

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.33 of 2013

In the matter of an Appeal under section 383 of the Code of Criminal Procedure, 1973 and from the judgment of conviction and order of sentence dated 24th May, 2013 passed by the learned Additional Sessions Judge, Rourkela in Sessions Trial No.145 of 2012.

Krushna Dom @ Domb *Appellant*

-versus-

State of Odisha *Respondent*

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant - Ms.Sanjukta Bala Das
(Advocate)

For Respondent - Mr.S.K. Nayak,
Additional Government Advocate.

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE G.SATAPATHY

Date of Hearing :11.01.2024 : Date of Judgment :16.01.2024

D.Dash, J. The Appellant, by filing this Appeal from inside the jail, has challenged the judgment of conviction and order of sentence dated 24th May, 2013 passed by the learned Additional Sessions Judge, Rourkela in Sessions Trial No.145 of 2012 arising out of G.R Case No.814 of 2012, corresponding to Bisra P.S. Case No.24 of 2012 of the Court of the learned Sub-Divisional Judicial Magistrate (S.D.J.M.), Panposh.

The Appellant (accused person) thereunder has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (in short, 'the IPC'). Accordingly, he has been sentenced to undergo imprisonment for life.

2. PROSECUTION CASE:-

The accused, namely, Krushna Domb and Ratan Domb are neighbours having their residential houses at Village-Puruna Bisra. However, they used to have frequent quarrel between them. It is stated that on 28.04.2012 around 9.30 p.m., there arose a quarrel between them and in course of the same, it is stated that the accused dealt a blow by means of a piece of hard wood on Ratan's head. Ratan, receiving the blow from the accused, became serious and while being shifted to Rourkela Government Hospital as advised by the Medical Officer of the Hospital at Bisra, on the way, met his death.

The wife of Ratan (deceased), namely, Purnima Domb (Informant-P.W.10) lodged a written report being scribed by one Rameswar Sarlia (P.W.4) with the Inspector-in-Charge (IIC), Bisra Police Station. On receiving the said report, the IIC treated the same as F.I.R. (Ext.2) and upon registration of the case, directed the Sub-Inspector (S.I.) of Police (P.W.13) to take up the investigation.

3. In course of investigation, the Investigating Officer (I.O.-P.W.13) examined the informant (P.W.10) and other witnesses.

The I.O. (P.W.13), having visited Rourkela Government Hospital, held inquest over the dead body of the deceased and prepared the report (Ext.1). He (P.W.13) sent the dead body of the deceased for post mortem examination to Bisra Community Health Centre. The I.O. (P.W.13) arrested the accused and on the same day, he sent him for medical examination. The wearing apparels of the accused were seized under seizure list (Ext.4). Ext.3 is the seizure list showing the seizure of the weapon of offence, blood stained earth, sample earth seized from the spot whereas Ext.5 shows the seizure of the wearing apparels of the deceased. The I.O. (P.W.13), during his visit to the spot, has prepared spot map (Ext.10). The I.O. (P.W.13) sent the seized incriminating articles for chemical examination through Court.

On completion of investigation, the I.O. (P.W.13) submitted the Final Form placing this accused to face the Trial for commission of offence under section 302 of the IPC.

4. Learned S.D.J.M., Panposh on receipt of the Final Form, took cognizance of the offence under section 302 of the IPC and after observing the formalities, committed the case to the Court of Sessions. That is how the Trial commenced by framing the charge for the said offence against this accused.

5. In the trial, the prosecution examined in total thirteen (13) witnesses. Out of them, as already stated, the Informant, who happens to be wife of the deceased, has been examined as P.W.10.

P.W.4 is the scribe of the FIR (Ext.2). P.Ws.11 & 12 are the daughters of the deceased. P.Ws.1, 2 and 6 are post occurrence witnesses. P.W.5 is the police constable and a witness to the seizure of the piece of hard wood. P.W.7 is also a police constable and a witness to the seizure of wearing apparels of the deceased and accused as well as the blood sample and nail clippings of the accused. The Doctor, who had conducted the autopsy over the dead body of the deceased, has been examined as P.W.8. The I.O. of the case, at the end, has come to the witness box as P.W.13.

6. Besides leading the evidence by examining the above witnesses, the prosecution has proved several documents which have been admitted in the evidence and marked Ext. 1 to 10. Important of those are the F.I.R. (Ext.2), Inquest Report (Ext.1) and Postmortem Examination Report (Ext.7). The spot map prepared by the I.O. (P.W.13) has been admitted in evidence and marked as Ext.10.

7. The accused, having taken the plea of denial and false implication, has, however, not tendered any evidence in support of the defence.

8. Ms.Sanjukta Bala Das, learned counsel for the Appellant (accused), at the outset, without question the nature of death of the deceased as homicidal as per the report of the Doctor (P.W.8) conducting the post mortem examination over the dead body of the deceased and other circumstances emanating therefrom being

supported by the evidence of the I.O. (P.W.13), submitted that here is a case where even accepting the version of the prosecution witnesses as regards the role played and acts done by the accused viewing the other surrounding circumstances, which have emerged in evidence, the Trial Court ought to have convicted the accused for commission of the offence under section 304-I of the I.P.C. She further submitted that viewing the happenings in the incident, the subsequent events, when are kept in view with the fact that the parties hail from rural back ground whose temper usually run high and behavior for silly reasons, often becomes abnormal, the Trial Court ought not to have convicted the accused for commission of offence under section 302 of the IPC. He, therefore, urged for alteration of conviction for commission of offence under Section 302 of the IPC to one under Section 304-I of the IPC and accordingly, she contended that the accused be visited with the sentence as appropriate for the said offence.

9. Mr.S.K. Nayak, learned Additional Government Advocate submitted all in favour of the finding returned by the Trial Court that the accused is liable for commission of the offence under Section 302 of the I.P.C. He further submitted that the blow being by a piece of hard wood, on the head of the deceased, the Trial Court did commit no mistake in holding the accused is guilty for commission of the offence under section 302 of the IPC.

10. Keeping in view the submissions made, we have carefully read the impugned judgment of conviction. We have also extensively travelled through the depositions of the witnesses (P.W.1 to P.W.13) and have perused the documents admitted in evidence and marked as Ext.1 to Ext.10.

11. The Doctor conducting the post mortem examination over the dead body of the deceased, being examined as P.W.8, has stated to have noticed two lacerated injuries on the left parietal region and occipital region. While stating those injuries to be ante mortem in nature, he has, however, not stated that both these injuries cannot be resulted from the single blow when the witnesses (P.Ws.9, 11 & 12) are stating the accused to have given the blow by means of a wooden piece, which has been seized under Ext.3, it is not stated by any of the witnesses that P.Ws.11 & 12 that the accused suddenly came, dealt a blow by means of that wooden piece on the head of the deceased. None-else is stating that the accused had come to that place carrying that wooden piece. In the absence of any evidence in that direction, normal inference is that the accused had picked up that piece of wood from near the spot. There was dispute between the accused and the deceased for certain landed property when witnesses (P.Ws.11 & 12) are differing on the point as to how many blows the accused dealt upon the deceased and one of them has stated as if it was a solitary blow, the benefit must go to the accused in

getting his role confined to have dealt one blow on the deceased. So, the evidence, being cumulatively viewed, with the facts that the parties are members of Scheduled Caste and hail from rural pocket situated within the Scheduled Area of the State where ordinarily their temper run high and for silly reasons, they many a times behave differently, at times in a quite an unexpected manner; we are of the view that the offence could be properly categorized as one punishable under section 304-I of the IPC. We are thus of the considered opinion that for the role played by the accused and the act done, he would be liable for conviction under Section 304-I of the IPC.

In that view of the matter, this Court, alters the conviction under Section 302 of the IPC to one under section 304-I of the IPC. Consequently, the Appellant (accused) is sentenced to undergo rigorous imprisonment for a period of ten (10) years.

12. In the result, the Appeal is allowed in part. With the above modification as to the judgment of conviction and order of sentence dated 24th May, 2013 passed by the learned Additional Sessions Judge, Rourkela in Sessions Trial No.145 of 2012, the Appeal stands disposed of.

*(D. Dash),
Judge.*

G. Satapathy, J. I Agree.

*(G.Satapathy),
Judge.*