

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.9 of 2009

Budhram Deogam

.... ***Appellant***
Mr. B.P. Dhal, Advocate

-versus-

State of Odisha

.... ***Respondent***
Mr. J. Katikia, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

Order No.

**ORDER
24.09.2022**

04.

1. This appeal is directed against an order dated 24th October, 2008 passed by the learned Additional Sessions Judge, Talcher in C.T. (Sessions) No.10 of 2006 convicting the Appellant for the offence under Section 302 IPC and sentencing him to under Rigorous Imprisonment (RI) for life and pay a fine of Rs.5,000/- in default undergo RI for six months.

2. The case of the prosecution is that the Appellant killed his own brother the deceased Manik Deogam with a bow and an arrow in the evening hours of 1st November 2005 in the presence of Bela Deogam (PW 6) the wife of the deceased.

3. According to PW 6, there was a quarrel between the deceased and the Appellant over land. The Appellant shot an arrow at her husband which pierced left arm pit and then his chest. Shortly before he died, their daughter Mukta (PW 7) and son in law Panchu Behera (PW 8) reached there. The deceased is stated to

have made an oral dying declaration before them that the Appellant had shot him with an arrow.

4. On the following morning, Debadutta Baral (PW 9) the Officer-in-Charge of the Pallahara Police Station after receiving telephonic message from an unknown person, reached the village Kadodiha. PW 6 then orally reported the incident to PW 9 who reduced it to writing and treated it as an F.I.R. After examining PW 6 and visiting the spot, PW 9 conducted an inquest over the dead body in presence of witnesses and also examined certain witnesses. The dead body was then sent for post mortem.

5. The Appellant was arrested on the same day at 11.30 am. PW 9 seized the arrow and checked lungi of the deceased and sent the seized material objects to the SFSL for examination. On completion of investigation, a charge sheet was laid against the Appellant on 26th September, 2006 for the offence under Section 302 IPC. The Appellant pleaded not guilty and claimed trial.

6. For the prosecution, nine witnesses were examined and none for the defence.

7. On an analysis of the evidence, the trial court concluded that the prosecution had proved the case against the Appellant beyond all reasonable doubt.

8. This Court heard the submission of Mr. B.P. Dhal, learned counsel appearing for the Appellant and Mr. J. Katikia, learned AGA for the State.

9. PW 6 the wife of the deceased stated that she and the deceased were sitting on the verandah of their house when at around 7 p.m. the Appellant came there and shot an arrow towards the deceased which pierced the left arm pit and came out near the chest. The deceased fell down on the verandah upon which PW 6 took him to the house and tried to give him water. In the cross examination, she stated that there was a dibiri burning on the verandah, although it was a dark night. Although she stated that her husband was not pleased with their son in law (PW 8), it was not a fact that the Appellant was protesting whenever the deceased scolded the son in law. She was clear that “there was ill feeling between the accused and the husband for land dispute.”

10. Learned counsel for the Appellant sought to suggest that PW 6 should not be believed as it was a dark night and she could not have possibly seen who had shot her husband. It must be remembered that the Appellant was the own brother of the deceased and the brother-in-law of PW 6. Further he was staying throughout in the adjacent house. It was therefore not difficult at all for PW 6 to identify the Appellant as the assailant.

11. The evidence of PW 6 is corroborated in material aspects by her daughter PW 7 and son in law PW 8 both of whom speak of reaching the scene soon after the occurrence and at a time when

the deceased had still not expired. Each of the said witnesses stated that the deceased disclosed to them that it was the Appellant who had shot him. This oral dying declaration was admissible in evidence.

12. PWs 7 and 8 were unable to be shaken in the cross examination. They have spoken clearly and cogently. There is no inconsistency or contradiction in their evidence. The preposterous suggestion to PW 8 that it was he who killed his father in law and foisted a false case with the connivance with his mother in law was obviously denied. There was absolutely nothing in the evidence to suggest this.

13. With the three witnesses having spoken clearly and cogently, the trial court rightly concluded that the prosecution had proved the case against the Appellant beyond all reasonable doubt. The Court is unable to find any error having been committed by the trial court in arriving at the above conclusion.

14. The appeal is accordingly dismissed. No order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge