

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**JCRLA 96 of 2006**

*Baisakhu Sethy @ Behera* .... *Appellant*  
-versus-  
*State of Odisha* .... *Respondent*

*For Appellant* : Mr. R. N. Parija, Advocate

*For Respondent* : Mr. A. P. Das,  
Additional Standing Counsel

**CORAM:**  
**THE CHIEF JUSTICE**  
**JUSTICE R. K. PATTANAİK**

**JUDGMENT**  
**18.05.2022**

**Dr. S. Muralidhar, C.J.**

1. This appeal is directed against the judgment dated 13<sup>th</sup> July, 2006 passed by the learned Sessions Judge, Keonjhar convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life in ST Case No.18 of 2004.
2. By an order dated 19<sup>th</sup> October 2012, this Court enlarged the Appellant on bail.
3. This Court has heard the submissions of Mr. R. N. Parija, learned counsel appointed by the High Court Legal Services

Committee to appear for the Appellant and Mr. A. P. Das, learned Additional Standing Counsel for the State-Respondent.

4. The case of the prosecution is that the mother of the accused had left the house after quarrelling with his father. The accused was said to have been upset and threatened his father. The deceased, who happened to be the elder cousin brother of the accused, protested this act of the accused. A quarrel ensued between them. However, at that point in time, the dispute subsided and, in the evening, both the accused and the deceased took their meals in the house of the accused. The deceased slept in the verandah.

5. At around 11.30 PM, on hearing the shout of the deceased, the Informant-Nakula Behera (P.W.1), the father of the deceased and the uncle of the accused woke up and saw the accused standing with a Bala and his son, the deceased, lying with head injuries. P.W.1 chased the accused, who ran away throwing the Bala at the spot.

6. P.W.1 lodged the report at the Bamebari Outpost. Mr. Pradeep Kumar Baral (P.W.8) was the Investigating Officer (IO), who on 14<sup>th</sup> June, 2003 at around 7 AM took down the complaint in writing, registered the case and took up investigation. On 15<sup>th</sup> June 2003, he seized the wearing apparels of the deceased and on the same day at 10.30 AM arrested the accused and seized the wearing apparels of the accused. Meanwhile, the dead body of the deceased was sent for Post-Mortem (PM). The charge was laid against the accused for the offence under Section 302 IPC. He pleaded not guilty and claimed trial.

7. Eight witnesses were examined for the prosecution and none for the defence.

8. P.W.1, the informant, spoke clearly and cogently about he having witnessed the incident. In his cross-examination, he made clear that a 'Dibiri' was burning in the room and he was clearly able to recognize the accused. He also mentioned how his wife and his daughter, Bilasini (P.W.3) also woke up and saw the accused run away. He said "to my knowledge, there was no enmity between the accused and the deceased." Barring the above sentence, nothing else emerged in the cross-examination of this witness to doubt the veracity of his testimony.

9. It is sought to be argued that the above sentence in the cross-examination shows there was no motive for the crime. However, P.W.3 said that "at evening, the accused being drunk came to our house and there was exchange of words between my brother and accused. Being asked by us, the accused went away to his house." Clearly therefore, there was a quarrel between the deceased and the accused in the evening whereas the murder took place in the night while the deceased was sleeping. Although P.W.3 said in the cross-examination "there was no quarrel between the accused and deceased prior to this incident", what she was referring to were incidents prior to the quarrel that took place between the accused and the deceased. The evidence of P.W.4, who was another uncle of the accused and the deceased, is not very helpful to either side although he says accused and the deceased were in good terms. The seizure witnesses have also supported the case of the

prosecution. Blood stains were detected on the Bala but the blood grouping and the origine could not be detected.

10. This is not a case of mistaken identity since all the witnesses are close relations of both the accused and the deceased. The fact that the accused hits the deceased with Bala on the head clearly reveals his intention to cause the death of the deceased. This was not on the spur of the moment. The quarrel happened in the evening whereas the incident happened in the night when the deceased was sleeping and wholly unarmed. There was no need for the close relations of the accused to falsely implicate him in the homicidal death of the deceased.

11. The evidence being clear and cogent, the Court finds no reason to interfere with the well-reasoned judgment of the trial Court. There is no merit in this appeal and it is dismissed as such.

12. The bail bond of the Appellant is cancelled and he is directed to surrender forthwith and in any event, not later than 1<sup>st</sup> June, 2022 failing which the IIC concerned Police Station will take steps to have him apprehended in order to serve out the remainder of the sentence.

**(S. Muralidhar)**  
**Chief Justice**

**(R. K. Pattanaik)**  
**Judge**

*M. Panda*