IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No. 31 of 2010
ODHC010230032010

[An application under Section 374 of the Code of Criminal Procedure from the judgment and order dated 29.10.2009 passed by learned Sessions Judge, Keonjhar]

AFR

1. Sambari Munda (Dead)

2. Mana Munda .... Appellants

-Versus-

State of Orissa ..... Respondent

Advocate(s) appeared in this case through hybrid mode:

For Appellants	:	Mr. C.R Sahu, Advocate
For Respondent	:	Ms. Suvalaxmi Devi, Addl. Standing Counsel

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing: 03.09.2026 :: Date of Judgment: 08.09.2026

SASHIKANTA MISHRA, J.

The appellants, namely, Mana Munda and Sambari Munda, who are husband and wife, faced trial in Sessions Trial Case No. 105 of 2009 [Sessions Trial Case No. 132 of 2009] before the learned Sessions Judge, Keonjhar, for

committing the murder of one Radhi Munda of village Kendughati, who was the sister-in-law of appellant Mana, and for attempting to commit the murder of her stepson, Tuna Munda. By judgment dated 29.10.2009, the trial Court convicted both the appellants under Sections 341, 506, 307 and 302 read with Section 34 of IPC and sentenced each of them to undergo simple imprisonment for one month under Section 341 of IPC, RI for five years and to pay a fine of Rs.2,000/-, in default thereof, to undergo further RI for one year under Section 307 of IPC, RI for one year under Section 506 of IPC and imprisonment for life and to pay a fine of Rs.5,000/-, in default thereof, to undergo further RI for two years under Section 302 of IPC. However, both the appellants were acquitted of the charge under Section 294 of IPC while appellant Sambari was also acquitted of the charge under Section 109 of IPC.

Be it noted that the appeal in respect of appellant No. Sambari Munda has abated in view of her death. Accordingly, the present appeal is confined to appellant Mana Munda.

2. Prosecution case, briefly stated, is as follows.

On 18.08.2008, at about 8.00 to 9.00 a.m., the informant, Tuna Munda, asked Mana Munda, his elder paternal uncle, for his father's share in the land belonging to his grandfather. The informant's parents had died when he was very young and his stepmother, Radhi Munda (the deceased), the first wife of his father and issueless, had raised him and maintained him. Mana, who resided in the adjoining house, was in possession of the entire land. Despite repeated demands, Mana and his wife, Sambari, refused to give him his share and threatened to kill him if he persisted. On the above date, when the informant reiterated his demand, both appellants became angry. Sambari caught hold of the informant by his shirt and dragged him towards their house, while Mana came with a *budia* (axe) and was about to assault him. At that time, the deceased intervened and stood in front of Tuna to protect him. It is stated that Sambari caught hold of the deceased and exhorted Mana to assault her, whereupon Mana dealt two blows with *budia* on her head. The deceased fell down and died at the spot. The appellants thereafter threw the *budia* near the dead body

and fled from the spot. Due to absence of any conveyance on the following morning, i.e., 19.08.2008 Tuna, accompanied by one Makuru Giri, went to the Banshapal Outpost and lodged FIR. On the basis of the FIR, Nayakote P.S. Case No.32 of 2008 was registered under Sections 302/34 IPC. Upon completion of investigation, charge-sheet was submitted against them under Sections 341/109/506/294/307/302/34 IPC.

3. The defence of the accused persons was one of complete denial and false implication.

4. To prove its case, prosecution examined six witnesses and exhibited twelve documents. That apart, prosecution also proved one material object. Defence, on the other hand, did not adduce any evidence.

5. After analyzing the evidence on record, the trial Court held that the prosecution established the charges under Sections 341, 506, 307 and 302 read with Section 34 of the IPC against both the appellants. It principally relied on the evidence of P.W.1, Tuna, who was treated as an eyewitness and the evidence of P.W.2, who had been

informed about the occurrence by P.W.1 soon thereafter. It also placed reliance on the evidence of P.Ws.3 and 4, who had reached the spot after the occurrence and seen the dead body, the medical evidence of P.W.5 regarding the homicidal death of the deceased and the capability of the seized *budia* to cause the injuries as well as the evidence of P.W.6, the IO. It also relied on the report of the State Forensic Science Laboratory, Bhubaneswar, regarding the presence of human blood on the seized articles. It therefore, held that the appellants had in furtherance of their common intention, wrongfully restrained and criminally intimidated Tuna and the deceased, attempted to commit the murder of Tuna and intentionally caused the death of the deceased. However, it found that the prosecution failed to establish the charge under Section 294 of the IPC against either of the appellants and the charge under Section 109 of the IPC against appellant Sambari, and acquitted them of the said charges.

6. Heard Mr. C.R Sahu, learned Counsel for the appellant and Ms. Suvalaxmi Devi, learned Addl. Standing Counsel for the State.

7. Mr. Sahu assails the impugned judgment of conviction on the following grounds: -

i) The trial Court erred in relying on the testimony of P.W.1 despite material inconsistencies and absence of independent corroboration.

ii) P.Ws.2, 3 and 4 are not eyewitnesses and their evidence does not connect the appellant with the assault.

iii) The evidence regarding the timing of the FIR is inconsistent. While P.W.6 proves its lodging on 19.08.2008, P.W.1 stated that he lodged it two days after the occurrence.

iv) The seizure of *budia* commonly available in villages, does not connect the appellant with the offence, particularly in the absence of recovery at his instance. The medical evidence only establishes that the weapon could have caused the injuries.

v) The prosecution case is that the appellant intended to assault P.W.1 and that the deceased was injured while intervening. Thus, the requisite intention to cause her death is not established. In the alternative, it is argued that the occurrence would fall within Exception 4 to Section 300 IPC.

vi) The conviction with the aid of Section 34 IPC is unsustainable in the absence of cogent evidence establishing a common intention between the accused.

vii) The convictions under Sections 341, 307 and 506 IPC are also unsustainable for want of evidence establishing the essential ingredients of the said offences against the appellant.

8. Per contra, Ms. Suvalaxmi Devi would argue that the prosecution established the charges against the appellant beyond reasonable doubt. She submits that the evidence of P.W.1, who is an eyewitness to the occurrence,

is consistent in material particulars and finds corroboration from the medical evidence, the evidence relating to the seizure of the weapon and the report of the State Forensic Science Laboratory. The minor discrepancies pointed out by the defence do not affect the core of the prosecution case. She also argues that the fact that the deceased intervened to save P.W.1 does not absolve the appellant of the liability for her death, particularly when the appellant assaulted her on the head with a sharp-edged weapon. The nature and situs of the injury show the requisite intention or knowledge. The plea of applicability of Exception 4 to Section 300 of the IPC is also not available to the appellant, as the assault was not the result of a sudden fight and the appellant had used a deadly weapon against the deceased. The conviction under Section 34 of the IPC is also justified from the conduct of both the accused persons and their participation in the occurrence. She therefore, submits that the judgment calls for no interference.

9. We have heard learned counsel for the parties and have taken note of the rival contentions. We have also perused the case record and the impugned judgment. It is

seen that the prosecution case rests mainly on the testimony of P.W.1, Tuna, who is the informant and an eyewitness to the occurrence. We, therefore, find it necessary to first examine if his testimony inspires confidence.

10. P.W.1 has stated that about one and a half years prior to the occurrence, he demanded his share from the accused persons but both of them threatened to kill him. He also stated that on the date of occurrence, appellant Sambari caught hold of him, appellant Mana Munda came with a *budia* to assault him, his mother the deceased intervened and stood in front of him, whereafter appellant Mana assaulted the deceased on her head with the budia, resulting in her death at the spot. The sequence of events as deposed by P.W.1, namely, the demand for share, the attempt to assault him, intervention by the deceased and the subsequent assault upon her, has remained substantially consistent. Certain discrepancies have been pointed out in the evidence of P.W.1. In his cross-examination, he stated that he lodged the FIR two days after the occurrence, whereas the FIR itself and the evidence of

P.W.6 show that it was lodged on the following day, i.e., 19.08.2008. There is also some discrepancy regarding the time when P.W.1 informed P.W.2 about the occurrence. However, in our considered view, these discrepancies do not affect the substratum of his testimony. The occurrence took place in a rural setting and the witnesses are persons from tribal background. The Court cannot expect a witness to reproduce every detail of an occurrence, including the precise time sequence, with mathematical accuracy. Minor variations, discrepancies and contradictions cannot militate against the veracity of the core of the testimony, provided there is a ring of truth in it and the same is inherently probable. Reference in this regard may be had to the case of ***Shivaji Sahabrao Bobade v. State of Maharashtra***[1], wherein the Supreme Court observed as follows:

> *"Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate*

[1] (1973) 2 SCC 793

against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered."

11. It has been argued by Mr. Sahu that being the son of the deceased, he is an interested witness and without independent corroboration his evidence cannot be believed. Such submission, in our considered view, cannot be accepted for the reason that there is no dispute that PW-1 is related to the deceased however 'related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of the case cannot be said to be 'interested'. P.W.1 had no reason to protect the real culprit and falsely implicate the appellants, who had assaulted his mother, who had brought him up after the death of his father and mother when he was at a tender age. The trial Court has also rightly appreciated this aspect. The distinction between related and interested witness was delineated by

the Supreme Court in the case of ***State of Rajasthan v. Kalki[2].***

12. We are also conscious that the trial Court had the advantage of observing the witnesses while they deposed and of appreciating their demeanour. Such advantage is undoubtedly a relevant consideration for an appellate Court. However, the same cannot substitute an independent assessment of the evidence. As observed in ***Shivaji Sahabrao Bobade (Supra)***, the appellate Court is not required to make a fetish of the trial Judge's assessment of demeanor. In the present case, on our independent scrutiny of the evidence, we find no reason to discard the core testimony of P.W.1 merely on account of the discrepancies noticed above.

13. The evidence of P.W.1 regarding the assault on the deceased receives corroboration from the surrounding circumstances, conduct of the appellant and the medical evidence. P.Ws.2, 3 and 4, though not eyewitnesses to the occurrence, reached the place thereafter and found the deceased lying dead with injuries on her head/near the

[2] (1981) 2 SCC 752

ear. P.W.3 has also stated about the seizure of the *budia* near the dead body. P.W.5, the doctor who conducted the post-mortem examination opined that the injury sustained by the deceased was ante-mortem and homicidal and that the seized *budia* could have caused such injury. P.W.6 also proved the seizure. The evidence of these witnesses, therefore, lends support to P.W.1's version.

14. At the same time, the evidentiary value of the seizure of the *budia* has to be appreciated with caution. The weapon was seized from near the dead body and was not recovered at the instance of the appellant. P.W.6 has admitted that *budias* of such nature are commonly available in villages. The forensic report showing the presence of human blood on the seized articles is also only a corroborative circumstance and there is no evidence before us identifying the blood as that of the deceased by blood group or otherwise. Thus, the seizure and the forensic evidence cannot, by themselves, establish the appellant's authorship of the assault. Nevertheless, these circumstances, read with the ocular testimony of P.W.1

and the medical evidence, provide corroborative support to the prosecution case.

15. Based on discussion made above, we find no ground to reject the evidence of P.W.1 insofar as his statement that appellant Mana came with a *budia*, the deceased intervened to protect him and the appellant thereafter assaulted the deceased on her head. We therefore accept the said part of his testimony.

16. The next question is, whether the facts so established are sufficient to sustain the conviction of the appellant under Section 302 of the IPC.

17. Before we proceed to consider the same, it is necessary to keep in view the distinction between culpable homicide under Section 299 and murder under Section 300 of the IPC. The mere fact that the act of the accused resulted in death does not, by itself, make the act murder. In the case of ***Anbazhagan v. State of Tamil Nadu***[3], the Supreme Court observed that even where none of the five Exceptions to Section 300 is pleaded or prima facie established, the prosecution must still establish that the

[3] (2024) 20 SCC 500

case falls within any one of the four clauses of Section 300. If the prosecution fails to establish any of the said four clauses, the case may constitute culpable homicide not amounting to murder within the meaning of Section 299.

18. In the present case, the prosecution has undoubtedly established that appellant Mana inflicted the blow on the deceased with a *budia*. P.W.5 opined that the injury was sufficient in the ordinary course of nature to cause death and that even one blow with the seized *budia* could cause such injury. The act of the appellant, therefore, was undoubtedly dangerous and culpable. Having regard to the weapon used and the part of the body upon which the blow was inflicted, the appellant must also be attributed with the knowledge that such an assault was likely to cause death.

19. However, the main question that falls for consideration is whether the prosecution has established the intention required to bring the act within any of the four clauses of Section 300 of the IPC. The genesis of the occurrence assumes significance in this regard. The

prosecution case itself is that P.W.1 had again demanded his share in the land; appellant Sambari caught hold of him and dragged him towards their house; and appellant Mana came with the *budia* to assault P.W.1. It was at that stage that the deceased intervened and stood in front of P.W.1 to rescue him. The fatal assault on the deceased, therefore, occurred after her intervention and in the course of the same confrontation.

20. The fact that the deceased was not the intended target of the accused assault must be considered in light of Section-301 IPC, invoking the doctrine of Transfer of Malice. The doctrine implies that where a person, while doing an act which he intends or knows to be likely to cause death, causes the death of another person whose death he neither intends nor knows himself likely to be caused. In the case of ***Ganga Singh v. State***[4], the Allahabad High Court, while relying on the decision in ***Emperor v. Jeoli***[5], commonly known as the 'Halwa case', explained the scope of Section 301 IPC as follows:

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[4] 1979 SCC OnLine All 877
[5] (1917) ILR 39 All 161

> *"20. Section 301, I.P.C. does not as already pointed out, enact any rule not deducible from S. 299 and S. 300, I.P.C. but it declares in plain language an important rule deducible from those sections just as an explanation to a section does. The rule could not well be stated as an explanation to either Section 299 or Section 300, Penal Code, 1860 as it relates to both. It was, therefore, most convenient to state the rule by means of a fresh section. The rule makes it clear that culpable homicide may be committed by causing the death of a person whom the offender neither intended, nor knew himself to be likely to kill, a rule which though it does not lie on the surface of S. 299 yet is deducible from the generality of the words "causes death" and from the illustration to the section; and the rule then goes on to state that the quality of the homicide, that is, whether it amounts to murder or not, will depend on the intention or knowledge which the offender had in regard to the person intended or known to be likely to be killed or injured, and not with, reference to his intention or knowledge with reference to the person actually killed, a rule deducible from the language of Ss. 299 and 300 though not, perhaps, lying on their very surface. The Public Prosecutor v. Suryanarayana Moorty, ((1912) 13 Cri LJ 145) (Mad); Emperor v. Jeoli, ((1917) ILR 39 All 161) and Ballan v. State (1955 Cri LJ 1448) (All)."*

Such being the position of law, what can be inferred from it is that Section 301 is a rule of attribution not a provision defining the degree of homicide. In other words, Section 301 transfers the *mens rea*, it does not elevate every homicide into murder. Therefore, the act of culpable homicide is to be determined with reference to the intention or knowledge of the accused. The provision does not create an independent offence but merely attributes the consequence of the act to the unintended victim while

preserving the nature and degree of culpability accompanying the act. The appellant cannot, therefore, be held guilty of a graver offence in respect of the deceased than that which would have been attracted had P.W.1 been the person who sustained the blow.

21. Thus, the mere fact that the blow ultimately fell upon the deceased, who had intervened to protect P.W.1, would not by itself absolve the appellant of liability for her death. The question, to decide is regarding the nature and degree of the intention or knowledge with which the appellant had proceeded to assault P.W.1 and if the intended assault had resulted in the death of P.W.1, would the act attract the provisions of Section 300 or Section 299 of the IPC. If the act would fall under the former, the appellant would be guilty of murder, but if it falls under the latter, they would be guilty of culpable homicide not amounting to murder. The above, in effect is the principle behind the doctrine of Transferred Malice as per Section-301 IPC.

22. It therefore becomes necessary to distinguish between the intention to cause a particular injury and the

fact that the injury ultimately caused was sufficient in the ordinary course of nature to cause death. P.W.5 has established the latter. But, for attracting the third clause of Section 300, it must also be established that the bodily injury intended to be inflicted was the injury which was sufficient in the ordinary course of nature to cause death. The fact that the injury proved fatal cannot, by itself, establish the requisite intention. The intention has to be gathered from the totality of the circumstances, including the genesis of the occurrence, the weapon used, the part of the body targeted, the manner in which the assault took place and the surrounding circumstances.

23. In the present case, appellant Mana came armed with a budia to assault P.W.1. The use of a sharp-edged weapon for assault undoubtedly establishes that the appellant intended to cause bodily harm to him. Nevertheless, the evidence does not establish that the appellant intended to cause the death of P.W.1 or intended to inflict upon him a bodily injury of the nature contemplated by the third clause of Section 300 of the IPC. There is also no evidence of repeated blows or any prior

preparation directed towards causing death. The absence of evidence of any prior intention and planning directed against the deceased or his son is a circumstance which cannot be ignored.

24. We are, therefore, unable to hold that the prosecution has discharged its burden of bringing the act of the appellant within any of the four clauses of Section 300 of IPC. At the same time, having regard to the nature of the weapon with which the appellant had proceeded to assault P.W.1 and the manner in which the assault was sought to be made, the appellant must be attributed with the knowledge that such an act was likely to cause death. The assault having resulted in the death of the deceased, who intervened in the course of the occurrence, the culpability attached to the act is attracted by virtue of Section 301 of the IPC. The act, therefore, constitutes culpable homicide not amounting to murder.

25. We have also considered the alternative submission regarding Exception 4 to Section 300 of the IPC. Exception 4 states where death is caused without premeditation, in a sudden fight, in the heat of passion

upon a sudden quarrel, provided the offender has not taken undue advantage or acted in a cruel or unusual manner. The evidence in the present case does indicate that the occurrence developed suddenly in the course of the confrontation arising from the demand for share of land and the deceased intervened in an attempt to protect P.W.1. However, since we have already found that the prosecution failed to establish the ingredients of any of the four clauses of Section 300 itself, it is unnecessary to rest the alteration of conviction solely upon Exception 4. The question of the applicability of a particular exception does not require a determination once the prosecution fails to establish the charge of murder in the first place. We accordingly hold that the appellant is guilty of culpable homicide not amounting to murder punishable under Section 304 Part II of the IPC.

26. We shall now consider the conviction under Section 307 of the IPC. The prosecution case is that appellant Mana came armed with a *budia* to assault P.W.1, but before any blow could be inflicted, the deceased intervened. P.W.1 has not stated in his deposition that he

sustained any injury. Rather, he has specifically attributed to the appellant a threat to assault him with the *budia*, which was prevented by the intervention of the deceased. Though actual injury is not a *sine qua non* for an offence under Section 307, the prosecution must nevertheless establish the requisite intention or knowledge to cause death. In the present case, the assault on P.W.1 was not carried out, and the circumstances in which the occurrence developed do not establish the requisite intention.

27. As regards Section 341 of the IPC, P.W.1 specifically attributes the act of catching hold of and dragging him to appellant Sambari. No specific act of wrongful restraint is attributed to appellant Mana. In the absence of proof that he participated in such restraint pursuant to a common intention, his conviction under Section 341 with the aid of Section 34 cannot be sustained.

28. The conviction under Section 506 of the IPC is also unsustainable. The evidence regarding the threat to kill relates to an earlier demand for the share in the land,

stated to have been made about one and a half years before the occurrence. There is no clear evidence of any specific act of criminal intimidation attributable to appellant Mana proximate to the occurrence.

29. We shall next consider Section 34 of the IPC. The evidence attributes distinct acts to the two accused, appellant Sambari restrained P.W.1, while appellant Mana assaulted the deceased after she intervened. There is no cogent evidence establishing that they shared a common intention to commit the offences charged, specifically with regard to the charge of causing murder or bodily injury to P.W.1. Their relationship and presence at the spot, by themselves, are insufficient to attract Section 34.

30. Thus, on a conspectus of the evidence and the discussion made above, we find that the prosecution has established beyond reasonable doubt that appellant Mana Munda inflicted the fatal blow on the deceased with a *budia*, but has failed to establish that the act amounted to murder within the meaning of Section 300 of the IPC. The evidence, however, establishes that the appellant had knowledge that such act was likely to cause death, thereby

attracting Section 304 Part II of the IPC. The prosecution has also failed to establish the essential ingredients of Sections 307, 341 and 506 of the IPC against the appellant or to establish his liability with the aid of Section 34 of the IPC. The conviction of the appellant under Sections 302, 307, 341 and 506 read with Section 34 of the IPC, therefore, cannot be sustained and stands modified.

31. In the result, the appeal is allowed in part. Conviction of the appellant Mana is modified to one under Sec 304-II IPC.

32. Mr. Sahu submits that the appellant is presently aged more than 72 years and that, having regard to his advanced age, the fact that the occurrence took place in the year 2008, interest of justice would be served by sentencing him to imprisonment for a lesser term. Having regard to the overall facts and circumstances of the case and the advanced age of the appellant, we are of the considered view that a sentence of RI for 10 years would meet the ends of justice. Since the appellant has already undergone the said

period of imprisonment, the period already undergone by him shall be set off against the sentence. He shall be set at liberty forthwith, if his detention is not required in connection with any other case.

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(**Sashikanta Mishra, J)**

Manash Ranjan Pathak, J. I agree.

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(Manash Ranjan Pathak, J)

Orissa High Court, Cuttack
Dt. 8th September, 2026/Deepak

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