

22.07.2025
Ct No.13
Sl. No. 11
AP/sp/pk/ap

CRA695 of 2013
Ramprasad @ Rupchand @ Rupai Murmu &Anr.
Versus
State of West Bengal

Mr. Mainak Bakshi,
Ms. Niketa Bhattacharjee.

..for the appellants.

Mr. Debasish Roy, Id. P.P.,
Mr. Partha Pratim Das,
Mr. T. Mukherjee.

..for the State.

1. The instant appeal is directed against a judgment and order of conviction and sentence dated 26th June, 2013 and 28th June, 2013 passed by the Additional District and Sessions, 1st Court Purulia in Sessions Trial No. 8 of 2012 arising out of Sessions Case No. 174 of 2011.
2. The appellants were convicted under Section 302 read with Section 34 of the Indian Penal Code and sentence to life imprisonment and fine.
3. The prosecution case is that on 16th October, 2010, the deceased Khadulal Murmu went to the house of the accused persons that is located adjacent to his own house. The deceased went to demand certain documents in connection with land and also his share. The deceased and the accused no. 1 were cousin brothers.
4. As per the complaint lodged by the son of the victim, a hot altercation ensued between the deceased on one side and the

appellants and their son on the other. The complainant stated that the appellant no. 2 Labani @ Logoni Murmu and her son caught the victim at waist length and restrained him. The appellant no. 1 seized the opportunity and assaulted the victim on the head with an axe. The victim fell down in front of the house of the appellants.

5. The son of the victim PW 1, Dibakar Murmu and daughter, PW 2, Hiramoni Murmu were inside their house comprising in a room. Hiramoni Murmu was cooking. Upon hearing the commotion outside their house, they rushed out to find their father, the victim, lying in a pool of blood on the street in front of the house of the appellants.
6. The victim was surprisingly not taken to any medical facility and was deemed dead by Dibakar Murmu and several other local villagers. The said villagers who were sitting at a distance, away from the place of occurrence and having an evening conversation, suddenly heard PW 1 coming towards them shouting that his father has been killed. They rushed to the spot to find the body of the victim on the pathway in front of the house of the accused persons.
7. A complaint was lodged by Dibakar Murmu, PW 1, at about 10.45 p.m. on the same day. The police arrived at the place of occurrence, and seized the wearing apparels of the victim. Inquest was performed in the presence of PW 1, PW 3, PW 4 and PW 5. The Inquest Officer recorded the statements of the

witnesses that the victim was assaulted with an Axe by the appellant no. 1.

8. The offending weapon being an Axe was also seized under a seizure list. The postmortem was performed on the body of the victim on 17th October, 2010, the next day. The injuries recorded in the PM report by the Postmortem Doctor on the victim, have been set out hereinbelow:-

Sharp cut incised wound 2" x 1" x bone deep about 2'/2" above Rt. eyebrow in frontal region.

Sharp cut incised wound 1" x 1/2" x 1" bone deep – 3" from Rt. eyebrow in frontal region.

Sharp cut incised wound – 1 1/2" x 1" @ occipital bone – upper portion.

Sharp cut incised wound separation of Lt. parietal and occipital junction 2" above Lt. ear.

9. The cause of death was "cardio respiratory failure due to shock and hemorrhage due to injuries mentioned above ante mortem and homicidal due to sharp cutting weapon".
10. The appellants were taken into custody. Charge was framed against them under Section 302 read with Section 34 of the Indian Penal Code and the trial commenced.
11. PW 1, Dibakar Murmu, was the de facto complainant and the son of the deceased. He stated that the incident took place at around 7 to 8 p.m. on 16th October, 2010. His mother and elder sister were out of the house for earning their livelihood. He was in the room in his house along with his sister PW 2, Hiramoni Murmu, who was cooking.
12. PW 1 heard a quarrel outside his house and came out. He found his father/victim lying dead just in front of the house

of his uncle. He lifted his father and brought him back near the doorstep of their house. PW 1, therefore, had not witnessed the actual incident. As to how he could have stated that the accused no. 2 and her son had physically restrained the victim to enable the appellant no. 1 to assault him, in the complaint, is not known. There is no corroboration of the statements in the complaint by any of the witnesses of the prosecution.

13. PW 2, Hiramoni Murmu was the daughter of the victim. She stated that at about 8 p.m. on 16th October, 2010 while she was cooking inside the house, the appellant no. 2 and her son Jayanta held her father by his waist and hands to their doorstep. The appellant no. 1 is thereafter stated to have inflicted a blow with an axe on the back of her father's head. She rushed to the spot along with her older brother Dibakar.
14. She confirmed that she had deposed as such in the statements under Section 164 of the Cr. P.C. before the Magistrate and identified such statements in the trial. There is some contradiction here at the statements of PW 2 with that of PW 1. If PW 2 was, in fact, cooking in the house, she could not have possibly witnessed her father being held by in the waist region by accused no. 2 and her son Jayanta.
15. The PW 1 and PW 2 can reasonably be said not to have seen the appellants beating the victim. If they had seen so, they would have rushed to save the victim, and in that attempt,

they would have equally suffered injuries. The victim was their father, therefore, they would throw themselves at the risk of being injured to save his life. Nothing of that sort has come on record. The fact that the victim was not taken to any hospital fortifies the reasonable inference that by the time PW 1 and PW 2 became aware of their father being beaten, their father had left the world or was on his last breath.

16. In any event, the fact remains that it was the victim who went to the adjacent house of the appellants to demand certain documents and share in the ancestral property. The evidence of PW 2, therefore, cannot be completely relied upon by this Court.
17. PW 3 was Madan Murmu, the brother of the deceased. He lived a few houses away from the house of the deceased. There was a lamp post in front of the house of the appellants where the incident occurred. He is stated to have seen the incident from his house under the light of the lamp post. He claims to have seen the appellant no. 1 striking an axe blow on the victim. He mentioned that his wife was cooking inside the house and came out of the house after hearing the commotion. PW 3 deposed that he saw PW 1 and PW 2 standing outside the house. This would invariably indicate that he had not seen the actual scuffle and attack and blow by the appellant no. 1 on the victim. This is so as admittedly

PW 1 and PW 2 were present inside the house when the assault occurred. PW 3 saw PW 1 and PW 2 standing outside the house. He was therefore narrating the incident from the time after the assault, when the victim was already severely injured and lying on the pathway. One cannot ignore the fact that PW 3 and his wife PW 10 are related to the victim and PW 1 & 2. This by itself however does not discredit their evidence.

18. Therefore, there is some doubt as to whether PW 3 was at all an eye witness in the incident. PW 4 to 7 are local villagers, who were having an evening conversation at a distance from the house of the victim. They came to the place of occurrence after PW 1 went to them shouting that his father has been killed. They have only narrated that they saw the victim lying with bleeding injuries on the head in front of the house of the appellants.
19. PW 8 was a witness to the seizure of the wearing apparel of the deceased. PW 8 was the police constable. PW 9 was the Revenue Officer/Amin, who submitted a report to the Investigating Officer as regards the nature of the place of occurrence and stated that it was a public road (rasta).
20. PW 10 was Kalabati Murmu, wife of PW 3. Curiously she did not mention the presence of her husband at the time when she claimed to have seen the incident of assault. She was admittedly cooking inside the house at the time. Her

evidence as an eye witness would have been more reliable had she corroborated the presence of her husband. Such corroboration would have lent more credence to the actual incident.

21. PW 11 was another co-villager, who has deposed similar to PW 4 to 7. In fact PW 11 has deposed that the victim had some criminal antecedents.
22. PW 12 was the Investigating Officer, Anwar Hossain and the Officer-in-Charge of the Kenda Police Station. He narrated the entire investigation. Interestingly he deposed that neither PW 3 nor PW 10 told him that they had witnessed the incident of assault by the appellants on the victim.
23. For bringing the charge of murder home, the following ingredients are to be established as held in ***Kunhimammed v. State of Kerala***, reported in **2024 SCC OnLine SC 3618**, which are however absent in the present case. Paragraphs 25.5 and 25.8 are set out below:-

25.5. It has been held by this Court in several cases such as *Manubhai Atabhai v. State of Gujarat*, and *Arun Nivalaji More v. State of Maharashtra*, that **when the ocular evidence of eye witnesses are reliable and well corroborated by medical, and other evidence also inspires the confidence that the accused had the intention to cause such fatal injuries, then such evidence is enough to prove the charge of murder beyond reasonable doubt.** This intention is to be gathered from a number of circumstances and evidence like the place of injury the nature of the weapon, the force applied while inflicting the injury, and other such considerations. Whether the accused had any intention to kill the deceased has to be judged upon taking into consideration the facts of each case.

25.8. The appellant's primary defence has been the absence of intent to commit murder. However, intent can be inferred from the circumstances surrounding the act, **including the nature**

and location of the injuries inflicted, the weapon used, and the actions of the appellant during the incident. The injuries were concentrated on the vital parts of the deceased's body, such as the chest and ribs, which house critical organs like the heart and lungs. The deliberate targeting of these areas indicates a clear intent to cause harm that could lead to death...

(Emphasis applied)

24. Injuries have been caused to the occipital and parietal bones which are situated at the back of the head. Indeed the place of injury is serious. There are injuries to the eyes of victim also, meaning thereby the assailants were targeting the upper portion of the body. Probably, it is in that context that the back of the head of the deceased got injured. Heart and Lungs as pointed out in ***Kunhimammed (supra)*** were not targeted. It is alleged that the appellants were carrying a sharp weapon. The same could have been used to inflict injuries on the heart and lungs which would have unquestionably resulted in death, and it is indeed natural that a person with a sharp weapon will try to attack the heart and lungs, which has not been done in the present case.
25. Apart from the above, there is absolutely no evidence whatsoever to indicate the exact nature and circumstances under which the appellant nos. 1 and 2 are stated to have participated or premeditated any assault on the victim. What transpires undoubtedly from the evidence on record is only that the victim went to the house of the appellants on the fateful day to demand certain documents and shares of the

property. A hot altercation ensued and the appellant no. 1 assaulted the victim with an axe.

26. There is absolutely no evidence on record that any such assault was premeditated or pre-planned. The chain of circumstances indicates that the incident occurred in the heat of the moment as a result of sudden quarrel that broke out between the appellants and the victim, when he went to the residence of the appellants to demand documents of land and his share.
27. The story, that the appellant no. 2 and her son restrained the victim by holding him at his waist, is not established by any clear evidence.
28. The contents of the complaint appear to be contradictory and not corroborated by the evidence of any of the witnesses for the prosecution.
29. The fact, however, remains that the victim suffered injuries indicated by the Post Mortem Doctor. The death occurred by Cardio Respiratory Failure and hemorrhage as a result of the injuries inflicted by a sharp-cutting weapon.
30. If indeed the appellants were desirous of putting an end to the life of the victim, they could have inflicted far more serious injuries which would have visibly killed the victim. There is some indication that the victim may have walked a few steps after the assault to come out of the house and

collapsed in the pathway, in front of the house of the appellants.

31. In the light of the discussions made hereinabove, this Court notes that there is no premeditation proved by the prosecution against the appellants to attract the ingredients of Section 302 of the Indian Penal Code.
32. It is quite possible and most likely that the appellant no.1 was enraged to such an extent that he may have known that the assault by an axe could have caused fatal injuries to the victim.
33. The enmity between the appellant no.1 and the victim cannot be ruled out. The appellant no.1 may have known that the injury could have caused death. The evidence on record can only take us that far and not beyond.
34. The case of the prosecution on the charge of murder could have been based on circumstantial evidence. However, the investigating officer has not pursued the investigation based on circumstantial evidence. Consequently, the prosecution did not lead the evidence on circumstantial evidence. The evidence was lead on the basis of alleged eye-witnesses. In absence of the any circumstantial evidence pointing out the intention of the appellants to kill, the appellants cannot be convicted for murder. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in **Nusrat**

Parween v. State of Jharkhand, reported in **2024 SCC**

OnLine SC 3683:-

7. It is a well-established principle of criminal jurisprudence that conviction on a charge of murder may be based purely on circumstantial evidence, **provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt.** The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence.

(Emphasis applied)

35. In the backdrop of the aforesaid discussions and also applying the test laid down by the Hon'ble Supreme Court of India in the case of ***Govindanv. State represented by Deputy Superintendent of Police*** reported in **(2021) 9 SCR 515** and several other cases on the subject, this Court is of the view that the appellant no.1 could at best be guilty of the offence of Part-I of Section 304 of the Indian Penal Code.
36. Admittedly, the appellant no.1 has undergone sentence of more than 12 years. He is sentenced to the period for which he has already undergone incarceration and be set at liberty forthwith.
37. Insofar as the appellant no.2 is concerned, in the absence of any evidence and proof that there was some intention or collusion or conspiracy along with her husband to cause and inflict the injuries and the resultant death on the victim, has

not been proved. The prosecution has not been able to drive home a premeditation in the commission of offence. In fact, they could not have done so. The evidence on record does not lend support to such case. This does not mean that the investigation or the prosecution had lacked in any way. It is just that there was no evidence available to the prosecution to support the conviction of the appellant no.2.

38. Since there is absolutely no evidence that the appellant no.2 also wielded any weapon to inflict any injury on the victim, the charge under Sections 302 and 34 of the Indian Penal Code against the appellant no.2 are held not proved. The appellant no.2 is found not guilty of the offences alleged and shall also be set free forthwith.
39. With the aforesaid observations, C.R.A. 695 of 2013 is hereby allowed and disposed of.
40. In view of disposal of the appeal itself, the connected application being CRAN 3 of 2024 shall also stand disposed of.
41. Both the appellants shall be set at liberty from custody if not wanted in any other case upon execution of a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of section 437A of the Cr.P.C. corresponding to section 481 of the BNSS, 2023
42. Let a copy of this judgment be sent down to the Court below for information.

43. Let the T.C.R. of the instant appeal be also sent down to the Court below forthwith.
44. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)