

**Kumar Jena Vs. State of Orissa**

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**SooperKanoon Citation :** [sooperkanoon.com/525797](http://sooperkanoon.com/525797)

**Court :** Orissa

**Decided On :** Feb-01-2006

**Reported in :** 2006(I)OLR416

**Judge :** S.B. Roy, C.J. and; M.M. Das, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

**Appeal No. :** Jail Criminal Appeal No. 110 of 1996

**Appellant :** Kumar Jena

**Respondent :** State of Orissa

**Advocate for Def. :** Government Adv.

**Advocate for Pet/Ap. :** Gouri Sankar Pani, Adv.

**Judgement :**

S.B. Roy, C.J.

1. This appeal at the instance of the appellant-Kumar Jena is directed against the judgment dated 27.2.1996 passed by the Second Addl. Sessions Judge, Puri in S.T. Case No. 19/100 of 1991 convicting the appellant under Section 302, I.P.C. and sentencing him to undergo R.I. for life.

2. Learned Counsel for the appellant has taken us through the evidence on record. It appears that there are in all 14 prosecution witnesses. Out of the said 14 P.Ws., P.W.1- Satyapriya Jena, P.W.3-Halu Mohanty, P.W.4-Krushna Chandra Jena, P.W.5-Kalu Dalei, P.W.6-Rabi Parida and P.W.8-Krushna Chandra @ Titua Naik are alleged eye-witnesses to the occurrence. P.W.11-Dr. Kiran Kumar Misra held post mortem examination over the dead body of the deceased. From the evidence of the witnesses, it appears that the appellant gave a solitary blow on the head of the deceased, with a lathi. This is the sum and substance of the prosecution evidence as gathered from the testimony of the eye-witnesses. We have gone through the evidence and we find no reason to disbelieve the veracity of their testimony.

3. P.W. 11-Dr. Kiran Kumar Misra during post mortem examination, noticed the following injuries on the body of the deceased, (i) one liner lacerated wound of size 5 cm x 1 cm x bone deep situated over the left temporo occipital region of the head, stitched with four stitches,

(ii) abrasion of the size 4 cm x 4 cm on the right elbow. Apart from these injuries, no other injury was found on the person of the deceased. P.W.11 opined that the first injury found on the head of the deceased is the fatal injury, which is sufficient in ordinary course of nature to cause death. This injury is stated to have been caused with a linear blunt weapon, like lathi/stick/rod.

4. From the aforesaid, it appears that only two injuries were inflicted upon the person of the deceased by a linear blunt weapon and such evidence of P.W.11 corroborates with the evidence of the eye-witnesses.

5. However, on examining the nature of injuries found on the person of the deceased, it appears to us that the appellant did not inflict the injuries with an intention to commit murder of the deceased though he had perhaps the knowledge that such injuries were likely to cause death.

6. That being the position, we are of the further view that the conviction of the appellant under Section 302, I.P.C. was not justified. In the circumstances of the case and in view of the medical evidence on record, the appellant should have

been convicted under Section 304, Part-II, I.P.C.

7. In that view of the matter, the conviction of the appellant under Section 302, I.P.C. is altered to one under Section 304, Part-II, I.P.C. The appellant was arrested on 27.8.1990 and since then, he was never released on bail until 14.8.1996. Therefore, the appellant has already served out six years imprisonment. We are of the view that it would meet the ends of justice if the sentence is limited to the period already undergone by the appellant and accordingly, we sentence him for the period he had already undergone. The appellant is, therefore, no more required to surrender before the Court below and the bail bonds stand discharged.

In the result, the appeal is partly allowed.

**M.M. Das, J.**

8. I agree

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