
(1998) 11 OHC CK 0004

In the Orissa High Court

Case No : Criminal Appeal No's. 18 and 19 of 1991 and Government Appeal No. 20 of 1991

Godabarish Mohapatra, Janardan Mohapatra, Hatim
Mahammad and Chandrasekhar Mohapatra

APPELLANT

Vs

State of Orissa
 State of Orissa Vs Godabarish
Mohapatra and Janardan Mohapatra

RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 114, 302, 34

Citation : (1998) 11 OHC CK 0004

Hon'ble Judges : R.K. Dash, J;P.C. Naik, J

Bench : Division Bench

Advocate : D.S. Mishra, G.N. Mohapatra, S. Behera, S. Mohanty and P.K. Sahoo, in both Criminal Apls. and Res. in G.A, for the Appellant; D. Nayak, S. Swain, D.P. Pradhan, M. Mohanty, J. Pal and P.K. Pradhan, for the Respondent

Final Decision : Allowed

Judgement

R.K. Dash, J.—Godabarish Mohapatra and Janardan Mohapatra (A-2 and A-3), Appellants in Criminal Appeal No. 18 of 1991, and Hatim Mahammad and Chandrasekhar Mohapatra (A-1 and A-4), Appellants in Criminal Appeal No. 19 of 1991, faced trial in Sessions Case No. 28 of 1989 in the court of the Sessions Judge, Kalahandi, Bhawanipatna. Hatim Mahammad, A-1 stood charged u/s 302, Godabarish Mohapatra, A-2 stood charged u/s 326, Janardan Mohapatra, A-3 stood charged u/s 307, Chandrasekhar Mohapatra, A-4 stood charged under Sections 302, 307 and 326 read with Section 114 and all the accused persons also stood charged u/s 302 read with Section 34 of the Indian Penal Code. Learned Sessions Judge upon trial, convicted Hatim Mahammad, A-1 under Section 302, I.P. C. and sentenced him to undergo imprisonment for life, Chandrasekhar Mohapatra A-4, under Sections 302, 324 and 326 read with Section 114, I.P. C. and sentenced to undergo imprisonment for life, Janardan

Mohapatra, A-3 u/s 324, I.P.C. and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/-, in default to undergo rigorous imprisonment for a further period of one month, and Godabarish Mohapatra, A-2 u/s 326, I.P. C. and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/-, in default to undergo rigorous imprisonment for a further period of one month. Aggrieved by their conviction and sentence, the accused persons have preferred separate appeals as aforesaid. The State has preferred Government Appeal No. 20 of 1991 challenging the order of acquittal of Godabarish Mohapatra, A-2 and Janardan Mohapatra, A-3 of the charge u/s 302/34, I.P. C. and also Janardan Mohapatra, A-3 of the offence u/s 307, I.P.C. Though in the memorandum of appeal all the accused persons have been arraigned as Respondents, but leave has been granted in so far as Godabarish Mohapatra, A-2 and Janardan Mohapatra, A-3 are concerned.

2. Prosecution case culled out during trial may briefly be stated thus:

Godabarish Mohapatra, A-2 and Janardan Mohapatra, A-3 are real brothers, being sons of Chandrasekhar Mohapatra, A-4, Nishamani Mohapatra is the maternal grand- mother of Amarendra Mohapatra, informant (p. w.2). Husband of Nishamani Mohapatra and Chandrasekhar Mohapatra, A-4 are two brothers p. w. 2's mother is the only daughter of Nishamani.

Umesh Chandra Mohapatra (hereinafter referred to as "the deceased") is the father of p. w. 2. He along with his wife and Children were looking after the properties of Nishamani. The accused persons were trying to dispossess the deceased from the lands of Nishamani and for that there were some litigations. The incident in the present case took place on 20-10-1988 at about 5 p.m. which was a "Dushera day". On that day the deceased along with his sons Amarendra (p w.2), Sangram (p.w. 11) and Debasis (p.w.15) were returning from the house of Nishamani after attending "Nabarna" festival. At this time Godabarish; A-2 hurled abusive words at them. Hearing this, they turned back and found the accused persons following them being armed with lethal weapons. of them, Godabarish, A-2 was holding a Katari, Janardan, A-3 was holding a Tangia (axe) and Hatim Mahammad, A-1 was holding a Gupti. Chandrasekhar, A-4 was instigating other accused persons to kill the deceased and others. In the meanwhile, Janardan, A-3 gave an axe blow on the left hand of Sangram (p.w. 11) and Hatim Mahammad, A-1 pierced a Gupti on the right side chest of the deceased. Godabarish, A-2 and Janardan, A-3 simultaneously, assaulted the deceased with weapons held by them. When p.w.2 tried to intervene to rescue the deceased, Godabarish, A-2 aimed "Katari" blow at his head. To ward off the blow he raised his hand as a result, it struck on his right palm causing bleeding injury. P.w. 2 snatched away the "Katari" from the hand of Godabarish, A-2. The latter shouted calling Hatim Mahammad, A-2 to come to his rescue. Immediately Hatim Mahammad, A-1 rushed there and having snatched away the "Katari" from his hand, Janardan. A-3 aimed a blow on his head. He however. stretched his head as a result the blow fell on his back. After assaulting the deceased and

Ors. as aforesaid, all the accused persons went towards the house of Chandrasekhar, A-4. The deceased and the injured persons were brought to Bhawanipatna Hospitals. The doctor on examination of the deceased declared him dead. Amarendra (p. w.2) and Sangram (p. w. 11) -were treated as in-patients in the hospital. Officer- in-charge of Bhawanipatna P.S. rushed to the Hospital to whom Amarendra (p.w.2) reported the incident. Thereupon F.I.R Ext. 1 was drawn up under Sections 302,307, 326/34, I.P.C. and investigation commenced and on completion thereof, charge-sheet was placed against all the four accused persons to stand their trial for various offences.

3. The accused pleaded not guilty to the charges and urged that they were falsely implicated. Besides. Hatim Mahammad A-1. while denying his involvement in the incident contended that during his absence police had visited his house on 17-11-1988 in connection with this case, and so he surrendered before the Magistrate, but he was refused to be taken to judicial custody since he had not been arraigned as accused in the F.I.R..

4. The prosecution in order to bring home the charges to the accused persons, examined as many as seventeen witnesses of whom p.ws. 2, 11 and 15 were the eye-witnesses to the incident Dayanand Mishra, Assistant Public Prosecutor attached to the court of S.D.J.M., Bhawanipatna and Prafulla Kumar Panda, S.D.J.M., Bhawanipatna at the relevant time were examined as Court witnesses Nos. 1 and 2 respectively. Two witnesses Y. Ammaji Rao, Bench Clerk S.D.J.M., Bhawanipatna, and one Surendra Bhujabal were examined as d. ws. 1 and 2 respectively. The learned trial Judge upon consideration of the evidence held the accused guilty and convicted them for the various offences as hereinbefore stated.

5. Learned Counsel for the accused persons challenging the judgment and order of conviction contended that it is a totally false case foisted against the accused persons, that accused persons were innocent and that they had no hands in doing away with the deceased and causing injury to p.ws. 2 and-11. Elaborating his argument he would contend that the original F.I.R. was substituted by Ext. 1., inasmuch as Hatim Mahammad, A-1 did not figure as an accused in the original F.I.R. as in evident from the order-sheet, Ext-F where the learned S.D.J.M. refused to take him to judicial custody since he had not been named in the F.I.R.. But strengely enough, it could be noticed that in the F.I.R. that was proved as Ext. 1 he has been described as the main accused having given the fatal blow to the deceased. Counsel further urged that no independent witness was examined to corroborate the evidence of related and interested witnesses, namely, p.ws. 2, 11 and 15 and therefore, adverse inference should be drawn against the prosecution. He went on to argue that oral evidence as to the injuries sustained by the deceased and the injured being discrepant in relation to the medical evidence, prosecution case should be viewed with suspicion. Challenging the appeal preferred by the State, learned Counsel would submit that in view of the settled principle of law that an order of acquittal should not be set aside unless it

is found to be patently wrong and wholly unsustainable, this Court should be loathe to exercise appellate power conferred by section - 378, Code of Criminal Procedure and upset the order of acquittal recorded against Godabarish, A-2 and Janardan, A-3 from the offence u/s 302/34. I.P.C. Per contra, learned Additional Standing Counsel appearing for the State supporting that part of the judgment and order of conviction recorded against the accused persons submitted that the ultimate conclusion being based on proper appreciation of evidence, does not call for interference in these appeals. So far as the appeal preferred by the State is concerned he contended that in view of the cogent and consistent evidence that on account of land dispute there was a prior concert among Godabarish, A-2, Janardan, A-3 and Chandrasekhar, A-4 to eliminate the deceased and his family members and with that end they arranged Hatim Mahammad, A-1, a contract killer, and being armed with lethal weapons committed murder of the deceased and assaulted p.w.s. 2 and 11 and therefore, the learned trial Judge with the aid of Section 34 should have convicted Godabarish, A-2 and Janardan, A-3, u/s 302, I.P.C.. But without considering the facts and circumstances in their proper perspective he in a mechanical manner in paragraph 33 of the judgment observed that the evidence is lacking that there was pre-arranged plan of all the accused persons to commit the offence.

6. For the sake of convenience we shall first deal with the appeals preferred by the accused persons. The Medical Officer, p.w.4 who conducted autopsy on the dead body of the deceased noticed 5 incised injuries on the right chest, right cheek, right axillary pole, left leg and left ear. He also found the 9th and 10th ribs to have been cut in the middle portion. On dissection he found the right lung to have been punctured and liver perforated. According to him, all the injuries were antemortem in nature and cause of death was due to haemorrhage and shock as a result of injuries to vital organs: that is, -lung and liver. The next Medical Officer is p. w. 3 who on police requisition examined Amarendra, p. w. 2 and Sangram, p. w. 11. On examination he found incised wound on the dorsum of the right hand of p. w. 2 and as per the clinical examination there was fracture of 5th metacarpal bone and proximal phalanges. So far as p: w. 11 is concerned he found one incised wound on the frontal aspect of left forearm. The said injury, according to him, was grievous as transpired from the radiological examination report. The fact that the deceased died a homicidal death and the injured witnesses p. ws. 2 and 11 received grievous injuries on the date of incident has not been denied or disputed by the defence. In that view of the matter, the sole question for consideration is as to whether the accused persons were the authors of the crime.

7. As the F.I. R. story goes, on account of land dispute there were litigations in between Chandrasekhar, A-4 and the deceased and in order to take revenge the accused persons assaulted the deceased and his sons, p. ws. 2 and 11 on 20-10-1988 at about 5.00 p.m.. In order to bring home the charges to the accused persons prosecution relied upon the ocular testimony of p. ws. 2, 11 and 15. P. w. 2 in his evidence has stated that on the date and time of the incident he

along with his brothers and the deceased while returning home from his maternal grandmother's house at village Tiljodi after attending "Nabarna" festival, Godabarish, A-2 called them from behind uttering obscene words. He looked back and found that all the accused persons, except Chandrasekhar, A-4 being variously armed were following them. Chandrasekhar, A-4 was instigating the other accused persons to kill the deceased and his sons. Immediately thereafter Janardan, A-3 gave a Tangi blow on the left hand of Sangram, p. w. 11 and Hatim Mahammad, A-1 pierced a Gupti on the right side chest of the deceased. Godabarish, A-2 and, Janardan, A-3 simultaneously assaulted the deceased with the weapons held by them. In the meanwhile when he (p. w. 2) tried to intervene to save his father (deceased), Godabarish, A-2 aimed a Katari blow; it hit his head. In order to ward off the blow he raised his right hand; as a result the blow fell on his palm causing bleeding injury. At this moment Hatim Mahammad, A-1 rushed there, snatched away "Tangi" from the hand of Janardan, A-3 and gave a blow aiming at his head, but the blow fell on his right side back causing injury. Similar is the evidence of p. w. 11. He is another witness who was assaulted during the occurrence and received injuries. He has given a graphic picture as to how he, his brother p. w. 2 and father (deceased) were attacked by the accused persons. Corroborating the evidence of p. w. 2 that on being exhorted by Chandrasekhar, A-4 to kill the deceased and Ors. Janardan, A-3 assaulted him with a "Tangi" on his left hand and Hatim Mahammad, A-1 plunged a Gupti into the right side chest of the deceased. Thereupon Godabarish, A-2 aimed a "Katari" blow at p. w. 2 who in order to save himself from the assault raised his right hand; as a result the blow fell on his palm. Hatim Mahammad, A-1 then came running, snatched away "Tangi" from Janardan, A-3 and gave a blow which struck on p. w. 2's back.. The next witness is p. w. 15. Though he was in the company of the deceased and the injured, but he was spared. He has corroborated the evidence of p. ws. 2 and 11 in material particulars. As deposed to by him, Chandrasekhar, A-4 was instigating to kill the deceased and his sons. Thereupon Janardan, A-3 gave a Tangi blow aiming at the head of p. w. 11 who in order to save himself from the attack raised his left hand; as a consequence the blow fell on his hand. He further stated that Hatim Mahammad, A-1 gave the fatal blow on the chest of the deceased, Godabarish, A-2 inflicted Katari" blow on the hand and Hatim Mahammad, A-1 snatching away "Tangi" from Janardan, A-3 gave a blow on the back of p. w. 2.

8. The eye-witness account of p.w.s. 2, 11 and 15 as discussed above, finds support from the medical evidence of the doctor, p.w. 3. As deposed to by him, he noticed incised wounds on the dorsem of right hand of p.w. 2 and left forearm of p.w. 11. P.w.s. 2, 11 and 15. although have stated that p.w. 2 had also received injury on his back at the hand of Hatim Mahammad, A-1, but the injury report as well as the evidence of p.w. 3 is silent on this aspect. This discrepancy in our opinion being trivial and insignificant does not go to the root of the matter to cast any doubt about the trustworthiness of the above three eye witnesses. True it is, as submitted by the learned Counsel appearing for the accused

persons, p. ws. 2, 11 and 15 were interested witnesses, but since p.ws. 2 and 11 had sustained injuries during the occurrence, they were most natural and competent witnesses who supported the prosecution case in material particulars and therefore, their evidence cannot be rejected merely on the ground of interestedness. It cannot be assumed that an independent witness is a truthful and an interested witness, a liar. However, while appreciating the evidence of an interested witness all that is necessary is that the evidence of such witness should be examined with due care and caution and after having done so, if the court finds his evidence is intrinsically reliable, then it may be relied upon to base a conviction thereon. An interested witness is not on par with an approve and therefore, his evidence does not require any corroboration before acceptance. In the present case we have scanned the evidence of p. ws. 2, 11 and 15 in detail and are satisfied that they being natural witnesses, and more so p. ws. 2 and 11 being injured, their evidence inspires confidence. Besides, it is not borne out from the materials on record that except these three witnesses, any other person was present at the scene of occurrence and had witnessed the assault. of course, p.ws. 2 and 11 have stated that Anama Gouda and Ors. had come to the scene of incident after the assault was over to whom the former had disclosed the names of the assailants. But these persons being the post-occurrence witnesses, no adverse inference can be drawn against the prosecution for their non-examination.

9. The main thrust of submission of the learned Counsel for the accused persons is that the written report, Ext-I is not the original, as is evident from the order passed by the learned S.D. J.M. under Ext. F. He contended that when the Investigating Officer visited the house of Hatim Mahammad, A-1 in connection with the case, the latter surrendered in court, but the S.D. J.M. refused to take him to custody, since he was not named as an accused in the F.I. R. Subsequently the said F.I. R. was replaced by Ext. 1 incorporating the name of Hatim Mahammad, A.I to be the main assailant. In support of his such submission he referred to Ext. F, the order-sheet dated 17-11-1988 which was brought in evidence by the defence. It transpires from the said order that Hatim Mahammad, A-1 surrendered in court and applied for bail. His prayer was refused and he was not taken in to custody since he did not figure as accused in the F.I. R. although it was so mentioned in Col. 2 of the formal F.I. R.. This perhaps created doubt in the mind of the learned Sessions Judge for which he summoned the S.D. J.M. who had passed the order, Ext. F to be examined as a court witness. Being examined as C.W. 2 he stated that the name of Hatim Mahammad which was clearly mentioned in Ext. 1 escaped his notice. He being a judicial officer his explanation as aforesaid cannot be brushed aside lightly. To err is human. So it was quite but natural that name of Hatim Mahammad, A-1 missed his notice and because of that he refused to take him to judicial custody.

Of course, he should have been vigilant and cautious and diligently scrutinised the F.I.R. while dealing with the application for bail. But for his inadvertent mistake, as explained by him, the defence cannot urge upon the court to hold

that the F.I. R. Ext. 1 had been substituted in place of the original. On an appraisal of his evidence and on scrutiny of the record we are of the view that the F.I. R., Ext. 1 was the original which bore the name of Hatim Mahammad, A-1. This finding of ours gains support from the averments made by Hatim Mahammad, A-1 in his petition when surrendered in the court. In the said petition he categorically admitted that since his name appeared in the F.I.R. he was surrendering in the court for being taken to judicial custody.

On careful scrutiny of the evidence of p. ws. 2, 11 and 15 and the medical evidence, we concur with the findings of the learned Sessions Judge that Hatim Mahammad, A-1 pierced "Gupti" on the chest of the deceased resulting in his death and Godabarish, A-2 assaulted p. w. 2 with Katari and Janardan, A-3 assaulted p. w. 11 with Tangi (axe) causing grievous injuries to them. In that view of the matter, we confirm the findings of conviction and sentence recorded against them by the learned Sessions Judge.

10. From the trend of cross-examination of p. w. 15 it appears that an attempt was made by the defence to create a doubt in the mind of the trial court that one Jahid Khan of Bhawanipatna and not Hatim Mahammad, A-1 was the real assailant of the deceased. As the evidence of p. w. 15 goes while being examined during investigation he had stated that one Jahid Khan armed with a Tangia was present with the accused persons. Except this statement, nothing more is borne out that he had implicated Jahid Khan in the assault either to the deceased or to p. ws. 2 and 11. From a reading of the evidence of p. w. 15 coupled with the evidence of the Investigating Officer, p. w. 17 what transpires is that one Jahid Khan had accompanied the accused persons to the place of incident, but had neither participated in the incident nor instigated the accused persons to assault. It may be noted in the F.I. R., Ext. 1 it was stated that two persons (one tall and another of short height) along with other accused persons had come to the place of incident and of them the tall person was identified to be Hatim Mahammad, A-1, p. w. 17, the Investigating Officer in paragraph 29 of his evidence stated that the unknown person who was present with the accused persons was one Jahid Khan and since he had not participated either directly or indirectly in the incident and had only accompanied the accused persons, he was not charge-sheeted. In view of such evidence, no doubt arises in our mind as to the truth of the prosecution case regarding involvement of Hatim Mahammad, A-1 in the incident and the role played by him.

11. Coming to the case of Chandrasekhar. A-4 the prosecution version is that he was the hero of the whole episode. It was he who wanted to eliminate the deceased and his family members in order to grab the properties belonging to the mother-in-law of the deceased. As the evidence reveals all the accused persons including him came to the place of occurrence in a group and at his instigation, the other accused persons (A-1 to A-3) assaulted the deceased as well as p. ws. 2 and 11. This part of the prosecution case has been fully supported by p. ws. 2, 11 and 15. They have categorically stated that being

directed by Chandrasekhar. A-4, other accused persons inflicted blows with lethal weapons held by them on the deceased and the injured. They were subjected to lengthy cross-examination, but nothing tangible could be brought out to discredit their testimony.

12. Section 114, I.P. C. deals with constructive liability. A person abets the doing of a thing when he instigates one or more other persons to do a thing or engages with one or more other persons in any conspiracy for the doing of that thing or intentionally aids by any act or illegal commission the doing of that thing. It has been held by the Supreme Court in the case of Mathuralal Adi Reddy v. State of Hyderabad: A.I. Rule 1956 Supreme Court 177 that if the evidence makes out no more than mere instigation, it is, even so, instigation by a person who is present at the scene of offence when the act is committed. In such a case the instigator is "deemed" to commit the murder by virtue of Section 114, I.P. C.. Keeping in view the settled position of law and on consideration of the evidence as discussed above, we affix our seal of approval to the findings of conviction and sentence recorded against Chandrasekhar, A-4 under Sections 302, 324 and 326 read with Section 114, I.P. C..

13. We shall now advert to the appeal preferred by the State. At the outset we would like to mention that the learned Additional Standing Counsel confined his argument as regards the finding of the learned Sessions Judge about the applicability of Section 34, I.P. C.. It may be noted, leave to appeal was granted to the State against the order of acquittal of Godabarish, A-2 and Janardan, A-3. From the record it transpires that alternative charge was framed against all the accused persons u/s 302/34, I.P. C. for having committed murder of the deceased. The learned sessions Judge in his lengthy judgment though reproduced the ocular evidence of the eye-witnesses, p. ws. 2, 11 and 15, but did not give any definite finding as to if the prosecution had been able to bring home the said charge to the accused persons. In paragraph 13 of the judgment he has made a passing observation that evidence is lacking that there was no pre-arranged plan to commit the offence so as to fasten all the accused persons with the offence with the aid of Section 34, I.P. C. Scope of power of the High Court in an appeal against acquittal has been highlighted in several judicial pronouncement. In a recent decision Hon"ble Supreme Court in the case of Ajit Savant Majagavi Vs. State of Karnataka, , has laid down the principles which should govern and regulate appeal preferred by the State against an order of acquittal passed by the trial court, in the following words:

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and consciously entertain as to the guilt of the accused.

Keeping the aforesaid dictum of the Apex Court in view, we proceed to reappraise the evidence to come to our own conclusion to find as to whether prosecution was able to bring home the charge u/s 302, I.P. C. with the aid of Section 34, I.P. C. against Godabarish. A-2 and Janardan. A-3. We may reiterate that there is absolutely no finding by the trial court so far as charge u/s 302/34, I.P. C. is concerned except the cryptic observation as mentioned above.

14. Section 34, I.P. C. lays down the principle of constructive liability. It is well settled that a common intention pre-supposes prior concert. It requires a pre-arranged plan. Before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of common intention of them all. If this is shown, anyone of the accused persons may be held liable for the crime, in the same manner as if the act were done by him alone. It is to be borne in mind that it is difficult, if not impossible to produce direct evidence to prove the intention of a person. Therefore, courts in most cases, have to infer the intention from the act or conduct of a particular person or from the other relevant circumstances of the case. It is also to be remembered that the inference of common intention within the meaning of Section 34, should never be reached unless it is a necessary inference deducible from the circumstances of the case. (see AIR 1945 118 (Privy Council)). The above view has been reiterated by the Supreme Court in Pandurang, Tukia and Bhillia Vs. The State of Hyderabad, . It has been pointed out in the said decision that there is no special rule of evidence for applying Section 34 and at bottom, it is a question of tact in every case and however, similar the circumstances facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. All that is necessary is either to have direct proof of prior concert, or proof of

circumstances which necessarily lead to that inference.

15. Coming to the case in hand, we find from the evidence of p. w. 2, one of the eye-witnesses to the incident that Hatim Mahammad, A-1 gave the fatal blow on the chest of the deceased and immediately thereafter, Godabarish, A-2 and Janardan, A-3 simultaneously assaulted him with the lethal weapons held by them. To the same effect is the evidence of p. w. 11.

16. The next witness on whose evidence the prosecution relied upon is p. w. 15. He has implicated both Hatim Mahammad, A-1 and Godabarish, A-2 and not Janardan, A-3 in the assault to the deceased. A reading of his evidence would show that he was at a little distance and was throwing earthen pieces to the accused persons to disperse them. In such a situation, it was probable that assault by Janardan, A-3 to the deceased, escaped his notice. The evidence of the above witnesses about the deceased having received injuries at the hands of Hatim Mahammad, A-1, Godabarish, A-2, and Janardan, A-3 is sufficiently corroborated by the autopsy doctor, p. w. 4. His evidence would reveal that the deceased had sustained five incised injuries including the one on the right side chest. On scrutiny of the facts, circumstances and the evidence what appears to us is that all the accused persons being variously armed with lethal weapons, had come to the place of occurrence, with pre-arranged plan to commit murder of the deceased and his sons and with that end in view, three of them (Hatim Mahammad, A-1, Godabarish, A-2 and Janardan, A-3) assaulted the deceased and the injured witnesses and then left together to the house of Chandrasekhar, A-4. In that view of the matter, we have no hesitation to hold that accused Godabarish Mohapatra, A-2 and Janardan Mohapatra, A-3 are liable to be convicted u/s 302, read with Section 34, I.P.C.

17. Resultantly, we allow the appeal preferred by the State and convict Godabarish Mohapatra, A-2 and Janardan Mohapatra, A-3 u/s 302, read with Section 34, I.P. C. and sentence each of them to undergo imprisonment for life.

18. All the appeals accordingly stand disposed of.

P. C. Naik, J.

I agree.