates that the deceased confronted the accused over the ploughing of his land which A-2 was claiming to be his own. In that altercation both Appellant No.2 Raghunath Behera and the deceased Gobinda Kisan dealt blows to each other but with the blunt side of the axe. As far as Appellant No.1 Narayan Behera is concerned, he did not come there armed and he crossed the fence to try to intervene since his father Raghunath Behera (Appellant No.2) was being attacked. He then snatched the axe from the hands of the deceased Gobinda Kisan and on the urging of Appellant No.2 attacked Gobinda Kisan on the arm and the chest. Clearly, this was on the heat of the moment and on grave and sudden provocation in the form of the father of the accused being attacked by the deceased.

8. The ocular evidence that has emerged from the depositions of both P.Ws. 4 & 10 finds full corroboration in the medical evidence. P.W. 2 who conducted the post mortem has stated that he found following wounds on the body of the deceased.

- (i) Incised wound on right upper arm through and through cut cutting the skin and muscles, brachial vessels etc. size 3" x 1 ½" and it was dangerous in nature.

- (ii) Laceration on left and frontal area 1 ½” x 1” size and dangerous in nature.
- (iii) Incised wound middle of the right chest wall 1 ½” x ½” in size dangerous in nature.

9. Two of the above injuries has stated to have been caused by the accused Narayan Behera (Appellant No.1 herein). However, the facts remains that he had come to the scene unarmed and it was on account of his father being attacked by the deceased that he was provoked to reacting to it and gave a fatal blow to the chest of the deceased to which the deceased succumbed. This was certainly not a pre-planned murder but on the spur of the moment and therefore the ingredients of Explanation 4 to Section 300 IPC is attracted. It is an offence of culpable homicide not amounting to murder.

10. The Court is of the considered view that the offence is punishable under Section 304(Part-II) IPC since it is essentially offence as a result of grave and sudden provocation and over a piece of land. The Appellant No.1 having already undergone nearly 7 years of imprisonment the sentence is confined to the period already undergone. The appeal is accordingly disposed of. The bail bonds of Appellant No.1 shall stand discharged.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge