



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

**CRA No.253 of 1995**

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

***Satya Narayan Meher & others* .....** ***Appellants***  
***-Versus-***  
***State of Orissa* .....** ***Respondent***

For the Appellants : Mr. Kirtan Badhei, Advocate and  
Mr. Subham Ghosh, Advocate

For the Respondent : Mr. Ashok Kumar Apat, AGA

**CORAM:**

**THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA**

---

Date of Hearing: 05.02.2026 : Date of Judgment: 12.02.2026

---

***S.S. Mishra, J.*** In this appeal, the appellants have challenged the judgment of conviction and order of sentence dated 08.08.1995 passed by the learned Sessions Judge, Balangir in Sessions Case No.41 of 1995, whereby the learned Trial Court has convicted the appellants under Section 304(Part-II) read with Section 34 of the I.P.C and sentenced them to undergo rigorous R.I. for five years each.



2. Heard Mr. Kirtan Badhei, learned counsel along with Mr. Subham Ghosh, learned counsel appearing for the appellants and Mr. Ashok Kumar Apat, the learned Additional Government Advocate appearing for the State.

3. The prosecution case in terse and brief is that on 19/20.08.1994 at about 1.30 A.M., P.W.1-Urmila Meher, wife of deceased Chintamani Meher submitted a written report before the O.I.C., Patnagarh Police Station alleging that, at about 5.30 P.M., her husband had been to their land locally known as "Rangalduli" where they had transplanted the paddy plants. After half an hour, Rabi Meher (P.W.3) came to her and told that Chintamani Meher was being assaulted by the accused persons mercilessly. Having been so informed, she had her granddaughter (P.W.4) ran to their "Rangalduli" where they found that Chintamani Meher was coming leaping with severe bleeding injuries on different parts of his body. On being asked, he told that when he went to their "Rangalduli", he found accused Satya Narayan had closed the opening of the land to stake the water. When he removed the obstruction, the accused persons came there. When accused Satyanarayan assaulted him by means of a spade, the other two



accused persons also assaulted by spade. The other two accused persons assaulted him by means of tangias. They brought Chintamani to their house and gave him first aid, but when gradually the condition of Chintamani became serious, they brought him to Patnagarh and admitted in the hospital of Patnagarh.

4. The plea of the accused persons is of complete denial. The accused persons without disputing the injuries on the person of the deceased pleaded that the accused Satyanarayan Meher being the owner of "Rangalduli" was in possession of the same. When he found that the deceased has made the opening so as to divert the water of "Rangalduli", they raised protest, while Chintamani was running away, he fell down over the stones lying in the opening and sustaining injuries but they are neither the assailants nor the murderers.

5. The prosecution has examined seven witnesses in support of its case as against two D.Ws. examined by the accused person. Out of the witnesses examined by the prosecution, P.W.1 is the widow of the deceased. P.W.4 is their grand-daughter. P.W.3- Rabi Meher though according to the prosecution was the only eye witness to the incident, but when he did not support the prosecution case, he has been



declared as hostile witness. P.W.2- Sumitra Meher was a post occurrence witness and a witness to the inquest when the I.O. held the inquest over the dead body of the deceased and sent for post-mortem examination. P.W.5 was the doctor, who has not only medically examined the injured on police requisition while deceased Chintamani was alive, but also has conducted the post mortem examination on the dead body of the deceased when he died. When Ext.2 is the injury report, Ext.3 is the post mortem report, rest P.Ws. are the police officers, who have investigated the case and they have submitted the charge sheet.

6. On the basis of the materials placed before the learned trial Court by the Investigating Agency by way of the Charge Sheet, charges were framed under Section 302/34 of the IPC against all the three accused persons. On their denial of the charges and claim of trial, they were subjected to trial.

7. The learned trial Court, after analysing the evidence brought on record by the prosecution as well as by the defence plea, arrived at a conclusion that the prosecution has failed to prove its case beyond all reasonable doubts in so far as the offence punishable under Section



302 of the IPC is concerned, however, found the accused guilty of the offence punishable under Section 304 (Part-II) read with Section 34 of the IPC. Accordingly, on that count, the learned trial Court sentenced the accused persons to undergo R.I. for five years each. The present Criminal Appeal has been preferred by the appellants questioning the judgment of the learned trial Court convicting them for the offence under Section 304 (Part-II)/34 of the IPC and the sentence passed on that count. The appeal has been pending since 1995. In the meantime, appellant no.3- Nilamani Meher has died. Therefore, in the absence of any application on behalf of the legal heirs or their next friend under Section 394 of the Cr.P.C., the appeal qua the said appellant no.3-Nilamani Meher stood abated.

**8.** The present Criminal Appeal is now surviving qua appellant nos.1 and 2. The appellant no.1 is now aged about 69 years, whereas the appellant no.2 is aged about 58 years.

**9.** The learned trial Court, while analysing the evidence on record, heavily placed reliance on the ocular evidence of P.Ws.1 and 4. The learned trial Court has also emphasised its judgment basing upon the testimony of the doctor-P.W.5. The reasonings recorded by the



learned trial Court to convict the appellants are largely reflecting in paragraphs- 8 and 9. For ready reference, paragraphs- 8 and 9 are reproduced here below:

*“8. Admittedly there is no eye-witness to the alleged assault. The only eye-witness said to have been present at the time of occurrence is P.W.3- Rabi Meher who now does not support the case of the prosecution for which he has been declared as a hostile witness. But P.W.1, the wife of the deceased and PW..4 their grand-daughter say in their evidence that having been informed about the assault from P.W.3 when they proceeded towards their “Rangalduli” they found that Chintamani was coming leaping and on asking he told that he was brutally assaulted by the accused persons. It is evident from their evidence that deceased Chintamani Meher told to them that while he saw that accused Satyanarayan has closed the opening of the “Rangalduli” and had staked the water, he removed the obstruction. At that time all the accused persons came to him. When accused Satyanarayan assaulted him on his left arm by means of a spade on its blunt side, accused Bharat assaulted him on his head by means of a tangia and the accused Nilamani assaulted him by means of a thenga on different parts of his body. Over and above it is evident from the evidence of P.W.6 that during his investigation he had examined the injured and had recorded his statement u/s 161 Cr.P.C. in separate sheet. Ext.5 is the said statement of the deceased recorded by P.W.6. It reveals that the deceased had gold before him that the accused Satyanarayan assaulted him on his left arm by a spade in its blunt side. Accused Bharat assaulted him by means of a tangi and accused Nilamani assaulted him byh means of a lathi. What they speak in their evidence is the statement made by the deceased Chintamani who cannot be called as a witness which is otherwise known as “Dying declaration”. It goes without saying that the “Dying declaration” may be oral or written which in most of the cases are made orally before death ensues. It is not necessary that it must be recorded or made before a Magistrate. The statement of the deceased to a Police Officer is also admissible as dying declaration even if the death took place much later. The fact that the declarant lingered few days after making the statement does not deprive it of its character as a dying declaration. It is undisputed position of law that such dying declaration being*



*admissible u/s 32 of the Evidence Act can be the sole basis of conviction, though it is not prudent to base a conviction on a dying declaration made to an investigating officer particularly when it is not signed by the declarant or the witnesses as it happens in the present case where the deceased Chintamani has not signed Ext.5 nor the same was signed by any other witnesses. But there is nothing to ignore the evidence of P.Ws.1 and 4 even if they happen to be the relations of the deceased. They being the relations of the deceased, it is quite natural that the deceased would disclose the name of the assailants before them. Their evidence being reliable and trustworthy, the inevitable conclusion is that the accused persons are the assailants who caused the bodily injury on the deceased leading to his death.*

9. *True, the doctor (P.W.5) who has conducted the post mortem examination on the dead body of the deceased opines that the cause of the death may be due to myocardial infarction, that means the proximate result of the death of the deceased Chintamani was not due to the assault. It is stated by P.W.5 that the deceased was the same person whom he had medically examined on 20.8.94. Chintamani died while he was undergoing treatment in their Subdivisional hospital as indoor patient on account of the injuries sustained by him. It reveals from his evidence that on dissection he only noticed (1) one pale gray thickening of endocardium of 1.5 cm X 1 cm on the lower part of the anterior aspect of the left ventricle, and (2) the pale neuritic muscle on the apex and anterior wall of the left ventricle 1.5 cm below and lateral to injury No.1. Therefore, the entire evidence of P.W.5 taken together, the only conclusion is that the injuries sustained by the deceased on account of the assault has accelerated the disease in the heart resulting his death. Therefore, the accused persons shall be deemed to have caused the death of the deceased as contemplated under Explanation- (1) appended to Section 299 I.P.C.”*

**10.** I have carefully gone through the evidence on record brought by the prosecution as well as the defence. In fact, the evidence of P.Ws.1, 3 and 5 are the essence of the prosecution case. P.W.1 is the informant in this case. She in her testimony has deposed that in the



afternoon of the date of incident her husband had been to their land which is situated in the end of the village basti. P.W.4, the grand-daughter hurriedly came and told her that one Rabi Meher (P.W.3) told her that the accused persons were assaulting her husband Chintamani in their land. She has also deposed that the accused persons were armed with spade, lathi and tangia. Immediately after hearing the incident, she went to the spot along with P.W.4 and discovered that her husband was lying there in severe bleeding injury on his head and other parts of the body. She and her grand-daughter, P.W.4 brought her husband to the spot and thereafter brought to their house. At that point of time, her husband disclosed that Satyanarayan, who is the son of younger brother of her husband, assaulted her husband by means of a spade on the left arm. Accused Bharat Meher dealt two blows on his head by tangia. Accused Nilamani assaulted her husband by means of a thenga on different parts of his body. She further deposed that she called her nephew Sumanta Meher (P.W.2) and with his help, her husband was shifted to the hospital. The said witness has very categorically deposed that there has been dispute relating to taking of water to their land. Accused persons have been



enmical to their family. This part of the prosecution narrative elucidated from P.W.1 stood directly corroborative with the evidence of P.W.4. P.W.4 is the grand-daughter of P.W.1. She has deposed that Rabi Meher (P.W.3) informed her regarding the assault to Chintamani. She and P.W.1 together went to the spot and found Chintamani had sustained severe bleeding injury on his person and his body was stained with mud. He enquired from Chintamani about the incident, who rebutted that Satyanarayan assaulted him by means of spade on his left arm. Bharat Meher assaulted him by means of a tangia on his head whereas Nilamani assaulted him by means of lathi on the other parts of his body. Thereafter, Chintamani was brought to their house and after giving First-Aid to him, he was removed to the hospital. While Chintamani was undergoing treatment as an indoor patient, he died on the following Sunday at 8 P.M. The incident had happened on Friday afternoon and Chintamani succumbed to the injuries on the following Sunday evening. Both P.W.1 and P.W.4 sustained extensive cross-examination by the defence witnesses. But their testimony could not be tainted in any manner whatsoever.



11. P.W.3-Rabi Meher, who had informed the incident to P.W.1 and P.W.4, had turned hostile. However, he deposed that on the date of incident, he heard hulla from the place of incident. Out of fear, he ran away towards the village. P.W.1 and P.W.4 have stated that P.W.3 had intimated them at the village regarding the incident. Therefore, the part of the testimony of P.W.3 that he heard hulla from near a place of occurrence and out of fear, left the place and ran away towards the village found corroborated with the evidence of P.W.1 and P.W.4. Therefore, safely it could be inferred that the incident had taken place at the land of Chintamani and Chintamani was assaulted by the accused persons.

12. It is also eminent from the record that there was past enmity between the accused and the deceased because of the dispute regarding the water saving. Accused Satyanarayan is the son of younger brother of Chintamani. Therefore, the identification of the accused persons is not doubted by the witnesses. The veracity of the aforementioned witnesses as discussed above, needs to be found corroborated to sustain the conviction recorded by the learned trial Court. In that view of the matter, I have also analysed the evidence of



P.W.5, who is the doctor and examined the deceased Chintamani. P.W.5 was examined on 20.08.1994. He, in his testimony has stated that he found four injuries on the person of the deceased. According to him, injury nos.1, 3 and 4 were simple in nature whereas injury no.2 was grievous. The following injuries were found on the person of the deceased :

- “(1) One lacerated wound 1 cm X 0.2 cm X 0.4 cm on the left middle lateral aspect of the arm.*
- (2) Fracture of left humerous bone at the middle part.*
- (3) One lacerated wound of 1 cm X 0.2 cm X 0.2 cm on the right supra scapular space 2 cm. back of acromion process of right clavicle bone.*
- (4) One lacerated wound of 6 cm X 0.5 cm skin X depth on right parietal bone 3 cm. right to mid-line placed obliquely.”*

**13.** The same doctor on 22.08.1994 had conducted the post mortem examination. He has further stated in his testimony that Chintamani died while he was undergoing treatment in the Subdivisional hospital as an indoor patient on account of injury sustained by him. On the dead body, he found the following injuries:

- “ I found one lacerated injury of 1 cm X 0.2 cm X 0.2 cm on the right supra scapular space, 2 cm. back of acromion process of right clavicle.*
- (2) One lacerated wound of 6 cm x 0.5 cm x skin depth on right parietal bone, 3 cm. right to mid-line, placed obliquely.*



(3) *One lacerated wound of 1 cm x 0.2 cm X 0.2 cm on the middle lateral aspect of the left arm.*

(4) *Fractures of left humerous bone at middle part which is compound in nature.*

*(On dissection) :-*

*Heart- (1) One pale, gray thickening of endocardium of 1.5 cm x 1 cm on the lower part of anterior aspect of left ventricle.*

*(2) Pale necrotic muscles on the apex and anterior wall of left ventricle, 1.5 cm. below and lateral to No.1."*

**14.** P.W.5 in the examination-in-chief has very categorically stated that *"the cause of death may be due to myocardial infections."* He has exhibited the post-mortem report as Ext.3. In the cross-examination, the said witness has further deposed that *"in case of lacerated injuries by lathis, by blunt side of axe, spade; the surrounding area of the lacerated wound are accompanied by bruises. In the present case I have not noticed the bruises around the lacerated wound."* From the evidence of P.W.5, the doctor, who had treated the deceased initially and subsequently conducted the post-mortem examination, one can safely infer to the conclusion that the death of Chintamani is not homicidal one. This conclusion would also be found support from the evidence of the other witnesses. The learned trial Court appears to have missed the point and arrived at the following conclusion :



*“All these circumstances taken together, the only conclusion is that the accused persons had not intended to cause the death of the deceased though ultimately on account of such injury the deceased died. The above being the consideration, the mischief of murder under Section 302 of the IPC not being attracted, the accused persons are only liable for the offence under Section 304 (Part-II) read with Section 34 of the IPC.”*

**15.** On the basis of the analysis of the evidence of the prosecution as narrated above, I am in complete disagreement with the findings of the learned trial Court as recorded above. I am of the view that the case is falling under the mischief of Section 325 of the IPC because the appellants have caused four injuries to Chintamani (the deceased) out of which three injuries were simple in nature, but one injury was grievous. The appellants have also used deadly weapons, which have been recovered and exhibited as M.O.1 and M.O.2. As per the testimony of P.W.7, the Investigating Officer of the case has stated the M.O.1 and M.O.2 were shown to the Medical Officer, who had given a Certificate that the injury sustained by Chintamani could have been caused by those weapons.



16. Therefore, while acquitting the appellants for the offence under Section 304(Part-II) of the IPC, I convict the appellants for commission of the offence punishable under Section 325 of the IPC read with Section 34 of the IPC. The conviction is accordingly modified.

17. At this stage, Mr. Badhei, learned counsel for the appellants submitted that during the trial, the appellants have already undergone six months of incarceration and he further submitted that keeping in view the age of the appellant nos.1 and 2, a lenient view may be taken.

18. Regard being had to the circumstances in its entirety, the appellant nos.1 and 2 are sentenced to undergo R.I. for one year each and to pay a fine of Rs.20,000/- (Rupees twenty thousand) each, in default, to undergo further period of R.I. for six months each. The sentence already undergone by them shall be set off towards the total sentence of one year under section 328 of the Cr. P.C. The fine amount to be deposited by the appellants shall be disbursed to P.W.1 or her legal heirs as compensation under Section 357 of the Cr. P.C.



19. Accordingly, the CRA stands partly allowed to the extent indicated above.

***(S.S. Mishra)***  
***Judge***

The High Court of Orissa, Cuttack.  
Dated the 12<sup>th</sup> Day of February, 2026/ Subhasis Mohanty