

CRLA No. 316 of 2003

AFR Babu Das Appellant

State of Orissa **Respondent**

For Respondent : Ms. Suvalaxmi Devi,
Addl. Standing Counsel

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing :09.04.2026 :: Date of Judgment:23.06.2026

SASHIKANTA MISHRA, J.

The appellant, Babu Das, faced trial in Sessions Case No. 59 of 2002/ Sessions Case No. 525 of 2002



(GDC) in the Court of the learned Additional Sessions Judge (Fast Track Court), Chatrapur for committing the murder of one Natabara Gouda. By judgment dated 31.10.2003, he was convicted under Section 302 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/-, in default, to undergo imprisonment for a period of six months.

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

On 28.05.2002 at about 6:00 P.M., the deceased Natabara Gouda, a resident of village Saru and known for practising '*Jhada Phunka*', was taken by PW-11 Bijaya Behera to village Punarakhandi for treating his ailing daughter. After performing '*Jhada Phunka*' while he was returning to his village on a bicycle with the deceased being seated on the rear carrier, the accused intercepted them near Majhi Sahi Chhaka of village Saru. It is the case of the prosecution that suspecting that the deceased had practised witchcraft against him and his brother, the accused dealt blows to the deceased by means of a lathi. Out of fear, PW-11 fled away from the spot leaving behind



the bicycle and the deceased and informed PW-12, son of the deceased, about the incident. Hearing this, PW-12 came to the spot and found that the accused was dragging and assaulting his father towards Bauri Sahi. The deceased thereafter fell down near the backyard of the house of one Ashok Das and succumbed to the injuries.

PW-12 lodged the FIR, on the basis of which P.S. Case No. 59(14) of 2002 was registered under Sections 302/294/341/323 IPC followed by investigation. During the course of investigation, the I.O. visited the spot, conducted the inquest and examined the witnesses and the accused was subsequently arrested. While in police custody, he gave a statement leading to discovery of the weapon of offence, i.e., lathi. Upon completion of investigation, charge-sheet was submitted against the accused for the offence punishable under Section 302 IPC.

3. The plea of the accused was of complete denial. The accused additionally took the plea of alibi that he was not present in his village on the day of occurrence but was present in his in-laws' village.



4. To prove its case, prosecution examined fifteen witnesses and exhibited twenty-one documents. That apart, prosecution also proved six material objects. Defence, on the other hand, examined only one witness.

5. After analysing the evidence on record, the trial Court was of the view that the prosecution was able to establish the charge against the accused. It held that that PW-11, who had accompanied the deceased stated about the accused intercepting and assaulting the deceased. The evidence of PW-12, who reached the spot immediately after being informed, was found to be natural and trustworthy as he had seen the accused dragging and assaulting the deceased. Also, the evidence of these witnesses finds due corroboration from the medical evidence regarding the nature of injuries sustained by the deceased. The plea of alibi taken by the accused was disbelieved on the ground that no convincing evidence was adduced in support of it. As such, the accused was convicted and sentenced as already stated hereinbefore.



6. Heard Mr. B.R. Mohanty, learned Amicus Curie for the appellant and Ms. Suvalaxmi Devi, learned Addl. Standing Counsel for the State.

7. Mr. Mohanty assails the impugned judgment of conviction on the following grounds.

- i) PW-11, who accompanied the deceased on his cycle did not support the prosecution case.
- ii) Conviction is based on the solitary evidence of PW-12, who is the son of the deceased and an interested and related witness.
- iii) Discovery of the weapon of offence is doubtful as the seizure witnesses have not supported the prosecution case.
- iv) Chemical examination report does not show that the seized lathi contained blood of the deceased.
- v) Scribe of the FIR has not been examined



8. Per contra, Ms. S. Devi would argue that though some of the witnesses have turned hostile, the evidence of PW-12, who is the son of the deceased, is natural and trustworthy and there is no reason to discard his testimony merely on the ground of relationship. She also submits that PW-12 had reached the spot immediately after being informed and had seen the accused dragging and assaulting the deceased and his evidence inspires confidence. She contends that it would be unrealistic to assume that related witnesses would falsely implicate innocent persons while allowing the real offenders to go scot-free. She further submits that the law is well-settled that the testimony of related or interested witnesses cannot be discarded solely on the ground of relationship if it is otherwise found to be credible and trustworthy.

She also argues that the evidence of P.W.12 finds due corroboration from the medical evidence as regards the nature of injuries sustained by the deceased. Merely because PW-11 has not supported the prosecution case, the same is not fatal when there is otherwise reliable



evidence available. She further submits that the discovery of the weapon of offence at the instance of the accused is a relevant incriminating circumstance and merely because the seizure witnesses did not support the prosecution case, the same cannot be discarded when it is otherwise proved through the evidence of the I.O. She also argues that non-detection of blood on the seized lathi in the chemical examination report is not fatal to the prosecution case, and also that non-examination of the scribe of the FIR is not material when the informant himself has proved the contents of the FIR.

9. The case record reveals that out of 15 witnesses examined by the prosecution, as many as 11, namely, PWs-1 to 11 turned hostile. As such, their evidence is of no value to the prosecution. In so far as PW-11 is concerned however, we find that he has described the occurrence to some extent consistent with the prosecution case prior to resiling from his original statement before the I.O. stating that while he was coming to the village of the deceased with the deceased sitting on the carrier of his



bicycle, four persons attacked the deceased and assaulted him by lathis, as a result both of them fell down. In his statement before the I.O. as also before the Magistrate recorded under Section 164 Cr.P.C., PW-11 had named the accused as being the assailant. Before the Court however, he changed his version. Obviously, he was hiding the truth and therefore, cannot be treated as a reliable witness. He however, stated that after the occurrence, he went to the house of the deceased and informed his son, PW-12 about it and thereafter he came back to the spot along with PW-12. This part of his statement finds support from PW-12. He further stated that after reaching the spot with PW-12 he saw his bicycle lying on the ground and the deceased was missing. PW-12, on the other hand stated that accused Babu assaulted his father while he was coming with PW-11 on his bicycle. He again said that he was informed about the assault by PW-11. It is therefore, clear that he had not seen the initial assault. His further statement that he reached the spot and he found the accused taking the deceased towards the Bauri sahi by



assaulting him with his lathi is contrary to the statement of PW-11 that the deceased was missing when he and PW-11 reached the spot. PW-12 further claims that he saw his father lying dead near the backyard of the house of one Ashok Das of Bauri Sahi. Ashok Das was not examined. All these raise considerable doubts in mind as regards the veracity of the versions of PW-11 and PW-12, both of whom, for reasons indicated, cannot be treated as reliable witnesses.

10. Coming to the medical evidence, the autopsy surgeon (PW-13) found as many as 9 injuries on the body of the deceased which are reproduced below:

“i. Parallel bruise- 15 cm × 2.5 cm, on the right anterior- lateral aspect of the chest.

ii. 5 nos. of parallel bruises on the back over the right scapular area, each measuring 14 cm × 2.5 cm.

iii. Parallel bruise- 14 cm × 2.5 cm, on the back over the right lumbar area.

iv. Parallel bruise- 23 cm × 2.5 cm, on the back over the left scapular area.

v. Parallel bruise- 14 cm × 2.5 cm, on the outer aspect of the left arm.

vi. Compound fracture of the upper end of the right ulna (forearm bone) with a communicating



lacerated wound of size 1.5 cm × 0.5 cm at the fracture site.

vii. Parallel bruise- 10 cm × 2.5 cm, on the outer aspect of the right upper thigh.

viii. Abraded laceration of size 6 cm × 1.5 cm x muscle deep on the front of the right leg.

ix. Abrasion 5 cm × 3 cm, on the front of the left leg.”

PW-13 opined that the injury under heading No.2 along with corresponding internal injury was sufficient to cause death in ordinary course of nature and was caused by successive blows by a hard and blunt object. Defence has not disputed the nature of death being homicidal but then the authorship of the crime cannot be proved by medical evidence alone. As discussed above, the medical evidence does not find any support from the ocular so as to point the needle of guilt at the accused.

11. Two other aspects need consideration. Firstly, in the absence of any corroboration from independent sources, the so-called disclosure statement relating to recovery of the seized weapon cannot be relied upon. Secondly, the last seen theory pressed into service by the prosecution also falls to the ground in view of the



apparent contradiction in the versions of PW-11 and PW-12 as regards the presence of the deceased and the accused at the spot when both of them arrived there. There is no evidence of anyone else having seen the accused assaulting and taking away the deceased with him from the spot towards Bauri Sahi. The only thing that comes out from the evidence is the discovery of the dead body in the backyard of the house of Ashok Das.

12. From the above narration we find that the prosecution case is not free from reasonable doubts. Perusal of the impugned judgment reveals that the trial Court has not taken note of the aforementioned vital aspects and the apparent gaps in evidence. On the other hand, the trial Court has shifted the burden at times to the defence, which cannot be countenanced in law.

13. For the foregoing reasons therefore, we are satisfied that the case of the prosecution not being free from reasonable doubts, the benefit ought to go in favour of the accused. For the reasons above, the impugned order



of conviction and sentence dated 31.10.2003 being not sustainable in law is set aside and quashed.

14. In the result, the appeal is allowed. The impugned order of conviction dated 31.10.2003 is set aside. The accused appellant being on bail, his bail bond be discharged, if not required in 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
The 23rd June, 2026/A.K. Rana,P.A.