IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No. 08 of 2010

An appeal under section 374 Cr.P.C. from the judgment and order dated 22.12.2009 passed by the Additional Sessions Judge, Fast Track Court, Rourkela, Camp-Bonai in Sessions Trial Case No.83/56 of 2009.

Makaru Naik ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellant: - Mr. Rajib Lochan Pattanaik
Amicus Curiae

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

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing and Judgment: 11.07.2024

By the Bench: The appellant Makaru Naik faced trial in the Court of learned Additional Sessions Judge, Fast Track Court, Rourkela, Camp at Bonai in Sessions Trial Case No.83/56 of 2009 for

commission of offence punishable under section 302 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that on 13.06.2008 at about 6.00 p.m. at village Kuliposh under Lahunipara police station, he committed murder of one Bhanu Naik (hereinafter 'the deceased') by means of a 'tangia'.

The learned trial Court vide impugned judgment and order dated 22.12.2009 found the appellant guilty under the offence charged and sentenced him to undergo imprisonment for life.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'F.I.R.') (Ext.4) lodged by Sukanti Naik (P.W.3), the widow of the deceased on 14.06.2008 before the Inspector in-charge of Lahunipara, in short, is that she married to the deceased about a year prior to the date of occurrence and after constructing a house on a Government land in village Kuliposh, she was staying there with her deceased husband. They had also constructed a goat shed adjacent to their house, and using the same for the purpose of keeping their goats. Two to three weeks prior to the date of occurrence, the appellant, who was related to the informant as uncle-in-law also constructed a house there and started living there. On

13.06.2008, the appellant locked the goat shed and when the deceased asked for the keys of the shed to the appellant, the latter did not hand over the same for which there was an altercation between the appellant and the deceased. During the course of such altercation, it is stated that the appellant brought a 'tangia' and assaulted on the head as well as neck of the deceased for which there was profuse bleeding. The deceased in an injured condition was immediately shifted to Lahunipara Hospital first and then as per the advice of the doctor, he was taken to Bonai Hospital for treatment. Though the occurrence in question took place on 13.06.2008, since the informant (P.W.3) remained busy in the treatment of the deceased, she could not lodge the F.I.R. immediately. It was lodged only on the next day i.e. on 14.06.2008 and accordingly, Lahunipara P.S. Case No.144 dated 14.06.2008 was registered under section 307 of the I.P.C.

P.W.15, the Inspector in-charge of Lahunipara police station himself took up investigation of the case, examined the informant (P.W.3) and other witnesses, visited the spot and prepared the spot map (Ext.12). He seized sample earth and blood stained earth from the spot including other articles i.e. napkin as per the seizure list Ext.13. He also seized a towel stained with blood from the verandah of this spot house at Kuliposh as per the seizure list Ext.14. He took steps for

recording the dying declaration of the deceased, who was then in an injured condition in the Hospital, but the same could not be recorded as the deceased was not in a conscious state. On 15.06.2008, P.W.15 received message regarding the death of the deceased and accordingly, the case turned to one under section 302 of the I.P.C. P.W.15 conducted inquest over the dead body and sent it for autopsy to S.D.H., Bonai and after the post mortem, the wearing apparels of the deceased were seized. The appellant was arrested on 17.06.2008 and while in police custody, he gave recovery of the weapon of offence i.e. 'tangia' in presence of the witnesses, which was seized pursuant to the statement recorded under section 27 of the Evidence Act. He also issued requisition to the Medical Officer, Lahunipara P.H.C. for examination of the appellant and seized the biological sample of the appellant, which was produced through escorting constable and then forwarded the appellant to Court and received the post mortem report. He made a query to the Medical Officer regarding possibility of the injuries sustained by the deceased with the weapon seized and got the report. He also seized the bed head ticket of the deceased and made a prayer to the S.D.J.M., Bonai for sending the exhibits for Chemical Examination and accordingly, the exhibits were sent. On

completion of investigation, he submitted charge sheet on 02.10.2008 under section 302 of the I.P.C. against the appellant.

Framing of Charges:

3. After submission of charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed charge against the appellant as aforesaid and since the appellant refuted the charge, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

Prosecution Witnesses, Exhibits and Material Objects:

4. During the course of trial, in order to prove its case, the prosecution has examined as many as sixteen witnesses.

P.W.1 Dr. Niranjan Bhoj was working as the Medical Officer at the Bonai Hospital who admitted the deceased to the Emergency O.P.D. and gave an emergency call to the surgery specialist. On 15.06.2008, he received a call from the staff nurse regarding gasping state of the deceased for which he provided all the cardio measures to save him but the deceased could not survive and died. Upon the death of the deceased, he declared him dead and informed the matter to S.D.M.O., Bonai.

P.W.2 Anna Topo is a witness to the seizure of bed head ticket by the police as per seizure list Ext.3.

P.W.3 Sukanti Naik is the widow of the deceased and she is also the informant in this case. She, being an eye-witness to the incident, narrated the facts as those unfolded on the date of occurrence and she supported the prosecution case.

P.W.4 Singa Naik is the father of the deceased and the brother of the appellant. He stated that at the time of occurrence, he was absent in his house. Upon returning, he got information that the appellant had assaulted the deceased.

P.W.5 Benga Naik is the brother-in-law of the deceased and the brother of the informant. He stated to have heard that the appellant committed the murder of the deceased by causing assault on his neck and head by means of a tangia. He is a witness to the preparation of the inquest report.

P.W.6 Dasmi Naik is an eye witness to the occurrence who stated that while the deceased was going to tie his goats, the appellant came and by means of a tangia assaulted on his head. She further stated that out of fear, she went inside her house and returned to the spot after a while only to find that the deceased had sustained injury on his head and neck.

P.W.7 Padmini Naik is an eye witness to the occurrence who stated to have seen the appellant assaulting the deceased on his head and neck while he was tying his goats. She also stated that the appellant left the spot after causing the assault.

P.W.8 Guruba Naik stated that on hearing hulla, he proceeded to the spot and found the appellant assaulting the deceased by means of an axe on his head and neck. After causing the assault, the appellant ran away from the spot and the deceased fell down on the ground sustaining bleeding injury on his person and blood was oozing out of his injuries.

P.W.9 Banshi Naik stated that the appellant was his maternal father-in-law. He further stated to have seen the appellant assaulting the deceased while the latter was tying his goats.

P.W.10 Kalia Dehury is a witness to the seizure of weapon of offence from the house of the appellant on production by his wife as per seizure list Ext.6. He further stated that the appellant did not confess anything before the police, for which he was declared hostile and was cross-examined by the prosecution.

P.W.11 Guru Naik is a witness to the seizure of the weapon of offence, i.e. axe from the house of the appellant. However, as he stated that the appellant did not confess to have killed the deceased before the police and led to the discovery of the axe, he was declared hostile and was cross-examined by the prosecution.

P.W.12 Ashok Kumar Dehury is a witness to the seizure of one blue half pant, plastic bangle, one cloth and clothing apparels of the deceased as per seizure list Ext.9.

P.W.13 Nrupa Ballav Behera was working as a constable who took the appellant to the hospital for his medical examination and for collection of biological samples. After collection of biological samples by the Medical Officer, he produced the same before the I.O. which was seized as per seizure list Ext.10.

P.W.14 Mahendra Naik was working as a constable who had taken the dead body of the deceased to the hospital for post-mortem examination.

P.W.15 Suresh Chandra Pathy was working as the I.I.C. of Lahunipara police station and he is the Investigating Officer of the case.

P.W.16 Dr. A.K. Mohapatra was working as the Medical Officer at Bonai Hospital, who on police requisition conducted post-mortem examination over the dead body of the deceased and opined the cause of death to be cerebral haemorrhage. He proved his report vide Ext.21.

The prosecution exhibited twenty one documents. Ext.1 is the referral slip, Et.2 is the bed head ticket, Ext.3 is the seizure list in respect of bed head ticket, Ext.4 is the F.I.R., Ext.5/2 is the inquest report, Ext.6 is the seizure list in respect of the weapon of offence i.e. 'tangia', Ext.8/2 is the statement of the appellant recorded under section 27 of the Evidence Act, Ext.9 is the seizure list in respect of wearing apparels of the deceased, Ext.10 is the biological sample of the appellant, Ext.11 is the police requisition, Ext.12 is the spot map, Ext.13 is the seizure list in respect of sample earth, blood stained earth including other articles i.e. napkin, Ext.14 is the seizure list in respect of towel stained with blood, Ext.15 is the requisition for recording dying declaration of the deceased, Ext.16 is the injury requisition, Ext.17 is the seizure list in respect of the emergency register of Lahunipara P.H.C., Ext.18 is the zimanama, Ext.19 is the police query, Ext.20 is the intimation to S.D.J.M. for sending

the exhibits to Forensic Laboratory and Ext.21 is the post mortem report.

The prosecution also proved two material objects. M.O.I is the tangia and M.O.II is the wearing apparels of the deceased.

Defence Plea:

5. The defence plea of the appellant was one of denial. Defence has neither examined any witness nor exhibited any document.

Findings of the Trial Court:

6. The learned trial Court after assessing the oral evidence of the witnesses, particularly, the evidence of the eye witnesses i.e. P.W.3, P.W.6, P.W.7, P.W.8 and P.W.9 so also the post-mortem report findings, came to hold that there is no concoction or fabrication in the evidence adduced by the eye witnesses and the medical evidence also corroborates the evidence of the eye witnesses. Taking into account the evidence relating to the recovery of the weapon of offence i.e. 'tangia' at the instance of the appellant basing on his statement recorded under section 27 of the Evidence Act, the learned trial Court held that the same is an additional circumstance against the appellant and in view of the doctor's report that the injury caused to the

deceased was possible by the weapon, which was recovered at the instance of the appellant, it was held that the prosecution has successfully established that the appellant is the author of the crime. The learned trial Court did not give much importance to the argument advanced by the learned defence counsel regarding the delay in lodging the F.I.R. and held that there is no deliberate delay and it has been satisfactorily explained by the informant. The learned trial Court held that the case presented by the prosecution against the appellant is well founded and intrinsically true and there is existence of abundant evidence and semblance of truth that the appellant is the perpetrator of the crime and accordingly, held the appellant guilty under section 302 of the I.P.C.

Contentions of the Parties:

7. Mr. Rajib Lochan Pattanaik, learned Amicus Curiae appearing for the appellant argued that the evidence of the eye witnesses should not be believed and P.W.3 could not have seen the occurrence as she was inside the house when the occurrence took place and even though the prosecution case is that sharp cutting weapon like 'tangia' was used to assault the deceased, but the injuries were found to be lacerated wounds and therefore, the medical evidence goes contrary to the ocular

testimonies. The learned counsel further argued that the circumstances under which the occurrence has taken place and since there was no previous enmity between the parties rather there was good relationship between the family of the deceased and the family of the appellant and in fact, they are related to each other, it cannot be said that there was any motive behind the commission of the crime and it appears that on account of sudden quarrel, the appellant assaulted the deceased and there is also evidence that no proper treatment could be provided to the deceased, which would be evident from the evidence of P.W.1 and therefore, the conviction under section 302 of the I.P.C. is not sustainable in the eye of law and it may be a case under the first part of section 304 of I.P.C. and since the appellant has already remained in custody for about sixteen years, in case the conviction is altered to one under section 304 Part-I of the I.P.C., the period of sentence be reduced accordingly.

Mr. Priyabrata Tripathy, learned Additional Standing Counsel appearing for the State of Odisha, on the other hand, supported the impugned judgment and submitted that P.W.3, the widow of the deceased has clearly stated that though she was in the house but she came out of the house on hearing

altercation and saw the blow being given by the appellant to the deceased and her evidence is getting corroboration from the other eye witnesses i.e. P.W.6, P.W.7, P.W.8 and P.W.9. Learned counsel further argued that though the doctor (P.W.16), who conducted the post-mortem examination, has noticed one lacerated wound on the temporal region of scalp and another lacerated wound on the left nape of neck and one abrasion on the left knee joint, but he has stated that the cause of death was on account of cerebral haemorrhage and the doctor has also examined the weapon of offence and gave his opinion that the injuries sustained by the deceased are possible by such weapon and therefore, the learned trial Court has rightly found the appellant guilty under section 302 of the I.P.C.

Whether the deceased met with a homicidal death?:

8. Adverting to the contentions raised by the learned counsel for the respective parties, let us examine the evidence on record as to how far the prosecution has proved that the deceased met with a homicidal death.

The inquest report, which has been prepared by the I.O. (P.W.15) vide Ext.5/2 indicates the nature of injuries sustained by the deceased. P.W.16 conducted post-mortem

examination over the dead body of the deceased on 16.06.2008 on police requisition and noticed the following injuries:

(i) Lacerated wound with ante mortem stitches 5 cm. X 1 cm. depth 1.5 cm. On right temporal region of scalp.

(ii) Lacerated wound- with ante mortem stitches of size 6 cm. X 2.5 cm. depth on left nap of neck.

(iii) Abrasion- 3 cm. X 1 cm. on left knee joint.

P.W.16 also noticed internal injuries like all the layers of skull reaching up to skull bone and outer table of the right temporal bone broken with formation of a subdural haematoma of size 8 cm. x 3 cm. just below the fracture of right temporal bone. Brain was intact but congested body of the third cervical vertebra was fractured with formation of haematoma of size 3 cm. x 2 cm. which was compressing the spinal cord. The laceration at the nape of the neck reached upto the third vertebra. All internal organs like lungs, kidney, hearts were intact but congested. Stomach was intact and contained around 200 ml. of yellowish liquid materials. The doctor opined that the cause of death was on account of cerebral haemorrhage.

Nothing has been brought out in the cross-examination of P.W.16. Only a suggestion has been given by the defence that he had not conducted the autopsy over the dead body of the deceased properly and that the injuries could not be possible by the weapon of offence referred to him for his examination and opinion.

Therefore, we are of the humble view that the learned trial Court is quite justified in holding that the prosecution has successfully proved that the deceased met with a homicidal death.

Whether the testimony of the prosecution witnesses implicate the appellant in commission of the crime?:

9. Coming to the direct evidence available in this case, the prosecution has examined P.W.3, P.W.6, P.W.7, P.W.8 and P.W.9 as eye witnesses to the occurrence.

P.W.3, the widow of the deceased stated that the occurrence took place in the evening hours at about 7.00 p.m. and the appellant was her elder father-in-law. She further stated that the goats of the appellant so also their goats were tied in a shed and on the date of occurrence, the wife of the appellant locked the said shed. When she requested the wife of the appellant to handover the key of the shed, the same was not

given and on that date, when the deceased was going to the shed to tie the goats, the appellant dealt blows by means of a 'tangia' on the neck and the second blow on the head causing severe bleeding injury on his person. She further stated that when she reached at the spot, the appellant fled away seeing her. In the cross-examination, she has stated that she was present in her house and there was good relationship between her family and the family of the appellant. She specifically stated in the cross-examination that on hearing hulla of the deceased, she came out of the house and heard the sound of blows given to the deceased by the appellant and saw further assault to the deceased. She also stated that on hearing her cry, the neighbouring people came to the spot.

The contention of the learned counsel for the appellant that since P.W.3 was inside the house and her evidence is that when she came out, she found the appellant fleeing away from the spot, therefore, she could not be accepted as an eye witness to the occurrence is not acceptable in view of the specific statement made in the cross-examination that she was inside the house and hearing hulla of her husband (deceased) and the sound of blows, she came outside and saw the further assault on the deceased. Since the deceased had sustained two injuries, the

possibility of P.W.3 seeing at least the second blow given by the appellant to the deceased cannot be ruled out. Being the widow of the deceased, she is not likely to spare the real culprit and implicate somebody falsely. She was in a close vicinity to the spot which is her house and therefore, her presence at the scene of the occurrence cannot be doubted at all.

The evidence of P.W.3 is getting corroboration from the other eye witnesses i.e. P.W.6, P.W.7, P.W.8 and P.W.9.

P.W.6 has stated that in the evening hours on the occurrence day while she was cleaning the rice, the deceased was going to tie his goats and the appellant came and assaulted the deceased by means of a 'tangia' on the head. In the cross-examination, she has stated that she had good relationship with the appellant and had no inimical relationship with him and therefore, the witness appears to be an independent witness and having no enmity with the appellant, but all the same, she has supported the prosecution case and her evidence has not at all been shattered in the cross-examination, which also corroborates the evidence of P.W.3.

P.W.7 has also stated that while she was in her courtyard in the evening hours on the date of occurrence, she found the appellant assaulted the deceased while the deceased

was tying goats. She further stated that the weapon of offence was an axe and the appellant assaulted on the head and neck of the deceased. In the cross-examination, she has stated that she saw the incident from a distance of 50 cubits from her house and further stated that there was no dispute or quarrel between the appellant and the deceased. Therefore, nothing has been brought out in the cross-examination to disbelieve this witness.

P.W.8 has stated that the occurrence took place on the last Raja at about 6.00 p.m. in front of the house of the appellant and he heard hullah and proceeded to the spot and found the appellant assaulted the deceased by means of an axe on his head and neck and then the appellant ran away from the spot and the deceased fell down on the ground sustaining bleeding injury on his person. Similar is the evidence of P.W.9 and nothing has been elicited in the cross-examination to disbelieve the evidence of these two witnesses.

Therefore, the consistent evidence of the prosecution, which has been adduced by the eye witnesses i.e. P.W.3, P.W.6, P.W.7, P.W.8 and P.W.9 is that the appellant assaulted the deceased by means of a 'tangia' on the head as well as on his neck. The evidence further indicates that when the appellant was taken into custody by P.W.15 on 17.06.2008, he

gave a statement before P.W.15, which was recorded under section 27 of the Evidence Act and he led the police and gave recovery of the weapon of offence i.e. 'tangia' in presence of the witnesses and his statement has been proved by the I.O. as Ext.8/2 and the M.O.I is the tangia, which was seized at the instance of the appellant and the same was sent to the doctor (P.W.16), who conducted post-mortem examination for his opinion and P.W.16 has specifically stated that he examined the axe, which was produced by the Havildar and opined that the injuries on the deceased could have been possible by the weapon of offence produced before him and the injuries were also found on the vital part of the body and could have caused the death of the deceased and the query report has been marked as Ext.19/2. Therefore, the learned trial Court has rightly held that the deceased died on account of the assault by the appellant on his head and the neck.

Whether the act of the appellant attracts the rigours of section 302 of I.P.C.?:

10. Now, the question crops up for consideration as to whether in the surrounding circumstances in which the crime has been committed, the ingredients of the offence under section 302 of the I.P.C. is made out or in view of the available materials

on record, the offence is to be altered to one under section 304 Part-I of the I.P.C.

It appears from the evidence on record that there was good relationship between the family of the appellant and the family of the deceased. In fact, the appellant was the elder father-in-law of the informant (P.W.3). The evidence further indicates that few weeks prior to the date of occurrence, the appellant constructed a house near the house of the deceased and started living there and both the appellant and the deceased were using the same goat shed for keeping their goats. However, on the date of occurrence, the wife of the appellant locked the said goat shed and when request was made from the side of the deceased to hand over the keys, the same was not given. The evidence further indicates that there was sudden quarrel between the appellant and the deceased over this issue and during course of such quarrel, the incident in question took place and the appellant assaulted the deceased by means of a 'tangia'. The evidence of P.W.1, who was posted as Medical Officer in Bonai Hospital indicates that on 13.06.2008 at about 10.30 p.m., the deceased came to emergency O.P.D. and it was a referred case of Lahunipara Hospital. The deceased was admitted and emergency call was given to the Surgery Specialist Dr. P.K. Das.

However, there is no evidence on record whether the Surgery Specialist attended the deceased rather the evidence of P.W.1 indicates that he started I.B. fluid and injection was administered to the deceased and only cardio measures treatment was provided to the deceased and on 15.06.2008, on receipt of a call from the staff nurse, he found the deceased in a gasping state and ultimately the deceased could not survive and died at about 8.00 p.m. on that day. Thus, it appears to be a case where no proper treatment could be provided to the deceased. It is of course true that under the Explanation 2 of section 299 of the I.P.C., it is stated that where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment, the death might have been prevented.

The doctor (P.W.16), who conducted the post-mortem examination has noticed two lacerated wounds, one on the right temporal region of scalp and another on the left nape of neck apart from one abrasion on the left knee joint. These two lacerated wounds are attributed against the appellant to have been caused by the 'tangia'. Looking at the injuries, it appears that sharp side of the tangia was not used to assault and the blunt side has been used.

In the case of **Ram Asrey -Vrs.- State of U.P. reported in 1993 Supp (4) Supreme Court Cases 218**, where also the appellant used the backside of the bankas in assaulting the deceased, the Hon'ble Supreme Court held that it can be reasonably inferred that such assailant had no intention to cause the death of the victim, otherwise there was no reason to use the back side of the bankas, instead of sharp side which in normal course could have caused the death of the victim. Accordingly, the conviction under section 302 of the I.P.C. was set aside and instead the accused was convicted under section 304 Part-I of the I.P.C.

In the case of **Gurdial Singh and others -Vrs.- State of Punjab reported in (2011) 2 Supreme Court Cases 768**, where the blow was given by means of gandasi and the blunt side was used, it was held by the Hon'ble Supreme Court that if the appellant had intention to commit murder Buta Singh, there was nothing to stop him from using the gandasi from its true side as that would have made it a much more effective weapon. Accordingly, the conviction was altered to one under section 304 Part-I of the I.P.C.

In the case of **Harish Kumar -Vrs.- State (Delhi Admn.) reported in 1994 Supp (1) Supreme Court Cases**

462, the Hon'ble Supreme Court held that looking at the nature of the injuries and also the time gap between the time of infliction of the injury till the date of death, which was two days after the injury was inflicted, and since there was no sufficient material as to the nature of the treatment given to the deceased during those two days, the Hon'ble Court altered the conviction from section 302 of the I.P.C. to section 304 Part-II of the I.P.C.

None of the eye witnesses to the occurrence has stated that the appellant assaulted the deceased on his head and neck by using the sharp side of tangia. Normally when the witness says that a sharp cutting weapon like tangia is used, there is no warrant for supposing what that the witness means is that blunt side of the weapon was used. If that be the implication, it is the duty of the prosecution to obtain a clarification from the witness as to whether the sharp edged tangia was used as blunt weapon (**Ref.: Hallu and others -Vrs.- State of Madhya Pradesh : A.I.R. 1974 S.C. 1936**). It is a case where even though the appellant was having a sharp cutting weapon like 'tangia' with him, but he used the blunt side and not the sharp side.

In the case of **State -Vrs.- Raja Parida and others reported in 1972 Criminal Law Journal 193**

(MANU/OR/0129/1971), a Division Bench of this Court held as follows:-

> "14. The case against appellant Raja, however, stands on a different footing. Both P.Ws. 2 and 3 say that Raja came to the spot saying that the Guard should be finished and struck a blow with the blunt side of the axe on the right side of the head of the Forest Guard and that minutes thereafter the Guard died. If really Raja intended to cause the death of the Guard, there is no reason why he did not use the sharp edge of the Tangia in giving the blow to the deceased. Merely because he said that the Guard should be finished, it does not necessarily mean that he intended that he should be killed. We are, therefore, not prepared to hold that the prosecution has proved beyond all reasonable doubt that Raja intended to kill the Guard. In this connection it is worth recapitulating the distinction between murder and culpable homicide not amounting to murder by referring to Sections 299 and 300. I.P.C. Section 299 is divided into three parts. The first part refers to the act by which the death is caused by being done with the intention of causing death. That part corresponds to the first part of Section 300 I.P.C. The second part of Section 299, I.P.C. speaks of the intention to cause such bodily injury as is likely to cause death. This has

corresponding provisions in clauses "secondly" and "thirdly" of Section 300, I.P.C. Section 304, Part I I.P.C. covers cases which by reason of the Exceptions under Section 300 I.P.C. are taken out of the purview of Clauses (1), (2) and (3) of Section 300, I.P.C. but otherwise would fall within it, and also cases which fall within the second part of Section 299 but not within Section 300 Clauses (2) and (3). The third part of Section 299 corresponds to "Fourthly" of Section 300. Section 304, Part II, I. P. C. covers those cases which fall within the third part of Section 299 but do not fall within the fourth clause of Section 300. As already stated, the case against Raja does not come under the first part of Section 300, I.P.C. Clause (2) of Section 300 is attracted only when the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. It includes cases of special knowledge of the constitution, constitutional defects or the ailments of the deceased. There is no evidence of the existence of such circumstances in this case. We do not have even evidence of the exact nature of the injury that is caused from which it is possible to infer that Raja had the knowledge that the injury which he intended to; inflict was likely to cause death. Clause (2) of Section 300, I.P.C. has therefore no application.

15. The next question is whether the injury is one which was intended to be caused and if so whether it was sufficient in the ordinary course of nature to cause death. If the injury caused is not in the ordinary course of nature sufficient to cause death, it is out of the purview of clause 'Thirdly' of Section 300, I.P.C. and would then appropriately fall under the second part of Section 299. I.P.C. Unfortunately in this case the nature of the injury caused on the deceased by the single blow given by appellant Raja is not known and much less is there any evidence that such blow is sufficient in the ordinary course of nature to cause death. In the circumstances, the appellant must have the benefit of doubt and the case must go out of the purview of clause "Secondly" and "Thirdly" of Section 300, I.P.C. Surely the death of the deceased was not caused by the blow given on his legs and knees by the appellant Hrushi. It can therefore, safely be held that the deceased died as a result of the blow given on his head by Raja. That blow was given with, the blunt edge of the Tangia on a vital part of the deceased, namely his head. The blow so given is neither unintentional nor accidental. In the circumstances of the case, the appellant Raja must be held to have intended to give such a blow as is likely to cause death. We would, therefore, hold that the appellant Raja is guilty under the first part of Section 304, I.P.C."

The relationship between the two families was not only good but they were related to each other inasmuch as P.W.3 has stated that the appellant was her elder father-in-law. There was no serious motive behind the incident and the incident is said to be an offshoot of altercation which had taken place on a very petty matter. The quarrel between the appellant and the deceased took place all of a sudden when the deceased asked for the keys of the goat shed, which was locked by the appellant. On account of such sudden quarrel, the possibility of losing the self-control on the part of the appellant cannot be ruled out. In spite of such a situation, the appellant has not used the sharp side tangia but seems to have used it from the blunt side and has caused two lacerated wounds on the vital part of the body like scalp and neck and there is no opinion given by the doctor (P.W.16) that any of the injuries caused either cumulatively or individually is sufficient to cause death in the ordinary course of nature.

Even though sharp side of 'tangia' has not been used, but since the injuries were caused on the right temporal region of scalp and left nape of neck for which all the layers of skull reaching up to skull bone and outer table of the right temporal bone were broken with formation of subdural haematoma and

third cervical vertebra was found fractured with formation of haematoma, we are of the view that the act by which the death was caused was done with the intention of causing such bodily injury as the appellant knew to be likely to cause the death of the deceased which attracts clause '2ndly' of section 300 of the I.P.C. but since it seems to have been caused on being deprived of the power of self-control by grave and sudden provocation, it attracts Exception 1 to section 300 of the I.P.C. and punishable under the first part of section 304 of the I.P.C.

In the factual scenario, when there was no previous dispute between the parties, they are related to each other and due to a petty quarrel between the parties, all of a sudden the appellant assaulted the deceased, but he has not used the sharp side of the weapon as could be inferred from the nature of injuries sustained as per the post mortem report findings proved by P.W.16 so also when there is evidence on record that no proper treatment could be provided to the deceased, we are of the humble view that the conviction under section 302 of the I.P.C. is not sustainable in the eye of law and the liability of the appellant comes under first part of section 304 of the I.P.C.

Conclusion:

11. In view of the foregoing discussions, the conviction of the appellant is altered from section 302 of the I.P.C. to one under section 304 Part-I of the Indian Penal Code and the appellant is sentenced to undergo R.I. for ten years for the said offence.

It appears from the record that the appellant was taken into judicial custody in connection with this case on 17.06.2008 and neither he was released on bail in the trial Court nor he was granted bail by this Court during pendency of the Jail Criminal Appeal and thus, he has already undergone substantive sentence which has been imposed by us. Therefore, the appellant be set at liberty forthwith, if his detention is not required in any other case.

In the result, the JCRLA is allowed in part.

Before parting with the case, we would like to put on record our appreciation to Mr. Rajib Lochan Pattanaik, the learned Amicus Curiae for rendering his valuable help and assistance towards arriving at the decision above mentioned. The learned Amicus Curiae shall be entitled to his professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only).This Court also appreciates the valuable help and

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

The trial Court records with a copy of this judgment be communicated to the concerned Court forthwith for information and necessary action.

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S.K. Sahoo, J.

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Chittaranjan Dash, J.

Orissa High Court, Cuttack
The11th July 2024/RKMishra