

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**JCRLA No. 5 of 2011**

***Gandaram Bag***

....

***Appellant***

Mr. Kirtan Dang, Advocate

-versus-

***State of Orissa***

....

***Respondent***

Mr. A.P. Das, Addl. Standing Counsel

**CORAM:**  
**THE CHIEF JUSTICE**  
**JUSTICE R. K. PATTANAİK**

**ORDER**

**19.05.2022**

**Order No.**

02. 1. The present appeal is directed against an order dated 13<sup>th</sup> December 2010, passed by the Additional District & Sessions Judge, Titilagarh in S.C. Case No.147 of 2009, convicting the Appellant for the offence punishable under Section 302 of Indian Penal Code (IPC) and sentencing him to undergo Rigorous Imprisonment (RI) for life and to pay a fine of Rs.5,000/- and in default to undergo RI for two years.
2. The case of the prosecution is that the accused Gandaram Bag@ Kita used to quarrel with the informant Nilabati Bag (PW-1) and her husband Gunanidhi Bag (the deceased, the younger brother of the Appellant) and other villagers under the influence of liquor. It is stated that on 11<sup>th</sup> May 2009, at around 12 noon, also there was a quarrel between the deceased and the accused. That night, at around 8.30 pm, while the deceased and PW-1 were eating rice sitting in the courtyard of their house, and Gupteswar Bag (PW-11) the brother-in-law of the deceased was talking with him sitting in a cot,

suddenly the accused came with an axe (Tangia) and as a result of the previous grudge inflicted an axe blow on the head of the deceased, who fell down facing upwards. Thereafter, the accused again assaulted the deceased on his chest with the blunt side of the axe. At that time, PW-11 caught-hold of the accused, Nata Bag (PW-9) the nephew of PW-1 snatched away the axe from the accused. The accused had also assaulted PW-11 with the handle of Tangia with an intent to kill him. Subsequently, the deceased was shifted to the Saintala Hospital where the doctor declared him dead.

3. Upon completion of investigation, a charge sheet was laid against the accused who pleaded not guilty and claimed trial. The case of defence, as spoken by the accused who examined himself as DW-1 was at around 8 pm, he and the deceased were bringing firewood by loading it on a bullock-cart and the deceased was sitting on the cart. The bullock-cart entered into a ditch, he fell down and the bullock-cart and the firewood also fell on him as a result of which, the deceased sustained bleeding injuries on his head; subsequently, he was taken to the hospital where he died.

4. The prosecution examined as many as 21 witnesses, of which PWs-1, 4, 7, 9 and 11 were eye-witnesses. PW-1 was the wife of the deceased. PW-11 was the brother-in-law of the deceased. PWs-4 and 7 were the daughters and PW-9 was the son of the accused.

5. The medical evidence of PW-13, Dr. Brajendra Panda revealed the presence of the following injuries on the dead body of the deceased:

“(i) abrasion 2 ½ " X 1/2" X 1/6" on the xiphisternum vertically down words.

(ii) incised wound 2inch. X 1/2 inch. X 1 inch. in vertex of head, longitudinally one inch to the left from mid line and 5 inch away from left ear.

(iii) incised wound 1 ½ inch. 1/2 inch. X 1 inch obliquely on the vertex of the head 1/2 inch away from midline and 1/2 inch behind injury No.(ii).

(iv) fracture of left parietal bone of size 2 inch X 1/2 inch X 1 inch and 1 inch away from midline below the injury No.(ii).

(v) incised wound 1 ½ " X 1/2 inch on the membranes 1/2 inch to the left from the midline below the fracture parietal bones.

(vi) Haematoma of size 3 inch X 1 ½" on the membrane adjacent to injury No.(v).

(vii) incised wound 1 inch X 1/2 inch X 1/2 inch on the parietal bone of left cerebral hemisphere longitudinally 1/2 inch away from midline.

(viii) Haematoma of 1/2 inch X 1/2 inch on left cerebral cortex at the margin of injury No.(vii).

6. The injuries were stated to be ante mortem in nature and could have been caused by a sharp weapon. The cause of death was due to injury to the vital organ like brain. The doctor confirmed subsequently that the injuries could have been caused by the Tangia that was seized from the spot. He denied the suggestion that the injuries could have been caused by fall on a sharp object.

7. The trial Court, on an analysis of the evidence, was convinced that the prosecution had brought home the guilt of the accused beyond all reasonable doubt.

8. This Court has heard the submissions of respective learned counsel for the parties. It has also been taken through the evidence.

9. The eye-witness testimony of PW-1 is clear and cogent about the actual assault as she was witnessed to it from a distance of just 3 to 4 feet. Her cross examination yielded nothing for the defence. Corroborating her were PWs-4, 7 and 9 (the daughters and son of the accused). The fact that there was a previous quarrel at around 12 noon between the accused and the deceased and that the accused was under the influence of liquor has also been sufficiently established beyond doubt by these witnesses. When the accused returned to the house of the deceased with a Tangia, he walked stealthily through a lane, inflicted one blow by the sharp side of the axe and when the deceased fell down, he inflicted one blow by the blunt side of the axe on the chest.

10. From the evidence of PW-4, it is also clear that PW-11 and PW-9 caught-hold of the accused and that PW-9 snatched away the axe from the accused and thereafter, the accused fled away through the 'bari' side.

11. It is a significant fact that PWs-4 and 7 are the daughters and PW-9 the son of the accused and they were all living as a joint family. They have fully supported the case of the prosecution.

12. The accused who examined himself as DW-1 tried to portray the incident as an accident in which the bullock-cart full of firewood overturned on the deceased as a result of which he sustained bleeding injuries. DW-1 further stated that his son Nata Bag (PW-9), Gupteswar Bag (PW-11) and Nilabati Bag (PW-1) had

also gone to the hospital with the deceased. However, none of these witnesses came up with any such story and did not support the accused at all. The trial Court rightly therefore disbelieved DW-1. DW-1 also tried to project that they took the deceased to the hospital and Dr. Namita Bisi (PW-19) gave him a saline injection. However, PW-19 was examined and did not state anything about giving injection and saline to the deceased at the hospital. On the other hand, she stated that he was brought dead to the hospital.

13. The entire evidence of the prosecution established beyond all reasonable doubt the guilt of the accused for having murdered his younger brother out of a previous quarrel.

14. The Court is unable to find any infirmity in the impugned judgment of the trial Court convicting and sentencing the accused in a manner of as discussed above.

15. The appeal is accordingly dismissed but in the circumstances with no orders as to costs.

***(Dr. S. Muralidhar)***  
***Chief Justice***

***(R. K. Pattanaik)***  
***Judge***