



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 69 of 2002
ODHC010292732002 &

CRLA No. 72 of 2002
ODHC010014112002

[Applications under Section 374 of the Code of Criminal Procedure from the judgment and order dated 20.09.2002 passed by learned Sessions Judge, Mayurbhanj, Baripada in S.T. Case No. 97 of 2001]

AFR

CRLA No. 69 of 2002

Kanhu Charan Parida Appellant

-Versus-

State of Orissa Respondent

CRLA No. 72 of 2002

Nini Babu @ Niranjan Parida Appellant

-Versus-

State of Orissa Respondent

Advocate(s) appeared in this case through hybrid mode:

For Appellant(s) : Mr. Dharanidhar Nayak, Sr. Adv
With M/s. M. Mohanty, P.K.
Mohanty, A.K. Patnaik, B. Rout,
U.R. Jena & A.K. Barik, Advocates

For Respondent : Mr. Partha Sarathi Nayak,
Addl. Government Advocate

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA



Date of Hearing :28.07.2026 :: Date of Judgment:13.08.2026

SASHIKANTA MISHRA, J.

Both these appeals arise out of the same judgment and the same incident and were heard together. As such, both appeals are disposed of by this common judgment.

2. The appellants, Niranjana Parida @ Nini Babu and Kanhu Charan Parida, faced trial in Sessions Trial Case No. 97 of 2001 in the Court of the learned Sessions Judge, Mayurbhanj, for committing the murder of Bibhakar Choudhury @ Kabuli. Along with the appellants, five other co-accused, namely, Bikashranjan Mohanty, Muralidhar Sial, Ram Chandra Behera, Lalit Kumar Ghose and Ratnakar Sahu also faced trial for the same charge. By judgment dated 20.09.2002, the trial Court acquitted the aforesaid five co-accused of all the charges. However, it convicted the appellants for the offence punishable under Section 302 read with Section 34 IPC. and sentenced each of them to undergo imprisonment for life.



3. Prosecution case, briefly stated, is as follows.

On the morning of 05.07.1999, Jagabandhu Choudhury (PW-4), the brother of the deceased Kabuli, lodged FIR before the OIC, Udala Police Station, stating that the deceased had left home on the previous evening for Udala Bazar but did not return. Early on the next morning, he received information that the dead body of his brother was lying behind the Ganesh Puja Pandal near the High School crossing at Udala. On reaching the spot, he found multiple injuries on the neck and hands of the deceased. A Suzuki Samurai motorcycle was also found lying nearby. Suspecting that the murder had been committed on account of previous enmity he requested for immediate action.

4. On basis of the FIR, Udala P.S. Case No. 52 of 1999 was registered under Section 302. Upon completion of investigation, charge-sheet was submitted against all the aforesaid five co-accused and one Mahes Das, who remains absconding, for the offence punishable under Section 302 read with Section 34 IPC.



5. The defence of the accused persons was one of complete denial and false implication. Appellant Nini Babu, in his defence, stated that he had previous enmity with the deceased. According to him, the deceased and his father-in-law were in the habit of organizing gambling and causing annoyance to college students, which he had reported to SP and the Collector. Owing to such previous hostility, he claimed that he had been falsely implicated.

6. To prove its case, prosecution examined nineteen witnesses and exhibited eleven documents. That apart, prosecution also proved eight material objects. Defence, on the other hand, did not adduce any evidence.

7. After analyzing the evidence on record, the trial Court held that the case rested entirely on circumstantial evidence, there being no eyewitness to the occurrence. It found that the prosecution had established a complete chain of circumstances against the appellants on the grounds of: (i) the existence of long-standing enmity between the deceased and appellant Nini Babu, (ii) the deceased



having left his house at the instance of appellant Kanhu on the pretext of attending a meeting, (iii) the evidence relating to the movement of the appellants and the deceased during that night, (iv) the circumstance of the deceased 'last seen' with the appellants and (v) the medical evidence establishing the homicidal death of the deceased. On these circumstances, the trial Court held that the prosecution had proved the guilt of the appellants beyond reasonable doubt and accordingly, convicted the appellants as stated hereinbefore while acquitting the remaining co-accused for want of any evidence against them.

8. Heard Mr. Dharanidhar Nayak, learned Senior Counsel with Ms. Chetana Prakash, learned counsel for the appellant and Mr. Partha Sarathi Nayak, learned Addl. Government Advocate for the State.

9. Mr. Nayak assails the impugned judgment of conviction on the following grounds:

- i) The prosecution has failed to establish a complete and unbroken chain of



circumstances pointing towards the guilt of the appellants.

ii) The trial Court erred in relying upon the evidence of PW-2 to hold that appellant Kanhu had called the deceased from his house on the pretext of a meeting, ignoring that said version was an improvement from her earlier version.

iii) The prosecution failed to prove motive.

iv) The evidence on record only establishes previous enmity and suspicion, while it also discloses that the deceased had disputes with several other persons for which prosecution case is doubtful.

v) The evidence of the prosecution witnesses does not establish that the appellants were last seen in the company of the deceased immediately before his death. On the



contrary, the evidence shows that the deceased was in the company of several other persons.

vi) The prosecution failed to establish the circumstances relating to the recovery of the dead body, inasmuch as the persons who first noticed the body were not examined and even the IO was unable to state who had first discovered it.

vii) The medical evidence only establishes that the death was homicidal and does not connect the appellants with the offence.

viii) No weapon of offence or any incriminating article was recovered from the appellants.

10. Per contra, Mr. P.S Nayak would argue that the prosecution successfully established a complete chain of circumstances unerringly pointing towards the guilt of the appellants. According to him, the evidence on record clearly



establishes the long-standing enmity between the deceased and appellant Nini Babu, the deceased having left his house at the instance of appellant Kanhu, the movements of the appellants and the deceased during the previous night, the 'last seen' circumstance and the homicidal nature of the death. He further argues that the evidence of the prosecution witnesses was correctly appreciated by the trial Court and that the conviction is based on cogent and reliable evidence.

11. We have heard learned counsel for the parties and have taken note of the rival contentions. We have also perused the case record and the impugned judgment. It is seen that in the absence of ocular evidence, the prosecution case rests entirely on circumstantial evidence. Several circumstances have been put forth by the prosecution and accepted by the trial Court, which are said to be incriminating enough to point the finger of guilt unerringly at the accused. Law relating to circumstantial evidence can be succinctly summarized as follows:-



A conviction can be recorded in such a case only if all the links in the chain are complete, pointing to the guilt of the accused and that the hypothesis of innocence is negated. Courts are called upon to adopt a cautious approach while appreciating circumstantial evidence. Reference in this regard may be had to the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***¹. Keeping the above principle in mind, we shall now proceed to analyze the evidence on record in light of the rival contentions raised before us.

Motive

12. The prosecution has relied upon the circumstance of previous enmity between the deceased and appellant Nini Babu to establish motive. In support thereof, it relied upon the evidence of PW-1, PW-2, PW-15, PW-18 and PW-19. The evidence of these witnesses indicates that previous disputes existed between the deceased and Nini Babu and proceedings under Section 107 Cr.P.C. had also been initiated between them. However, the evidence on record

¹ (1984) 4 SCC 116



also shows that the deceased had criminal antecedents and had developed hostility with several other persons. PW-8, PW-9, PW-11 and PW-17 have deposed that the deceased had enmity with members of the cricket club, bus owners, the relatives of a girl whom he had kidnapped three to four days prior to the occurrence, who were residing near the place of occurrence and several other persons. PW-19 has also stated that he did not investigate the existence of such enmity with other persons. Thus, though previous hostility between the deceased and Nini Babu may be said to have been established, the same by itself cannot constitute a conclusive incriminating circumstance. It is well settled that motive alone cannot take the place of proof and assumes significance only when the remaining circumstances form a complete chain pointing towards the guilt of the accused. It is, therefore, necessary to examine whether the other circumstances relied upon by the prosecution have been proved beyond reasonable doubt.



Deceased Leaving the House

13. Coming to the second circumstance, the prosecution case is that the deceased had left his house at the instance of Kanhu on the pretext that Nini Babu had called him for a meeting. To establish such circumstance, the prosecution has solely relied upon the evidence of PW-2, the wife of the deceased. According to her, Kanhu came to her house on that night, informed the deceased that Nini Babu had called him for a meeting and assured her that the deceased would safely return home. It is on such assurance that the deceased left the house in the company of Kanhu.

14. We, on perusal of the statements of PW-2 before the IO, PW-19 under Section 161 Cr.P.C. and her deposition before the trial Court, are of the view that her evidence does not inspire confidence. The evidence of the IO (PW-19) shows that PW-2 had not stated before him during investigation that Kanhu had come to her house to call the deceased for a meeting. According to him, PW-2 did not say that Kanhu had taken the responsibility of bringing the deceased back safely. On the contrary, PW-19 stated that



PW-2 had not said anything before him implicating Kanhu. It further appears from the evidence of PW-19 that during investigation PW-2 had merely expressed her belief that Mahes Das, Nini Babu and others had murdered her husband. She had also stated that no two persons could have easily killed the deceased and that more than two persons were involved in the occurrence. Thus, the statement made by PW-2 during investigation was based only on suspicion. During trial, however, she stated, for the first time, that Kanhu had taken the deceased from the house on the pretext of a meeting. We find this to be a clear improvement made by her during trial. Had such an important fact actually taken place, there was no reason for PW-2 not to disclose the same to the IO. It is also significant to note that, except the testimony of PW-2, there is no other evidence to corroborate the aforesaid circumstance. No independent witness has been examined to establish that Kanhu had gone to the house of the deceased or that the deceased had left with him on that night. There is no evidence to show that any meeting was in fact, convened by



Nini Babu on that night. In the absence of any corroborative evidence, it would be unsafe to accept the solitary version of PW-2. Once this circumstance is excluded from consideration, one of the principal links in the chain of circumstances relied upon by the prosecution disappears.

Last Seen Theory

15. The next and the most important circumstance placed by prosecution and accepted by the trial Court is that the appellants and the deceased were last seen together on the night preceding the occurrence. Before discussing this circumstance, it would be apposite to notice the settled principle of the 'last seen' theory. To invoke such a circumstance, the prosecution is required to establish by cogent and reliable evidence that the deceased was last seen alive in the exclusive company of the accused within such close proximity of time to the occurrence that the possibility of any other person intervening is completely ruled out. It is only when such circumstance is firmly established that an adverse inference can be drawn against the accused. Reference in this regard may be had to the decision of the



Supreme Court in ***State of U.P. v. Satish***², wherein it was held as follows:

“22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.”

16. In the present case, the prosecution has relied upon the evidence of PW-5, PW-6, PW-7, PW-8 and PW-9. We have carefully examined the evidence of these witnesses. PW-5, the owner of the hotel where the deceased had dinner, stated that at about 1.00 A.M. the deceased had dinner along with Tuna, Maku@ Manoj and Dillip. Thereafter, he left the hotel with Tuna on a motorcycle. In his cross-examination, he stated that he had not seen any of the accused persons near his hotel on that night.

² (2005) 3 SCC 114



Similarly, PW-6, the owner of the liquor shop, stated that the deceased was present along with Tuna, Manoj and Dillip. He also stated that he had not seen any of the accused persons near the bus stand or at the hotel on that night.

17. PW-7 stated that he along with the deceased, went on motorcycle to the Police Station Square at 12 midnight, where they met Maku and Dillip and thereafter proceeded to the liquor shop of PW-6. He also stated that after consuming liquor and taking dinner, he himself travelled with the deceased on the motorcycle. The deceased dropped him near his house and thereafter proceeded alone. He further stated that while proceeding on the road he had not seen any of the accused persons. Thus, according to the evidence of PW-7, the deceased was not in the company of either of the appellants immediately before the occurrence.

18. The evidence of PW-8 and PW-9 is also of no assistance to the prosecution. PW-8 stated that at about 1.30 to 2.00 A.M. he had seen the deceased near the hotel in the company of some persons, but he specifically stated



that the accused persons had already left the pan shop much earlier. PW-9 also deposed that at about 1.00 or 1.30 A.M. he had seen the deceased in the company of Tuna, Manoj, Purna, Pranab (P.W 7) and Dillip. Neither of these witnesses stated that either of the appellants was accompanying the deceased at the relevant time.

19. Reading the evidence of PW-5 to PW-9 in toto shows that immediately before the occurrence the deceased was in the company of Tuna, Manoj (Maku), Dillip, Pranab (P.W 7) and Purna and not in the company of either of the appellants. Rather than supporting the prosecution case, the evidence of these witnesses negatives the circumstance sought to be relied upon by the prosecution. It is also significant that the prosecution has not chosen to examine Tuna, Dilip, Manoj or Purna to explain the circumstances in which they parted company with the deceased. Their non-examination assumes significance, particularly when the prosecution witnesses themselves disclose that they were the persons last accompanying the deceased.



20. The prosecution has also relied upon the evidence of PW-16 and PW-17 to establish the movements of the appellants on the relevant night and to lend support to the circumstance of 'last seen together'. However, on careful scrutiny of their evidence, we find that both these witnesses have not supported the prosecution case and were declared hostile. In such circumstances, the prosecution has failed to establish the 'last seen together' theory beyond reasonable doubt.

Medical Evidence

21. The prosecution has relied upon the medical evidence to support its case. PW-18, the doctor who conducted the post-mortem examination over the dead body of the deceased, found multiple incised injuries on different parts of the body and opined that the death was homicidal in nature. There is no dispute with regard to the fact that the deceased met a homicidal death. However, the medical evidence only establishes the nature and cause of death. It does not identify the appellants nor does it connect either of the appellants to the death. No weapon of offence was



recovered at the instance of the appellants nor was any incriminating article seized from their possession. Even the fingerprint examination report obtained at the instance of the IO does not indicate the complicity of the appellants. Thus, the medical evidence, though proving the homicidal death of the deceased, does not complete the chain of circumstances against the appellants.

Non-Examination of Material Witnesses

22. Another factor which assumes significance is that the prosecution failed to examine some material witnesses. The evidence of PW-5 to PW-9 shows that immediately before the occurrence the deceased was in the company of Tuna, Manoj (Maku), Dillip, Pranab (P.W 7) and Purna. Out of them, except PW-7, none has been examined by the prosecution. No explanation has been offered for withholding such material witnesses, who were the last persons accompanying the deceased before his death. Similarly, the prosecution has also failed to examine the person who first noticed the dead body or informed the family members. Even PW-19 has stated that he could not



state who had first discovered the dead body. These omissions assume importance in a case resting solely on circumstantial evidence, where every link in the chain is required to be proved.

23. On an overall appreciation of the evidence on record, thus, we find that the trial Court has failed to appreciate the evidence in its proper perspective. The prosecution has failed to establish a complete and unbroken chain of circumstances pointing unerringly towards the guilt of the appellants. Obviously, the conviction of the appellants cannot be sustained on the basis of preponderance of probabilities. Suspicion, however strong, or the mere existence of previous enmity cannot prove the case. In such circumstances, we are of the considered view that the judgment of conviction passed by the trial Court warrants interference.

24. In the result, the appeals are allowed. The impugned judgment of conviction dated 20.09.2002 passed by the Sessions Judge, Mayurbhanj in Sessions Trial Case



No. 97 of 2001 is hereby set aside. The appellants being on bail be discharged from their bail bonds.

.....
(Sashikanta Mishra, J)

Manash Ranjan Pathak, J. I agree.

.....
(Manash Ranjan Pathak, J)

Orissa High Court, Cuttack
The 13th August, 2026/A.K. Rana, P.A.

Signature Not Verified

Digitally Signed
Signed by: AJAYA KUMAR RANA
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 14-Aug-2026 11:22:33

