



accusation that on 28.06.2009 at about 12.30 p.m. at village Damkipali, they committed murder of Jaylal Bhoi (hereafter 'the deceased') in furtherance of their common intention and that knowing or having reason to believe that the offence had been committed, they caused certain evidence of the said offence to disappear by removing the dead body in a gunny bag with an intention to screen themselves from legal punishment.

The learned trial Court vide impugned judgment and order dated 18.05.2010 while acquitting the co-accused Binodini Bhoi of all the charges, found the appellant guilty under sections 302/201 of I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- (rupees two thousand), in default, to undergo R.I. for one year for commission of offence under section 302 of the I.P.C. and R.I. for two years and to pay a fine of Rs.1,000/- (rupees one thousand), in default, to undergo R.I. for a further period of six months for commission of offence under section 201 of I.P.C. and both the substantive sentences were directed to run concurrently.

Prosecution Case:

2. The prosecution case, in brief, is that on 28.06.2009 at about 2.00 p.m. Hadibandhu Sethi (P.W.23), A.S.I. of Larambha outpost received a telephonic information from an



unknown person regarding the murder of the deceased and on receiving such information, he made Station Diary Entry No.437 dated 28.06.2009 and proceeded to village Damkipali along with Constable No.438 Hina Baralebdia (P.W.17) to enquire into the matter. On reaching there, the informant Gahaki Bhoi (P.W.12), the son of the deceased presented a written report (Ext.3) before P.W.23 to the effect that on the same day morning, he had been to his field with buffalos for grazing and the deceased had gone to the paddy field locally known as Talimunda situated in the said village to spread manure. At about 12 noon, he returned home with buffalos and the deceased had been to the straw heap at their paddy field to bind straws. It is further stated in the written report that while he was taking rest after taking lunch, his elder father Jagabandhu Bhoi (P.W.13) and his son Kartika Bhoi (P.W.16) informed him that the appellant, who was staying near Kutramunda agricultural field, caught hold of his deceased father near his house while he was returning with straws and after tying the neck of the deceased by means of a napkin with wooden post near his house, killed the deceased by stabbing with a Trisul (trident) on his head and body and thereafter, packed the dead body of the deceased in a gunny bag, loaded it on his bicycle and went towards the jungle. On



getting such information, P.W.12 immediately went in search of his deceased father towards the nearby jungle, but could not trace him out. Thereafter, he returned back to the house of his uncle and came to know that after committing the murder of his deceased father, the appellant fled away from the house. He also noticed blood stains on the wooden post, straws have been burnt and the wooden post has been wiped with water and mud. It is further stated that as mangoes from the tree belonging to their share were falling over the roof of the house of the appellant, the appellant had kept grudge on his deceased father to kill him.

Since the written report disclosed the commission of a cognizable case, P.W.23 sent the report to the Inspector in-charge of Patnagarh police station through B. Tandi, the Grama Rakhi for its registration and accordingly, the Inspector in-charge of Patnagarh police station registered Patnagarh P.S. Case No. 118 dated 29.06.2009 under sections 302/201 of I.P.C. against the appellant. P.W.23 took up preliminary investigation of the case, searched and detected the dead body of the deceased lying inside Budhiduguri Nala packed in a gunny bag tied with rope and he brought out the same from the Nala with the help of local people and shifted it to village Damkipali and kept it in the rest shed of the village since the place from where the dead body was



recovered was a dense forest and there was apprehension of attack by wild animals.

The Inspector in-charge of Patnagarh police station handed over the charge of investigation to Kandarpasen Nayak (P.W.24), S.I. of police of the said police station who took up investigation of the case from P.W.23.

During course of investigation, he made requisition to the S.D.M., Patnagarh to depute one Executive Magistrate to remain present during inquest over the dead body of the deceased and also sought for the help of Scientific Team, Balangir. Thereafter, he visited the spot and after arrival of the Executive Magistrate and Scientific Team, he prepared the spot map (Ext.14) and effected seizure of bamboo lathi (M.O.III) from the courtyard of the appellant as per seizure list (Ext.4). He also examined the witnesses and held inquest over the dead body of the deceased and prepared the inquest report vide Ext.2, sent the dead body of the deceased for post mortem examination to the S.D.M.O., Patnagarh as per the dead body challan (Ext.15). On production of blood sample, saline gauge cloth, control gauge cloth, saline earth piece of blood stained gunny bag, piece of control gunny bag, saline extract of gauge cloth by the Scientific Team, the same were seized as per seizure list Ext.4. P.W.24



also seized a violate colour lungi (M.O.I), a blood stained gunny bag (M.O.VI), two nos. of vials containing the blood sample of the deceased collected by the Medical Officer during post mortem, which were marked as Ext.5. P.W.24 apprehended the appellant on 30.06.2009 and on the same day, he also arrested the co-accused Binodini Bhoi and while the appellant was in police custody, he made a disclosure statement under section 27 of the Evidence Act (Ext.12/2) in presence of the witnesses and stated that he had concealed the trident near a well and he would led and give recovery of the same. Accordingly, the appellant led P.W.24 to the place of concealment and in presence of witnesses, he gave recovery of the trident (M.O.IV) which was seized as per seizure list Ext.11/4. Thereafter, P.W.24 forwarded both the appellant and his wife, the co-accused to the Court. P.W.24 collected the post mortem report (Ext.9) and made a query as per Ext.10/2 to the doctor conducting post mortem examination as to whether the injuries found on the dead body could be possible by the seized weapon of offence along with the lathi and the trident and the doctor submitted the query report as per Ext.10. P.W.24 thereafter made a prayer to the learned S.D.J.M., Patnagarh to send the seized exhibits to R.F.S.L., Sambalpur for chemical examination as per Ext.17. P.W.24 also



seized the bicycle on being produced by one Mahadev Padhan, which was used by the appellant in lifting the dead body of the deceased as per seizure list Ext.20. P.W.24 also effected seizure of Larambha outpost station diary book vide entry dated 16.06.2009 to 01.07.2009 as per seizure list Ext.6 and gave the same in the zima of P.W.23 on executing zimanama (Ext.13) and on completion of investigation, P.W.24 submitted charge sheet against the appellant and his wife, the co-accused Smt. Binodini Bhoi under sections 302/201/34 of the I.P.C.

Framing of Charges:

3. After submission of charge sheet, following due procedure, the case was committed to the Court of Session where the learned trial Court framed charges as aforesaid and since the appellant pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prove their guilt.

Prosecution Witnesses, Exhibits & Material Objects:

4. In order to prove its case, the prosecution examined as many as twenty four witnesses.

P.W.1 Sumitra Bhoi, the widow of the deceased has stated that her deceased husband and her son (P.W.12) had been to the agricultural land and during noon time, P.W.12 returned home with buffalos and when she enquired the



whereabouts of the deceased, P.W.12 went in search of the deceased and in course of such search, his elder father Jagabandhu Bhoi (P.W.13) told him that the appellant had killed the deceased. Thereafter, P.W.12 along with some villagers went in search of the deceased and after returning to her house, they disclosed before her that the appellant, who was the brother of the deceased, after killing the deceased, put the dead body inside a gunny bag and had thrown in a Nala in Budhiduguri and accordingly, P.W.12 reported the matter at the police station.

P.W.2 Mohan Bhoi who is a co-villager of both the appellant and the deceased, has stated that on the date of occurrence during lunch time, when he was coming on the village road, Mena Bhoi (P.W.4) was coming towards his house and on seeing him, he disclosed that the appellant after killing the deceased, packed the dead body inside a gunny bag and went towards the jungle in a cycle and he advised P.W.2 to inform the matter to police. Both P.W.2 and P.W.4 went to the house of Radhakanta Bhoi (P.W.11) and disclosed the matter and requested him to report to the police over phone. Accordingly, P.W.11 informed the police over phone and on arrival of the police, P.W.2 also accompanied the police in search of the deceased. He further stated that at about 7.00 p.m. to 8.00



p.m., the dead body of the deceased was detected in a ditch (Nala), which was packed in a gunny bag and the dead body of the deceased was brought to the rest house situated near the bus stoppage of the village and the police guarded the dead body throughout the night. He also stated that after recovery of the dead body, P.W.12 presented the written report to the police at the spot.

P.W.3 Kailash Bariha, who is a co-villager of both the appellant and the deceased, has been declared hostile by the prosecution.

P.W.4 Mena Bhoi, who is the brother of both the appellant and the deceased, has stated that on 28.01.2009 during noon time, while he was taking rest, his nephew Kartika Bhoi (P.W.16) informed him that the appellant had killed the deceased by means of a Trisul and thereafter, he along with P.W.16 went to the headman of the village, namely, Mohan Bhoi, who went to P.W.11 to inform the incident to the police over phone as he had got a telephone and accordingly, P.W.11 intimated the matter to the police. He further stated that on arrival of the police, he also accompanied the police in search of the deceased towards Budhiduguri jungle and during search, they found a gunny bag packed with the dead body of the



deceased in a ditch and as per the direction of the police, they brought out the packed gunny bag to the village and kept it in the rest shed of the village and the police guarded the dead body throughout the night. He further stated that on the next day, the inquest over the dead body was conducted in presence of the Tahasildar. He further stated that fifteen days prior to the incident, there was an altercation between the appellant and the deceased relating to a mango tree which situates near the house of the appellant, which was falling to the share of the deceased and on his intervention, the matter was subsided.

P.W.5 Bidyadhar Tandi was the Grama Rakhi of the village, who has been declared hostile by the prosecution.

P.W.6 Malati Bhoi, who is a co-villager of both the appellant and the deceased, has stated that on the relevant date, he had been to the village and she heard that the appellant had killed his brother. The said witness has been declared hostile by the prosecution.

P.W.7 Netrananda Panigrahi who is a co-villager of both the appellant and the deceased, has stated that on the date of occurrence, while he was taking rest, Jagabandhu Bhoi (P.W.13) came to his house and disclosed that the appellant had killed his deceased brother and out of fear, he had come to his



house and to leave his house only after the police reached his village and when police reached, the headman of the village came to his house and called P.W.13.

P.W.8 Parameswar Suna, who is a co-villager of both the appellant and the deceased, is a witness to the seizure of bamboo lathi as per seizure list Ext.1.

P.W.9 Jagannath Gadtia, who is a close relative of both the appellant and the deceased, has stated that on getting information about the death of the deceased, he had been to their village and accompanied the police and other villagers in search of the deceased and during such search, they noticed a gunny bag thrown in a Nala inside Budhiduguri jungle. He further stated that he along with other villagers brought the dead body to the village Damkipali and kept in rest shed and on the next day, the police held inquest over the dead body in presence of the Magistrate and prepared the inquest report (Ext.2). He is a witness to such inquest report.

P.W.10 Durga Charan Sahu was the Tahasildar -cum- Executive Magistrate, Patnagarh, in whose presence, the police held inquest over the dead body of the deceased. He proved the inquest report as per Ext.2.



P.W.11 Radhakanta Bhoi who is a co-villager of both the appellant and the deceased, has stated that on the date of incident at about 1.30 p.m., while he was taking rest, the village headman sent his son Debasis Bhoi to him to ascertain about the telephone number of the A.S.I. of Larambha outpost and he further disclosed that the elder brother of the deceased had come to his house to inform the police that the appellant had killed the deceased. Accordingly, he contacted P.W.23 on his mobile phone and disclosed about the incident. He further stated that he heard that after committing the murder of the deceased, the appellant had kept the dead body of the deceased in a gunny bag and took it towards the jungle.

P.W.12 Gahaki Bhoi, who is the son of the deceased, is the informant in the case. He stated about the search made inside the jungle and detection of the gunny bag in the Nala carrying the dead body of the deceased. He is also a witness to the inquest over the dead body.

P.W.13 Jagabandhu Bhoi, who is the elder brother of the appellant and the deceased has stated that on the date of occurrence at about 12.30 p.m., while he was taking rest in his house, he heard a sound calling him 'DADA DADA' and on hearing such sound, he came out of the house and went towards



the direction from where the sound was coming and found that the deceased was lying on the backside of the house of Chatrubhuja Bhoi and the appellant was standing near it by holding a lathi. The appellant on seeing P.W.13, declared that whosoever came near him, he would see him and thus, he returned to his house and told his family members not to come outside and out of fear, he went to the house of Netrananda Pujari (P.W.7) and disclosed before him that the appellant had killed the deceased. He further stated that though P.W.7 told him to go the spot and insist the appellant to surrender before police, but out of fear, he told him to go to the spot only after the arrival of police. He further stated that on that day at about 3.00 p.m., he was called by the police and he accompanied the police to the spot field and also to Budhiduguri jungle in search of the deceased. He further stated that during such search, they found that the dead body of the deceased in a Nala being packed with a gunny bag and the dead body was brought to the rest shed of the village and on the next day, inquest was held by the police and he is a witness to the inquest report Ext.2.

P.W.14 Laxmikanta Bag and P.W.15 Jagyan Kumar Bhoi, who were the constables attached to Patnagarh police station, are the witnesses to the seizure of saline extract of



blood, control gauge cloth, blood stained earth, control earth, blood stained gunny bag piece, control gunny bag and saline extract of gauge cloth, control gauge cloth and one bamboo lathi as per seizure list Ext.4. They are also the witnesses to the seizure of one violet colour lungi, one gunny bag stained with blood, one command certificate and sample blood of the deceased collected by the Medical Officer during post mortem examination as per seizure list Ext.5.

P.W.16 Kartika Bhoi, who is the nephew of the appellant and the deceased, has stated that on the date of occurrence, while he was in his house, he heard a sound 'DAKATAR MOTE MARI DEUCHI MOTE BANCHA BANCHA' and on hearing the shout, he along with his father came outside and proceeded towards the direction from where the shout was coming and they found that the deceased was lying on the backside of the house of Chaturbhuja and the appellant was standing near him holding a bamboo lathi affixed with Trishul (trident) and the appellant was declaring to kill whosoever dare to come to him. On hearing the same, out of fear, his father went inside the village and he was watching the incident by concealing himself. He further stated that the appellant went inside his house, brought a gunny bag with him and put the dead



body of the deceased inside the gunny bag, tied the face of gunny bag by means of a rope, loaded the same on the middle of the cycle and went towards Budhiduguri jungle. He further stated that he went to the house of Mena Bhoi (P.W.4) and disclosed before him about the incident, who in turn went to the headman of the village to intimate to the police. He further stated that on arrival of police, he accompanied the police and other villagers in search of the deceased and found a gunny bag inside the Nala of the jungle in which the dead body of the deceased was packed. He further stated that as per the direction of the police, the said gunny bag was brought to the village and kept in the rest shed. He further stated that he along with his father and other villagers guarded the dead body of the deceased throughout the night and on the next day morning, inquest over the dead body was conducted and he is a witness to the inquest report vide Ext.2.

P.W.17 Hina Baralebdi, who was the constable attached to Laramba outpost, accompanied P.W.23 to the spot village as per his direction. He stated that he also accompanied P.W.23 along with other villagers in search of the deceased towards the jungle on getting information that the appellant had taken the dead body of the deceased in a bicycle and following the track mark of the bicycle, they went towards the jungle and



during such search, they found a gunny bag stained with blood and its face was tied lying in a Nala inside the jungle. He further stated that they brought out the gunny bag from the Nala and kept in the rest shed. He further stated that he along with others guarded the dead body of the deceased throughout the night and on the next day, inquest over the dead body was held. He is a witness to the seizure of the wearing apparels of the deceased as per seizure list Ext.6.

P.W.18 Rabindra Kumar Patra, who was the Scientific Officer, DFSL, Bolangir, has stated that as per the requisition of the I.I.C., Patnagarh police station and on the direction of the S.P., Bolangir, he visited the spot and collected the samples as per seizure list Ext.7. He is also a witness to the seizure of photographs as per seizure list Ext.4.

P.W.19 Pramod Kumar Khamari, was the A.S.I. (Photographer) in the office of DFSL, Bolangir, who took the photographs of the dead body of the deceased as well as the spot and the scene of occurrence and the I.O. collected the same from their laboratory. He is a witness to the seizure of such photographs as per seizure list Ext.7.

P.W.20 Dr. Durga Dutta Das was working as Assistant Surgeon in Sub-divisional Hospital, Patnagarh. On



police requisition, he conducted post mortem examination over the dead body of the deceased Jayalal Bhoi and proved his report vide Ext.9. He also proved query report as per Ext.10.

P.W.21 Mahendra Hariha and P.W.22 Subash Seth are the co-villagers of both the appellant and the deceased and though they were witnesses to the seizure of trident as per seizure list Ext.11, but they were declared hostile by the prosecution.

P.W.23 Hadibandhu Sethi was the A.S.I. of Larambha outpost who on getting telephone call about the murder of the deceased, made S.D. Entry No.437 dated 28.06.2009 and proceeded to the spot village along with P.W.17, where P.W.12 presented the written report which revealed a cognizable case under sections 302/201 of I.P.C. and accordingly, he took up investigation and sent the report to I.I.C., Patnagarh police station for its registration. During search, he detected the dead body found lying inside Budhiduguri Nala packed in a gunny bag being tied with a rope. The dead body was brought out from the Nala with the help of local people and since it was a dense forest and there was apprehension of attack by wild animals, the dead body was shifted to village Damkipali and kept in the rest shed of village Damkipali. He further stated that he also made a request



to the I.I.C. to send Scientific Officers to the spot and thereafter, the charge of investigation was taken over by P.W.24. He is a witness to the written report (Ext.3) and zimanama (Ext.13).

P.W.24 Kandarpasen Naik was the Inspector in-charge of Patnagarh police station and he is the Investigating Officer of this case.

The prosecution proved twenty numbers of documents to fortify its case. Exts.1, 4, 5, 6, 11 and 20 are the seizure lists, Ext.2 is the inquest report, Ext.3 is the F.I.R., Ext.7 is the spot visit report, Exts.8 to 8/10 are the photographs, Ext.9 is the post mortem examination report, Ext.10 is the report of the doctor (P.W.20), Ext.12/2 is the statement of the appellant recorded under section 27 of the Evidence Act, Ext.13 is the zimanama, Ext.14 is the spot map, Ext.15 is the dead body challan, Ext.16 is the command certificate, Ext.17 is the prayer of the I.O. for sending the exhibits to R.F.S.L., Sambalpur for chemical examination, Ext.18 is the forwarding letter for sending the exhibits to R.F.S.L., Sambalpur and Ext.19 is the chemical examination report.

The prosecution also produced seven material objects for proving its case. M.O.I is the lungi, M.O.II is the



gamuchha, M.O.III is the lathi, M.O.IV is the trident, M.O.V is the piece of blood stained gunny bag and M.O.VI is the gunny bag.

Defence Plea:

5. The defence plea of the appellant is one of complete denial to the prosecution case and false implication.

Findings of the Trial Court:

6. The learned trial Court, after assessing the oral as well as documentary evidence on record, came to hold that from the evidence of the doctor (P.W.20), it can be conclusively held that the deceased died a homicidal death. It was further held that the discrepancies and contradictions as pointed out in the evidence of P.Ws.12, 13 and 16 are insignificant and does not render their evidence unworthy of acceptance. The evidence of P.W.16 who is an eye witness to the occurrence, found corroboration from the evidence of the I.O. (P.W.23) who detected the dead body in a Nala inside the jungle which was put in a gunny bag. The prosecution has well proved its case against the appellant by adducing cogent, trustworthy evidence to the effect that on the relevant date and time, when the deceased was returning to his house with bundle of straws, near the spot, the appellant tied his neck by means of a napkin in a wooden post and dealt consecutive blows by means of a bamboo lathi



fitted with trident (M.O.IV and M.O.III) with intention to commit his murder and due to such assault, the deceased sustained severe bleeding injuries on his person, which resulted in his death. Learned trial Court further held that after the death of the deceased, the appellant put the dead body in a gunny bag (M.O.VI), loaded it in his bicycle and took the same and threw it in a Nala inside Budhiduguri jungle in order to cause disappearance of the evidence of the offence of murder with intention to screen himself from legal punishment and accordingly, held the appellant guilty under sections 302/201 of I.P.C. However, so far as the co-accused Binodini Bhoi, the wife of the appellant is concerned, the learned trial Court relying on the evidence of the eye witnesses, namely, P.W.13 and P.W.16 held that neither they had stated about the participation of the said co-accused along with her husband while the appellant was committing the murder of the deceased nor about her presence near the scene of occurrence nor there is any evidence except the uncorroborated testimony of the I.O. (P.W.24) that the co-accused Binodini knew or had reason to believe that the offence of murder had been committed by her husband and caused evidence of commission of the said offence to disappear by concealing the trident. Learned trial Court further held that



simply because the co-accused Binodini happened to be the wife of the appellant, no presumption can be drawn that she shared common intention with him in committing the crime in absence of any positive evidence against her and thus, culpability of the offences under sections 302/201/34 of I.P.C. cannot be fastened against her and thereby, the learned trial Court acquitted the co-accused Smt. Binodini Bhoi of all the charges.

Contentions of Parties:

7. Mr. Radharaman Das Nayak, learned counsel for the appellant strenuously urged that there are discrepancies in the evidence of the two eye witnesses i.e. P.W.13 and P.W.16. He further argued that though P.W.16, son of P.W.13 has stated that he along with his father (P.W.13) on hearing the shout of the deceased that the appellant was killing him and to save him, went in the direction from where such shout was coming and found that the deceased was lying on the back side of the house of Chaturbhuja Bhoi and the appellant was standing near him holding a bamboo lathi affixed with a Trishul, but P.W.13 has stated that on hearing the call like 'DADA DADA', he went outside and proceeded in the direction from where such sound was coming and found that the deceased was lying on the back side of the house of Chaturbhuja Bhoi and the appellant was



standing near him holding a lathi. P.W.13 has not stated to have accompanied to the spot with P.W.16 and what they heard from the shout of the deceased, was also discrepant. He argued that it was not expected on the part of the appellant to remain present at the spot after committing murder of the deceased just to be seen by P.W.13 and P.W.16. He further argued that the weapon of offence i.e. trident (M.O.IV) was sent for chemical examination, but the chemical examination report (Ext.19) reveals that no blood was found in the same and therefore, the prosecution case that the appellant committed the crime with such weapon becomes a doubtful feature. He further argued that though all the seized material objects were sent for chemical examination, but the report (Ext.19) reveals that human blood was found in some exhibits, but the origin/group of such human blood could not be detected. Learned counsel further submitted that in view of the discrepancies in the evidence of the witnesses, absence of any specific motive on the part of a brother to kill another brother, benefit of doubt should be extended in favour of the appellant.

Mr. Jateswar Nayak, learned Addl. Government Advocate, on the other hand, supported the impugned judgment and argued that the evidence of P.W.16 to have heard the



deceased shouting that the appellant was killing him and to save him can be utilized as *dying declaration* of the deceased. He further stated that what P.W.13 and P.W.16 heard while they were present in their house may be little discrepant in nature, but P.W.16 was quite younger in age and almost half the age of P.W.13 and therefore, it was not expected that what P.W.16 had heard, would also be audible to P.W.13 in view of his age. However, their version regarding the presence of the appellant near the dead body of the deceased holding a lathi in the backside of the house of Chaturbhuja Bhoi so also the threat given by the appellant at that point of time is consistent. He argued that the opinion given by the doctor (P.W.20) to have noticed number of injuries and his opinion that some of the injuries were possible by trident (M.O.IV) and injury on the occiput was possible by bamboo stick (M.O.III) corroborates the ocular testimonies of P.W.13 and P.W.16. He further argued that the evidence of P.Ws.2, 4, 11 and 12 regarding recovery of the dead body of the deceased packed in a gunny bag inside the jungle is another relevant feature which lends support to the evidence of P.W.16 who has stated that the appellant put the dead body of the deceased in a gunny bag, loaded it on the cycle and went towards Budhiduguri jungle. The learned counsel



further argued that absence of any blood in the trident which was seized at the instance of the appellant or non-finding of human blood on the bamboo stick cannot be a ground to disbelieve the prosecution case and as such, the learned trial Court is quite justified in convicting the appellant and therefore, the appeal should be dismissed.

Whether the deceased met with homicidal death?:

8. Before advertng to the contentions raised by the learned counsel for the respective parties, we have to carefully scrutinize the evidence on record to see as to how far the prosecution has proved that the deceased Jaylal Bhoi met with a homicidal death.

The doctor (P.W.20) conducted post-mortem examination over the dead body of deceased Jaylal Bhoi and noticed the following injuries:

- (i) Average body built male with sign of decomposition.
- (ii) Incised wound of size 3"x ½" x ½" over the left side cheek;
- (iii) Incised wound of size 3"x ½" x 3" over the medial aspect of left mid fore arm;
- (iv) Incised wound over the occiput of size 1"x ½" x ½";



(v) Stab wound of size 3" x 1" brain deep over the left side fore head with fracture bone with underline hematoma in the brain measuring 10 c.m. x 10 c.m.;

(vi) Stab wound of size 1"x ¼ " deep into the peritoneal cavity with hemoperitoneum injury mesenteric vessels and transverse colon;

(vii) Ligature mark of size 1 c.m. width over the neck above the thyroid cartilage without any bony injury with subcutaneous bleeding, it was parchment hard to feel and was present in front of the neck horizontally in direction and deficient at the back of the neck.

On internal dissection, P.W.20 found that there was homicidal brain injury along with injury to peritoneum and the cause of death was due to the brain injury accompanied by shock. He proved the post mortem report (Ext.9).

The I.O. also made a query regarding the possibility of the injuries sustained by the deceased Jaylal Bhoi by the weapon 'trident' (M.O.IV) seized during investigation at the instance of the appellant and the doctor opined that all the injuries detected on the person of the deceased except the injury over the occiput were possible by the trident (M.O.IV) and the injury over occiput was possible by bamboo stick (M.O.III). The query report has been marked as Ext.10.



In view of the evidence available on record, the inquest report of the deceased vide Ext.2, the post mortem report findings as per Ext.9 and the evidence of the doctor i.e. P.W.20, who conducted post mortem examination over the dead body of the deceased Jaylal Bhoi, we are of the view that the learned trial Court has rightly held that the prosecution has successfully established that the deceased met with a homicidal death.

Whether the eye witnesses account of P.W.13 & P.W.16 are reliable and trustworthy?:

9. There are two eye witnesses to the occurrence, i.e. P.W.13 and P.W.16.

P.W.13 is the elder brother of the appellant so also the deceased. He has stated that on the date of occurrence at about 12.30 p.m., while he was taking rest in his house, he heard somebody was calling him 'DADA DADA'. On hearing such sound, he came out of the house and went towards the direction from where such sound was coming and found that the deceased was lying on the backside of the house of Chatrubhuja Bhoi and the appellant was standing near it by holding a lathi and on seeing him, the appellant declared that whosoever came near him, he would see him and on hearing such threat, he returned



to his house and told his family members not to come outside and out of fear, he went to the house of Netrananda Pujari (P.W.7) and disclosed before him that the appellant had killed the deceased. He further stated that though P.W.7 asked him to go the spot and insist the appellant to surrender before the police, but out of fear, he told P.W.7 to go to the spot only after arrival of police. He further stated that on that day at about 3.00 p.m., he was called by the police and he accompanied the police to the spot field and also to Budhiduguri jungle in search of the deceased. He further stated that during such search, they found that the dead body of the deceased in a Nala being packed with a gunny bag and the dead body was brought to the rest shed of the village and on the next day, inquest was held by the police and he is a witness to the inquest report (Ext.2). He also stated that the police effected seizure of lungi, gamucha and lathi marked as M.Os.I, II and III respectively from the courtyard of the appellant. In the cross-examination, he stated that they all the three brothers were separated in house and mess and the family of the appellant and the deceased had cordial relationship.

P.W.16 is the son of P.W.13 and he has stated that on the date of occurrence, while he was in his house, he heard a sound 'DAKATAR MOTE MARI DEUCHI MOTE BANCHA BANCHA'



and on hearing the shout, he along with his father (P.W.13) came outside and proceeded towards the direction from where the shout was coming and they found that the deceased was lying on the backside of the house of Chaturbhuja Bhoi and the appellant was standing near him holding a bamboo lathi affixed with Trishul (trident) and the appellant was declaring to kill whosoever dare to come to him. On hearing the same, out of fear, his father went inside the village and he was witnessing the incident by concealing himself. He further stated that the appellant went inside his house, brought a gunny bag with him and put the dead body of the deceased inside the gunny bag, tied the face of gunny bag by means of a rope, loaded the same on the middle of the bicycle and went towards Budhiduguri jungle. He further stated that he went to the house of Mena Bhoi (P.W.4) and disclosed him about the incident, who in turn went to the headman of the village to intimate to the police. He further stated that on arrival of police, he accompanied the police and other villagers in search of the deceased and found a gunny bag inside the Nala of the jungle where the dead body of the deceased was packed. He further stated that as per the direction of the police, the said gunny bag was brought to the village and kept in the rest shed. He further stated that he along



with his father and other villagers guarded the dead body of the deceased throughout the night and on the next day morning, in presence of Magistrate, inquest over the dead body was conducted and he is a witness to the inquest report (Ext.2). In the cross-examination, he has stated that all the brothers of his father have separated mess and property including houses. He further stated that the house of the appellant was at a distance of 15 to 20 cubits from their house and that except the appellant and the deceased, no one was present at the spot. He further stated that Trishul, who was affixed in a lathi having about five feet length.

The contention of the learned counsel for the appellant that there are discrepancies in the evidence of P.W.13 and P.W.16 is not acceptable. Both P.W.13 and P.W.16, who are the father and son were in the same house when they heard the shout of the deceased. P.W.13 heard somebody was calling him 'DADA DADA', whereas P.W.16 stated to have heard the deceased shouting 'DAKTAR MOTE MARI DEUCHHI MOTE BANCHA BANCHA' (Daktar was killing me. Save me. Save me). What exactly was heard by the two might be little discrepant, but as rightly pointed out by the learned State counsel, P.W.13 was aged about sixty years whereas P.W.16 was thirty five



years. Therefore, their power of audibility which refers to the ability of human ear to detect and perceive sounds, encompassing the range of frequencies and sound levels may be different. It is a normal phenomena that as people grow older, their ability to hear, particularly high frequency sounds, declines, a condition known as presbycusis, affecting communication. It is, of course, correct that though P.W.16 stated that hearing the sound of the deceased, he himself and his father (P.W.13) came out of the house and proceeded towards the place from where the shout was coming and found the deceased lying dead on the backside of the house of Chaturbhuja Bhoi, but P.W.13 has not stated to have proceeded to the spot along with his son (P.W.16), but both of them noticed the presence of the appellant in the backside of the house of Chaturbhuja Bhoi where the dead body of the deceased was lying. The appellant was holding a lathi as stated by P.W.13 whereas P.W.16 has stated that the lathi was affixed with Trishul with three heads. When both P.W.13 and P.W.16 reached at the spot, the appellant threatened them for which P.W.13 out of fear returned back immediately whereas P.W.16 remained there concealing himself till the appellant removed the dead body of the deceased by putting it in a gunny bag and tying the face of the gunny bag by means of



rope and loading it on the cycle, since P.W.16 was present at the spot for a longer period, he could have noticed that the lathi was affixed with Trishul which P.W.13 might have missed it because of his short presence at the spot.

Although there are certain minor discrepancies in the evidence of P.W.13 and P.W.16, but that by itself is not a ground to disbelieve the prosecution case and falsify the evidence of these two witnesses. Law is well settled as held in the case of **Bakhshish Singh -Vrs.- State of Punjab and another reported in (2013) 12 Supreme Court Cases 187** that minor inconsistent versions/discrepancies do not necessarily demolish the entire prosecution story, if it is otherwise found to be credible. It is pertinent to note that the lathi (M.O.III) which was found in the hands of the appellant was identified by P.W.13 and the trident (M.O.IV) was recovered at the instance of the appellant from the place of concealment and both these weapons were sent to the doctor (P.W.20), who conducted post mortem examination and after examining the same, he has specifically opined that all the injuries detected on the person of the deceased except injury over the occiput and the injury over occiput as per his report Ext.9 were possible by trident (M.O.IV) and bamboo stick (M.O.III) respectively and the query report has



been marked as Ext.10. No explanation has been offered by the appellant regarding his presence near the dead body holding the weapon and he has simply taken a plea of false implication.

P.W.16 had seen the appellant packing the dead body in a gunny bag, tying the face of the bag by means of a rope, loading it in the cycle and going towards Budhiduguri jungle. Number of witnesses examined by the prosecution including P.W.17, the constable and P.W.23, A.S.I. of Larambha Outpost stated about the recovery of a gunny bag lying inside Budhiduguri Nala in the forest being tied with a rope, which was brought to the village and kept in the rest house and on opening the same in presence of the Magistrate, the dead body of the deceased was recovered and accordingly, inquest was conducted. Similarly, P.W.13 stated to have disclosed before P.W.7 regarding the appellant killing the deceased and P.W.7 also supported the same. P.W.16 also disclosed about the commission of crime by the appellant before P.W.4 and P.W.4 also supported the same. The conduct of P.W.13 and P.W.16 in disclosing about the incident immediately after returning from the spot before P.W.7 and P.W.4 respectively is relevant under section 6 of the Evidence Act as *res gestae*. A statement to be admissible under section 6 of the Evidence Act, must be



substantially contemporaneous with the fact i.e. made either during or immediately before or after the occurrence. To form a particular statement as part of the same transaction, utterance must be simultaneous with the incident, or soon after it so as to make it reasonably certain that the speaker is still under stress of excitement in respect of the transaction in question. This statement made by P.W.13 before P.W.7 so also P.W.16 before P.W.4 lends very important corroboration to the other evidence, in support of the culpability of the appellant. P.W.13 is not interested in either side, in other words, he is the brother of the deceased as well as the appellant so also P.W.16 who is closely related to both the appellant and the deceased and therefore, their versions deserve to be acted upon particularly when it is getting corroboration from the medical evidence.

The submission of the learned counsel for the appellant that the presence of the appellant at the spot, after committing the crime till the arrival of P.W.13 and P.W.16, is a doubtful feature, cannot be accepted. Reaction of an accused after committing the crime may vary from person to person and in the case in hand, the appellant remained at the spot and made every effort to cause disappearance of evidence by packing the dead body in the gunny bag and shifting the same inside the



jungle in a cycle as stated by P.W.16. Therefore, his presence at the spot after committing the crime seems to be for a particular purpose i.e. to cause disappearance of evidence from the scene of crime and in the meantime he could get noticed by P.W.13 and P.W.16.

As rightly pointed out by the learned counsel for the State that whatever the deceased shouted after being assaulted by the appellant as deposed to by P.W.16 that he was being killed by the appellant and further shouted to save him, can certainly be relied upon as dying declaration of the deceased. The dying declaration is a substantive evidence only for the reason that a person in acute agony is not expected to tell a lie and in all probability, it is expected from such person to disclose the truth and an order of conviction can be safely recorded on the basis of dying declaration, if the Court is fully satisfied that the declaration made by the deceased was voluntary, true and reliable and in such case, no further corroboration can be insisted. Dying declaration need not be addressed to a particular individual and we find there is no suspicious feature in such evidence in the case in hand and there is no infirmity in it.

P.W.4 has stated that a fortnight prior to the incident, there was altercation between the appellant and the



deceased relating to a mango tree which situated near the house of the appellant, but falling to the share of the deceased. The submission of the learned counsel for the appellant that there is no motive on the part of the appellant, cannot be accepted.

Even though the bamboo stick (M.O.III) which was found from the house of the appellant was containing blood but its origin could not be found out and even though no blood was found in the trident (M.O.IV), but in view of sufficient evidence available on record regarding the culpability of the appellant particularly that of P.W.13 and P.W.16 and the medical evidence, we are of the view that the learned trial Court has rightly found the appellant guilty of the offences charged.

Conclusion:

10. In view of the foregoing discussions, we are of the view that the conviction of the appellant under sections 302 and 201 of the I.P.C. is quite justified and the sentence imposed thereunder by the learned trial Court is also proper and justified and we find no illegality or infirmity to interfere with the same.

Accordingly, the impugned judgment of the learned trial Court stands confirmed.

In the result, the JCRLA stands dismissed.



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

Before parting with the case, we would like to put on record our appreciation for Mr. Radharaman Das Nayak, Advocate for the appellant 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. Jateswar Nayak, Addl. Govt. Advocate.

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S.K. Sahoo, J.

Savitri Ratho, J. I agree.

.....
Savitri Ratho, J.

Orissa High Court, Cuttack
The 8th April 2025/PKSahoo/RKMishra/Sipun

Signature Not Verified

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