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**(2008) 01 OHC CK 0037**  
**In the Orissa High Court**

State of Orissa

APPELLANT

Vs

Sunadhar Khilla

RESPONDENT

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**Date of Decision :** 07-01-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 315, 366  
Penal Code, 1860 (IPC) — Section 302

**Citation :** (2008) 105 CLT 241

**Hon'ble Judges :** L. Mohapatra, J;B.P. Roy, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

L. Mohapatra, J.—The above reference has been made by the Learned Additional Sessions Judge, Malkangiri for confirmation of sentence of death passed in Criminal Trial No. 34 of 2003 and the Criminal Appeal has been filed by the Appellant challenging the order of conviction u/s 302 of the Indian Penal Code and sentence of death imposed by the Trial Court.

The case of the prosecution as revealed from the F.I.R. is that on 22.8.2002, which was Rakhi Purnima Day, there was an altercation between the deceased and the Appellant. It is further alleged that the Appellant being in a drunken state asked the deceased to cook food but the deceased, who was also drunk was not feeling well and requested her husband, the Appellant, to cook food. On this issue, there was an altercation and the deceased went to sleep. The Appellant being enraged by the conduct of the deceased, assaulted her by means of kick and fist blows to her belly and chest, as a result of which, she vomited blood and died. On these allegations, investigation was taken up and charge sheet was submitted for commission of offence u/s 302 of the Indian Penal Code.

2. The prosecution examined ten witnesses to bring home the charge and the Appellant himself was examined u/s 315 Cr.P.C. On the basis of the materials placed before the Court, the Trial Court convicted the Appellant for commission of offence u/s 302 of the Indian Penal Code and sentenced him to death.

3. Learned Counsel appearing for the State in support of conviction and sentence imposed by the Trial Court submitted that the Appellant having admitted to have assaulted his wife by kick and fist blows resulting in her death, there is no reason as to why this Court should interfere with the Judgment and order of conviction and sentence. The Learned Counsel appearing for the Appellant assailing the legality of the Judgment and order of the Trial Court submitted that except the evidence of P.W.5, there is no other evidence on record to convict the Appellant. According to the Learned Counsel for the Appellant, P.W.5 is a witness, who stated to have remained present at the village meeting, where it is alleged that the Appellant admitted his guilt. In cross examination, this witness having admitted that the Appellant was forced to make a statement, the same cannot be relied upon and in absence of any other material, the order of conviction and sentence is liable to be set aside.

4. As we find from the Judgment of the Trial Court, the Appellant has been found guilty for commission of the alleged offence solely on the evidence of P.W.5 and his statement recorded u/s 315 Cr.P.C. On examination of the evidence adduced before the Court, we find that P. W.1 is a witness to the inquest and he has specifically stated that he does not know how the wife of the Appellant died. Similar is the evidence of P.Ws.2 and 3. P.W.4 is a witness to the seizure of nail clippings of the Appellant. P.W.5 is a witness on which much reliance has been placed by the Trial Court. This witness in his deposition has stated that after the occurrence, there was a village panchayat relating to death of the deceased and the Appellant being asked admitted to have assaulted his wife to death. In cross-examination, this witness has stated that at the first instance, the Appellant denied to have any knowledge about the death of the deceased but subsequently being threatened by the villagers, he confessed his guilt. If this part of the deposition of P.W.5 is taken into consideration, it can be safely held that the so-called confession made before the villagers is not voluntary and under threat he made such confession. P.W.6 has stated that he had no knowledge as to how the deceased died. Similar is the evidence of P.W.7 and this witness has further denied about the meeting in the village. P.W.8 is the constable, whose evidence is of no use to the prosecution. P.W.9 turned hostile and did not say anything about the incident. P.W.10 is another constable, who had taken the dead body of the deceased to Kalimela Hospital for post mortem examination. It is surprising to note that neither the I.O. nor the doctor, who conducted the postmortem examination-have been examined in this case. The Appellant was examined u/s 315 of the Code of Criminal Procedure. Much reliance has also been placed on such statement of the Appellant by the Trial Court. In-examination-in-chief, the Appellant stated that a meeting was convened in the village and he was given a good deal of beating and till today he does not know how his wife died. In cross-examination, he admitted to have assaulted his wife in the village Panchayat by giving kick and fist blows. The Trial Court appears to have convicted the Appellant solely on the confession made before the Panchayat coupled with the statement of P.W.5, but has failed to take note of the fact that such statement

was made by the Appellant admitting his guilt because of the threat given by the villagers in the meeting. It further appears that the Appellant was beaten in the village meeting for making such confession. Under the circumstances, the statement made by the Appellant under threat and force cannot be treated to be voluntary. There is no other evidence on record to support the case of the prosecution that the Appellant had assaulted his wife to death. Though the allegation of the prosecution is that the Appellant had dealt kick and fist blows to the deceased, it is strange that the Learned Additional Sessions Judge did not even take care to get the doctor conducting the postmortem examined in Court and even the I.O. was also not examined. In view of the discussion made earlier, this Court is of the view that there is absolutely no material available on record to convict the Appellant for commission of the offence as alleged. The so called confession made before the village Panchayat can in no stretch of imagination be said to be voluntary.

5. (Sic) We therefore, allow the Jail Criminal Appeal, set aside the Judgment and order of conviction and sentence passed by the Learned Additional Sessions Judge, Malkangiri in Criminal Trial No. 34 of 2003 and direct that the Appellant-Sunadhar Khilla be released forthwith, if his detention is not required in any other case. The reference made u/s 366 Cr.P.C. is answered accordingly.

B.P. Ray, J.

6. I agree