

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLA No.570 of 2014

(From the judgment of conviction and order of sentence dated 22.09.2014 passed by the learned Additional Sessions Judge, Baripada in S.T. No.18/ 205 of 2010-09)

Lachhman Singh & Ors. *Appellants*

-versus-

State of Odisha *Respondent*

Advocates appeared in the case:

For Appellants : *Mr. Subrata Panda, Adv.*

-versus-

For Respondent : *Mr. S.S. Kanungo, AGA*

CORAM:

MR. JUSTICE D. DASH

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-24.11.2022

DATE OF JUDGMENT:-23.12.2022

Dr. S.K. Panigrahi, J.

1. The Appellants have preferred this Criminal Appeal challenging the judgement of conviction and order of sentence dated 22.09.2014 passed by the Learned Additional Sessions Judge, Baripada in S.T Case No.18/205 of 2010-2009, arising out of G.R Case No.423 of 2009 of the file of the

learned S.D.J.M., Baripada; wherein the Learned Additional Sessions Judge, Baripada has convicted the Appellants for commission of offence punishable under Section 302/34 of the I.P.C and accordingly, sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default to undergo further R.I for a period of six months.

I. CASE OF THE PROSECUTION

2. The case of the prosecution in brief is that the Informant Surendranath Singh, son of Manohar Singh(deceased) lodged a F.I.R before the IIC, Bangiriposi P.S. stating therein that there was civil dispute between their family and the accused appellants' family over a homestead since 2005 and the same was decreed in favour of the Informant party before one month from the date of occurrence.
3. On 09.04.2009 at about 9 P.M, the accused Narasingh Singh and his wife accused Budha Singh started quarreling with the Informant and his uncle named Harihar singh @Suria for taking water from the well. At that time, Sridhar Singh-son of accused Narasingh assaulted the Informant's uncle by holding his collar and accused Harihara Singh and Lachhaman Singh rushed towards them holding Tangia and threatened to kill them. Accused Lachhaman dealt Tangia blow to the father and elder father of the informant, Manahar

Singh and Chhotrai Singh as a result of which they both died at the spot. The accused persons also injured to the aunt of the Informant on her head. The accused persons chased the Informant and his uncle for which they entered inside the house and locked the door from inside and saw through the widow that the accused persons severed the head of the deceased persons and went away from the spot holding the severed heads in their hand. The Informant found the dead bodies having no head. Thereafter, Raiban Singh- the ward member of the village reached the spot and reported the matter to the police.

4. Based on the written report, Bangiriposi P. S. Case No- 31 of 2009 was registered against the accused appellants for the alleged offences under section 302/34 of IPC. After the investigation, the police submitted charge-sheet for the said offences and the appellants faced trial.
5. Learned Additional Sessions Judge, Baripada after perusal of the depositions adduced by the prosecution witnesses, convicted the appellants for commission of offence punishable under Section-302/34 of the I.P.C. and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default to undergo further R.I for a period of six months.

II. SUBMISSIONS ON BEHALF OF THE APPELLANTS

6. It is submitted by Learned Counsel for the Appellants that that the FIR as well as the other evidence produced by the prosecution is completely contradictory to each other. Moreover, while passing the impugned order, the Learned Trial Court has not considered the injury sustained by the accused persons and it has remained unexplained by the prosecution. As such the impugned order is liable to be set aside on the ground that the prosecution allegation is not proved beyond reasonable doubts.
7. It is contended by Learned Counsel for the Appellants that on the basis of the alleged inadmissible confession of the accused persons made while they were in police custody, the Learned Trial Court has presumed the guilt of accused persons and held them as guilty for being the authors of the alleged offences. The Learned Trial Court has not properly considered the circumstances that the alleged occurrence happened due to a sudden fight between two group of persons and the alleged occurrence falls within the exception-IV of Sec-300 of 1.P.C as the incident happened without any premeditation. Further, a bare perusal of the prosecution evidence reveals that the said evidence seems to be false and foisted against the appellant by the interested persons. The Informant and the rivals of the

appellant have joined hands to harass the appellants as there is no evidence at all to prove how and when the alleged occurrence took place and the prosecution has completely failed to prove the allegations against the appellants beyond all reasonable doubts.

8. The Learned Counsel, during the course of argument, raised that there is absolutely no common intention on the part of the accused persons to commit the crime. There is no evidence on record to show that there was prior meeting of minds of the accused persons to commit the crime. Moreover,

III. SUBMISSIONS ON BEHALF OF THE STATE

9. Per Contra, it is submitted by Learned Additional Government Advocate for the State that the prosecution has successfully established its charge under Section 302/34 of I.P.C against the accused persons beyond all reasonable doubt. The P.Ws examined on behalf of the prosecution have fully supported the prosecution case and their evidence on material aspect is found consistent throughout and corroborated to each other. The material eye witnesses i.e., P.Ws 1,2,4,9, 14 & 17 have clearly and consistently stated regarding the role played by each of the accused persons at the time of occurrence.

10. P.W.6 who has got no animosity with the accused appellants, is an independent witness to the taking of severed heads by

the accused appellants and he has also overheard the accused persons talking that they had murdered the deceased persons. Moreover, the accused appellants themselves surrendered in the police station with the severed heads and weapon of offence (Tangia) and this fact itself establishes the culpability of the accused persons.

11. Furthermore, insofar as discrepancies in the version of witnesses viz-a-viz the FIR is concerned, it is argued by Learned Addl. PP that human memory is fallible, and discrepancies are bound to occur even in the statement of truthful witnesses. The contradictions and omissions, which do not affect the root of the prosecution case, cannot be taken into consideration.

IV. COURT'S ANALYSIS AND REASONS

12. The prosecution, to bring home the charge against accused appellants, has examined as many as 26 witnesses. Out of them, P.W.1 is the Informant himself as well as son of the deceased Manohar Singh and P.W.2 and P.W.9 are respectively his(informant's) wife and nephew. P.W.14 is Informant's mother as well as wife of deceased Manahar. P.W.4 is the wife, whereas PW17 is the daughter of the deceased Chhotrai. They all are eyewitnesses to the occurrence. P.Ws 3, 8, 19, 20 & 21 are the co-villagers of the

parties and are post- occurrence witnesses as well as witnesses to the inquest. P.W.5 is the brother of deceased Manahar, who during the incident went to call village ward-member. P.W.6 is another co-villager, who saw the accused persons taking away the cut-heads of the deceased persons. P.Ws.7, 10, 18, 22, & 25 are witnesses to different seizures. P.W.11 is the doctor who conducted postmortem examination over the dead body of deceased Manahar Singh. P.W.15 is another doctor, who conducted postmortem over the dead body of deceased Chhotrai Singh. P.W.12 is another doctor, who on police requisition, medically examined the accused persons namely Lachhaman, Harihar and Narasingh. P.W.16 is another doctor, who on police requisition, medically examined the injured persons i.e. Informant or P.W.1. Budhuni, Suru, Manguli, who sustained injuries during course of the Incident. P.W.24 is the Scientific Officer, D.F.S.L., Baripada. P.W.26 is the LO. who investigated major part of this case and P.W.13 is another I.O who only submitted the charge sheet of this case. On the other hand, the defence has neither adduced any oral nor documentary evidence in support of its stand.

13. In a case involving murder, the primary point that arises for consideration is whether the death of the deceased was homicidal in nature. According to the deposition of P.W.11, the head of the deceased Manahar Singh was cut irregularly

and separated from the body below the Thyroid cartilage. He categorically deposed that cut margin was irregular and the injuries were antemortem in nature and the time of death was within 24-48 hours of the post-mortem examination. Further, he had opined that the weapon of offence i.e., Tangia produced by the police could have been used to cause the death and for separating the head from the trunk. Moreover, in the cross-examination, he had also stated that going by the circumference and the cut margin, he could ascertain that the severed head and the trunk was of one person; however, the same was not mentioned in the postmortem examination report. On the other hand, P.W.15 who conducted postmortem examination over the dead body of deceased Chhotrai Singh categorically deposed that head of the body of the deceased had been cut irregularly and separated from the Thyroid bone. P.W.15 opined that the injuries were ante mortem in nature and time of death was within 24-38 hours of the postmortem examination. He also deposed that the weapon of offence i.e., Tangia produced by the police could have been used for causing death and separating the head from the trunk of the body. From a bare perusal of the depositions of P.W.11 & P.W.15, it can be ascertained that the nature of injuries suffered by both the deceased persons are quite similar and cut margin being irregular in case of both persons, raises a

possibility that both the deceased persons were assaulted in a similar manner and with a similar weapon. In the instant case, it was also opined by P.W.11 & P.W.15 that the weapon of offence i.e., Tangia produced by the police could have been used for causing the death of deceased persons. Considering the nature of injuries on the bodies of deceased persons and the cut margin in both cases, it can be reasonably ascertained that both the deceased persons were hacked by a similar weapon i.e., tangia and in a similar manner. If the nature of injuries sustained by the deceased persons were to analysed in detail, it can be perceived that the death of the deceased persons was unnatural and homicidal in nature. Further, according to the evidence furthered by eyewitnesses P.Ws 1,2,4,9,14 & 17, the accused appellants brutally assaulted the deceased persons, first, by means of a crowbar and then severed their heads with a Tangia i.e., weapon of offence in the instant case. Moreover, P.W.6, who is an independent and post-occurrence witness has deposed that he saw the accused appellant Narasingha holding the severed head of one of the deceased on the night of occurrence and on being asked by Lachmann, he had even replied that the severed head belonged to Manahar.

14.P.Ws 1,2,4,9,14 & 17 are the relatives of the deceased persons and hence, are interested witnesses. Moreover, they are the

only eyewitnesses to the entire incident. According to P.W.1, both the parties had dispute over the homestead property which had later been decreed in favour of both the deceased persons and that was the reason of constant quarrel and friction between both the families. P.W.1 has deposed that the occurrence took place on 09.04.2009 at about 9 P.M. As per his statement, the accused Budha quarreled with the Informant and his uncle Harihar @ Suriya that they would not allow anyone to take water from their ancestral well. Upon hearing P.W.1's protest, accused Narasingh & Harihara rushed towards his house and both parties had a heated exchange of words. Suddenly, Sridhar Singh, son of Narasingh barged into the spot and pressed the neck of P.W.1's uncle, Suriya. At the time, the deceased Chhotrai intervened following which the accused Budha, Harihar, Narasingh as well as Sridhar caught hold of the deceased Chhotrai and dragged him towards land of Ghasiram. Accused Narasingh entered the house of Chhotrai and brought out a crowbar and assaulted the deceased Chhotrai. He also called his brother Lacchman to bring an axe. The deceased Manahar Singh rushed to the spot after hearing the screaming and he was subsequently assaulted by Narasingh with a crowbar. P.W.2 has deposed that the accused Budha Singh assaulted her mother-in-law and Khudisashu by a crowbar following which they came back to

their house and locked the door out of fear. She has also deposed that the accused Budha came and locked the door by a crowbar. The deposition of P.W.4 & P.W.9 further corroborates the evidence of P.W.1 & P.W.2 that concerned incident took place around 9 P.M at night.

15. According to P.W.1, the quarrel ensued after accused Budha shouted that they will not allow anyone to take water from the well following which P.W.1 protested. However, in the cross-examination he has stated that first there was a quarrel between Narasingh and him. The deposition of P.W.2 corroborates the deposition of P.W.1 that the accused Budha shouted about not allowing anyone to take water from the well and when P.W.1 protested Budha, Narasingh and Harihar came and quarreled with P.W.1. P.W.2, in her cross examination has also stated that there was an exchange of words between the accused Budha and P.W.1 for 5-10 minutes. The deposition and testimony of P.W.1 & P.W.2 is further corroborated by the evidence of P.W.4 who has deposed as well as testified that the quarrel ensued when the accused Budha shouted that they are not going to permit anyone to use the well. However, eyewitnesses P.Ws.9,14 & 17 have not deposed anything in particular as to who initiated the quarrel. P.W.14 stated in his cross-examination that there was a quarrel between the accused Budha and P.W.1. Therefore, the fact that

there was a quarrel/disagreement between the parties regarding the usage of well is not in dispute. The question as to who initiated the quarrel is not an important point for consideration; therefore minor discrepancies in the account of eyewitnesses is not fatal to the case of prosecution.

16. It has been categorically deposed by P.Ws 1,2,4 & 14 that Sridhar caught hold of Suriya's neck amidst the tussle following which the deceased Chhotrai intervened. P.W.9 & P.W.17 have not deposed anything in particular regarding Sridhar or Chhotrai's intervention. They have merely stated two parties were involved in a tussle in which Sridhar and Chhotrai were also present. It can be ascertained from the depositions of eyewitnesses that the initial moments of the tussle didn't involve any weapons and it was a free fight as a result of which both the parties sustained injuries. PW1 as well as P.W.14 in his cross examination have stated that at the initial stage there was no weapon of offence. Even though the initial moments in quarrel did not involve any weapon, the involvement of accused persons did not end with the free fight. It has been deposed by P.Ws 1,2,4,9,14 & 17 that the accused Budha, Narasingh, Harihar as well as Sridhar caught hold of Chhotrai when he tried to intervene and the accused Narasingh fetched a crowbar from the house of deceased Chhotrai. The deposition of P.W.2 is corroborated by the

deposition of P.W.4 that the accused persons caught hold of Chhotrai and made him lay on the field of Ghasiram. Even though other eyewitnesses have not deposed in specific that the deceased Chhotrai was made to lay in the field of Ghasiram by the accused persons, the same is not relevant to towards the issues in hand and hence, not an important point for consideration. On the other hand, all the eyewitnesses have deposed that the accused Harihar called Lacchman to bring a tangia. P.W.14, in particular, has deposed that Accused Harihar called Lacchaman by saying "BHAI TANGIA TA NEI AA TANGIA TA NEI AA".

17.As per the case of the prosecution, the deceased Manahar was not present at the spot of occrence when the quarrel ensued. He subsequently came to the spot after hearing the sound emanating from the quarrel. In the cross examination, P.W.2 had stated that the deceased Manahar went to the club house to sleep after taking food. The statement of PW2 is corroborated by the evidence of PW4 who has also stated in his cross examination that the deceased Manahar was sleeping in the club house which is about 150 metres from the spot while the quarrel ensued between the parties. The statements of P.W.2 & P.W.4 corroborates the statements of P.W.14 & P.W.17 who have also affirmed that the deceased Manahar was sleeping in the club house during the incident and that no

one had gone to call him. It has been affirmed by all eyewitnesses that the deceased Manahar came to the spot himself after hearing the sound of quarrel.

18. Further, PW1 has stated that the accused Narasingh assaulted the deceased Manahar with the crowbar as a result of which he fell down on the ground. P.W.2 has also deposed that the accused Narasingh assaulted Manahar with a crowbar. P.Ws 9, 14 & 17 have categorically deposed that the accused Narasingh brought a crowbar from the house of Chhotrai and assaulted Manohar. Thereafter, the accused Lacchaman, who was present at the spot after being called upon by Harihar, dealt tangia blows on the neck of Manahar who was already lying on the ground. It has been affirmed by all the eyewitnesses with any discrepancy whatsoever that the accused Narasingh assaulted with a crowbar and that was followed by Lachhaman's blow by means of a tangia. Moreover, from a bare perusal of eyewitnesses account, it can be ascertained that Manahar was first assaulted even though the accused persons had first restrained the deceased Chhotrai. If the chain of events were to be analysed, it can be interpreted that the deceased Manahar was assaulted immediately after he reached the spot of occurrence by the accused Narasingh by means of a crowbar which he has fetched from the house of Chottrai. Meanwhile, the accused Lacchaman who was already present

there with a tangia after being called by Harihar, dealt tangia blows on the neck of Manahar. Therefore, the deceased Manahar was assaulted and murdered by the accused persons Narasingh and Lacchaman while the other accused persons had restrained Chhotrai.

19.P.W.9 in particular has stated that P.W.4 tried to separate Chhotrai from the grab of accused persons but the accused Budha have her a push as result of which P.W.4 sustained injury on her eyebrow as she came in contact with the Tangia. Thereafter, P.W.4 ran inside the house and the accused Narasingh and Lacchhaman inflicted crowbar and tangia blows respectively on the body of the deceased Chhotrai. The depositions and testimonies of the eyewitnesses not only appears to be cogent and clear but also is devoid of infirmities and contradictions insofar as the chain of events is concerned. The material particulars in the version of all eyewitnesses correspond to each other be it the sequence in which the events happened or the details surrounding the same. On the other hand, nothing has been furthered on behalf of the Appellants to disprove their involvement.

20.It is submitted by Learned Counsel for the Appellants that there was free fighting between the parties and the death of the deceased persons occurred while the accused persons were

exercising the right of private defence. In our opinion, the contention of Learned Counsel for the Appellant would have made sense had the injuries on the body of the deceased persons been less severe. In the present case, the deceased persons have sustained multiple injuries due to assault by crowbar and subsequently by a tangia which was also used to sever their heads. Had the deceased persons suffered minor injuries or contusions that are relatively probable when one engages in a free fight, then the contentions of learned counsel for the Appellants would have been justified. In the present case, the degree and gravity of injuries sustained by the deceased were effected through extremely brutal and inhuman assault by the accused persons and it would not qualify in any way as private defence. If the accused persons were only involved in the quarrel and free fight, it was imperative on them to have produced material on record substantiating the same. The ocular evidence furthered by the prosecution does not suffer from any infirmities or material contradictions to be considered inadmissible and therefore, in such scenario the burden of disproving presence lies on the accused persons and nothing has been produced on record to rebut the presumption of involvement and ultimately, guilt on the part of accused persons. Since, both the parties were involved in a violent scuffle, it would not be extraneous to presume that the

accused persons sustained minor injuries as a result of getting involved in the said scuffle rather than acting out of private defence. Moreover, the accused appellants have not contended at point of time during the proceedings that P.W.1 or any of his family members were armed with weapons. Therefore, we are of the opinion that the injuries sustained by the accused appellants are very minor and it has been adequately explained through chain of events and there is no reason to disregard the prosecution case as untrue on the basis of such contentions.

21. According to the deposition of P.W.26 (I.O), the weapon of offence i.e, Tangia was seized from the possession of accused persons while they surrendered at the Police Station. While P.W.26 was at the spot of occurrence, he received information over cell phone from the Bangiriposi P.S that the accused persons namely Lacchman Singh, Harihar Singh and Narasingh had surrendered themselves at Bangiriposi P.S along with the severed heads of deceased Manohar Singh & Chottrai Singh and the weapon of offence i.e., Tangia. As per his deposition, at 12:45 P.M he seized the weapon of offence i.e., tangia on production by the accused persons. The fact of seizure of crowbar from the spot of occurrence has been corroborated by P.W.22 who stated that at about 9 A.M, the I.O seized one crowbar along with one torch, one bundle of

Bidi, a pair of chappal and a lighter at the place of occurrence and prepared the seizure list. The weapon of offence i.e., tangia seized by the police was examined by P.W.15 and after thorough examination, P.W.15 opined that the tangia had an iron metal attached to a bamboo handle and it was covered with blood mixed with mud. There were multiple dried blood stains over it. The Chemical Examination Report also revealed that the blood found on tangia was of human origin. It is a settled position in law that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. In the present case, the accused persons Narasingh, Harihar and Lacchhman surrendered at the police station along with severed heads of deceased persons. It has been categorically deposed by P.W.26 that he seized the weapon of offence i.e., tangia on production by the accused persons, prepared the seizure list and took the LTI and signatures of the accused persons. Moreover, the deposition of P.W.26 that the accused persons surrendered on 10.04.2009 is corroborated by the deposition of P.W.25 as he categorically deposed that on 10.04.2009, P.W.26 seized the blood sample and nail clippings of the accused persons on

production by constable P.K Kar. Since, the presence of the accused persons in the police station following their surrender is not in dispute, it can be ascertained that the weapon of offence i.e., tangia was seized on 10.04.2009 on production by the accused persons. On top of that, the seizure of weapon of offence, wearing apparels of the accused persons was done in presence of P.W.3 & P.W.5. P.W.3 has deposed that the wearing apparels and weapon of offence was seized from the accused persons and his signature vide Ext.13/1 was obtained as he was the witness to such seizure. P.W.5 has not stated anything in particular regarding the seizure of weapon of offence or wearing apparels of the accused persons. However, the evidence of P.W.26 that the weapon of offence i.e., tangia was seized on 10.04.2009 on production by the accused persons is corroborated by the evidence of P.W.25 and further, corroborated by the evidence of P.W.3 who was a witness to the seizure. Therefore, the fact that the weapon of offence was recovered from the accused persons and such weapon was considered as adequate by P.W.15 to inflict injuries of same degree as were found on the body of the deceased persons, itself yields an additional link in the chain of events that unerringly points towards the guilt of accused appellants.

22. There is no doubt that a confessional statement before the police cannot be relied upon as the same is hit by Sections 25

and 26 of the Evidence Act but Section 27 of the Evidence Act is an exception to Sections 24 to 26. On the other hand, the admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offense. Thus, it incorporates the theory of “confirmation by subsequent facts” facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilize it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso. The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will have to satisfy the Court’s conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The Court will have to be conscious of the witness's credibility

and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act. In the present case, the weapon of offence was recovered upon production by the accused appellants in the police station. The weapon of offence i.e., tangia produced by the accused appellants was stained with blood and upon chemical examination, it was opined that the blood was of human origin. Even though, serological examination has not been conducted to ascertain whether the blood on tangia belonged to the deceased persons or not; in our opinion the same is not fatal to the case of the prosecution as effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused. In the instant case, it was stated in the chemical examination report that blood stains on tangia was of human origin and from the ocular evidence of eyewitnesses, it is sufficient to ascertain that the said tangia was used for assaulting and severing the heads of deceased persons. It is already established from the deposition of all eyewitnesses that the accused Harihar Singh called the accused Lacchhaman Singh to bring a tangia and the deceased persons were attacked first by the means of a crowbar and then were dealt blows with tangia. Hence, the production of tangia by the

accused persons and its subsequent seizure at the police station followed by the opinion of P.W.15 that the said tangia could have been the weapon of offence due to discovery of blood stains of human origin, can enable the Court to draw a presumption under Section 114 of the Evidence Act that the tangia produced by the accused appellants was used in committing the murder of the deceased persons. However, the inference of culpability and involvement in the alleged incident on the part of the accused persons can only be suspected out of such presumption under S. 114 or disclosure and discovery under S.27. Unless the disclosure or discovery of fact under section 27 of the Evidence Act is proved through corroboration with other admissible evidences, the same cannot be used as a ground for substantiating the charge against the accused persons. Unless, the disclosure or discovery is proved by the help of other admissible evidence, it remains at suspicion stage and therefore, is inadmissible.

23. In the present case, even though the weapon of offence i.e., tangia was recovered from the possession of accused, a mere presumption cannot be taken that the accused appellants committed the murder of the deceased persons using the said tangia. Therefore, in order to attribute the liability of the alleged incident to the accused persons, it is imperative to analyse the deposition of P.W.6 who was a post-occurrence

witnesses. According to the deposition of P.W.6, on the relevant night, he woke up and found the accused Narasingh carrying a severed head of a person. He has further deposed that on being asked by the accused Lacchhaman as to whom the severed head belonged to, Narasingh replied that it belonged to Manahar. P.W.6 also revealed that he overheard the accused persons discussing about going to the police station. On being cross-examined, P.W.6 stated that there was an open space between his house and the house of Narasingh and it was about 40-50 cubits. He also stated that he had not gone to the spot of occurrence and was in his house and that he cannot remember properly as to who was carrying the bag with severed heads. Further, it has been stated by P.W.6 in his cross-examination that he revealed the said information before the police after 10 days from the date of occurrence and had also not informed the villagers regarding the same. In our opinion, the conduct of P.W.6 might be unnatural but the same does not disregard his evidence as he is an independent and post-occurrence witness who was not even present at the spot of occurrence. He was at his house for the whole time and incidentally found and overheard the accused appellants having discussions with each other.

24. P.W.6 stated in his deposition that he saw the accused Narasingh carrying a severed head and upon being asked by

Lacchaman Singh regarding the identity of severed head, Nrasingh replied that it belonged to Manahar. In his cross-examination, P.W.6 maintained his stance that the accused persons were discussing about going to the police station and were carrying a bag. P.W.26 in his cross-examination has stated that the severed head of the deceased persons was recovered from a tree trunk inside the P.S Campus and the weapon of offence was seized on production by the accused persons. If the deposition of P.W.6 is construed and analysed side-by-side with the ocular evidence of eyewitnesses P.Ws 1,2,4,9,14 & 17, it can be said that the conjoint interpretation of circumstances enumerated above complete the chain of events from which the only irresistible conclusion that can be drawn is that the accused appellants were responsible for the death of deceased persons by assaulting them with crowbar and tangia. From the deposition of P.W.6, it is clear that the accused appellants were in possession of the severed heads of the deceased persons and were discussing about going to the police station. The fact that they surrendered on the next day at the police station along with the severed heads of the deceased persons and weapon of murder, proves that the accused appellants had assembled near the house of P.W.6 on the relevant night after the occurrence. Since, there was an open space between P.W.6's house and the house of accused

Narasingh and the same was about 40-50 cubits, it can be presumed that the accused persons escaped from the spot of occurrence after the fight and assembled near the house of P.W.6 which was nearby. Since, P.W.6 had woken up at that point of time, he found the accused persons carrying severed head of person and overheard them discussing about going to the police station.

25. Section 106 of the Evidence Act postulates that, the burden of proving things which are within the special knowledge of an individual is on that individual. Although the Section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove. Therefore, in the present case, the fact that the accused appellants were present near the house of P.W.6 and were carrying the severed head of the deceased persons is within their special knowledge and the burden of proving that they were not present near the house of P.W.6 and were not carrying the severed head of deceased persons lies on the accused appellants. This is specifically because on the basis of

ocular evidence, medical examination report and chemical analysis report, the prosecution has successfully established the chain of events and therefore, the burden of proving the fact that the accused appellants persons were not present at the said spot is on the appellants.

26.The subsequent appearance and surrender of accused appellants at the Bangiriposi P.S, the seizure of weapon of offence i.e., tangia from the accused appellants and the discovery of severed heads of the deceased persons from the accused persons corroborates the evidence of P.W.6. Even though the severed heads of deceased persons were not actively recovered from the possession of accused appellants and were found hanging on the branch of a small tree inside P.S campus which was easily accessible to the public, the fact that the severed heads were discovered in or around the same point of time as the surrendering of accused appellants at the police station, is sufficient to prove that the severed heads were brought into the P.S campus by the accused appellants. Moreover, the deposition of P.W.6 also corroborates the fact that the accused appellants were carrying severed heads and were discussing about going to the police station.

27.P.W.19 stated in his evidence that during the night on the relevant day, he had gone to the spot of occurrence after being

called by P.W.5 and in the morning, he found the dead body of deceased persons lying on the land of Ghasiram Singh and the heads were severed. P.W.21 has stated in his evidence that he had gone to the place of occurrence at about 3 A.M and found the headless body of deceased Manahar and Chhotrai lying at the spot. The deposition of post-occurrence witnesses P.W.19 & P.W.26 is corroborated by the ocular evidence of eyewitnesses P.W.2 & P.W.4. P.Ws 2 & 4 had categorically deposed that the accused persons restrained Chhotrai Singh and made him lay on the land of Ghasiram Singh. While he had been restrained, the accused Narasingh assaulted Manahar who had just reached the spot after listening to sounds emanating from the quarrel. Thereafter, the accused Lacchhman dealt tangia blows on the neck of Manahar and thereafter, the accused persons assaulted and murdered Chhotrai in a similar manner. Therefore, the final act of accused appellants took place on or near the land of Ghasiram Singh. As per the deposition of P.W.19 & P.W.26, the headless bodies of the deceased persons were lying on the land of Ghasiram Singh. Further, after a bare perusal of F.I.R, we are of the view that the F.I.R is not contradictory to the evidence on record produced by the prosecution. There is no discrepancy insofar as the material particulars of the F.I.R viz-

a-viz evidence on record, is concerned and therefore, the same cannot be termed as contradictory.

28. It has been submitted by Learned Counsel for the Appellant that the alleged occurrence happened due to a sudden fight between two group of persons and the alleged occurrence falls within the exception-IV of Sec-300 of I.P.C as the incident happened without any premeditation. In our opinion, since, both the parties had strained relationship because of dispute over the homestead, there were numerous instances of hostility between the parties and the same surfaced almost every weekend. The frequency of quarrel between both parties was high and this has been stated by P.W.14 in her cross-examination. According to the deposition of eyewitnesses, the quarrel on the relevant day was over usage of water from well for construction purpose. P.W.1's family had an Indira Aavas in their name and the wall of the said house was being constructed and the water from well was used for the said purpose. As there was a scarcity of drinking water, the accused appellants protested and quarreled with P.W.1 that the water from well cannot be used for construction purpose. The quarrel ensued and later, became violent as P.W.1 did not cater to accused appellants' suggestion. Moreover, according to P.W.1, the disputed property had been decreed in their favour before few months of the alleged incident and

therefore, their family had the legal right to use the homestead area as per their convenience. From the abovementioned factual matrix, it can be ascertained that even though both the parties had civil dispute between them over a homestead, the scarcity of water owing to summer season and on top of that, the usage of water from the well for construction purpose though there was an acute scarcity of drinking water, had escalated the situation to such a point that both the parties behaved with each other like sworn enemies. Further, the statements of P.W.1 as analysed, were not aimed at inciting, or provoking the accused appellants. P.W.1 was merely arguing with accused Budha when she said that no one would be allowed to take water from their ancestral well. The incident took a violent turn when P.W.5 asked the accused Budha to lower her voice following which Sridhar barged into the scene and caught hold of P.W.5's neck. Thereafter, the other accused persons intervened and it ultimately, resulted in brutal and inhuman death of the deceased persons.

29.It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passion to cool down and in this case, the parties have worked themselves into fury on account of the verbal altercation in the beginning. A fight is a combat between two

and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. In the instant case, no material has been brought on record on behalf of the Appellants that P.W.1 and his family members (including the deceased persons) possessed any weapons during the quarrel. Learned Counsel for the Appellant himself has argued that P.W.17 stated that there was no fight using any weapons for the initial 10-15 minutes and both the parties were involved in a free fight. It is pertinent to mention that the Appellants have not produced anything on record to prove that P.W.1 and his family members brought out weapons after the initial verbal altercation. On the other hand, it has been categorically deposed by the eyewitnesses that the accused Narasingh fetched a crowbar from the house of Chhotrai and assaulted Manahar. Meanwhile, the accused Harihar called Lacchhaman to fetch a tangia and upon arriving at the spot,

the accused Lacchhman dealt tangia blows on the neck of Manahar while he was down and then subsequently, assaulted the deceased Chhotrai. The head of deceased persons was also severed in presence of their family members. The brutal and inhuman way in which the accused appellants committed the murder of the deceased persons, not only, frustrates the meaning of expression “undue advantage” but also erodes the applicability of exception-IV of Sec-300 of I.P.C. The gravity of conduct of the accused appellants in assaulting the deceased persons on the vital parts of their body i.e., head and neck with a crowbar and subsequently, with a tangia and the injuries sustained by the deceased persons, not only exhibits intention of the accused appellants in causing death of the deceased persons, but also knowledge of the accused appellants in that regard. It is pertinent to mention that such attack could be none other than for causing death of victims. Further, the act of severing the head of the deceased persons would not qualify as rational to any reasonable person, and it cannot be concluded with any stretch of imagination that requisite action was taken due to sudden fight without any premeditation. Even though, it is proved that there existed no premeditation on the part of the accused appellants, the severing of heads of the deceased persons cannot be perceived as valid or reasonable response to sudden fight and the applicability of

exception-IV of Section 300 of I.P.C is ousted on that ground alone. Accordingly, the intention of the accused appellants in causing the death of the deceased persons is also proved. Insofar as the motive behind committing the said act is concerned, the same is also established from the fact that there was a civil dispute between the parties over a homestead and due to constant tussle and altercations, the relationship of both the parties had been strained from a long time. Since, the water from the well was being used by P.W.1's family for construction, it was categorically opposed by the accused appellants as there was scarcity of water owing to summer season. The motive of the accused appellants was to prevent P.W.1 and his family from using the well and the same transpired into a cold-blooded murder due to over act and conduct on the part of accused appellants.

30. Learned Counsel for the Appellants has further argued that there is absolutely no common intention on the part of accused persons to commit the crime. He contended that there is no evidence on record to show that there was prior meeting of minds of the accused persons to commit the crime. Insofar as the common intention is concerned, Section 34 of IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention.

In order to incur joint liability for an offence there must be a prearranged and premeditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the premeditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. In the present case, the ocular evidence of eyewitnesses reveal that P.W.1 and accused Budha engaged in an altercation regarding usage of water from well and admist the altercation, the other accused persons i.e. Narasingh, Harihara & Lacchhaman intervened. The accused appellants were involved in all the incidents from the start, till the very end. The accused Lacchhaman fetched a tangia after being called upon by the accused Harihar and assaulted the deceased persons and severed their head. The accused Narasingh brought a crowbar from the house of Chhotrai and assaulted both Manahar & Chhotrai. The accused Harihar and Budha also assaulted the other family members of P.W.1 and aided the accused Lacchhman and Narasingh by restraining

Chhotrai in the field of Ghasiram Singh while Narasingh had gone into the house of Chhotrai to fetch crowbar. Therefore, we are of the opinion that common intention to inflict injuries and cause the death of deceased persons can be gathered from the action and conduct of accused appellants. Further, the accused appellants were only parties who were armed with dangerous weapons. The Chemical Examination Report of Tangia coupled with the ocular evidence of eyewitnesses and other evidence of post-occurrence witnesses establish that the accused appellants had shared the common intention to cause injuries, and the crime was committed in furtherance of the common intention, which led to the death of the deceased persons. Since the dispute between both the parties was pertaining to a homestead, there were frequent altercations on the question of usage of the disputed property. In fact, all the accused appellants had interest over the use of the disputed property. The genesis of quarrel in the concerned incident can also be traced to the said civil dispute and all the accused appellants herein were the interested stakeholders. Therefore, from the facts and circumstances of this case, it can be well established that although the occurrence place on the heat of passion or at the spur of the moment, but the common intention of the accused persons to cause murder of the accused persons developed during the course of incident.

31. On scanning the entire record as well as evidence of prosecution witnesses clearly it is clearly established that the accused Narasingh, Harihara, Lacchhamann and Budha were sharing common intention for causing death of both the deceased Manahar and Chhotrai by means of crowbar and tangia on their vital parts of the body i.e. neck and head, therefore, they are liable to be held guilty of commission of offence u/S 302 of IPC with the aid of Section 34 of IPC. As such, there is no contrary evidence available on record, therefore, prosecution is found to have established its case beyond reasonable doubt that on the alleged date of incident, a double murder was committed by the accused persons by means of crowbar and tangia. The tangia was also used to brutally severe the head of the deceased persons. Accordingly, from the eyewitnesses' account, chemical examination report, medical examination report and deposition of post-occurrence witnesses, it is but to be held that the accused appellants are guilty of offence under section 302 of IPC, irrespective of part played by each one of them.

32. In view of the above, we are of the considered opinion that the Trial Court has rightly convicted and sentenced the appellants for the offences aforesaid. As a consequence, thereof, impugned judgment of conviction and order of sentence dated 22.09.2014 passed by the Learned Additional Sessions Judge,

Baripada in S.T Case No.18/205 of 2010-09, arising out of G.R Case No.423 of 2009 of the file of the learned S.D.J.M., Baripada, are hereby affirmed.

33. The appeal is hereby dismissed.

(Dr. S.K. Panigrahi)
Judge

D. Dash, J. I agree.

(D. Dash)
Judge

Orissa High Court, Cuttack,
Dated the 23rd Dec., 2022/B. Jhankar

