

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:
BHUBANESWAR.

PRESENT:-

Sri Ishan Kumar Das, LLB,
Addl. Sessions Judge, Bhubaneswar.

SESSIONS TRIAL CASE NO. 13/61 of 1996

(Arising out of GR case No. 45 (B)/94 Committed
by the S.D.J.M, Bhubaneswar)

Date of argument- 20.01.14

Date of Judgment- 25.01.14

S t a t e

Vrs.

Sita @ Sisira Baral, aged about 45 years
S/o Sidheswar Baral, resident of Vill: Nuagaon
PS: Bhubaneswar, Dist: Khurda

....Accused person

Advocate for the prosecution- Sri N.R. Ray, Advocate

Advocate for Accused persons Sri P.K. Mohanty, Advocate

Offence Under Sections:- Sec. 302/34 IPC

J U D G M E N T

Four accused persons including the present accused were charged and faced trial u/s 302/34 IPC, in three split up files. While accused Bipin Barala faced trial in ST case No. 11/142 of 95, accused Bula Swain and Daka @ Pradip Kumar Jena faced trial in ST case No. 15/280 of 95. A common judgment was passed by this Court in respect of ST case No. 11/142 of 1995 and ST case No. 15/280 of 1995. Accused Daka @ Pradip Jena having been expired, the case was abated against him and the rest two accused persons were acquitted vide judgment of this Court dtd. 26.10.95. Accused Sita @ Sisira Barala faced trial in ST case No. 13/61 of 1996 and was also acquitted vide judgment dtd. 29.1.97. Government preferred appeal before Hon'ble High Court of Orissa vide Government Appeal No. 50/96 against the common judgment of acquittal in ST

case No. 11/142 of 1995 and ST case No. 15/280 of 1995 and the informant of the case filed a revision before Hon'ble Court vide Crl. Revision No. 176/97 against judgment of acquittal in favour of the present accused passed by this Court. Crl. Revision No. 54/96 was also preferred by the informant Soubhagya Ranjan Naik against the order of acquittal in ST case No. 15/280 of 1995. All the matters preferred before the Hon'ble Court were taken up and a common judgment was passed by the Hon'ble Court on dtd. 6.5.09. Hon'ble Court held that

“ Having found that the eyewitnesses are consistent in their evidence and that their evidence is supported by evidence of P.W.2, who conducted the post mortem examination, we hold that both the impugned judgments are unsustainable.

8. The impugned judgment in ST case No. 13/61 of 1996 acquitting the accused Sita @ Sisira Baral has not been challenged by the State. The informant having challenged the said judgment, we cannot convert the judgment and order of acquittal to one for conviction. We, therefore, set aside the judgment in the aforesaid Sessions Case and remit the matter back to the trial Court for fresh disposal after giving opportunity of hearing to the accused Sita @ Sisira Baral. Accordingly, the Criminal Revision No. 176 of 1997 is disposed of.

So far as Government Appeal is concerned, we allow the same, set aside the impugned judgment and convict the respondents Bipin Barala and Bula Swain for commission of offence u/s 302/34 IPC and sentence each one of them to imprisonment for life. Respondent No.3, Daka @ Pradip Kumar Jena having expired in the meantime, the Government Appeal abates against him.”

In view of such direction of Hon'ble Court, a fresh judgment is passed after hearing the matter giving opportunity to both the parties.

2. Prosecution was initiated on the basis of one oral report of one Soubhagya Ranjan Naik before the IIC, Bhubaneswar PS on 6.1.94 stating therein that on the same day at about 8.30 AM while he and his father Basudev Naik were going to their land, accused Sita, Bula, Bipin and Daka rushed towards his father at the river embankment and dealt blows with farsa, bhujali and sword. The informant while following his father was at a little distance and witnessed the occurrence at the spot. Out of fear, he rushed to his uncle Hullas Naik in the village and informed him about the assault on his father. Again he returned to the spot and saw his father was lying dead in a pool of blood with multiple injuries on his body. He rushed to the PS and reported the matter to the police. In the FIR, it is also admitted that there was prior enmity of the accused persons with his father and therefore, they murdered brutally to his father.

The FIR having been received just after the occurrence at about 9.10 AM, the IIC registered Bhubaneswar PS case No. 5/94 dtd. 6.1.94 for the offence u/s 302/34 IPC and directed one S.I. D. Seth to take up investigation of the case. During the course of investigation, police visited the spot, examined witnesses, conducted inquest over the dead body and forwarded for postmortem examination. The blood stained earth and the wearing apparels of the deceased were also seized at the spot. Statement of some witnesses were also recorded u/s 164 Cr.P.C and after obtaining the postmortem report and after completion of investigation, charge sheet is submitted warranting the trial in the case, showing three of them to be absconders and one was sent for trial.

3. Plea of the defence is complete denial to the allegation and of false implication and they have been foisted due to enmity between both the parties.

4. The points for determination in this case is

- (i) Whether on 6.1.94 at about 8.30 AM, the accused, in furtherance of common intention with other co accused persons committed murder intentionally causing death of Basudev Naik at Aradasahi, Nuagaon on the village road near the embankment of Daya river ?

5. In order to prove its case, prosecution examined ten number of witnesses.

6. P.W.1, Pabani Naik of the same village Nuagaon in his evidence said that on 6.1.94 at about 8.30 AM, he was thrashing paddy in front of Dhoba Sahi at his village and saw the present accused Sita and accused Bula came from the side of river towards village with blood stained farsa in their hands. He also noticed a gathering at a distance and after going to the spot, he found deceased Basudev was lying dead with cut injuries on his body. In his cross examination, he said that the spot where the deceased was lying is visible from the thrashing floor where he was working. Again he resides from his evidence in Chief and said that the two persons who came from river side with Farsa do not belong to his village. It is brought out from his mouth during cross examination that hearing the hulla "MARIGALI MARIGALI", he rushed to the spot from the thrashing floor and found some persons were assaulting Basu. As he raised hulla, the villagers belonging to Dhoba Sahi and Barika Sahi reached at the spot and the assailants ran away. He also admitted that the persons who were assaulting to Basu do not belong to his village and he is the first person to reach at the spot.

P.W.2 said on the relevant day he heard some hulla and Laxmidhar was passing by that time. As he asked Laxmidhar about the hulla, he could not understand anything and after going to the spot he found accused Sita, Daka, Bula and Bipin were assaulting Basudev by means of sword, farsa, bhujali. He was terribly shocked and came back inside the village and sat on the Chandini and disclosed about the occurrence before Raj Kishore. In his cross examination he admitted that he was examined in the split up case in relation to this occurrence and admitted that he was in litigating term with the accused Sita Baral. He said that he belongs to Kharada Sahi and in his presence, the accused persons dealt 3 to 4 blows on Basudev. He was so afraid of the accused persons that he could not talk to anybody and only after arrival of police he became normal. His cross examination further reveals that two police constables were deployed in his village by the time of occurrence due to some dispute between the persons of Uppar Sahi and Bhoi Sahi. P.W.3 being a co-villager said at the relevant time he was present in his grocery shop and P.W.2, Ganeswar informed him about the

occurrence. Immediately, he went to the spot and found the deceased was lying on the ground with bleeding injury. The two police constables deputed in his village prior to the occurrence were also present at the spot when he reached there. Although, he admitted that there was ill feeling between the villagers he does not belong to any group. P.W.4 said he is an eye witness to the occurrence and all the four accused persons assaulted Basudev with bhujali, sword and farsa. The statement of this witness was recorded by the Magistrate u/s 164 Cr.P.C during investigation. In his cross examination, it is brought out from his mouth that he saw each of the accused giving 3 to 4 blows to the deceased on his hand, head, neck and mouth. He witnessed the occurrence from a distance of 50 to 60 feet. Pabani Naik (PW.1) was present at the spot, but he could not dare to open his mouth out of fear. P.W.5 is the medical officer who conducted postmortem examination. He said on 6.1.94 at about 1.30 PM he conducted postmortem examination over the dead body of deceased Basudev and noticed both external and internal injuries. All the injuries were antemortem in nature and cause of death was due to haemorrhage and shock due to multiple injuries to the vital organs namely, brain, trachea, bones and neck etc. The time of death was within 6 to 8 hours prior to postmortem examination. He proved the postmortem report Ext.2 which he supplied to police. P.W.6 is also a co-villager who said that at about 8.30 AM on the relevant day while he was standing at the side of his house, all the four accused persons came to him and threatened to inform his father not to take any step in the case or else he would face dire consequence. The earlier statement of this witness also recorded u/s 164 Cr.P.C. It has been confronted by the learned prosecuting lawyer declaring him hostile that this witness in his statement u/s 164 Cr.P.C stated that the accused persons came running armed with farsa stained with blood. Their wearing apparels were also stained with blood. It was also available in his statement and was confronted in cross examination that the accused persons confessed before him that they assaulted Basu with farsa. P.W.7 is a minor girl and child witness being the daughter of P.W.8, Hullas Naik. She said that the deceased was the elder brother of her father (BADABAPA). She said two years back, one day while she was returning from the village shop found

Sita, Daka, Bula and Bipin were assaulting to her Badabapa by means of farsa, sword, bhujali on the village road. She has categorically stated that Sita and Bula dealt blow with farsa while Bipin was assaulting with bhujali, Daka assaulted with sword. She informed her mother about the occurrence and again she alongwith her mother went to the spot and found Badabapa was lying dead in a pool of blood. Her cross examination reveals that Soubhagya, the informant of the case was also lying on the dead body of his father. She had not seen any other person at the spot when she saw the occurrence. It is brought out from her mouth during cross examination that usually she goes to the shop of Raj Kishore which is near to her house. But, on the relevant day, she had been to the shop of Bhima to purchase tea and sugar which is located at Uppar Sahi. She further answered that the length of farsa used by the accused persons was having length of 2 to 3 cubits and the length of bhujali would be 3 to 4 cubits. While facing cross examination, the child witness answered that she does not remember if she was tutored to depose about the case while deposing evidence in ST case No. 11/142 of 1995 and ST Case No. 15/280 of 1995. P.W.8 is the younger brother of the deceased and said corroborating the FIR story that on the relevant day while he was talking with two constables near Dolamandap in the village, Soubhagya came to him and told that his father was murdered and on reaching at the spot he saw his elder brother Basudev lying dead in a pool of blood with serious injuries on his body. As he scolded the assailants at random, the accused persons rushed to him, armed with weapons and out of fear, he ran away. P.W.9 is also an eye witness to the occurrence who said that at the relevant time, he was going to the house of one barber and saw Basu was lying on the road and the accused persons were assaulting him with farsa, sword and bhujali. As he was shocked to see the occurrence, he came back to his house and on arrival of police, he again went to the spot. He is also a witness to the inquest and seizure of blood stained earth. P.W.10, the IO in his evidence supported his investigation and proved the papers prepared by him during investigation. It is his evidence that the present accused Sita absconded for which he could not be apprehended during investigation of the case and charge sheet was submitted declaring him absconder. In his cross

examination, he admitted that his investigation does not disclose regarding inimical relationship between both the groups. The spot is on the village road which leads to river embankment in between Dhoba Sahi and Barika Sahi. He further admitted that non of the villagers from Dhoba Sahi or Barika Sahi has been examined by him during investigation. His investigation does not reveal if Bhima has any shop at Uppar Sahi in the same village. It was suggested to the IO that the original written FIR submitted by Soubhagya which was suppressed by police and instead another FIR has been prepared entangling the accused persons in the case.

In addition to such oral evidence, prosecution also relied on the exhibits marked in the Court including the postmortem report, seizure list and spot mpa, chemical examination report and the M.Os produced in the Court.

7. Learned defence counsel during the course of argument has pointed out that the evidence adduced by the witnesses are parrot like evidence and they are all tutored. In a faction ridden village there is every possibility of deposing falsehood in the Court in order to take revenge on the members of the opposite group. Almost all the witnesses examined by the prosecution are not natural witnesses, rather all of them are chance witnesses. The informant of the case who is the most material witness has not been examined in the Court and no explanation has been given for his non-examination. Defence particularly highlighted the evidence of P.W.1, Pabani Naik who has stated in his cross examination that accused Sita was not a member among the accused persons to whom he saw assaulting the deceased. The witnesses who claimed to be eye witness to the occurrence in fact deposed falsehood in the Court in view of evidence of child witness that the witnesses came to the spot when he alongwith his mother and Soubhagya were present at the spot after the death of his Badabapa. On the other hand, it has been argued from the side of prosecution that there is consistent evidence on record describing the manner of assault and use of weapons by each of the assailants including the present accused Sita and there is no scope to discard their evidence. Minor contradictions in the evidence of witnesses are very much natural which do not make the evidence doubtful in any

manner. In addition to it, it is also argued that the Hon'ble Court after perusal of judgments categorically observed at para 7 and 8 of the judgment that the evidence of eye witnesses are consistent supported by the evidence of the doctor who conducted postmortem examination and therefore, both the impugned judgments are unsustainable. Therefore, it cannot be said at this stage that the evidence adduced by the prosecution is not trustworthy. Further, whether Bhima has a grocery shop at Uppar Sahi in the case village is not a factor to decide the case. Again non-examination of any witness from Dhobasahi or Barika Sahi will not discard the evidence of other co-villagers who have been examined in this case.

8. This Court while passing the judgment in the earlier occasion considered that as three accused persons have been acquitted previously from charge in the split up trial, the present accused Sita may not be found guilty of the offence taking the advantage of Sec. 34 IPC. This Court also took exception to the evidence of prosecution witnesses that when 5 witnesses claimed to be eye witness to the occurrence, non of the witness said that he saw the other witness at the spot witnessing the occurrence. Again the evidence of witnesses regarding the use of weapons and number of blows inflicted on the deceased appears to be improbable as they witnessed the occurrence standing at a long distance. The evidence of the child witness and the evidence on extra judicial confession has been doubted by this Court taking into contradictions with their previous statement.

9. Now, let me examine the available material on record to test if the evidence is reliable . During the course of argument, learned defence counsel has argued that P.W.1 Pabani Naik although deposed in his examination in chief that while he was working in his thrashing floor, he saw accused Sita and Bula came from the river side holding blood stained farsa and also there was a gathering at little distance. But, in his cross examination he withdrew from such statement and said that the accused standing in the dock was not seen by him at the relevant time. During his cross examination he developed the case that he rushed to the spot and saw some persons were assaulting Basu, but the present accused Sita was

not amongst them. Taking the advantage of such evidence of P.W.1, it is argued that if the defence proves its case beyond preponderance of probabilities then the accused is entitled for acquittal on the ground that the prosecution failed to prove its case beyond reasonable doubt. In support of such contention, he relied on a decision reported in **52 (1981) CLT 56 in the case of Somnath Choudhury vrs. Union of India**. On perusal of the decision, it appears that it is a case u/s 409/420 and 420 (b) IPC. Entrustment of cash was doubted by the Hon'ble Court in view of evidence of one of the witness which is the main ingredient to prove the offence u/s 409 IPC. The instant case is not similar as no ingredient of offence u/s 302 IPC has been negated by the defence through adducing evidence. He also relied on another decision reported in **1981 CLR, 80 in the case of Ramanath Dash vrs. State of Orissa**. The principle that the defence case when finds support from the evidence of some of the prosecution witnesses, plea of the accused is acceptable. After examining the said judgment I find that this is a case u/s 7 of the Essential Commodities Act. The facts and circumstances in this case is also not similar with the case at hand. In his Chief, P.W.1 said that he saw Sita and Bula coming from the spot and again withdrew from such statement. The Court is to scrutinize if the witness deposed truly in the Court and thereafter give a finding. Admittedly, the accused persons are co villagers of P.W.1. It was broad day light. P.W.1 was seen by other witnesses near the spot at the time of incident. Although, prosecution did not declare hostile to the witness, it will not be proper to completely reject the prosecution case basing on such statement of P.W.1. It appears P.W.1 has tried to suppress some material in order to save the present accused through his cross examination as there was no chance of mistaken identification of Sita by him as they both belong to the same village Nuagaon. Hon'ble Apex Court in a decision reported in **2002 (3) Crimes, 155 (Supreme Court) in the case of Jhunjara & othes vrs. State of Madhya Pradesh** held that only because a part of statement of a witness has not been accepted by the trial Court, is no ground for rejecting the whole testimony of the witness. On the basis of such principle as laid down by the Hon'ble Apex Court it will be proper if the evidence of other witnesses would be tested alongwith the rest evidence of

P.W.1 for adjudication of the case and completely discarding the evidence of other witnesses is not acceptable in any manner.

10. It is further argued that admittedly there was ill feeling between the deceased and the accused persons and there was litigation pending in different Courts. Therefore, there is every possibility of deposing falsehood in the Court. Law is very much clear in this respect that if the evidence of eye witnesses examined in the case is found to be trustworthy to form safe basis for recording a finding of guilt of the accused persons, the relation between the parties have a little role to play as observed in **2002 (3) Crimes 93 (S.C.) in the case of Babu Ram and another vrs. State of U.P. & others**. The most important objection raised by the defence is that the informant of the case being the most material witness has not been examined by the prosecution and therefore, prosecution case cannot be believed. From the side of prosecution, it is submitted that the life of the informant was in danger from the side of the accused persons and he was threatened to be killed if he deposed evidence in the Court. Accordingly, petition was moved before the Court for security of the informant which was rejected by this Court. Neither prosecution suppressed the informant nor there was any ill motive in it. It may be noted here that FIR is not evidence only it is a piece of paper which sets law into motion. Its purpose is only to be used u/s 162 Cr.P.C to bring out contradictions and corroborations at the stage of evidence. Hon'ble Apex Court of India in a decision reported in **AIR 2002 Supreme Court, 1965 in the case of Krishna Machi vrs. State of Bihar**, held that even if in a criminal proceeding FIR is not proved it would not be a ground for acquittal. In another decision reported in **2001 (2) Crimes, 256 (Supreme Court) in the case of State of Himachal Pradesh vrs. Gianchand**, Hon'ble Supreme Court held that non examination of material witness is not a mathematical formula for discarding the weight of the testimony available on record. I have already mentioned in the earlier paragraphs the evidence of witnesses in support of the case. P.W.2, P.W.4, P.W.7 and P.W.9 are eye witness to the occurrence and P.W.3 and P.W.8 are post occurrence witness who have consistently stated the role of each of the accused persons including the present accused Sita in committing murder of Basudev by

giving blows in his body with deadly weapons which stands unshaken in any manner. The informant reporting his uncle about the incident is also supported in the mouth of his uncle Hullah. It is argued from the side of defence that although number of witnesses claimed to have witnessed the occurrence, it is strange that none of the witness said that the other witness was also present who saw the occurrence. P.W.2 in his evidence said that hearing hulla while he was going towards the spot he saw Laxmidhar was coming from that side. Although, he asked Laxmidhar about the hulla, he explained something which was not audible to him. Said Laxmidhar while examined as P.W.4 said that he saw all the four accused persons were assaulting Basu on the road. Sita and Bula were assaulting with farsa and Bipin was assaulting with bhujali. Out of fear, he came back to his house. P.W.4 further said that P.W.1 Pabani Naik was present at the spot, but he had already left the spot by the time of his arrival. The horrible scene of assaulting a man by four others with dangerous weapon is in fact not possible to bear with on the part of a common man. It is also very much natural that the witnesses will not venture to run to the spot to save the victim when their life is at risk. It is also very much natural that a witness to such grievous offence will be dumb out of fear. Hence, it is not expected that the witnesses will behave normally and will call the villagers and protest the accused persons considering the blood shed and horrible scenery. P.W.2 also stated that after witnessing the occurrence he was terribly shocked and came back from the spot and sat on the Chandini. The evidence of P.W.2 that he disclosed about the occurrence to Raj Kishore is also supported in his mouth while examined as P.W.3 and by the time he ran to the spot he saw Basudev was lying in a pool of blood having cut injuries on his body. P.W.4 is also a co-villager and claimed to be the eye witness to the occurrence and out of fear, he came back to his house. P.Ws.7, 8 and 9 have also consistently stated that none other than the four accused persons dealt blow with the weapons and committed murder of Basudev. The evidence of the witnesses is sufficiently corroborated through the evidence of medical officer who conducted postmortem examination and the report prepared by him. All the witnesses have stated that they saw the occurrence standing at a long distance out of fear. All of

them were not at a common place rather at different directions of the spot of occurrence. Therefore, it is not probable that the witnesses will see each other and talk with each other while witnessing the occurrence. Learned defence counsel has taken exception that all the witnesses examined in this case are only chance witnesses. Not a normal witness has been examined in support of the case. In my view, it will not be proper to brand the witnesses as chance witness as all of them belong to the same village Nuagaon and the spot of occurrence is on the village road. Hon'ble Apex Court in a decision reported in **2005 (30) OCR (SC) 642 in the case of Thangaiya vs State of TamilNadu**, it is held that by describing one independent witness as chance witness, it cannot be implied thereby that their evidence is suspicious and their presence at the scene is doubtful. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere chance witness. While examining the evidence on record, I have noticed some minor contradictions in the evidence of witnesses from their earlier statement before police recorded u/s 161 Cr.P.C and also their statement recorded u/s 164 Cr.P.C in presence of the Magistrates. It is very much natural that unless a witness is tutored properly he cannot utter the same words at different forum. Therefore, Hon'ble Apex Court in a number of decisions observed that any material improvement of the case through the mouth of witnesses will only be considered as contradiction if not stated before police or the Magistrate. Hon'ble Apex Court in a decision reported in **(2003) 24 OCR (S.C.), 712 in the case of Alamgir vrs. State (NCT Delhi)**, held that omission on the part of a police officer in recording a relevant fact in the statement of a witness u/s 161 Cr.P.C would not be a ground for rejecting the evidence if such evidence is otherwise creditworthy and acceptable. In addition to the direct evidence of the witnesses regarding manner of assault, P.W.6 also said that all the four accused persons came to him at about 8.30 AM on the relevant day while he was standing on his danda. They threatened him “to instruct his father not to take any step in the case or else he would face dire consequence” is a part of extra judicial confession made by the accused persons just after causing murder of Basudev. In his cross examination, learned defence counsel has further suggested

to the witnesses that while deposing in split up cases, the witness said that the accused persons confessed before him that they committed murder of Basudev. Thus, I find there is no scope to disbelieve this witness rather it is sufficiently proved that the accused persons after committing the brutal murder threatened this witness and confessed before him regarding murder of Basudev. It is urged that the child witness P.W.7 who was only 7 years old by the time of deposing evidence was a tutored witness as admitted by herself in her cross examination. The competence of this witness was tested by the Court prior to her examination. She has categorically deposed her evidence about the role of the present accused and the weapon used by him. Deceased is her Badabapa. She claimed while she was returning from the grocery shop of Bhima witnessed the occurrence and immediately on her return she reported the fact to her mother. During her cross examination it was suggested to her by the defence that while deposing in the previous split up cases she admitted that she was tutored by her father to adduce evidence in the Court. It is not the case of defence that the girl was tutored in respect of this case by her father or anybody. Even if for the sake of argument, it is admitted that there was discussion about the incident in her family it cannot be said that she was tutored. It is argued by defence that the occurrence took place at 8.30 AM as stated by witnesses. But, the medical officer conducted postmortem examination at 1.30 PM on the same day and opined that the time of death is within 6 to 8 hours of prior to postmortem examination. Thus, it appears that postmortem was conducted after 5 hours of death of the deceased. It is already settled that medical jurisprudence permits a gap of 2 hours in medical opinion regarding death. Therefore, the time of occurrence cannot be disbelieved in this score.

11. Much has been argued regarding non seizure of weapons of offence and while the previous judgment was prepared by this Court, a doubt was raised regarding the prosecution allegation solely for non seizure of weapons of offence. It is the duty of investigating officer to search for the weapons of offences by examining the accused persons which is very much material in a case u/s 302 IPC. During investigation of the case, the investigating officer is to collect material by

examining the accused persons regarding whereabouts of weapons of offences. In the instant case, out of four accused persons, three accused persons absconded including the present accused Sita although the investigation and therefore, charge sheet was filed showing them absconder. Therefore, non seizure of weapons of offences cannot be attributed towards laches in prosecution which will entitle the accused to be acquitted. Although the record, I find no reason as to why the villagers will involve the present accused in such a grievous offence without any cause. All of them belong to the same village and are rustic villagers. Defence also did not point out what may be the probable reason for such false prosecution of the accused. On the other hand, after examining the evidence of witnesses and perusing the documents on record it can safely be concluded that prosecution has been able to prove its case u/s 302/34 IPC against the accused beyond all reasonable doubt and it is well proved that the present accused in furtherance of common intention of his associates committed murder intentionally of Basudev Naik on the relevant day and therefore, punishable u/s 302/34 IPC.

12. In the result the accused is found guilty for the offences u/s. 302/34 IPC and convicted thereunder u/s 235 (2) Cr.P.C.

13. The convict and his associates murdered the deceased, a co-villager brutally on broad day light which is heinous in nature. Therefore, I am not inclined to extend the benefits of Probation of Offenders' Act to the convict as it will be sheer misuse of law.

Dictated and Corrected by me.

Addl. Sessions Judge, BBSR

Addl. Sessions Judge, BBSR

HEARING ON THE QUESTION OF SENTENCE

14, Heard from the convict, learned counsel for the convict and the learned Addl. PP on question of sentence. Hon'ble Court while hearing Government Appeal No. 50/96 in respect of other accused persons in the same occurrence convicted them under the same offence and sentenced each of them to imprisonment for life and remanded this case for fresh disposal after hearing both the sides afresh. After perusing the evidence and considering the gravity of the

offence, I find it will be proper if the convict will be sentenced to imprisonment for life and to pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for further 6 months u/s 302/34 IPC which will meet the ends of justice. The period of Under Trial Prisoner if any be set off against substantive period of imprisonment.

11. The seized articles, if any be destroyed after four months of appeal period is over, if no appeal is preferred or in case of appeal the same be dealt with in accordance with the direction of the Hon'ble Appellate Court.

Pronounced in the open Court today this the 25th day of January, 2014.

Dictated and Corrected by me.

Addl. Sessions Judge, BBSR

Addl. Sessions Judge, BBSR

List of witnesses examined for the prosecution

P.W.1:- Pabani Naik
 P.W.2:- Ganeswar Swain
 P.W.3:- Raj Kishore Sahu
 P.W.4: Laxmidhar Baral
 P.W.5: Sailendra Nath Das
 P.W.6: Bichitra Kumar Sahu
 P.W.7: Tilotama Naik
 P.W.8: Hullas Naik
 P.W.9: Gayadhar Moharana
 P.W.10: Debendra Seth

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1: Inquest report
 Ext.1/1: Signature of P.W.1
 Ext.1/2: Signature and endorsement of P.W.3 on Ext.1
 Ext.1/3: Signature and endorsement of P.W.9
 Ext.1/4: Signature and endorsement of P.W.10
 Ext.2: Postmortem Report
 Ext.3: Seizure list
 Ext.3/1: Signature of P.W.9
 Ext.3/2: Signature of P.W.10
 Ext.4: FIR
 Ext.5: Spot Map

- Ext.6: Dead body challan
- Ext.7: Seizure list
- Ext.7/1: Signature of P.W.10 in Ext.7
- Ext.8: Written prayer of P.W.10
- Ext.9: Written prayer of P.W.10 for recoding of statement of witnesses u/s 164 Cr.P.C.
- Ext.10: Written prayer of P.W.10
- Ext.11: Forwarding letter of SDJM, BBSR
- Ext.12: Chemical examination report
- Ext.12/1: Serologist report
- Ext.12/2: Report of Scientific officer

List of exhibits marked for the defence

- Ext.A: Certified copy of deposition of P.W.6 in ST 11/142 and 15/280 of 1995
- Ext.B: Certified copy of deposition of P.W.8 in ST 11/142 and 15/280 of 1995
- Ext.C: Certified copy of deposition of P.W.9 in ST 11/142 and 15/280 of 1995
- Ext.D: Certified copy of deposition of P.W.12 in ST 11/142 and 15/280 of 1995

List of M.Os. Marked for the prosecution

- M.O.I: Blood stained Lungi
- M.O.II: Blood stained banyan

List of M.Os. Marked for the defence

Nil

Addl. Sessions Judge, Bhubaneswar.