**IN THE HIGH COURT OF ORISSA, CUTTACK**

**JCRLA No.100 of 2006**

An appeal under section 374 Cr.P.C. from the judgment and order dated 03.08.2006 passed by the Additional Sessions Judge, Malkangiri in Sessions Case No.03 of 2000.

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Hadi Dhangada Majhi @ Challan ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellants: - Mr. Bikash Ch. Parija
Amicus Curiae

For Respondent: - Mr. Priyabrata Tripathy
Addl. Standing Counsel

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P R E S E N T:

THE HONOURABLE MR. JUSTICE SANGAM KUMAR SAHOO

AND

THE HONOURABLE MR. JUSTICE SIBO SANKAR MISHRA

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Date of Hearing and Judgment: 13.09.2023

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**By the Bench:** The appellant Hadi Dhangada Majhi @ Challan faced trial in the Court of learned Addl. Sessions Judge, Malkangiri in Sessions Case No.03 of 2000 for commission of offence under section 302 of the Indian Penal Code (hereinafter 'I.P.C.') on the

accusation that on 29.05.1999 at about 3.00 p.m. at village Goiguda, he committed murder of Sukra Sisa (hereinafter the 'deceased').

The learned trial Court vide impugned judgment and order dated 03.08.2006 found the appellant guilty for the offence charged and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo further R.I. for six months.

**Prosecution Case**:

The prosecution case, as per the first information report (hereinafter 'F.I.R.') lodged by Lachhimi Sisa (P.W.4) before the Officer in-charge of Mudulipada police station on 29.05.1999, is that three years prior to the lodging of the F.I.R., one Lachhimi Challan of village Tulaguruma had married to one Sukri Sisa, who was the co-villager of the informant. After marriage, the girl Sukri Sisa eloped with another boy for which the co-villagers of the husband of that girl, namely, Lachhimi Challan came to the village of the informant and took away five cows from the mother of the girl. However, the cows subsequently returned to the village of the informant on their own and at this, on 29.05.1999 the appellant Hadi Dhangada Majhi @ Challan, who was the paternal uncle of Lachhimi Challan

came to the village of the informant at about 3.00 p.m. holding bow and arrows. Seeing him, the villagers of the informant concealed themselves. The deceased Sukra Sisa, who was the paternal uncle of the informant, was sitting at the verandah of his house. The appellant shot two arrows at the deceased, one arrow hit on the chest of the deceased and the other one hit at the right side abdomen of the deceased for which he fell down on the ground. The appellant left the spot carrying the bow and arrows. It is stated that Sukra Sisa (P.W.5), one Hadi Sisa and others had seen the occurrence. After the appellant left the spot, the villagers came near the deceased and found that he was lying dead there on the ground being shot with two arrows, one at the chest and another at the abdominal region. The informant broke the wooden portion of the arrows. The villagers wanted to report the matter at the police station, but at that point of time, the appellant again came to the spot and threatened the villagers that if anyone would touch the dead body of the deceased, he would also be shot with arrows. Due to such threat, the informant and others could not bring the dead body to the police station and report was lodged accordingly indicating therein that the dead body was lying in the village.

On the basis of such oral report, P.W.7 Sarbeswar Naik, the Officer in-charge of Mudulipada police station registered Mudulipada P.S. Case No.21 dated 29.05.1999 under section 302 of the I.P.C. against the appellant and he himself took up investigation of the case. During the course of investigation, P.W.7 examined the witnesses, visited the spot, seized two nos. of arrows as per the seizure list Ext.3, held inquest over the dead body as per the inquest report (Ext.4), sent the dead body to the Medical Officer, C.H.C., Khairaput for post mortem examination, and seized the blood stained earth and sample earth as per seizure list Ext.5. He also seized the wearing apparels of the deceased as per seizure list Ext.2. On 04.06.1999, P.W.7 arrested the appellant, seized one bamboo bow as per seizure list Ext.6 and the appellant was forwarded to the Court on 05.06.1999. Post mortem over the dead body of the deceased was conducted in C.H.C., Khairaput and the doctor, who conducted the post mortem examination, noticed two arrows struck to the body of the deceased, one on the chest cavity and the other on the right side abdominal cavity and he opined the cause of death to be haemorrhage and hypovolemic shock due to shot of arrows and the report was marked as Ext.7. The post mortem report (Ext.7) was received by the I.O. (P.W.7) on 07.07.1999, but he made a query to the doctor about the

possibility of the injury on the deceased by such arrows and the doctor gave his report vide Ext.8/1 and opined that the injuries were possible by the arrows. On 20.08.1999 the I.O. (P.W.7) sent the exhibits to R.F.S.L., Berhampur for chemical examination and on completion of investigation, submitted charge sheet under section 302 of the I.P.C. against the appellant.

The case was committed to the Court of Session after observing due formalities. The learned trial Court framed the charge on 15.11.2001 under section 302 of the I.P.C. against the appellant and since the appellant pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prove his guilt.



**Prosecution Witnesses & Exhibits:**

In order to prove its case, the prosecution examined seven witnesses.

P.W.1 Kusa Singh was the Constable attached to Mudulipada police station. He escorted the dead body of the deceased to P.H.C., Khairput for post mortem examination. He has proved the dead body chalan marked as Ext.1 and he is also a witness to the seizure of the wearing apparels of the deceased marked as Ext.2.

P.W.2 Prasana Kumar Dalai and P.W.3 Madan Mohan Amanatya were the police constables attached to Mudulipada police station. They are witnesses to the seizure of blood stained arrows, torn cloth and command certificate as per Ext.2.

P.W.4 Lachhimi Sisa is the informant in the case. He has stated that he did not see the occurrence, but on hearing about the same, he orally reported the matter at Mudulipada police station and after it was written, he put his L.T.I. on the same.

P.W.5 Hadi Sisa is a co-villager of the informant as well as the appellant and he has supported the prosecution case.

P.W.6 Sukra Badnaik did not support the prosecution case for which he was declared hostile by the prosecution.

P.W.7 Sarbeswar Nayak, the Officer in-charge of Mudulipada police station, who is the Investigating Officer of the case.

The prosecution exhibited nine documents. Ext.1 is the dead body challan, Ext.2, 3 6 are the seizure lists, Ext.4 is the inquest report, Ext.5 is the spot map, Ext.7 is the post mortem report, Ext.8 is the requisition to M.O. for opinion and Ext.9 is the forwarding report to R.F.S.L., Berhampur.

**Defence Plea**:

The defence plea of the appellant is one of denial and he stated that he has been falsely implicated in the case on suspicion.

**Findings of the Trial Court:**

The learned trial Court after analysing the oral as well as documentary evidence on record, has been pleased to hold that the death of the deceased due to arrow shot is admitted and the statement of P.W.5 is truthful, credible and trustworthy enough for securing conviction of the appellant and accordingly, held the appellant guilty under section 302 of the I.P.C.

**Contentions of the Parties:**

Mr. Bikash Ch. Parija, learned counsel, who has been engaged as the counsel for the appellant by the Orissa High Court Legal Services Committee as per order dated 04.07.2023, submitted that except the evidence of P.W.5, who claimed himself as an eye witness to the occurrence, there is no other material against the appellant to corroborate the evidence of P.W.5. He argued that even though in the F.I.R., P.W.4 Lachhimi Sisa has mentioned that apart from P.W.5, one Hadi Sisa and others had also seen the occurrence, but none of them have

been examined to corroborate the evidence of P.W.5. Learned counsel further submitted that P.W.5 has stated that the appellant shot an arrow at the deceased and committed his murder whereas in the post mortem report, the doctor has noticed two arrows struck to the body of the deceased, one at the chest and the other at the abdominal region and therefore, there are discrepancies in the oral evidence of the eye witness (P.W.5) and the medical evidence. Learned counsel further argued that the doctor, who conducted the post mortem examination over the dead body of the deceased, has not been examined during trial and the post mortem report has been proved by none else than P.W.7 and therefore, by non-examining the material witness like the doctor, who conducted post mortem examination, the appellant has been seriously prejudiced as many more things could have been elicited from the evidence of the doctor. Learned counsel further argued that the material witness like P.W.5 has not been properly cross-examined, which has caused serious prejudice to the appellant. It is further argued that the evidence of the eye witness (P.W.5) would indicate that the appellant picked up quarrel with the deceased Sukra Sisa and when the deceased challenged as to why he was quarrelling, the appellant shot an arrow at him. It is submitted that the appellant belonged to tribal community and

holding of bow and arrows is not unusual on their part and therefore, if during sudden quarrel, he shot an arrow, the offence would not come within the purview of section 302 of the I.P.C. and it may at best an offence under section 304 Part-I of I.P.C.

Mr. Priyabrata Tripathy, learned Additional Standing Counsel appearing for the State of Odisha, on the other hand, supported the impugned judgment and contended that the post mortem report (Ext.7) was marked without objection on 25.07.2006 when the I.O. (P.W.7) proved the same. The evidence of the eye witness (P.W.5) has almost remained unchallenged and when two arrows were shot at the deceased, which hit on the vital parts of the body like chest and abdomen and the post mortem report corroborates that the death of the deceased was due to haemorrhage and hypovolemic shock on account of arrow shot, the learned trial Court has rightly convicted the appellant under section 302 of the I.P.C. and the appeal should be dismissed.



**Analysis of evidence**

On careful analysis of the evidence on record, it appears that P.W.1 accompanied the dead body for post mortem examination and after the post mortem was conducted, he received the wearing apparels of the appellant along with the

weapons of offence from the doctor and produced the same before the I.O., which were seized under seizure list Ext.2 and P.W.2 is also a witness to the seizure of the said articles so also P.W.3. P.W.4 is the informant in the case, who has stated that he has not seen the occurrence, but only upon hearing about the same, he orally reported the matter at Mudulipada police station and in the cross-examination, he has stated that the written report was neither read over nor explained to him. P.W.6 did not say anything about the case and P.W.7 is the I.O. and therefore, the entire case of the prosecution rests on the testimony of P.W.5, who claims himself to be the eye witness to the occurrence.

**Conviction basing upon testimony of solitary witness**:

Law is well settled that in order to base conviction on the evidence of the solitary witness, the same must be clear, cogent and trustworthy and reliable. There are innumerable precedents on this point of law and if there is any need to provide a citation then the locus classicus is **Vadivelu Thevar -Vrs.- The State of Madras reported in A.I.R. 1957 Supreme Court 614,** wherein it is held as follows:-

> "There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single

witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable."

It is imperative for us to examine the evidence of P.W.5 keeping the above principle in view. P.W.5 was examined in the trial Court on 19.07.2005 and he has stated that the occurrence took place about five years back and the appellant

came to their village and picked up quarrel with the deceased and when the deceased challenged as to why he was quarrelling, the appellant shot arrows at him and committed his murder. In cross-examination, he has denied the suggestion of the learned defence counsel that he did not see the occurrence and that he was absent from the village and further denied the suggestion given by the learned defence counsel that since he was in inimical terms with the appellant, he has deposed falsehood. The examination-in-chief of the eye witness has thus remained unchallenged and practically, no cross-examination has been made to disbelieve the evidence of P.W.5 except giving some suggestion to him.

We verified from the case records that though earlier State Defence counsel was engaged to conduct the case for the appellant, but after the charge was framed on 15.11.2001, the appellant engaged his own counsel on 20.11.2002 and P.W.5 was examined and cross-examined on 19.07.2005 and therefore, when the most vital witness for the prosecution i.e. P.W.5 was examined, the appellant was represented by his own counsel and not by any State Defence Counsel and if his own engaged counsel did not put any question to discredit the evidence of the star witness like P.W.5, no blame can be put on anybody.

P.W.5 no doubt has stated that the appellant shot one arrow at the deceased and the post mortem report indicates that in fact two arrows were struck on the body of the deceased, one on the right side chest portion and the other one on the abdominal region, however, this discrepancy itself is not a ground to disbelieve the prosecution case in toto and it cannot be said that the appellant is in no way responsible for the death of the deceased. At this stage, if we look into the background of the case and the status of the appellant, it appears that he belonged to a tribal community and a rustic villager of the tribal area carrying bow and arrow is an usual and day to day affair and they carry this kind of weapon as an accessory adding to their attire as they generally go for hunting. Therefore, merely because the appellant came to the village of the deceased on the relevant day with bow and arrows, it cannot be inferred that he had come prepared to kill the deceased. In fact, there is no material on record that there was any kind of previous enmity between the appellant and the deceased and further, it appears that on the fateful day, there was a sudden quarrel between the appellant and the deceased and when the deceased challenged the appellant as to why he was quarrelling with him, the appellant shot an arrow at the deceased. It is not unusual for a tribal man to lose his temper even on trivial issues.

**Whether the act of appellant amounts to murder?**:

In the case of **Laxman -Vrs.- State of M.P. reported in A.I.R. 2006 Supreme Court 3240**, the accused therein shot arrow at the deceased as a result of which the deceased fell down on the ground and died instantaneously. The question which fell for consideration before the Hon'ble Supreme Court is whether the offence would come under the purview of 'murder' or 'culpable homicide not amounting to murder'. After appreciating the evidence on record, the Hon'ble Court held as follows:

> 10. Clause (b) of Section 299 IPC corresponds with Clauses (2) and (3) of Section 300 IPC. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of Clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such

injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of Clause (2) is borne out by illustration (b) appended to Section 300 IPC.

11. Clause (b) of Section 299 IPC does not postulate any such knowledge on the part of the offender. Instances of cases of falling under Clause (2) of Section 300 IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result: of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In Clause (3) of Section 300 IPC, instead of the words likely to cause death' occurring in the corresponding Clause (b) of Section 299 IPC, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in

the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between Clause (b) of Section 299 IPC and Clause (3) of Section 300 IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or of the lowest degree. The word likely in Clause (b) of Section 299 IPC conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury.....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

12. For cases to fall within Clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature.

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17. Thus, according to the rule laid down in Virsa Singh's case, even if the intention of accused was limited to the infliction of a bodily

injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 IPC clearly brings out this point.

18. Clause (c) and Clause (4) of Section 300 IPC both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that Clause (4) of Section 300 IPC would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

19. The above are only broad guidelines and not cast iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the

matters involved in the second and third stages."

This Court adjudged a similar matter in the case **Ude Naik -Vrs.- State of Orissa reported in (2008) 41 Orissa Criminal Reports 479**, where the accused shot an arrow which pierced into the right side chest of the deceased. The Court, while placing reliance on the judgment of the Highest Court in **Laxman** (supra), deemed it proper to set aside the conviction of the accused under section 302 of I.P.C. and instead convicted and sentenced him under section 304 Part I of I.P.C. While altering the order of conviction handed down by the learned trial Court, this Court had observed as follows:

> "Admittedly, the arrow travelled a distance of above 50 feet and under such circumstance it could also assume as an act of accidental hitting of the arrow into the chest. In the case of **Laxman v. State of Madhya Pradesh, AIR 2006 SC 3240** relied on by the Appellant, the Apex Court has propounded that though there was no sudden quarrel as stated by the Appellant, but shooting of the arrow without accuracy of the place to hit, the act of the accused in causing arrow shot injury and the death of the deceased amounts to culpable homicide not amounting to murder. Though the facts are distinguishable on finer

> aspect, yet the ratio is applicable inasmuch as in the present case, there was provocation from the side of the deceased and in retaliation only, the arrow was shot and the prosecution does not say whether it was aimed to kill him, though the arrow shot injury killed the deceased. Under such circumstance, we set aside the order of conviction under Section 302, I.P.C. and the sentence of imprisonment for life and in its place find the accused guilty of the offence under Section 304, Part I, I.P.C. and a custodial sentence of ten years as good enough and appropriate punishment."

In the case of **Hadi Sisa -Vrs.- State of Orissa reported in (2018) I ILR-CUT 507**, this Court had occasion to decide another appeal having analogous set of facts. Therein, the accused had shot an arrow, which pierced into the chest of the deceased. Though he was taken to hospital, but he succumbed to the injuries. Examining the circumstances therein, this Court had deemed it apposite to alter the conviction of the accused from murder to one for culpable homicide not amounting to murder under section 304, part I. While reducing the gravity of culpability and punishment, this Court had observed:

> "From the discussions made hereinabove, we are of the view that the death of the deceased

> was culpable homicidal one but the single shot by arrow without there being evidence of intention to cause death. The judgment of conviction under Section 302 IPC passed against the appellant, while being not agreed with, the prosecution case for the offence under Section 304-I of IPC against the appellant is well made out."

After perusing the aforesaid precedents of both the Hon'ble Supreme Court as well as of this Court and applying the ratio thereof to the present set of facts, when there was no previous enmity between the appellant and the deceased and there was no premeditation on the part of the appellant to commit the crime and the occurrence took place all of a sudden and during course of such quarrel, the appellant who is a tribal man and was having bow and arrows with him, shot the arrows at the deceased, in our humble view, the ratio laid down in **Laxman** (supra) is applicable to this case and thus, the act of the appellant would come under the purview of the first part of section 304 of I.P.C.

**Conclusion**:

Accordingly, the JCRLA is allowed in part. The conviction of the appellant under section 302 of the Indian Penal Code is altered to one under section 304, Part-I of the Indian

Penal Code and the appellant is sentenced to undergo rigorous imprisonment for ten years and in view of poor financial condition of the appellant, no fine amount is imposed.

It appears from the trial Court record that the appellant was taken into judicial custody on 09.06.1999 and the trial Court judgment was pronounced on 03.08.2006 and he was never released on bail during pendency of the trial. During pendency of the appeal, he was never released on bail and as such, he has already undergone substantive sentence of more than twenty-four years. A report has been received from the Senior Superintendent, Circle Jail, Koraput (Welfare Services) on 12.07.2023 wherein it is indicated that the appellant was transferred from Circle Jail, Koraput to Biju Pattnaik Open Air Ashram, Jamujhari on 25.02.2010 for confinement. Since the appellant has already remained in judicial custody for more than twenty-four years, he be set at liberty forthwith, if his detention is not required in any other case.



Before parting with the case, we would like to put on record our appreciation to Mr. Bikash Ch. Parija, learned counsel for rendering his valuable help and assistance towards arriving at the decision above mentioned. This Court also appreciates the

valuable help and assistance provided by Mr. Priyabrata Tripathy, learned Additional Standing Counsel.

The lower Court records with a copy of this judgment be sent down to the learned trial Court forthwith for information.

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**S.K. Sahoo, J.**

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**S.S. Mishra, J.**

Orissa High Court, Cuttack
The 13th September 2023/PKSahoo