

From the judgment of conviction and order of sentence dated 28.03.2011 passed by the learned Sessions Judge, Keonjhar in Sessions Trial No.269 of 2009.

The Appellant (accused) thereunder has been convicted for commission of offence under section-302 of the IPC and he has been sentenced to undergo imprisonment for life and pay fine of Rs.5,000/- with the default stipulation to undergo rigorous imprisonment for one years.

2. Prosecution case is that on 07.04.2009 in between 6 pm to 7 pm, one Dharani Munda (P.W.1) was proceeding in search of his calf and while passing by the side of the house of the accused, he was talking with the mother of the accused. During then, he found Gamha Munda (deceased) proceeding on that road. The accused present there called Gamha to their courtyard to consume Handia, a locally prepared intoxicant. Having consumed Handia they got intoxicated, at about 8 pm, the accused assaulted Gamha on his head and Gamha then shouting 'Marigali, Marigali', fell down on the ground when this Dharani, P.W.1 out of fear left the place as he then entertained in mind that the accused might attack him. In the morning, he went to the place and saw the dead body of Gamha lying in front of courtyard of the accused. He being the Ward Member of the village, then lodged a written report (Ext.3) at Nayakote P.S. Pursuant to the same, Nayakote P.S. Case No.14 of 2009 being registered by the Inspector-In-Charge of the P.S. (P.W.5), the investigation commenced.

The Investigating Officer in course investigation held inquest over the dead body of Gamha and got the postmortem examination conducted by the Doctor on Police requisition. He then examined the witnesses including the informant and made seizure of the incriminating articles. It is also stated that the accused being in Police custody led to give recovery of an iron bar which too was seized. The incriminating articles being sent for chemical examination, the report was received. Finally on completion of investigation, charge-sheet was submitted placing the accused to face the trial for commission of offence under Section-302 of the IPC for causing the murder of Gamha by intentionally causing his death.

3. The learned Sub-Divisional Magistrate, Keonjhar having taken cognizance of the offence, after observing legal formalities, committed the case to the Court of Sessions for trial and that is how the trial commenced by framing the charge for the above offence.

4. The prosecution in the trial has examined in total five (5) witnesses. Besides leading the oral evidence, the prosecution has also proved the F.I.R., Ext.3, Postmortem Report, Ext.1, Chemical Examiner's Report, Ext.12/1, statement of the accused leading to discovery of the weapon, M.O.-I as Ext.7 etc.

The plea of the accused is that of complete denial and false implication as the villagers including the Informant (P.W.1) were not

in good terms with him since he being the cow-head man of their village was grazing the cows and goats of the villagers of Kanda Sahi on the land of their village.

5. The Trial Court upon examination of evidence of the Doctor who conducted postmortem over the dead body of Gamha and the report as well as the other witnesses has held the death of Gamha to be homicidal. Proceeding to examine the other evidence on record to ascertain the complicity of this accused, upon analysis of the same at its level finally the Trial Court has held that the prosecution has proved its case against the accused beyond reasonable doubt. Hence, the accused being found guilty of commission of under section-302 of the IPC, he has been sentenced as aforestated.

6. Mr. S. Swain, learned Counsel for the Appellant submitted that the evidence of the witnesses examined from the side of the prosecution ought not to have been believed and as such the Trial Court has erred in holding that the prosecution through such evidence of those unreliable witnesses has proved its case against the accused beyond reasonable doubt. In this connection, he has taken us through the depositions of the witnesses in critically analyzing them one by one which would be dealt in course of our discussion to follow. He thus submitted with that such evidence on record, the finding of guilt is unsustainable.

7. Mr. Mr. S.K. Nayak, learned Additional Government Advocate submitted all in favour of the finding returned by the Trial Court holding the accused guilty for commission of murder of Gamha Munda. He submitted that all the witnesses, most importantly, the P.W.1 have directly implicated the accused to have assaulted the deceased on his head which has proved fatal, and therefore, the said injury being sufficient in ordinary course of nature to cause death, the accused had been rightly convicted.

8. Keeping in view the submissions made; We have carefully read the judgment passed by the Trial Court. We have also extensively travelled through evidence of the witnesses and have perused the documents admitted in evidence and marked Exhibits i.e. Exts.1 to 12.

9. In addressing the above rival submissions and proceeding to judge the sustainability of the finding of the guilt against the accused as has been returned by the Trial Court, We are called upon to undertake the exercise of examination of the evidence let in by the prosecution.

10. P.W.1 is the star witness for the prosecution who is also the Informant of the case who has lodged the F.I.R., Ext.3. He is said to be the witness to the occurrence. The F.I.R. version is that when he was talking with the mother of the accused, Gamha Munda (deceased) was called by the accused and they then consumed Handia and got

heavily intoxicated. It is narrated in the F.I.R. that when he arrived at the house of the accused, it was around 6 to 7 pm and around 8 pm, the actual incident took place when accused gave one blow on the head of the deceased. The F.I.R. does not indicate as to by means of what the blow was given, which resulted the fall of the deceased. It is indicated therein that accused dealt a blow on the head of Gamha. It is stated in the F.I.R. that seeing the incident when accused assaulted the deceased, out of fear, he ran away. This being the first version of P.W.1, his evidence in Court is that Gamha died around 6 pm and he had been assaulted by the accused on his head by a flat iron bar. It being his version in the F.I.R. that he ran away from the spot out of fear; he is silent as to why he entertained such fear and what was the reason for him not to take any further action, immediately there at the spot in restraining the accused and saving the deceased or even going to see the condition of the deceased there at the spot when he was lying. He is remaining totally silent on that score. From the above, it is seen that there has been the introduction by P.W. 1 in evidence as to the weapon which was used in assaulting the deceased. He being the Ward member of the village at that time when it was around 6 to 7 pm had not even taken any step to inform any villager and rather remained silent till the next morning, when he reported the matter at the Police Station after inspecting the dead body in the front courtyard

of the accused. He is also not stating anything that seeing the incident, he disclosed it before any other villager/s immediately or raised any hullah/cry at the spot or even in the village that too when he is not stating that accused had ever attempted to attack him in any manner. Such conduct of this witness (1) is wholly unnatural and for the same, his status as an eyewitness as he claims comes under thick cloud. Furthermore, P.W. 1 in the evidence is not stating anything as to what was the occasion for him to go there and stay for about an hour or so. It is rather the doubtful feature that he would remain detained there for such a long time in engaging himself in discussing with the mother of the deceased. It's as if he had gone there with the premonition at that point of time in that evening that such an incident would happen when the accused would be assaulting the deceased in causing his death. Furthermore, the mother of the accused namely, Chemei Munda has not been cited as a witness to at least say that P.W.1 and she had then talked for some time. No explanation is also offered. All these rather create grave doubt in mind that as to whether this witness was present and had actually seen the incident where the accused assaulted the deceased.

11. The other important witness for the prosecution is P.W.2, who is none other than the wife of the deceased. She states that when her husband was in their house, he was called by the accused to his house

to consume Handia. Said part of the evidence is seen to be in great variance with the version in the F.I.R. and the evidence of P.W.1 that the deceased when was going on the road was called by the accused to come to their house to take Handia.

P.W.2 states that when he went to call her husband to come back, she saw the accused assaulting on the head of her husband by flat iron bar. She however is not stating that at that time P.W. 1 was present there or that even on her way she had seen P.W.1, who has stated that the accused had given a solitary blow and he is also not stating that P.W.2 had arrived there at that time. The evidence of this witness being read as a whole, rather gives an impression that as if the accused was going on assaulting the deceased which this witness could see on her arrival, when the fact remains as per the evidence of P.W.1 that it was a solitary blow on the head which just over within fraction of a second. Furthermore, the deceased having left the house, it is seen from the evidence of P.W.2 that as if the accused was waiting for her arrival to assault the deceased. More importantly, when this witness stated to have seen the accused assaulting the deceased, it is the positive evidence of P.W.5, the Investigating Officer as he had so ascertained during investigation that, this witness P.W.2 who is the wife of the deceased is a post occurrence witness with such positive evidence of P.W.5; the evidence of P.W 2 falls flat

on the ground and thus cannot be so accepted as her arrival there at the spot stands doubted. With the above available evidence as discussed, thus, We hold that the Trial Court is not right in concluding that the accused is guilty of committing murder of Gamha Munda.

Therefore, in our view, the impugned judgment of conviction and order of sentence cannot be sustained.

12. In the result, the Appeal is allowed and the judgment of conviction and order of sentence passed by the learned Sessions judge, Keonjhar in Sessions Trial No.269 of 2009 are hereby set aside. The Appellant (accused) be set at liberty forthwith in case his detention is not so required in any other case.

**(D. Dash),
Judge.**

Dr.S.K.Panigrahi, J. I Agree.

**(Dr.S.K.Panigrahi),
Judge.**

Narayan