

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.110 of 2005

Madgu Tudu and another

....

Appellants

Mr. Sameer Kumar Singh, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. P.K. Muduli, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

DATE OF JUDGEMENT : 07.04.2022

Dr.S. Muralidhar, CJ.

1. This appeal is directed against the judgment of conviction and sentenced dated 15th April, 2005 passed by the Additional District and Sessions Judge, Fast Track Court, Rourkela convicting both the Appellants for the offences under Section 302 read with 34 IPC and sentencing each of them to undergo rigorous imprisonment for life (RI) and to pay of fine of Rs.2000/- and in default to undergo R.I. for six months in S.T. Case No.202/51 of 2004.

2. The case of the prosecution was that on 1st April, 2004 deceased Susanta along with Bhola Das (P.W.22) god-son of Susanta Das father went to the house of one Ranjeeta Majhi to watch Film in her T.V. In the night, there was a quarrel between the deceased Susanta and the two accused outside the house of the Ranjeeta and there was pulling and pushing. Thereafter, while Susanta was returning with P.W.22 to the house both the accused persons assaulted the deceased with a 'thenga'. As he fell down they

assaulted again by hands and bricks and then fled away. P.W.22 went to the house of the deceased called his younger brother Sumanta @ Bapi to take the deceased to the house. After being brought to the house Susanta died. Manmath Lenka (P.W.1) the father of the deceased lodged a report to the police and the case was then registered and both accused charge sheeted for the offence under Section 302 read with 34 IPC the pleaded not guilty.

2. Twenty-four witnesses were examined for the prosecution. The Judicial Magistrate who held the Test Identification (T.I. parade) was examined as P.W.24. Several witnesses including P.W.5, P.W.6 and P.Ws.10 to 16 turned hostile. As already mentioned, the informant P.W.1 and his two children P.Ws.2 and 3 were witness to Susanta alias Babu dying in front of them with bleeding injuries and stating that the two accused had assaulted him. P.W.4 was witness to the inquest and recovery of the weapon of offence on the basis of disclosure statement of the accused. The accused who went absconding from the scene of occurrence were arrested subsequently on 3rd April, 2004 from a village in Keonjhar.

3. The trial court discussed extensively the evidence of the solitary eye witness P.W.22 and concluded that he was reliable although he was related to the deceased. His evidence was found to be truthful. The trial court also discussed the evidence of P.Ws.4 and 8, who were present along with the Investigation Officer (P.W.21) at the time of recovery of the badi and the brick used in the assault of the deceased.

4. This Court has with a learned counsel for the parties and examined the evidence. The eye witness P.W.22 spoke clearly of the two accused assaulting the deceased with a 'thenga' first and then by hands and a brick. P.W.22 was extensively cross-examined but nothing useful could emerge therefrom for the accused. The testimony of PW 22 was natural, truthful and reliable. Although, he may be the son of the aunt of the deceased, his testimony cannot be discarded on that score, particularly since it stands fully corroborated by the medical evidence of P.W.17, the doctor who conducted the post-mortem of the deceased. There were as many as eight injuries on the dead body of the deceased. One was an incised wound of size 1 and ½ "X ½" scalp on the occipital region.

5. Learned counsel for the Appellants first submitted that the star witness P.W.22 was not able to identify that two accused correctly. This is not true, as revealed by the evidence of the Judicial Magistrate First Class (PW 24), who conducted the T.I. Parade. he clearly stated that when P.W.22 was asked to identify those who had played an active part in the commission of the murder of the deceased, P.W.22 identified both the accused promptly. Thus, the identification of both the accused by the star eye witness P.W.22 strengthened the case of prosecution. The role of both the accused is also spoken of by P.W.1 to P.W.3. All three of them have named of two accused as the persons who assaulted the deceased. The medical evidence fully corroborates the eye witness testimony.

6. The evidence produced by the prosecution was sufficient to bring home the guilt of both the accused. Consequently, the Court is unable to find any legal error having been committed by the trial court in convicting both the Appellants for the offence under Section 302 read with 34 IPC and sentencing them as aforementioned. There is no merit in the present appeal and it is dismissed as such.

7. The bail-bonds furnished by the Appellants are cancelled. they shall surrender forthwith. If they fail to do so within two weeks, the concerned I.I.C. will take immediately steps to have them taken into custody to serve out the remainder of their sentence..

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge