

## Basanta Kumar Sasani Vs State of Orissa

**Court:** Orissa High Court

**Date of Decision:** June 21, 2002

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 302, 307, 324

**Hon'ble Judges:** R.K. Patra, J; L. Mohapatra, J

**Bench:** Division Bench

**Advocate:** J.K. Panda, for the Appellant; M.R. Dhal, A.S.C., for the Respondent

### Judgement

L. Mohapatra, J.

The Appellant has preferred this appeal against the judgment and order passed by the learned Addl. Sessions Judge.

Jeypore convicting him u/s 302, IPC and sentencing him to undergo R.I. for life and also u/s 324. IPC sentencing him to undergo R.I. for two

years.

2. The case of the prosecution is that P.W.1 is the Headmaster of Ex-Board U.P. School, Bandhugaon where the Appellant was working as an

Assistant teacher. P.W.6 is a teacher of Kapalada School and the deceased Dandasi Rachmalla was a teacher of Hatigada Primary School. All of

them had arranged a closing year feast in the night of 31.12 1992 at Bandhugaon Ex-board U.P. School hostel. P.W.3 who is the informant was

working as a hostel cook and he was engaged to cook food in the night of occurrence. The further case of the prosecution is that the Appellant

changed his mind and did not come to the hostel from his quarter inspite of request made by the deceased and other teachers. Since the Appellant

did not turn up other teachers including the deceased came back to the hostel and set on the verandah of the hostel along with P.Ws. 5 and 7 who

had been invited to the feast. At about 10 P.M. the Appellant came to the place with an iron angle and suddenly assaulted P.Ws.1 and 6. Due to

such assault, both the witnesses sustained injuries. Immediately thereafter the Appellant dealt blows with the said iron angle on the head and face of

the deceased as a result of which the deceased fell down the became unconscious. He was immediately removed to Bandhugaon Hospital and

thereafter to parvatipuram Hospital. Soon after arrival in Parvatipuram Hospital, the deceased was declared dated P.W.3 who had been engaged

to cook and witnessed the occurrence reported the matter at Bandhugaon Out post and presented a written report (Ext.1). The said report was

entered into S.D.E. No. 1 dated 1.1.1992 and the same was sent to Narayanpatna P.S for registration of the case. Since the report revealed

commission of offence u/s 307, IPC requisition for medical examination of the injured was issued and investigation was taken up. The postmortem

examination of the deceased was conducted at Parvatipuram Hospital. On completion of investigation charge sheet was submitted against the

Appellant for commission of offence u/s 302, IPC for causing death of the deceased as well as u/s 307, IPC for attempting to commit murder of

P.Ws.1 and 6.

3. The Appellant denied the prosecution allegations altogether and pleaded that he had been falsely implicated in the case.

4. The prosecution in order to bring home the charge examined 17 witnesses and several documents were exhibited. The iron angle (weapon of

offence) was marked as M.O.I.

5. The learned Addl. Sessions Judge on consideration of materials held that the deceased died a homicidal death. On consideration of evidence of

P.Ws.1 3 and 5 to 7 as well as extra-judicial confession made by the Appellant before P.W.2 and the injuries sustained by the deceased, P.Ws.1

and 6, found the Appellant guilty for commission of offence u/s 302, IPC for causing murder of the deceased Dandasi Rachmalla and also found

him guilty u/s 324, IPC for assaulting P.Ws.1 and 6.

6. Learned Counsel appearing for the Appellant challenged the findings of the learned Addl. Sessions Judge on the ground that the story put

forward by the prosecution is highly improbable cannot be accepted. He also submitted that if the Appellant had any motive for causing murder of

the deceased he could have used any conventional weapon and there was no reason for him to use an iron angle for the purpose. That itself shows

that the Appellant had no motive to commit murder of the deceased. Referring to the evidence of P.Ws.3 and 14, learned Counsel also submitted

that the FIR which has been exhibited before Court is not the real FIR and there has been delay in lodging the FIR which remains unexplained.

7. In the light of argument advanced by the teamed counsel, it is necessary to examine the evidence of the eye witnesses, the witness before whom

extra-judicial confession was made and evidenced the Doctors who examined the injured and the deceased as well as the Doctor who conducted

the post mortem examination. P.W.1 is the Headmaster of Bandhugaon Ex-Board U.P. School who had arranged a contributory feast on the date

of occurrence. In his evidence he has stated that on the date of occurrence before he left for the hostel to attend the feast, all of them were sitting in

the house of the Appellant and were gossiping. At about 9.30 P.M. P.W.3 who had been engaged as cook called them to the hostel to take meals.

Accordingly, all of them came to the hostel but the Appellant did not come in spite of request made by him and Ors. . When they were sitting on

the verandah of the hostel, the Appellant came to the place being armed with an iron angle and first dealt a blow on his head by means of the said

iron angle. When he attempted to assault for the second time, P.W.1 raised his hand and the blow fell on his left hand. Thereafter the Appellant

assaulted on the left shoulder of P.W.6 by means of the said iron angle and then again assaulted on the head of the deceased. This witness has

specifically stated that he saw the Appellant dealing two blows on the head of the deceased from a distance of about 15 meters whereafter the

deceased fell down with bleeding injuries on his head. Learned Counsel for Appellant submitted that P.W.1 in the cross-examination admitted that

immediately after the assault on him he ran away from the spot to a distance of 10-15 meters and therefore, could not have seen assault either on

P.W.6 or on the deceased. P.W.3 is the cook who lodged information and also an eye witness to the occurrence. He has also supported P.W.1

so far as the conduct of the Appellant is concerned in assaulting P.Ws.1 and 6 as well as the deceased. Nothing has been brought out in his cross-

examination to disbelieve his evidence. P.W.5 was an invitee to the feast and was working as the Welfare Extension Officer at the relevant time.

He has supported the prosecution case is full and nothing has been brought out in the cross-examination to disbelieve him. P.W.6 is an injured who

has also supported the prosecution case in great detail and we do not find anything in his cross-examination to discard his evidence. P.W.7 Anr.

eye witness to the occurrence was an invitee to the feast and was working as Additional Welfare Officer at the relevant time He was declared

hostile and did not say anything about the assault. Even if the evidence of P.W.1 is discarded solely on the ground that immediately after assault he

ran away from the spot to a distance of 10-15 meters and could not have seen the occurrence, so far as P.W.6 and the deceased are concerned,

there is nothing to disbelieve the other witnesses viz. P.Ws. 3,5 and 6. From the injuries found on the deceased by P.W.8 who conducted the post

mortem examination, we find that the corresponding injuries were detected by P.W.8. He has also opined that the injuries were ante mortem in

nature and could have been caused by blunt object. He has also opined that the deceased died due to shock and haemorrhage as well as due to

multiple external injuries and injuries to the brain. On consideration of the above evidence, there is no iota of doubt in our mind that the deceased

died a homicidal death.

8. Coming to the question as to whether the Appellant is responsible for causing the death of the deceased or not apart from the evidence of the

eye witnesses discussed above, we find that before P.W.2 (wife of the deceased) an extrajudicial confession was made by the Appellant stating

that he had assaulted her husband by means of an iron angle and that her husband was lying on the hostel verandah. We do not find anything

brought out by the defence in her cross-examination to disbelieve her evidence. Considering the evidence of the eye witnesses to the occurrence,

extrajudicial confession made before P.W.2 and the injuries found by P.W.8 we find no reason to disagree with the findings of the learned

Additional Sessions Judge that the Appellant committed murder of the deceased.

So far as delay in lodging the F.I.R. is concerned, P.W.3 has stated that after the deceased was taken to Bandhugaon Hospital for treatment, he

went to Sandhugaon Out post and orally reported the incident to the A.S.I. of Police who reduced his oral report into writing. P.W.14 who was

the A.S.I. at the relevant time has stated that on 1.1.1992 at about 0.30 A.M. P.W.3 appeared before him and represented a written report.

Learned Counsel for Appellant tried to convince the Court that there was no such report (Ex.1) since there is variation in the evidence of P.Ws.3

and 14. According to him though P.W.3 stated to have made an oral report which was reduced into writing P.W.14 stated that he received a

written report from P.W.3. In our view, the contradiction is not so material so as to disbelieve the evidence of P.W.3 or P.W.14 that with regard

to the incident a report had been lodged in the Out post. It appears that the occurrence took place at about 10 P.M. in the night of 31.12.1991

and the report was submitted at about 0.30. A.M. in the same night. Learned Counsel for Appellant relied on a decision of the Apex Court in the

case of (1) Sevi and Another Vs. State of Tamil Nadu and Another, . The facts appearing in the said case are different from the facts of the

present case. In the aforesaid decision, the S.I. of police was informed by P.W.10 over phone that there was some rioting in Kottaiyur and some

persons were stabbed. The S.I. of Police made an entry in general diary and proceeded to the spot taking with him to F.I.R. book and hospital

memo book. This part of evidence was not accepted by the Apex Court and the Apex Court observed that such conduct on the part of the S.I.

was extraordinary on the ground that the Court had not yet come across any case where an OIC of a Police Station carried with him the F.I.R.

books. Learned Counsel for Appellant also cited Anr. decision of the Apex Court in the case of Thulia Kali Vs. The State of Tamil Nadu, on the

question of delay in lodging the F.I.R. in the said decision though the occurrence took place at about 10.30 P.M. on March 12, 1970 no report

was submitted till the following day even though the occurrence was witnessed by a large number of villagers and the police station was only at a

distance of three furlongs.

9. So far as the present case is concerned, the occurrence appears to have taken place at about 10 P.M. in the night and within two and half hours

of the incident, the matter was reported before the Out post. Therefore, we are of the view that there was no delay in submitting a report about the

occurrence.

So far as motive is concerned, learned Counsel for Appellant has relied on Anr. decision of the Apex Court in the case of Hanamant Bhimappa

Gadivaddar v. State of Karnataka reported in AIR 2001 SCW 2390. In our view, whether the culprit had any motive for commission of the

offence or not, depends on facts of each case. So far as the present case is concerned, there was no reason for the Appellant to come to the hostel

with an iron angle in his hand and there was also no reason for him to assault three persons one after the other. From the conduct of the Appellant,

it appears that he had come prepared from the house with a weapon to assault P.Ws.1, 6 and the deceased. So far as the deceased is concerned,

it also appears from the evidence of the witnesses and the Doctor conducting the post mortem examination that the Appellant had dealt more than

one blow on the head therefore, it cannot be said that he had no motive to cause the death.

10. In view of our observations made over, we do not find any reason to disturb the findings of the learned Addl. Sessions Judge so far as it relates

to the offence u/s 302, IPC.

11. So far as assault on P.Ws.1 and 6 is concerned, both the witnesses are consistent in their evidence supported by other witnesses who were

present at the spot that they had been assaulted by the Appellant by means of an iron angle both the witnesses were also examined on police

requisition by P.W.13 and he also found the corresponding injuries on both the injured. We therefore, do not find any reason to disturb the findings

of the learned Addl. Sessions Judge with regard to the offence u/s 324. I.P.C.

12. For the reasons aforesaid, we do not find any merit in this appeal which stands dismissed.

R.K. Patra, J.

13. I agree.