

**Chalku Vs. State**

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**Court :** Orissa

**Decided On :** Jul-06-1983

**Reported in :** 56(1983)CLT205; 1983CriLJ1717

**Judge :** P.K. Mohanti, Actg. C.J. and ;G.B. Patnaik, J.

**Appellant :** Chalku

**Respondent :** State

**Judgement :**

P.K. Mohanti, Actg. C.J.

1. This is a prisoner's appeal presented through the Superintendent of Jail against his conviction under Section 302, I.P.C. and the sentence of imprisonment for life.
2. The charge against the appellant was that on 3-7-1977 about 3 p.m. the appellant intentionally caused the death of Gula Minz of village Chandiposh under Biramitrapur Police Station in the district of Sundergarh by dealing axe-blows on him.
3. The appellant belongs to village Lanjibarga which is at a distance of about half a mile from the house of the deceased Gula Minz. There was ill-feeling between the appellant and 'the deceased over the repayment of a loan. To add to it, on the date of occurrence a bullock of the appellant suddenly died and he suspected that the deceased got it killed by practising witchcraft. In this background, it was alleged

that on 3-7-1977 about 3 p.m. the appellant went to the house of the deceased and enquired from his wife Hauri Minz (P. W. 2) as to the whereabouts of her husband. When P. W. 2 replied that the deceased was present in his outer courtyard the appellant went there and all of a sudden dealt blows on him with a Balua (a wide axe) on different parts of his body as a result of which he fell down on the ground with bleeding injuries. When P. Ws. 2 and 3 went to the rescue of the deceased, the appellant committed assault on them with the same weapon. The deceased died instantaneously on the spot and the appellant lied away with the weapon.

4. F.I.R. Was lodged by P. W. 1 Jaya Minz, a nephew of the deceased at Biramitrapur P.S on the same day at 8.30 p.m. and investigation was taken up. In due course, the appellant was committed to the Court of Session to stand his trial.

5. At the trial the plea of the appellant was a denial simpliciter.

6. The trial court on a consideration of the evidence led by the prosecution, held the appellant guilty and inflicted the sentence as indicated above.

7. The order of conviction is based mainly On the direct evidence of P. Ws. 2 and 3 who are eye witnesses to the occurrence It, is urged in this appeal that these two witnesses being close relations of the deceased, no reliance should be placed on their testimony.

8. That the death of the deceased was homicidal admits of no doubt. The doctor (P. W. 4) who performed postmortem examination over the dead body of the deceased on 4-7-1977 about 4.30 p.m. found the following injuries:

(1) A longitudinal incised injury 8' x 3' x 3' extending from the left half of the chin to the left half of the scalp.

(2) One incised injury on the left side of the scalp '6'x2'x2' extending from the back of the left pinna to the middle of the back of the neck.

(3) A transverse incised wound 5'x 3'x3' extending from the side of the left scapula to the middle of the spinal cord.

Internal examination revealed fracture of the ramus of mandible, maxillary bone, skull bones and cervical vertebrae. In the doctor's opinion, the death was due to shock and haemorrhage resulting from the injuries which were antemortem in nature. The evidence of the doctor coupled with the direct evidence of the two eye-witnesses clearly establishes that death of the deceased was homicidal.

9. No doubt, P, Ws. 2 and 3 are relations of the deceased but in our opinion, their evidence cannot be lightly brushed aside merely on the ground of relationship. As the offence was committed in a dwelling place, the persons who are most likely to be present at the time of occurrence are the near relations.

10. P. Ws. 2 and 3 uniformly stated that when the deceased came to his outer courtyard being called by the appellant he was given axe blows on different parts of his body as a result of which he fell down and died shortly thereafter. Both the eye-witnesses have stated that when they went to the rescue of the deceased the appellant dealt blows on them with the axe as a result of which they sustained injuries. The witnesses had marks of injuries the duration of which as opined by the doctor (P. W. 5) synchronises with the time of occurrence. The presence of injuries on their bodies lends assurance to their testimony that they were present at the scene of occurrence. They have described in detail the incident that they saw and in which they themselves received injuries. There is no appreciable reason why they would omit to name the real assailant and falsely implicate the appellant in a serious crime. Their evidence does not suffer from any infirmity or inherent improbability. It is not known that they had made any contradictory statements before the police during the investigation of the case. Nothing substantial has been brought out in their cross-examination so as to discredit their sworn testimony.

11. The evidence of P. W. 3 shows that as soon as the appellant saw the deceased he aimed the axe-blow, saying that he (the deceased) was responsible for the death of his bullock. Thus it appears that the appellant had a suspicion in his mind that the deceased got, the bullock killed by black Article This probably provided the motive for the murder.

12. The appellant having dealt violent blows with a deadly weapon on the vital parts of the body of the deceased, his intention to cause death is apparent. The conviction and the sentence are therefore justified.

13. The appeal is devoid of any merit and it is accordingly dismissed, the conviction and the sentence being confirmed.

14. Before concluding, we are constrained to observe that neither the Sessions Judge nor the Public Prosecutor put any question to the doctor as to whether the injuries on the dead body of the deceased were sufficient in the ordinary course of nature to cause death or likely to cause death. The intention or the knowledge of the accused is to be inferred only from the nature of the injuries. It is the duty of the Public Prosecutor to put a question to the doctor as to the nature of the injuries and if this duty is neglected by him, then the Sessions Judge ought to put this question.

**G.B. Patnaik, J.**

15. I agree.

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