

**A.F.R.**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CRLA Nos.547 of 2015 & 345 of 2016**

(Appeals U/S.374 of the Code of Criminal Procedure, 1973 against the common judgment passed by Sri. S.P.Nayak, Addl. Sessions Judge, Bhawanipatna in C.T. Case No.8/31 of 2013(Sessions) arising out of Biswanathpur PS Case No.14 of 2012 corresponding to CT(GR) Case No. 622 of 2012 of the Court of SDJM, Bhawanipatna).

**Ghana Majhi and others** ... **Appellants**  
**(In CRLA No.547 of 2015)**

**-versus-**

**State of Odisha** ... **Respondent**

**Ghana Majhi and others** ... **Appellants**  
**(In CRLA No.345 of 2016)**

**-versus-**

**State of Odisha** ... **Respondent**

**For Appellants** : **Mr. S.K.Mohanty, Advocate**

**For Respondent** : **Mr. S.N.Das, ASC**

**CORAM:**

**HON'BLE MR. JUSTICE D. DASH**

**HON'BLE MR. JUSTICE G. SATAPATHY**

**DATE OF HEARING :13.11.2023**

**DATE OF JUDGMENT:08.01.2024**

**G. Satapathy, J.**

**1.** The same appellants have filed these two appeals on two different dates assailing the judgment of conviction passed on 30.09.2015 by learned

Additional Sessions Judge, Bhawanipatna in CT Case No.8/31 of 2013 (Sessions) convicting the appellants for offences punishable U/Ss.302/201/34 of IPC and sentencing each of the convicts to undergo imprisonment for life with payment of fine of Rs.30,000/-, in default whereof, to undergo further Rigorous Imprisonment (RI) for six months for offence U/Ss.302/34 of IPC and to undergo RI for three years with payment of fine of Rs.10,000/-, in default whereof, to undergo RI for six months for offences punishable U/Ss.201/34 of IPC with direction of running of the sentences concurrently.

**An overview of prosecution case:**

2. Suspecting Bandar Majhi (hereinafter referred to as the "deceased") responsible for the death of Busuta Majhi (father of A-2) who died due to some disease around eight years back by practicing witchcraft, the co-villagers were quarreling with the family members of the deceased and when the father of A-1 namely, Amiti Majhi died due to some disease around two months before the date of occurrence,

the co-villagers suspected the deceased for practicing witchcraft and accordingly, the appellants and others threatened the deceased to kill him. Due to such threat of co-villagers, the deceased left the village and was staying at Kutruguda in the house of his brother-in-law, but on 09.08.2012 A-1 and A-4 came to the house of the deceased and asked her wife to intimate him to attend the village meeting on Friday to compromise the matter, however, the deceased could not attend the meeting. Prior to the meeting, A-3 had also asked the wife of the deceased to call him to the village from Kutruguda. Accordingly, on 11.08.2012 at about 7 PM, a meeting was held in front of the house of Chitra Majhi and the appellants and some others attended the said meeting wherein the deceased was accused of killing the co-villagers by practicing witchcraft. The said meeting was also attended by the deceased, his wife Mangu Majhi(PW9) & his brother namely Fagun Majhi(PW10) and one Bhasani Bhuki Majhi(PW15) with her husband namely Tadingi Majhi(PW14). While the

meeting was going on, A-3 provoked the villagers present in the meeting to finish the deceased and all of a sudden, one co-villager Chitra Majhi assaulted the deceased on his back and thereafter, the appellants and others dealt slap and kick blows to the deceased and the deceased fell down on the ground. When the deceased fell down on the ground, A-3 and others threatened the wife of the deceased(PW9) to leave the spot, otherwise she would be finished and out of fear, the wife of the deceased left the spot and concealed herself inside the house, but till the next date morning, the deceased did not return to his house and the wife of the deceased suspected the co-villagers to have killed her husband and she accordingly searched for her husband and intimated the fact to Gramrakhi and thereafter, the Gramrakhi and her brother-in-law Fagun Majhi informed the wife of the deceased that someone was buried in the village graveyard.

Basing on the information, the wife of the deceased lodged a FIR on 13.08.2012 at about 12.30

PM being scribed by one Basant Kumar Sahoo against the appellants before the IIC, Biswanathpur PS under Ext.13 paving the way for registration of Biswanathpur PS Case No.14 of 2012 resulting in commencement of investigation by the IIC, Biswanathpur, PW19-Gobinda Chandra Buruda, who in the course of investigation examined the informant and witnesses, visited the spot, disinterred the dead body(trunk), held inquest over the dead body in presence of Executive Magistrate under Ext.10. PW19 also disinterred severed head of the deceased from a nearby place and held inquest over the head in presence of Executive Magistrate under Ext.9 and he thereafter, held inquest of the complete dead body of the deceased by keeping the head and the body(trunk) jointly in presence of Executive Magistrate under Ext.8. PW19 also dispatched the dead body for post mortem examination and also collected the blood stained earth and sample earth from the spot of occurrence under Ext.1/1 and on 16.08.2012, PW19 arrested the appellants and seized

their wearing apparels as well as their biological materials being collected at PHC, Biswanathpur. PW19 handed over charge of investigation to PW18- Biswajit Manbodh who completed the other formalities of investigation and submitted charge-sheet against the appellants by keeping the investigation open for arrest of two other absconding accused persons. In the course of investigation, the incriminating materials were also sent to SFSL for chemical examination and the chemical examination report was obtained vide Ext.16.

**3.** Finding the sufficient materials, the learned SDJM, Bhawanipatna took cognizance of offence U/Ss.302/201/34 of IPC under which the appellants faced the trial after they abjured their guilt for the said offences. This is how the trial in this case commenced.

**4.** In support of the charge, the prosecution examined nineteen witnesses in all vide PWs.1 to 19 and proved certain documents under Exts.1 to 16 as well as identified material objects vide MOI to MOXI

in evidence as against the oral evidence of two witnesses vide DWs.1 and 2 namely Buda Majhi and Kate Majhi by the defence. Of the witnesses examined by the prosecution, PWs.1 to 5 are the witnesses to the seizure whereas PWs.6 to 8 are the co-villagers of the deceased. PW9-Mangu Majhi is the wife of the deceased-cum-informant in this case, whereas PW10-Fagun Majhi (brother of the deceased), PW14-Tadingi Majhi (brother-in-law of the deceased) and PW15-Bucki Majhi (sister-in-law of the informant) are eye witnesses to the occurrence. PWs.11 to 13 and PW.16 are the witnesses to the inquest. PW.17-Dr. Sunil Kumar Padhi is the doctor who conducted autopsy over the dead body of the deceased. PWs.18 and 19 are the two IOs in this case.

**5.** The plea of the appellants in the course of trial was denial simplicitor and false implication.

**6.** After appreciating the evidence on record upon hearing the parties, the learned trial Court convicted the appellants by mainly relying upon the

evidence of eye witnesses PWs.10, 14 and 15 as well as circumstantial evidence of last seen theory. Being aggrieved with the conviction, the appellants first filed CRLA No.547 of 2015 and thereafter, again filed another CRLA No.345 of 2016, but noticing the filing of two criminal appeals against the same judgment, this Court by way of order No.5 dated 21.10.2016 directed to take both the criminal appeals simultaneously for consideration, although the counsel for the appellants in subsequent appeal i.e. CRLA No.345 of 2016 wanted to withdraw it.

**Rival Submissions:**

7. In assailing the impugned judgment of conviction, Mr. S.K. Mohanty, learned counsel appearing for the appellants in both the appeals has submitted that although the learned trial Court has convicted the appellants by applying "last seen theory", but the material evidence on record does not justify the invocation of doctrine of "last seen theory" in this case and a bare perusal of deposition of material witnesses would only go to indicate about



some trivial allegation against the appellants for dealing slaps and kick blows to the deceased and thereby, the conviction of the appellants for offence U/Ss.302/201/34 of IPC is unsustainable in the eye of law. It is further submitted by Mr. Mohanty that the evidence of so called eye witnesses are full of contradictions & exaggerations and thereby, it cannot be relied upon to base conviction against the appellants. It is further submitted that neither the eye witness account of witnesses is inspiring confidence nor the circumstantial evidence deserves any credence and thereby, the evidence being wholly unacceptable, the conviction of the appellants for offences U/Ss.302/201/34 of IPC is unsustainable and is thereby, required to be set aside. Mr. Mohanty has accordingly, prayed to allow the appeals by setting aside the conviction of the appellants.

**8.** On the other hand, Mr. S.N. Das, learned Additional Standing Counsel, however, by taking this Court to the evidence of eye witnesses, has submitted that not only the evidence of these three

eye witnesses to the occurrence is free from any biases, but also establishes the guilt of the appellants for the offences beyond all reasonable doubt and, thereby, the conviction and sentence of the appellants being on sound appreciation of evidence, it cannot be faulted with and thereby, both the appeals merit no consideration. Mr. Das has, accordingly, prayed to dismiss both the appeals.

### **Analysis of law and evidence**

9. Gone through the impugned judgment of conviction carefully together with the evidence on record extensively keeping in view the rival submissions to examine the sustainability of the conviction and sentence of the appellants as awarded to the appellants by the learned trial Court. Quite understandably, there are two important aspects in a case of murder; firstly, the proof of homicidal death of the deceased and secondly, who is the author of such homicidal death of the deceased. In order to ascertain the cause of death, the best evidence is the evidence of doctor and in this case, the doctor

namely S.K. Padhi being examined as PW17 has testified in the Court that on 14.08.2012 at about 3.30 PM, he conducted the post mortem examination over the dead body of the deceased on police requisition and it is his specific evidence that the death of the deceased was homicidal in nature. Although, the defence has cross-examined the doctor at length, but there is hardly any chance to dispute the opinion of the doctor as to the cause of death of the deceased to be homicidal in nature. Even otherwise, there was no suggestion by the defence to dispute the homicidal death of the deceased and thus, the prosecution appears to have clearly established the homicidal death of the deceased objectively even by leaving the evidence of eye witnesses account, which confirms the death of the deceased to be homicidal in nature.

**10.** There is no quarrel over the position of law that merely establishing the homicidal death of the deceased would not by itself and without anything more would not prove the charge of murder against

the offenders, unless there is positive and subjective evidence on record to establish the complicity of the offenders to the charge of murder. In this case, the prosecution wholly relies upon the evidence of three eye witnesses who are PWs.10, 14 and 15 to bring home the charge against the appellants for the murder of the deceased. It is, therefore, required to be seen as to how the defence has got over the evidence of the three eye witnesses. PW10 is none other than the brother of the deceased and his evidence clearly discloses the motive behind the crime and the mode and manner of commission of crime by the appellants. It is transpired from the evidence of PW10 that the accused persons (appellants) were blaming the deceased for the death of Busuta Majhi and Amiti Majhi and they were threatening to kill the deceased who had left the village out of fear and was staying in the house of his sister Dumri in village Kutruguda. It is the further evidence of PW10 that while the meeting was going on, one Chitra Majhi assaulted the deceased by

means of thenga and all the accused persons and others assaulted the deceased by dealing fist and kick blows and due to such assault, the deceased died at the spot. In such situation, what would be the conduct of the relative of the victim would certainly be to desist the assailants from assaulting the victim or to rescue the victim and as usual of such conduct of the relative of the victim, PW10 has also stated in his evidence to have tried to rescue the deceased along with his brother-in-law Tadingi Majhi (PW14), informant (PW9) and his sister Bucki Majhi (PW15), but they could not rescue due to obstruction of the accused persons and others. It is the further evidence of PW10 that the accused persons (appellants) and others took away the dead body of the deceased towards river side and they buried the dead body inside the said river. Although, PW10 was cross-examined at length on three dates, but nothing substantial benefitting the defence was elicited from his mouth, rather the defence has only tried to contradict the witness, but it has failed to prove any

material contradiction by confronting the same to the IO.

**11.** Yet another eye witness to the occurrence is P.W.14 who testified in the Court, he along with his wife P.W.15-Bucki Majhi had been to village Kuburi to attend the village meeting which was convened on the allegation that the deceased was doing witchcraft and Amdi died for such witchcraft. It is the categorical and specific evidence of PW14 that the accused Chitra assaulted the deceased by means of a split wood on his back and thereafter all the accused persons dealt fist and kick blows to the deceased and the deceased fell down on the ground, but when they tried to rescue the deceased, the villagers threatened them for which, they left the spot and on the next day, his brother-in-law PW10 informed him that the accused persons(appellants) had killed the deceased and buried inside sand. It is also not disputed that PW14 is the brother-in-law of the deceased being the husband of sister of the deceased. What cannot be lost sight of is that it was elicited from the lip of

PW14 in cross-examination, he along with PW10-Phagunu Majhi went to Reth river side and PW10 has shown the dead body of the deceased to have been buried and he has seen a cut injury on the right upper arm of the dead body. Nothing substantial was elicited from his mouth to benefit the defence. On coming to the evidence of other eye witness PW15-Bucki Majhi, it transpired that on a Saturday, she, her husband and the informant had attended the meeting in village Kubri and the accused persons(appellants) alleged Bandra Majhi for doing witchcraft. It is the specific evidence of PW15 that the appellant Ghana assaulted the deceased by means of an axe causing injury on his neck and all the accused persons(appellants) took away the deceased towards river Reth. It is surprising, but true that the defence has cross-examined PW15 to elicit material evidence "Ghana(A-1) assaulted the deceased by the sharp edge of the axe" which only favours the prosecution case. From a careful analysis of evidence of these three witnesses PWs. 10, 14 & 15, it is revealed that

the deceased was practicing witchcraft according to the accused persons(appellants) and that is why, they called the meeting wherein the deceased was killed and therefore, the motive behind murder of the deceased was on account of suspicion by the accused persons(appellants) for the deceased practicing witchcraft.

**12.** Besides, the prosecution establishing the appellants to have assaulted the deceased by the evidence of these three eye witnesses, the further evidence on record transpired that the beheaded dead body of the deceased was recovered from the sand on the bank of river Reth and the head was also recovered from a nearby place being wrapped in a gunny bag. Furthermore, on a cursory glance of evidence of PW19, the IO in this case, it revealed that he had seized the wearing apparels of the appellants which were proved and identified by him in the Court vide MOI to MOX and he had sent these incriminating MOs to SFSL, Rasulgarh for chemical examination and accordingly, the chemical examination report was



obtained and proved under Ext.16 which discloses presence of human blood patches on the wearing apparels of appellant Ghana Majhi and Kesab Majhi who could not explain as to how their wearing apparels were found stained with human blood patches.

**13.** It is, however, true that the defence has examined two witnesses in the defence. Out of whom, the evidence of DW1-Buda Majhi is of no avail for the defence, whereas the evidence of DW2-Kate Majhi discloses about recovery of a human trunk without head from the river side and the severed head from a separate place near the river Reth and the trunk and head were of the deceased Bandra Majhi. This evidence of DW2 only goes to support the prosecution case about recovery of the trunk and head of the deceased which in the circumstance only lend assurance to the prosecution case.

**14.** On an overview assessment of totality of evidence on record, it is found that the prosecution has proved the death of the deceased to be homicidal

in nature beyond all reasonable doubt and the appellants were responsible for assaulting the deceased in the village meeting and the motive behind such assault of the deceased was for suspicion of practicing witchcraft and the appellants held the deceased responsible for the death of father of A-1 and A-2 who had died previously, by witchcraft. It is also established by the prosecution that the deceased was taken by the appellants after brutally assaulting him and subsequently the "trunk and head" of the deceased were recovered. The evidence of eye witnesses were not only credible, cogent and believable, but also the circumstance of recovery of the "trunk and head" of the deceased subsequently after appellants taking away by brutally assaulting him and this Court, therefore, found the view taken by the learned trial Court to be free from any infirmity and plausible one and does not suffer from any perversity.

**15.** In the aforesaid facts and circumstance coupled with analysis of the impugned judgment on

re-appreciation of evidence on record in the light of rival submissions, this Court has no hesitation to concur with the findings arrived at by the learned trial Court since the prosecution appears to have established the guilt of the accused persons (appellants) for committing murder of the deceased beyond all reasonable doubt.

**16.** Resultantly, both the appeals stand dismissed being devoid of merit, but no order as to cost. The judgment and order of conviction passed on 30.09.2015 by the learned Additional Sessions Judge, Bhawanipatna in CT Case No.8/31 of 2013 (Sessions) are hereby confirmed.

**(G. Satapathy)**  
**Judge**

**I Agree**

**(D.Dash)**  
**Judge**

Signature Not Verified

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Orissa High Court, Cuttack,  
Dated the 8<sup>th</sup> day of January, 2024/Kishore