# IN THE HIGH COURT OF ORISSA AT CUTTACK

## CRLA No.356 of 2009

An application under Section 374 of the Cr.P.C. against the judgment dated 30th June, 2009 passed by the learned Sessions Judge, Keonjhar in Sessions Trial Case No.62 of 2008.

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***Raina @ Ranjan Juanga*** **……** **Appellant**

*Versus*

**State of Odisha** **…..** **Respondent**

Advocate(s) appeared in this case :-

For Appellant : Mr. Chittaranjan Sahu, Advocate

For Respondent : Mr. J.Katikia, Advocate

**CORAM : THE CHIEF JUSTICE**
**JUSTICE B.P. ROUTRAY**

**JUDGMENT**
***6th September, 2021***

***B.P. Routray,J.***

1. The Appellant has been convicted and sentenced to life imprisonment for murder simpliciter by the learned Sessions Judge, Keonjhar in Sessions Trial Case No.62 of 2008.

2. The prosecution case in brief is that, the Appellant and the deceased were two friends and belonged to the same village Talapada. On 24th September, 2007 around 9 pm they were coming down the village road quarreling with each other. The quarrel intensified near the house of deceased and the Appellant assaulted the deceased by fist blows. Hearing

the shout, two elder brothers of deceased (P.W.1 and P.W.2) came out from their house and separated them. But during the quarrel deceased fell down on a hard surface and sustained a head injury. Then the Appellant left the place saying that he would take the deceased to Hospital and did not turn up. P.Ws.1 and 2 took the deceased into their house. He died there the next evening around 5 pm. P.W.1 lodged the written report (Ext.1) on the same night of the death. It was registered as Daitari P.S. Case No.27 dated 25th September, 2007.

3. P.W.5, the then I.I.C. of Daitari Police Station took up investigation. On the next morning inquest over the dead body was held and the dead body was sent for post mortem examination. P.W.4, the Medical Officer working as O&G specialist in the Sub-Divisional Hospital, Anandapur conducted post mortem examination on 26th September, 2007 at 5 pm. The accused was arrested on 1st October, 2007 and upon completion of investigation, a charge-sheet was submitted on 25th December, 2007 against the Appellant as the sole accused for the commission of the offence under Section 302 of I.P.C.

4. The Appellant faced trial taking the plea of false implication. In course of trial, prosecution examined 5 witnesses and marked 7 exhibits in order to prove their case. No material object has been adduced in evidence.

5. On the other hand defence did not adduce any evidence.

6. The learned Sessions judge upon completion of trial convicted the Appellant for murder of the deceased with the finding that prosecution had successfully proved the charge against him.

7. At the outset it must be noted that the death has been held to be homicidal. P.W.4 who conducted post mortem examination found one lacerated injury over the right frontal area of the head, one abrasion on the left knee. The abdominal skin around the umbilicus was found to have turned blue. All the injuries were found to be ante mortem in nature. The external injury on the head was associated with bleeding and fracture of the frontal bone exposing the brain matter just above the right orbital margin. It was corresponding to the internal injury of hematoma in the right hemisphere of the brain of size 2" X 2.5". P.W.4 opined that the death was due to hemorrhage and shock relating to the head injury. The time of death was within 24 hours from the time of post mortem examination. P.W.4 further opined that the death was homicidal in nature. Thus, considering the features of injuries as opined by P.W.4 and keeping in view the circumstances alleged by prosecution, it is concluded that the deceased died a homicidal death. This is in any event not disputed by counsel for the Appellant.

8. The next question to be examined is whether the Appellant can be said to have caused the homicidal death? P.Ws.1 and 2 are the eye witnesses to the occurrence. A perusal of their evidence reveals that they both have stated to have seen the Appellant and the deceased quarreling with each other near their house. Neither of the witnesses have said anything about the use of any weapon in the commission of the offence. Their evidence is to the effect that the Appellant dealt fist blows to the deceased during quarrel and the latter fell down and sustained an injury on the head. Thus, from the evidence of P.Ws.1 and 2 it is clear that the cause of the injury on the head of the deceased was due to his fall on the hard surface.

P.W.5 has admitted in his cross-examination that the spot of occurrence was stony with hard surface. This is also not disputed by P.W.1. Therefore, the reason for the head injury which resulted in the death of the deceased is due to fall of the deceased during quarrel with the Appellant. None of the witnesses including P.Ws.1 and 2 have whispered about any intention of the Appellant either for the quarrel or for the blows dealt by him. There is no other proven circumstance that points to the intention of the Appellant. Also, there does not appear to be any prior enmity between the Appellant and the deceased. Even the case of the prosecution is that they both were friends prior to the occurrence.

9. Upon a close scrutiny of the circumstances and the entire evidence adduced on record, the Court is unable to discern the intention behind the homicidal killing of the deceased. At the same time, it cannot be held that the Appellant did not have the knowledge that the fall on the hard surface is likely to cause an injury. The circumstances and the actions attributable to the Appellant suggest a clear case of culpable homicide not amounting to murder falling within the ambit of Exception 4 to Section 300 of the I.P.C. The occurrence took place in the course of quarrel between the Appellant and the deceased. The fist blows dealt by the Appellant in course of quarrel and which caused the deceased to fall on the hard surface was without premeditation and without any undue advantage taken by the Appellant. The quarrel appears to be a sudden one and nothing is there on record to show any cruel or unusual action on the part of the Appellant. Thus, in our considered opinion the culpable action of the Appellant was without any intention to cause death, which attracts the punishment under Section 304, Part-II of the I.P.C. and not

under Section 302. We conclude as such. The conviction of the Appellant by the trial court in the impugned judgment is set aside and modified to this extent.

10. As submitted by learned counsel for the Appellant and as also revealed from record, the Appellant has been in custody since 1st October, 2007. In other words, he has already undergone almost 14 years of imprisonment. In view of the above discussion, the sentence is modified to the period of imprisonment already undergone by the Appellant. Accordingly, we direct for his immediate release. The Appellant be set at liberty immediately if his detention is not required in any other case.

11. The appeal is allowed to the above extent. The LCR be returned forthwith. An urgent certified copy of this order be transmitted forthwith to the concerned Jail Superintendent.

***(B.P.Routray)***
***Judge***

***(Dr. S. Muralidhar)***
***Chief Justice***

*6th of September, 2021.*
*//M.K. Panda, Sr. Steno//*