

IN THE HIGH COURT OF ORISSA AT CUTTACK**JCRLA Nos.46 and 49 of 2005**

Baset Majhi *Appellant*
(In JCRLA No.46 of 2005)

Hikim Majhi *Appellant*
(In JCRLA No.49 of 2005)

-versus-

State of Odisha *Respondent*

Advocates, appeared in these cases:

For Appellant : Ms. Bijayalaxmi Tripathy,
Advocate
For Respondent : Mr. S.N. Das,
Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

JUDGMENT
06.05.2022

Dr. S. Muralidhar, CJ.

1. Both the appeals are directed against the same impugned judgment of conviction and order of sentence dated 8th December 2004 passed by the learned Additional Sessions Judge, Rairangpur in C.T. No.50 of 2003 (ST No.251 of 2003) convicting each of the Appellants for the offence punishable under Section 302/34 of IPC and sentencing them to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs.1,000/- and in default to undergo RI for one month each.

2. It must be mentioned here that while Baset Majhi (Accused No.2/A2), the Appellant in JCRLA No.46 of 2005 was enlarged on bail on 30th August 2012, Hikim Majhi (Accused No.1/A1), the Appellant in JCRLA No.49 of 2005, was enlarged on bail on 2nd December, 2011. They have each approximately undergone imprisonment for more than eight and half years.

3. The case of the prosecution is that the two Accused are the cousin brothers of the deceased Purna Chandra Soren. On 10th May 2003, at around 7 am, both the Accused went to the land where the deceased and his son were present and they had an argument about why the deceased was ploughing the land. The deceased replied that he was ploughing his own land. Upon this, A1 stated to have pelted a stone which hit near left ear of the deceased. A2 then assaulted with a mud boulder on his head. Thereafter, with the Barishi, A1 caused severe bleeding injuries on the cheek of the deceased. Soon after this, the son of the deceased Pitha Soren (P.W.2) ran away to his house out of fear and reported the matter to his mother. Thereupon, the wife of the deceased, one Laxmi Soren and others came running to the land and found the deceased lying senseless with bleeding injuries. They shifted him by a car to Badampahad Primary Health Centre, but the Doctor advised that he should be shifted to the Rairangpur Hospital. They reported the matter to the Informant-Pitabas Majhi (P.W.1) whose house was situated in front of the Badampahad PHC. The Doctor at Rairangpur Hospital declared the deceased as brought dead.

4. P.W.1 lodged a written report at the Police Station at around 10.30 am on 10th May, 2003. Soon thereafter investigation commenced. The Accused were taken into custody and the charge sheet was filed. The Accused pleaded not guilty and claimed trial.

5. The prosecution examined 12 witnesses, whereas the Defence examined one witness (D.W.1). P.Ws.5 and 6 were the two eye-witnesses who were ploughing the adjoining field. P.Ws.3, 8 and 9 were the seizure witnesses. P.W.2 is the son of the deceased who was present at the spot at the time of the incident.

6. On analyzing the entire evidence, the trial court came to the conclusion that the testimonies of P.Ws.2, 5 and 6 inspired confidence. P.W.2 was only 12 years old at the time of the assault on his father. Being just 12 years old, his running out of fear to his house and reporting the matter to his mother was natural. The testimonies of P.Ws.5 and 6 about the Accused assaulting the deceased also inspired confidence. Therefore, even if P.W.2 was a child witness and, therefore, was unable to correctly describe the sequence of the assault, his evidence coupled with that of P.Ws.5 and 6 proved that it was Accused who had assaulted the deceased by means of stone, earthen Dhela and Barishi which resulted in an instantaneous death.

7. This Court heard the submissions of Ms. Bijayalaxmi Tripathy, learned counsel for both the Appellant and Mr. S.N. Das, learned Additional Standing Counsel (ASC) for the Respondent-State.

8. It was submitted by Ms. Tripathy, learned counsel for the Appellant, that the evidence of P.W.2, an eye witness, was contradictory to his statement before the Investigating Officer (IO) (P.W.12) in material particulars thus rendering his testimony to be untrustworthy. P.Ws.3 and 11, who are stated to be the seizure witnesses, turned hostile and did not support the prosecution. It was pointed out that the Medical Officer (P.W.10) admitted in his cross-examination that one of the injuries to the deceased could be caused by a forced fall on a sharp stone and that other injuries could also be caused by fall on a stony surface. This version was also supported by the testimony of D.W.1. Lastly, it was submitted by Ms. Tripathy that the weapon of offence i.e. Barishi (M.O.V) did not reveal any bloodstain on chemical examination. It was also generally available in the house of an agriculturist. With the seizure witnesses not supporting the seizure of the weapon, it was perhaps not the weapon of offence at all. Therefore, the crucial piece of evidence was not proved by the prosecution.

9. Mr. Das, learned ASC for the State on the other hand supported the impugned judgment of the trial court. He submitted that the testimony of P.W.2 supported by the testimonies of P.Ws.5 and 6 conclusively proved that it was the Accused who had murdered the deceased. This was a case based on eye-witness testimony which was trustworthy and reliable and therefore any discrepancy in the seizure of the weapon or the evidence associated therewith would not dilute the evidence of the eye-witnesses. He

accordingly prayed that the impugned judgment of the trial court does not call for any interference.

10. While P.W.2 could be said to be a related witness and therefore an interested witness, being the son of the deceased, P.Ws.5 and 6 were working in the neighbouring field and had literally no axe to grind against the Accused. The Court therefore proposes to discuss the evidence of P.Ws.5 and 6 first.

11. P.W.5 is Budhram Pingua. He was ploughing the land of one Chhot Rai with one Gurucharan @ Charan Hembram (P.W.6) at the time of the incident. The adjoining land accordingly to him was that of the deceased. At the time of the incident, according to P.W.5, the deceased was cleaning his teeth sitting on the ridge of the land and his son (P.W.2) was ploughing the land. At that time both the Accused came there and talked to the deceased and they then assaulted the deceased by means of a stone. The deceased fell down on the ground. Thereafter, he was assaulted by a Barishi. P.W. 5 could not specify which of the two Accused used the Barishi. He witnessed the deceased sustaining bleeding injuries as a result of the attack. He then stated that he and P.W.6 ran away to the house of their master Chhot Rai Naik (P.W.7) and reported the incident to him.

12. P.W.5 was subjected to extensive cross-examination. Nothing whatsoever that could be elicited to raise any doubt about the veracity of the testimony of P.W.5. Except saying that he did not know which of the Accused first assaulted the deceased, P.W. 5

made no mistake about the identity of the two Accused and their coming to the land which was being ploughed by the son of the deceased and attacking the deceased in a manner earlier described. A suggestion was made to him that at the time of the attack, there was a bursting of a truck tyre nearby and due to the sound, the bullocks used in the ploughing ran away and that Purna chased his bullocks and fell down and sustained injuries. This was a false narrative which was unable to be substantiated by the Accused.

13. Next the Court turns to the deposition of P.W.6. His testimony was more or less in the same lines as P.W.5. It was consistent and corroborated by P.W.5 in all material particulars. He correctly identified both the Accused as the persons who had attacked the deceased with stone and Barishi. He too denied the story that the bullocks used for ploughing had run away and while chasing them the deceased had fallen on a stony surface and sustained injuries.

14. The two eye-witnesses testimonies completely corroborate the testimony of P.W.2 who at the time of incident was a Class-V student and his age was just 12 years. He was more specific in pointing out that A1 had assaulted the deceased by means of Dhela (mud stone) after which A2 attacked him with Barishi on the neck and head region causing bleeding injuries. He too denied the alternative theory of the Accused about the manner in which the deceased had died.

15. The Court is satisfied that the eye-witness testimonies of P.Ws.2, 5 and 6 corroborate each other on material particulars that

consistent, cogent and clearly describe the incident. Their cross-examination has not yielded much for the defence.

16. When the above evidence is read along with the evidence of Doctor Chhatish Chandra Mohanta (P.W.10) who conducted the postmortem of the deceased it becomes clear that the ocular testimony is fully corroborated by the medical evidence. P.W.10 noticed, during the post mortem, the following injuries on the deceased:

- "(i) Lacerated wound present over left cheek of size about 3" x 1" x bone deep and piercing into oral cavity with palpable fracture of mandible on left side.
- (ii) Lacerated oozing wound of size 1" x 1/3" x bone deep present over left molar eminence.
- (iii) Huge bruise over left upper cheek just anterior to left ear of size about 3.5 x 2".
- (iv) Bleeding from left ear, mouth and both nostrils.
- (v) Abrasion over left upper part of chest of size about 3" x 2 "."

17. On dissection P.W. 10 found multiple fractures over the left side body of mandible with presence of surrounding hematoma. His opinion was that the injuries were ante mortem and might have been caused by hard and blunt cutting weapon. There was a big hematoma in the scalp tissue. There was also subdural hematoma under the fracture side in the left parietal area. He opined that the death might have been caused as a result of hemorrhage and shock resulting from injuries to the vital organ (brain) fracture mandible as well as lacerated wounds.

18. While P.W. 10 said that Injury No.(i) could be caused if one would fall on force on a sharp stone and the other injuries could be caused by falling on force on stony surface, the evidence of P.Ws.2, 5 and 6 are clear how the injuries were caused. In the considered view of the Court the medical evidence corroborates the ocular evidence of P.Ws.2, 5 and 6.

19. In a case of direct evidence as the present one, even one solid eye-witness is more than sufficient to prove the case of the prosecution. In the present case, with the eye-witness testimony of P.Ws.2, 5 and 6 being consistent and cogent in describing the incident, the role of the accused, the Court does not consider it necessary to discuss either the issue of motive or the fact that the witnesses to the seizure of the weapon turned hostile. Merely because the chemical examination report does not disclose the presence of bloodstains on the Barishi, it will not be conclusive that it was not used in the commission of the murder. The weapon was identified by the eye-witnesses as having been used in the assault.

20. Having carefully perused the impugned judgment of the trial court and having considered the submissions of learned counsel for the parties, the Court is satisfied that the impugned judgment of the trial court does not suffer from any legal infirmity either in the analysis of the evidence or the conclusions reached. The prosecution has been able to successfully prove, beyond all reasonable doubt, the guilt of both the Appellants for the murder

of the deceased punishable under Section 302 read with Section 34 IPC.

21. Consequently, both the appeals are dismissed. The bail bonds of both the Appellants are hereby cancelled. They are directed to surrender forthwith in any event not later than 30th May 2022 failing which the IIC of the concerned Police Station will take steps to take them into custody for the purpose of serving out the remaining sentence. LCR be returned forthwith to the court concerned.



*S.K. Guin/
Sr. Stenographer.*