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**Katia @ Harekrushna Behera Vs State Of Orissa**

**Jail Criminal Appeal No. 22 Of 2016**

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**Court:** Orissa High Court

**Date of Decision:** July 24, 2023

**Acts Referred:**

Code of Criminal Procedure, 1973 " Section 164, 383#Indian Penal Code, 1860 " Section 302, 304I

**Hon'ble Judges:** D.Dash, J; Dr S.K. Panigrahi, J

**Bench:** Division Bench

**Advocate:** R.K.Mallick, Sitikant Mishra

**Final Decision:** Disposed Of

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**Judgement**

D.Dash, J

1. The Appellant, by filing this Appeal, from inside the jail, has challenged the judgment of conviction and order of sentence dated 26th February, 2016

passed by the learned 2nd Additional Sessions Judge, Balasore in Sessions Trial No.19/110 of 2014, corresponding to Nilgiri P.S. Case No.296 of 2013

of the Court of the learned Sub Divisional Judicial Magistrate, Nilgiri.

The Appellant (accused) thereunder has been convicted for commission of offence under section 302 of the Indian Penal Code, 1860 (in short,

IPC) and sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/- (Rupees Five Thousand) in default to undergo Rigorous

Imprisonment for period of two months.

2. Prosecution case is that the accused namely Katia @ Harekrushna Behera, his wife Anita Behera (deceased) were staying in their house in village

Ayodhya with their children. It is stated that though the marriage between the two had taken place sometime in the year 2001, the accused being in

the habit of consuming liquor used to assault his wife (deceased).

On 04.10.2013 around 5 pm, the accused asked his wife to part with some money for taking liquor. The request being turned down; it is stated that the

accused assaulted her by means of a crow bar on his head and other parts of the body and then fled away from the spot. The deceased with the help

of the local people being carried to the local hospital at Ayodhya, she was declared dead.

The matter being reported to the father of the deceased (P.W.2). He with his wife (P.W.3) arrived at the hospital and found their daughter lying dead.

On enquiry their granddaughter (P.W.11) disclosed that the accused on that day in the morning hour, around 7 am, assaulted her mother by a crow bar

when her mother (deceased) refused to pay any money to her father (accused).

The father of the deceased Anita who is the father-in-law of the accused then lodged a written report to the above effect with the Inspector-in-

Charge (IIC) of Nilgiri Police Station (Ext.3). The written report being received by the I.I.C., he treated the same as FIR (Ext.3) and registering the

case, took up investigation.

3. In course of investigation, the I.O (P.W.10) examined the informant (P.W.2) and his wife (P.W.3) and other witnesses. He visited the spot and

prepared the spot map (Ext.7) and then, proceeding to the hospital at Ayodhya, held inquest over the dead body of Anita and prepared the inquest

report (Ext.4). He then sent the dead body for post mortem examination. Further continuing with the investigation, he seized the incriminating articles

such as crowbar, one plastic mat stained with blood, blood stained and sample earth from the spot under seizure list. The accused was arrested and his

wearing apparels were also seized. The important witnesses for the prosecution, who is the daughter of the accused and the deceased then aged

about 8 years was examined and step was taken for recording her statement by the learned Judicial Magistrate under section 164 of the Cr.P.C.

which was so done.

Finally, on completion of investigation, the I.O (P.W.10) submitted the Final Form placing the accused to face the Trial for commission of offence

under section 302 of the IPC.

4. Learned SDJM, Nilgiri 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 the

accused.

5. In the Trial, the prosecution in total has examined eleven (11) witnesses. As already stated, P.W.2 is the father-in-law of the accuse and he is the

informant, who had lodged the FIR (Ext.3). The mother of the deceased and mother-in-law of the accused, who had accompanied P.W.2 to the

hospital after hearing the news of death of their daughter, has come to the witness box as P.W.3. The other important witness for the prosecution is

P.W.11, who happens to be the elder daughter of the accused and the deceased and the sole eye witness to the occurrence. Rest are post occurrence

witnesses, whereas the doctor who had conducted post mortem over the dead body of the deceased is P.W.6 and the Investigating Officer has come

to the witness box as P.W.10.

6. Besides leading the evidence by examining above the witnesses, the prosecution has also proved several documents which have been admitted in

evidence and marked as Ext.1 to Ext.13/1. Out of those, the important are the FIR, Ext.3, inquest report, Ext.4, Post Mortem Report, Ext.6, spot map,

Ext.7. The chemical examination report obtained after examination of the incriminating articles sent through Court at the instance of P.W.10 (I.O) is

Ext.12.

7. The accused has tendered no evidence in support of his plea of denial and false implication.

8. Learned Counsel for the Appellant (accused) from the beginning instead of questioning the finding of guilt as has been returned by the Trial Court in

holding him to be the author of the injury which was received by the deceased, who happens to be his wife on her head submitted that when the entire

circumstances surrounding the incident not only those which had taken place before but also the subsequent events, the relationship, the number of

blow that was given after some altercation and further keeping in view the fact the parties hail from rural background whose tamper usually run high

and behavior at times for silly reasons becomes abnormal and unexpected; the Trial Court ought not to have convicted the accused for commission of

offence under section 302 of the IPC. He, thus confined his submission for altercation of conviction for commission of offence under section 302 of

the IPC to offence under section 304-I of the IPC and accordingly, he urged for appropriate reduction of the sentence.

9. Learned Counsel for the Respondent-State submitted all in favour of the finding of the Trial Court that the accused is liable for committing the

offence under section 302 of the IPC. He submitted that the blow having been given on the head of the deceased by a crowbar which is heavy, the

Trial Court did commit no mistake in holding the accused guilty of commission of offence under section 302 of the IPC notwithstanding the fact that it

is a case of solitary blow being given by the accused.

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.11) and have perused the documents admitted in evidence and marked as Ext.1 to Ext.13/1.

11. In order to address the rival submission concerning the categorization of the offence for which the accused would be held liable for the act done

by him, let us have a glance at the evidence of P.W.11, who is the star witness for the prosecution and is stated to be the sole eye witness.

12. This P.W.11 is the daughter of the accused and the deceased. She was then aged about 8 years when the incident took place. She has not stated

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