

**Thuru Turi Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/531646](http://sooperkanoon.com/531646)

**Court :** Orissa

**Decided On :** Apr-02-1985

**Reported in :** 1985(II)OLR12

**Judge :** B.K. Behera and ; K.P. Mohapatra, JJ.

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

**Appeal No. :** Jail Criminal Appeal No. 36 of 1985

**Appellant :** Thuru Turi

**Respondent :** State

**Advocate for Def. :** M.R. Mohanty, Addl. Standing Counsel

**Advocate for Pet/Ap. :** I.C. Dash, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**B.K. Behera, J.**

1. Upon hearing the learned counsel for both the sides, we find no justifiable reason to dislodge the finding recorded by Mr. P. K. Ghosh, Sessions Judge, Sundargarh, that after a sudden quarrel in the evening of July 28, 1983, the appellant had hit the abdomen of his mother which resulted in her death owing to

rupture of the spleen, as noticed by the doctor conducting the autopsy. The learned trial Judge has relied on the evidence of the step-brother of the appellant (P. W. 4) who was one of the witnesses to the occurrence, the other being his step-father (P. W. 5). It is unfortunate that the evidence of P. W. 5 was not discussed in the judgment.

2. The learned trial Judge has unreasonably concluded that the appellant had the intention of causing the death of the deceased. The unfortunate incident had occurred after a sudden quarrel. If the appellant had the intention of causing the death of his mother, he would have come armed with a weapon of attack and dealt a decisive blow on a vital part. This he did not do. Instead, he dealt some fist blows on the abdomen of the deceased. It could not be said from his act and conduct that he had either the intention of causing the death of the deceased or that he had the knowledge that by his act, he was likely to cause her death. In the absence of intention or knowledge, the offence committed may be the offence of causing grievous hurt or simple hurt, as the case may be. In the instant case, it would be reasonable and legal to hold that the appellant had voluntarily caused grievous hurt to the deceased. He was liable to be convicted under Section 325 of the Indian Penal Code.

3. In the result, the appeal is allowed in part. The order of conviction passed against the appellant under Section 302 of the Indian Penal Code sentencing him to undergo imprisonment for life is set aside and in lieu thereof, he is convicted under Section 325 of the Indian Penal Code and is sentenced to undergo imprisonment for the period already undergone by him which, as has been submitted at the Bar, is over one and a half years and would meet the ends of justice. The appellant be set at liberty forthwith.

**K.P. Mohapatra, J.**

4. I agree.