



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRA No.247 of 2000

(From judgments dated 11.09.2000, passed by 2nd Additional Sessions Judge, Cuttack in S.T. Case No.489 of 1998)

Basanta Kumar Pradhan @ Basu Appellant

-Versus-

State of Orissa Respondent

Advocates appeared in the case through hybrid mode:

For Appellant : Mr. Raj Kumar Rout, Advocate

For Respondent : Ms. Suvalaxmi Devi,
[Additional Standing Counsel]

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 appellant faced trial with two others in S.T. No.489 of 1998 in the Court of learned 2nd Additional Sessions Judge, Cuttack for committing the murder of one Sukanta Kumar Senapati. The other two accused persons



were acquitted while the present appellant, being convicted under Section 302 of I.P.C., was sentenced imprisonment for life.

2. Prosecution case, in brief is as follows:-

On 31.07.1997 on Adashpur Road under Niali Police Station, the deceased Sukanta Kumar Senapati was assaulted by three of his co-villagers namely, Basant Pradhan (present appellant) by means of a Farsa, one Susanta Mohapatra by means of Sword and the son of one Sura Mohapatra by means of Bhujali. The assailants dealt several blows with the weapons on the head and neck of the deceased causing severe injuries. The deceased shouted for help, hearing which, the nephew of the deceased namely, Gopal Krushna Senapati, who was going towards the village square rushed to the spot and saw the assault. He thereafter, cried for help. Seeing him the assailants fled away from the spot. Gopal found his uncle with severe bleeding injuries. One Jagu Sahu also arrived at the spot hearing the shouts and asked as to what happened. The deceased, with much difficulty stated that Basu Pradhan, Tukuna Mohapatra and the son of Sura Mohapatra had assaulted him by means of farsa, sword and bhujali respectively. Several persons of the village namely, Subash Mohapatra, Umesh Mohapatra, Nursingha



Mohapatra, Braja Kishore Mohapatra and others arrived at the spot. Gopal carried the deceased to Adaspur Hospital along with his aunt Manjulata Senapati, Jagu Sahu, Satyabrata Mohapatra and Braja Mohapatra. But the doctor declared him dead. Gopal thereafter, went to Niali Police Station and lodged a written report about the occurrence and also about the threat given by the accused persons eight days prior to the occurrence of killing the deceased. Basing on the report, P.S. Case No.115 was registered under Section 302/34 IPC followed by the investigation. Upon completion of investigation, charge-sheet was submitted against the present appellant and two other persons namely, Hemanta Kumar Pradhan and Panchanan Pradhan under Sections 302/120-B/34 of IPC.

3. In course of trial, prosecution examined ten witnesses and proved twelve documents. Defence did not adduce any evidence, either, oral or documentary.

4. On appreciation of the evidence, the trial Court found that the evidence of P.Ws.1, 4 and 5 clearly proved the prosecution case against accused Basanta to the effect that he had assaulted the deceased with the farsa causing his death. It was further held that he was one of the authors of the crime. The Trial Court



however, did not find any evidence against the co-accused persons. Thus, while the co-accused persons were acquitted, the appellant was convicted and sentenced as already stated hereinbefore.

5. Heard Mr. Raj Kumar Rout, learned counsel for the Appellant and Miss. Suvalaxmi Devi, learned Additional Standing Counsel for the State

6. Assailing the impugned judgment, Mr. Rout would submit that the occurrence having taken place in a public road, it was incumbent upon the prosecution to examine independent witnesses to prove its case. Instead, prosecution relied upon the evidence of P.W. 1 and P.W. 5, who are interested witnesses. The others are post-occurrence witnesses who are not competent to state about the occurrence. It is further stated that the trial Court overlooked the discrepancies in the evidence of P.W. 5 as brought out from the I.O. in cross-examination. That apart, though P.W. 1 referred to five persons as having arrived at the spot immediately after the occurrence and of taking the deceased to the hospital, only one of them i.e., P.W.5 was examined. The so-called dying declaration of the deceased before P.W.1 could not have been



accepted by the trial Court as it does not meet the requirement of law.

7. Per contra, Ms. Suvalaxmi Devi would submit that the oral dying declaration was made by the deceased before P.W.1 at the spot of occurrence clearly identifying his assailants and the weapons with which they had assaulted him. There is no contradiction whatsoever in the evidence in this regard. She further submits that his clear evidence of P.W. 2 and P.W. 4 that soon before the occurrence the accused and the other assailants were armed with deadly weapons, which corroborates the evidence of P.W.1 that eight days prior to the occurrence they had threatened to kill the deceased.

8. Before delving into the merits of the rival contentions, we deem it proper to analyze the evidence on record independently. We find that P.W.1 (informant) is the nephew of the deceased, who witnessed the occurrence. He has vividly described the occurrence in all necessary details. According to him, P.W.5 arrived at the spot shortly after his arrival. If we compare the evidence of P.W.1 with that of P.W.5, we find that the latter fully corroborates the version of the former in all material particulars. We have not found any contradiction whatsoever in their



versions. Further, nothing has been elicited from them in cross-examination so as to cast doubt on the veracity of their sworn testimonies. Both of them have stated that hearing the shout of the deceased “Mari Pakaiela Mari Pakaiela”, P.W.1 arrived at the spot at first followed by P.W.5. P.W.1 described the occurrence to the effect that accused Basanta, Tukuna and Kanhu were assaulting the deceased by means of farsa, bhujali and sword. In particular, accused Basanta was assaulting by means of farsa. P.W.5, upon his arrival asked the deceased as to who had assaulted him to which the deceased disclosed the names all the three assailants and the weapons with which they assaulted him. P.W.5 fully corroborates P.W.1 in this regard. P.W.1 further stated that he saw bleeding injuries on head, neck, left shoulder and the body of the deceased. This finds support from the evidence of the autopsy surgeon P.W.8, who has listed as many as fifteen injuries out of which, fourteen are incised, chop and cut wounds. P.W.8 categorically stated that the injuries were ante-mortem in nature and could have been caused by heavy cutting weapon. Death was due to the head injury. Thus, the medical evidence is consistent with the ocular. The other witnesses are post-occurrence witnesses but P.W.3 stated that on the date of occurrence at



about 2:00 PM, he had seen the accused persons running away holding the weapons, which had blood stains. Half of an hour later, the wife of P.W.3 informed that the deceased had been killed. P.W.4 stated that on that date at about 1:00 to 1:20 PM, he had seen the three accused persons standing near a bamboo bush armed with the weapons in question. He thereafter saw the deceased sitting on rice bags and suddenly the accused persons assaulted him with the weapons. Nothing has been elicited from either P.W.3 or P.W.4 to view their testimonies with suspicion. The I.O., P.W.10 also did not state anything in regard to their evidence to doubt their versions.

9. Another important aspect that we have noted is that in the FIR itself, the informant P.W.1 has mentioned about the threat held out by the accused persons eight days prior to the occurrence of killing the deceased. He reiterated such fact in his evidence and stated that he informed such fact to the deceased but he took it lightly. He also stated that two months prior to the occurrence, accused Basanta had told him that a big man would be killed. P.W.2 stated that four to five days prior to the occurrence in the night at about 11.00 PM accused Basu told him that they will kill Sukanta Senapati (deceased) and that he



informed Sukanta and his family members. This suggests pre-mediation. P.Ws.2 and 4 have deposed about the immediate preparation of the accused persons to commit the crime.

10. Having observed as above, we shall now consider the grounds raised by the Appellant.

(i) It has been argued that the occurrence took place on a public road accessible to all but prosecution did not examine any nearby shop-owners or passers-by, who might have seen the occurrence. We are not impressed with this argument for the reason that on the face of direct eye witness accounts, which we have held to be clear, cogent, consistent and reliable, non-examination of other witnesses cannot weaken the prosecution case or persuade the Court to view it with suspicion. Law is well-settled that it is the quality and not quantity of evidence which is material.

(ii) It has been further argued that all the material witnesses are interested witnesses inasmuch as P.W.1 is the nephew of the deceased and P.W.5 was an employee of the deceased. We find that the trial Court did not base the order of conviction only on the version of P.Ws.1 and 5 but also that of P.W.2, who is a post-occurrence witness, P.W.3, who is an eye witness, P.W.4, who is a



post-occurrence witness and also P.W.7, who is also a post-occurrence witness. The versions of all these witnesses taken together clearly prove the complicity of the present appellant in the occurrence. It cannot therefore, be said that the order of conviction is based only on the version of interested witnesses. That apart, it is well-settled that relatives or close associates of the victim would never falsely implicate a person and thereby allow the actual offender to escape punishment.

(iii) It is argued that P.W.5 claims to be a worker under the deceased though, he could not say for how many years he had worked. P.W.1 however, categorically stated that Jagu Sahu (P.W.5) never worked under his uncle(deceased). Even accepting for a moment that this is a discrepancy, we fail to understand as to how this would affect the veracity of his sworn testimony regarding the occurrence. It must be kept in mind that he having arrived at the spot shortly after the occurrence had asked the deceased as to who had assaulted him. We therefore, find no difficulty in accepting the evidence of P.W.5 notwithstanding the above discrepancy.

11. Learned counsel for the appellant has argued that according to P.W.1, he took the deceased in a Trekker along with Manjulata



Senapati, Satyabrata Mohapatra, Jagu Sahu and Braja Kishore Mohapatra to Adashpur Hospital but except Jagu Sahu (PW.5), the others were not examined. We fail to understand as to how examination of the persons other than P.W.5 could have helped the defence case particularly when it is not disputed that the deceased was shifted to Adashpur Hospital where he was declared dead. Since P.W.5 has corroborated the version of P.W.1 in this regard, non-examination of the others according to us, is not fatal to the prosecution case.

12. As regards the oral dying declaration before P.W.1 and P.W.-5, it is urged that a person who received such grievous injuries could not have been in a position to name his assailants and the weapons with which they assaulted him. In this regard, our attention is drawn to the statement of the autopsy surgeon P.W.8 to the effect that one can die within few minutes on receiving such type of injuries and that one can talk for few minutes. We find that right from the F.I.R., itself, it is the consistent version of P.W.1 (informant) that on being asked by Jagu Sahu (P.W 5), the deceased with much difficulty managed to convey the names of his assailants and the weapons used by them. P.W.1 also stated so in his evidence and so also P.W.5. We have found nothing to



view their versions with suspicion. As to the statement of P.W.8, we are of the view that he was referring to a mere possibility that one can die within few minutes of receiving such injuries. It is not his definite case that death occurs in every such case as a rule. Even otherwise, he also stated that one can talk for few minutes. Thus, the argument is unacceptable.

13. Thus, from the above narration we find none of the grounds raised by the appellant valid or tenable so as to persuade us to take a different view than what was taken by the trial Court. Even on an independent appreciation of the evidence, we find that the appellant and the other accused persons bore grudge against the deceased for some reason and had decided to kill him. On the date of occurrence also, they made preparation to give effect to their design by being armed with deadly weapons. They jointly assaulted the deceased on the road, which was witnessed by P.W.1, followed by P.W.5. The deceased, while he was still alive immediately gave out the names of his assailants and the weapons with which they assaulted him. The medical evidence fully supports and corroborates the ocular evidence. We therefore, hold that the appellant was rightly convicted and sentenced.



14. For the foregoing reasons therefore, we find no merit in the appeal, which is therefore, dismissed. The appellant being on bail, his bail bond be cancelled and he be taken to custody forthwith for serving the remaining part of his sentence.

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(Sashikanta Mishra, J)

Manash Ranjan Pathak, J I agree.

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(Manash Ranjan Pathak, J)

*High Court of Orissa, Cuttack.
31st of March, 2026/ Puspanjali Ghadai, Jr. Stenographer*