



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 275 of 2003

(From the judgment and order dated 24.10.2000 passed by learned Addl. Sessions Judge, Deogarh in S.T. Case No. 290/1 of 97-2000)

Dharani Pradhan & Anr. Appellants

-Versus-

State of Orissa Respondent

Advocate(s) appeared in this case through hybrid mode:

For Appellant : Mr. P.C.Mishra, Advocate

For Respondent : Mr. Partha Sarathi Nayak,
Addl. Government Advocate

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing :24.03.2026 :: Date of Judgment:31.03.2026

SASHIKANTA MISHRA, J.

The appellants faced trial for murder in S.T. Case No. 290/1 of 97-2000 in the Court of learned Additional Sessions Judge, Deogarh and were convicted under Section



302/34 of IPC and sentenced to imprisonment for life. Be it noted that another person namely, Bhakta Pradhan, who was a co-accused and father of the present appellants, died before the charge was framed for which, the case abated against him.

2. Prosecution case, briefly stated, is as follows:

The occurrence took place on 06.06.1996 in the morning hours at 7 am over a piece of land locally known as '*Pathuri Kiari*' under '*Kusumi Chaka*, which was the subject matter of dispute between the parties and the accused persons and the deceased were on inimical terms. It is alleged that prior to the occurrence, deceased had requested the accused persons and their father, late Bhakta Pradhan to redeem the land on payment of the mortgage amount, but they did not agree and the dispute continued.

On the date of occurrence, the deceased Fakira Patta along with his wife Paluni Patta and brother-in-law Guru Charan Ati went to the disputed land and started ploughing the same for sowing paddy. At that time, accused



persons along with their father, Bhakta Pradhan arrived at the spot. Bhakta Pradhan assaulted Paluni Patta and Guru Charan Ati by means of a lathi as a result of which, he retreated from the spot. Thereafter, accused Dharani Pradhan caught hold of the deceased Fakira Patta by his waist, while his brother Karuna Pradhan dealt a blow with an axe on the left side of his neck below the ear. Due to the assault, the deceased sustained severe bleeding injuries and died at the spot.

Giridhari Gartia, who is the brother of the deceased, lodged an oral report before the O.I.C , Reamal P.S against the accused Karuna Pradhan, which was reduced into writing. Basing on such report, Reamal P.S. Case No. 37 of 1996 was registered under Section 302 of the IPC and investigation was taken up. Upon completion of investigation, charge-sheet was submitted against both the appellants under Section 302/34 of the IPC and charge was also framed against the accused Dharani Pradhan under Section 302 of the IPC.



3. The defence, took the plea of denial, and false implication one to previous enmity.

4. To prove its case, prosecution examined thirteen witnesses and exhibited ten documents. That apart, prosecution also proved four material objects. Defence, on the other hand, did not adduce any evidence.

5. Upon analysis of the evidence on record, the trial Court held that the death of the deceased was homicidal in nature. The Court found the testimony of the eye-witnesses, P.W.8 and P.W.12 as consistent, reliable and corroborated by medical evidence. The trial Court further observed that P.W.3 was not an eye-witness to the actual assault and treated his evidence as post-occurrence in nature, while the testimony of P.W.2 was relied upon only to the extent of corroborating surrounding circumstances. The evidence of P.W.4, having turned hostile, was discarded. Though discrepancies were noticed in the seizure of the weapon and certain lapses in investigation, including non-recording of the disclosure statement and non-examination of seized articles, the trial Court held that such deficiencies did not



affect the credibility of the ocular evidence. The plea of false implication due to enmity was rejected, holding that enmity provided a motive for the occurrence. It was also held that non-examination of independent witnesses was not fatal in view of the trustworthy evidence of related witnesses. The trial Court found that prosecution case was well established against accused persons and convicted and sentenced them as already stated hereinbefore.

6. Heard Mr. P.C. Mishra, learned counsel for the appellant and Mr. P. S. Nayak, learned Addl. Government Advocate for the State.

7. Mr. Mishra assails the impugned judgment of conviction on the following grounds.

- i) The name of accused Dharani Pradhan does not find place in the F.I.R and there is no material to show that the informant had stated his name before the police during investigation, which creates a serious doubt regarding his involvement



and indicates that he was subsequently implicated after due deliberation.

ii) The conviction is based solely on the testimony of related and interested witnesses belonging to the same family and therefore, in absence of independent corroboration, it suffers from infirmities.

iii) There are serious lapses in the investigation, including doubtful recovery of the alleged weapon of offence, non-recording of the disclosure statement and non-examination of seized articles.

iv) The occurrence took place in the course of a sudden quarrel arising out of forcible ploughing of the disputed land by the deceased and his family members and therefore, the act cannot be treated as murder within the meaning of Section 300 of IPC.

8. Per contra, Sri P.S. Nayak would argue that P.W.8 and P.W.12 clearly stated that they had seen the occurrence



and had described it vividly. Their evidence remained unshaken in cross examination. The ocular evidence is fully corroborated by medical evidence of P.W.11 with regard to the nature and location of the injury. He further submits that mere non-mention of the name of accused Dharani Pradhan in the F.I.R. is not fatal to the prosecution case, when his role in the occurrence has been clearly established by P.W.8 and P.W.12 during trial and also submits that evidence of related witnesses cannot be discarded solely on the ground of relationship, particularly when their testimony is otherwise trustworthy and consistent. As regards discrepancies, he submits that minor discrepancies in the evidence of witnesses are natural and do not go to the root of the prosecution case. Alleged lapses in investigation, including defects in recovery of the weapon or non-examination of seized articles, would not be sufficient to discredit the prosecution case when there is clear and cogent ocular evidence available on record.

With regard to the plea of sudden quarrel, he argues that the injury was inflicted by means of a deadly



weapon like an axe on a vital part of the body of the deceased and therefore, it is sufficient to infer that the accused persons had clear intention to do away with the life of the deceased.

9. We have given our anxious consideration to the rival contentions and have also analysed the evidence on record. It is seen that the prosecution examined two eye-witnesses to the occurrence, namely P.W.8 and P.W.12. It is further borne out from the evidence of P.Ws.2, 3 and 8 that there existed a dispute relating to the land in question between the parties. From the Prosecution case as laid and the evidence of the aforesaid witnesses, it is apparent that the occurrence took place in the backdrop of such land dispute. The evidence on record further indicates that the deceased in order to assert his claim over the land had gone to the spot and started ploughing the same, which led to confrontation between the parties.

10. Having observed as above, we shall now proceed to consider the rival contentions raised on behalf of the appellants.



11. It is argued that the name of accused Dharani Pradhan does not find place in the F.I.R. and he was subsequently implicated after due deliberation. In this context, it is to be noted that the F.I.R. is only the first version of the prosecution case and is not expected to contain every minute detail relating to the occurrence. On perusal of the record, it appears that the informant (P.W.3), who is the brother of the deceased, claimed to be ploughing land at a distance from the place of occurrence and stated to have seen the incident. However, the trial Court has disbelieved him as an eye-witness and upon scrutiny we find that such view appears justified. His own evidence indicates that being informed by P.W.12 about the assault he found the deceased lying in the field from which it can reasonably be inferred that he had not witnessed the actual occurrence. In that view of the matter, the F.I.R. lodged by P.W.3 based on such information and reduced into writing cannot be expected to contain a complete account of the roles of each of the accused persons. It is relevant to note that on the very day of the occurrence i.e. on 06.06.1996,



the informant, in his statement before the police, disclosed that accused Dharani Pradhan had caught hold of the deceased while accused Karuna Pradhan inflicted the axe blow. Said version also finds support from the consistent testimony of the eye-witnesses P.W.8 and P.W.12, who have clearly vividly the manner of assault.

Thus, when the evidence on record is considered in its entirety, the omission of the name of accused Dharani Pradhan in the F.I.R. does not, by itself, create a doubt regarding the prosecution case, particularly when his role stands established through reliable ocular evidence during trial.

12. As regards the second ground, Mr. Mishra argues that there is clear evidence of previous enmity between the family of the deceased and the accused persons on account of the land dispute. He contends that though the F.I.R. indicates the presence of other witnesses at the place of occurrence, prosecution has examined only the related witnesses. On that basis, he argues that the evidence of P.W.8 and P.W.12 being interested witnesses, ought to be



viewed with suspicion and cannot be relied upon in absence of independent corroboration.

Mr. Nayak, on the other hand, would argue that enmity is a double-edged weapon, which may provide a motive for the crime as well as a ground for false implication. He contends that it would be unrealistic to assume that related witnesses would falsely implicate innocent persons while allowing the real offenders to go scot-free. He further submits that the law is well settled that the testimony of related or interested witnesses cannot be discarded solely on the ground of relationship if it is otherwise found to be credible and trustworthy. The reasoning adopted by the trial Court that independent witnesses are often reluctant to come forward to depose in criminal cases is also pressed by him.

13. We have carefully considered the aforesaid contention and find that both the witnesses were present at or near the place of occurrence and have given consistent accounts of the incident. Their testimony on material particulars relating to the manner of assault and the role of the accused



persons does not suffer from any inherent improbability. Cross-examination of these witnesses does not reveal any material contradiction so as to render their version doubtful.

The contention regarding non-examination of independent witnesses also has been considered by us in the factual backdrop of the case. Merely because other witnesses, though stated to be present, have not been examined, it cannot be laid down as a rule that the evidence of the witnesses examined by the prosecution should be discarded. What is required is to assess whether the evidence available on record is trustworthy and sufficient to establish the prosecution case.

14. As regards the third ground, Mr. Mishra argues that the alleged recovery of the weapon of offence is doubtful, inasmuch as there is no clear and consistent evidence regarding the disclosure statement leading to such recovery and the same has not been recorded. He further submits that the seized articles including the alleged



weapon of offence and the blood-stained materials were not subjected to chemical examination.

15. Per Contra Mr. Nayak would argue that alleged lapses in investigation do not, by themselves, vitiate the prosecution case. He submits that it is well settled that any defect or omission on the part of the Investigating Officer cannot be a ground to discard an otherwise reliable and cogent prosecution case.

16. We have considered the aforesaid submissions with regard to the alleged lapses in investigation and have carefully examined the evidence on record. It is true that certain deficiencies are noticeable in the investigation, particularly with regard to the manner of seizure of the alleged weapon of offence, absence of a properly recorded disclosure statement and non-examination of the seized articles by chemical analysis. Such lapses do reflect lack of due diligence on the part of the Investigating Officer and, ideally, ought to have been avoided. The Supreme Court in ***Ram Bihari Yadav vs. State of Bihar AIR 1998 SC 1850***, ***Paras Yadav vs. State of Bihar AIR 1999 SC 644***,



Dhanraj Singh vs. State of Punjab AIR 2004 SC 1920, Ram Bali vs. State of U.P. AIR 2004 SC 2329 has held that failure, defect or negligence in investigation cannot adversely affect the prosecution case if direct evidence is credible, though the court should be circumspect in evaluating the evidence.

17. So, the question that arises for consideration is whether the deficiencies pointed out are of such a nature as to discredit the entire prosecution case. In the present case, the prosecution rests primarily on the direct evidence of P.W.8 and P.W.12, who have consistently deposed regarding the manner of occurrence and the specific role played by each of the accused persons. Their testimony finds corroboration from the medical evidence of P.W.11, which establishes that the deceased sustained a fatal injury on a vital part of the body by means of a sharp cutting weapon. On appreciation of the evidence, it appears that the prosecution case is supported by reliable ocular testimony, and the deficiencies in investigation do not go to the root of



the matter so as to create a reasonable doubt regarding the occurrence itself or the involvement of the accused persons.

18. Having thus dealt with the grounds of challenge to the impugned judgment as raised by the defence, we shall now proceed to examine the ultimate finding of the Court regarding the guilt of the accused persons. As stated earlier, there is acceptable evidence on record to indicate that the incident took place in the backdrop of a land dispute between the parties. This lends considerable weight to the supposition that the parties assaulted each other in course of a mutual quarrel/altercation. The genesis of the dispute appears to lie in the attempt of the deceased to assert possession over the disputed land by forcibly ploughing the same, which was resisted by the accused persons, leading to a confrontation at the spot. The evidence of P.W.8 and P.W.12 clearly establishes that upon noticing such act, the accused persons, along with their father, came to the spot. During the course of such occurrence, accused Dharani Pradhan caught hold of the deceased, while accused Karuna Pradhan dealt a blow with an axe on the neck of the



deceased, which proved fatal. The medical evidence also corroborates that the injury was caused by a sharp cutting weapon on a vital part of the body. The circumstances as emerging from the record indicate that the occurrence was preceded by a dispute relating to possession of land and the confrontation arose at the spot when the deceased started ploughing the land. The manner in which the incident unfolded, the nature of the weapon used, the part of the body targeted and the role attributed to each of the accused persons are relevant factors which require careful consideration in determining the nature of the offence and the culpability of the accused persons in light of the judgment of the Supreme Court in the case of **Gurmukh Singh v. State of Haryana, (2009) 15 SCC 635**, wherein the Supreme Court enunciated certain principles which is as follows:

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- (a) Motive or previous enmity;*
- (b) Whether the incident had taken place on the spur of the moment;*



- (c) The intention/knowledge of the accused while inflicting the blow or injury;*
- (d) Whether the death ensued instantaneously or the victim died after several days;*
- (e) The gravity, dimension and nature of injury;*
- (f) The age and general health condition of the accused;*
- (g) Whether the injury was caused without premeditation in a sudden fight;*
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;*
- (i) The criminal background and adverse history of the accused;*
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;*
- (k) Number of other criminal cases pending against the accused;*
- (l) Incident occurred within the family members or close relations;*
- (m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?*

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused."

19. Applying the aforesaid principles to the present case, it appears that the occurrence took place in the heat of the moment when the deceased attempted to plough the disputed land, which led to a sudden confrontation between the parties. There is no material on record to indicate that the accused persons had come to the spot with any premeditated intention to commit murder. The incident



appears to have occurred in the heat of passion during a sudden quarrel arising out of the land dispute. Though the injury was inflicted by means of an axe on vital part of the body, the overall circumstances do not suggest that the accused persons had taken undue advantage or acted in a cruel or unusual manner.

20. From what has been narrated above, we are unable to persuade ourselves to treat the act of appellants as murder, rather it would be a case of culpable homicide not amounting to murder punishable under Section 304 Part 1 of IPC.

21. From the conspectus of the analysis of evidence, contentions raised and the discussion made, we hold that the impugned judgment warrants interference by way of modifying the conviction of appellants from murder to culpable homicide not amounting to murder.

22. In the result, the appeal is allowed in part. Appellants are held guilty of committing culpable homicide not amounting to murder and are therefore, convicted under



Section 304 Part 1 IPC. The incident occurred in the year 1996, that is, 30 years ago and the appellants were in custody for some period during trial. We are therefore, of the view that ends of justice would be best served if they are sentenced to 7 years rigorous imprisonment with the usual set-off. Their bail bonds stand cancelled and they shall be taken into custody forthwith to serve the remaining part of the sentence, if any.

.....

(Sashikanta Mishra, J)

Manash Ranjan Pathak, J. I agree.

.....
(Manash Ranjan Pathak, J)

***Orissa High Court, Cuttack
The 31st March, 2026/Deepak.***