



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No. 149 of 2001

From order dated 15.06.2001 passed in Sessions Case No. 100 of 1999 (SC No. 293/98) of learned Addl. Sessions Judge, Malkangiri.

Kawasi Suka

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Appellant

-Versus-

State of Odisha

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Respondent

Advocate(s) appeared in this case :-

For Appellants : M/s. S.K. Dash, S.P. Dash,
& A.B. Srichandan
Advocates

For Respondent : Ms. S. Devi,
[Addl. Standing Counsel]

CORAM:

THE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

AND

THE HON'BLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing-17.02.2026 Date of Judgment-24.02.2026

Sashikanta Mishra, J.

The appellant calls in question the correctness of the judgment passed by learned Additional Sessions Judge, Malkangiri on 25.06.2001 in Sessions Case No. 100 of 1999, whereby he being convicted of the offence



under Section 302 of IPC, was sentenced to undergo imprisonment for life.

2. Prosecution case, briefly stated is that on 10.05.1997 at about 8.00 p.m. when the informant Pilaram Sagaria and his father were sitting on the verandah of their house, the present appellant and three other persons, namely, Kunjami Chenna, Madkami Sukra and Madkami Budura, scaled the boundary wall of their home and abused his father saying why he had forcibly taken the drum of the Jatra Party and threatened to kill them both. Thereafter, they pelted stones due to which the informant sustained injury near his ear and to save himself, he hid behind a tree near his house while his father entered inside the house while closed the door. All the accused persons then holding bows and arrows and tangia came inside their house by breaking open the door and assaulted the informant's father, who ran out to save his life. At that time, the appellant shot an arrow from his bow, which pierced his chest causing him to fall down. The accused persons then assaulted him due to which he died on the spot. The informant's mother came to rescue but she was threatened. They left the spot after taking



away gold ornaments and cash of Rs.5000/-. The matter was informed to the village member and others. On the next day, informant went to Mathili police station and lodged FIR leading to registration of P.S. Case No.43 of 1997 followed by investigation. Upon completion of investigation, charge sheet was submitted against all the accused persons under Sections 457/337/427/506/380/302/34 of IPC.

3. The defence plea was of denial.

4. To prove its case, prosecution examined nine witnesses and proved thirteen documents. Besides, two material objects were proved. Defence, on the other hand, did not adduce any evidence.

5. The trial Court found that of the nine witnesses, only the informant (P.W.4) and wife of the deceased (P.W.5) were eyewitnesses. Analyzing the evidence of these two witnesses, coupled with the medical evidence, namely, the post-mortem report and the evidence of the autopsy surgeon (P.W.1), the trial Court believed the prosecution case that the deceased had died because of the piercing of arrow shot by the appellant into his right side chest.



Further, analyzing the evidence of the eyewitnesses, the trial Court found that the case against the present appellant was clearly proved but insofar as the other accused persons were concerned, the evidence against them was not adequate. Basically on such findings, while acquitting the other accused persons of the charges, the trial Court held the appellant guilty under Section 302 of the I.P.C. As such, he was convicted and sentenced as already stated hereinbefore.

6. Heard Mr. A.K. Dash, learned counsel for the appellant and Ms. Subhalaxmi Devi, learned Additional Standing Counsel for the State.

7. Mr. Dash assails the impugned judgment on the following grounds:-

i. The prosecution did not cite any independent witness and relied entirely on the evidence of P.Ws. 4 and 5, who being the son and wife respectively of the deceased, were interested witnesses.

ii. The trial Court should not have believed the evidence of P.Ws. 4 and 5, as it being a dark



night, they could not have seen the occurrence.

iii. There is inconsistency regarding the spot of occurrence in the versions of P.Ws.4 and 5.

iv. P.W. 5, being present in the kitchen could not have been seen the occurrence.

8. Per contra, Ms. Suvalaxmi Devi would argue that the occurrence having taken place inside the house of the deceased at night, it is natural that no other person was present there. As to the objection raised by the defence that P.Ws.4 and 5 could not have seen the occurrence, she draws attention of the Court, to the the spot map marked Exhibit-10 to contend that the occurrence having taken place within the premises of the house, both P.Ws.4 and 5 were direct witnesses to it. She further argues that there is clear evidence that the accused persons came inside by scaling the wall and shot the arrow at the deceased for which he went inside the room but the accused persons followed him and assaulted. He came out to save himself and fell down in the courtyard. Since the spot where the dead body was found was in front of the



kitchen where P.W.5 was present, it is very much possible for her to have seen the occurrence herself.

9. At the outset, we take note of the fact that the defence does not question the finding that the death of the deceased was homicidal in nature being caused by piercing of arrow in his chest besides other injuries. As regards the authorship of the crime, we have given our anxious consideration to the rival contentions and have also carefully perused the evidence on record.

10. Admittedly, the occurrence took place inside the house of the deceased at 8.00 p.m. This, by itself, rules out the possibility of any outsider being present at the time of occurrence. As regards the interestedness of P.Ws. 4 and 5, we are not inclined to accept the contention raised by the defence, for the simple reason that it has not been shown why P.Ws.4 and 5 would implicate the accused persons if the crime had been committed by some other persons. That apart, no motive is ascribed by the defence for these witnesses to depose falsely against the accused persons.



11. That said, we have carefully gone through the evidence of P.Ws.4 and 5, keeping in mind the following two questions:

- (i) Where exactly did the occurrence take place, and
- (ii) Whether P.Ws. 4 and 5 could have seen the incident as described by them.

12. In this context, we have perused the spot map marked Exhibit-10 carefully. According to P.W.4, he and his father were sitting on the verandah of their house. The accused-Suka shot an arrow at his father and the arrow pierced on the right side of chest and he fell down.. Thereafter, the other accused persons assaulted his father with the blunt side of the axe and he died. He has not pinpointed the spot of occurrence. In cross-examination, he admits that there was no light in the village and only one *deepa* (lamp) was burning inside the house. He further admits that he went to the jackfruit tree as there was a pelting of stones. His father entered inside the house out of fear and was followed by the appellant. P.W.-4 in his cross- examination also stated that seeing Budura and other three persons came jumping the boundary wall,



out of fear he went to the back side of the house and that the door at the back side of the house was closed. Read as a whole, the evidence of P.W.4 does not indicate where exactly the deceased was fatally wounded by the arrow and where he was assaulted.

13. P.W.5, on the other hand, stated in cross-examination that she was inside the kitchen and the occurrence took place in the middle room. She also stated that the occurrence took place inside the house and not on the verandah. Turning to the spot map, we find that the kitchen is marked 'F' and the courtyard intervenes between the kitchen and the rooms marked 'A'. If the occurrence, according to her, took place inside the room, a doubt arises as to how P.W. 5 being in the kitchen could see it. There is in fact, inconsistency as to the place where the arrow was shot. According to P.W.4, it was the verandah while according to P.W.5, it was inside the house.

14. In the impugned judgment, we find that the trial Court has mentioned that P.W.4, sustaining a brickbat injury went near the jackfruit tree while his father entered



inside the house followed by the appellant but, P.W.4 does not say anything at all about being injured on his back. He simply said, 'There was pelting of stones. So, I went to jackfruit tree'. This is, therefore, a perverse finding.

15. The prosecution case is that the appellant, Kawasi Suka, shot the arrow while the other accused persons assaulted the deceased with the blunt side of an axe. The trial Court has disbelieved this claim, as no axe was seized from the spot but police seized only a wooden plank and a bamboo stick and none had seen the deceased being assaulted with these two weapons. According to P.Ws. 4 and 5, the assault was with the blunt side of the axe. This raises a grave doubt as to the veracity of their versions. Another important aspect is that according to P.W.5, it was a dark night and one *dibiri* was burning in the house. Obviously, a small lamp cannot be expected to have lighted the entire premises so brightly as to afford a clear vision of the happenings therein. Moreover, according to P.W.-5, she was inside the kitchen and as per P.W-4 back side door of the house was closed. From this it cannot be ascertained that P.W.-5 saw the incident.



16. Thus, taking into consideration the discrepancies and inconsistencies referred to in the preceding paragraphs, we find that the case of the prosecution is not free from reasonable doubts, the benefit of which ought to be given to the accused persons. To reiterate, the version of P.Ws. 4 and 5 does not appear to be credible or doubt-free so as to be relied upon. The trial Court has disbelieved the claim of assault by the other accused persons and of theft of cash and gold by them from the house because of inadequate evidence.

17. We are of the considered view that the same analogy ought to have been applied to the claim that the appellant had shot the deceased with an arrow, causing his death. The case, as laid, according to us, is not free from reasonable doubts. For such reason therefore, the impugned judgment of conviction cannot be sustained.

18. In the result, the appeal succeeds and is therefore, allowed. The impugned judgment of conviction and sentence passed by Addl. Sessions Judge, Malkangiri dated 15.06.2001 in Sessions Case no. 100 of 1999 are



hereby set aside. The appellant, being on bail, his bail bond be discharged.

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**Sashikanta Mishra,
Judge**

Manash Ranjan Pathak, J. I agree.

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**Manash Ranjan Pathak,
Judge**

*Orissa High Court, Cuttack,
The 24th Feb, 2026/ B.C. Tudu*