



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.206 of 2016

(From judgment dated 18.1.2026 passed by the learned Sessions Judge, Puri in Sessions Trial Case No.188 of 2013)

Papun @ Satyanarayan Pradhan

..... Appellant

-Versus-

State of Orissa

.....Respondent

Advocates appeared in the case through hybrid mode:

For Appellant:

Mr. B.C. Ghadei, Advocate

For Respondent:

Miss Suvalaxmi Devi,
[Additional Standing Counsel]

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing:09.7.2026 Date of Judgment:29.7.2026

Sashikanta Mishra,J. The appellant faced trial in the Court of the learned Sessions Judge, Puri in S.T. Case No.188/2013 being charged for the offences under Sections 364/366/376/302/201



of I.P.C. By judgment passed on 18.1.2016, he was acquitted of the charges under Sections 364/366/376 of I.P.C. but was convicted under Sections 302 and 201 of I.P.C. As such, he was sentenced to imprisonment for life and to pay fine of Rs.10,000/-, in default to undergo further R.I. for six months under Section 302 of IPC and R.I. for five years under Section 201 IPC and to pay fine of Rs.1,000/-, in default to undergo R.I. for further period of three months. Both the sentences were directed to run concurrently.

2. The prosecution case, briefly stated, is as follows:-

On 04.1.2013, an unidentified dead body of a female aged about 17 to 18 years was found lying in a half-burnt position on the Balanga-Haripur canal embankment road near Samarei Sasan village forest. On a telephonic information given by one Dijabar Mohapatra, A.S.I. of Police, Balanga P.S., a Station Diary Entry was made and the O.I.C. of the said P.S. directed the said A.S.I. to proceed to the spot and conduct inquiry. The A.S.I. visited the spot and after observing the dead body and the wearing apparels, suspected that some unknown culprit had



committed the murder of the unidentified female on the previous night and set her body on fire to cause disappearance of evidence. On the written report submitted by the said A.S.I., Balanga P.S. Case No.2/2013 was registered under Sections 302/201 of I.P.C, followed by investigation.

In course of investigation, the dead body was identified as that of Kumudini, the daughter of Surendra Swain. In course of further investigation, it was found that the accused had travelled from Bhubaneswar to Balanga on the night of 3.1.2013 and had gone to the house of the victim. He, thereafter carried the victim to Tarajanga, where he kept physical relationship with her. On the same night, they went to Samarei Sasan, where he killed the deceased and left the spot on his motor cycle. Since the complicity of the appellant was fully established by the recovery of the motor cycle and several other articles at his instance, charge sheet was submitted against him under Sections 364/366/376/302/201 of I.P.C.

3. The accused took the plea of denial but admitted his relationship with the deceased girl.



4. To prove its case, the prosecution examined forty-five witnesses and proved forty-six documents. Besides, prosecution also proved twelve material objects. On the other hand, the defence, though did not adduce any oral evidence, proved one document from its side.

5. After analyzing the evidence on record, the trial Court held that the dead body ceased from the spot was that of the deceased and that she was present in her house till late night but was absent after midnight. The trial Court also found that prior to the incident, the accused and the deceased were in a love affair and had physical relationship many times due to which the victim had become pregnant. The matter went to the extent of aborting the pregnancy. The trial Court also found that the accused and deceased were moving together on the motor cycle of the accused. The relationship between them was thus well proved. The trial Court further held on the basis of evidence on record that the accused and the deceased had conversed over phone. It did not accept the defence objection regarding admissibility of the electronic evidence as per the mandate of Section 65-B(2) of the



Evidence Act by holding that it could be utilized as a corroborative piece of evidence. Added to the above, the accused and the deceased being found together on the night of the occurrence and the fact that the accused did not give any explanation as to under what circumstances the deceased died and her half burnt dead body was found at the spot, the trial Court accepted the prosecution evidence adduced with regard to the recovery of incriminating articles at the instance of the accused, while he was in police custody. The trial Court however, did not find any evidence regarding the charges under Sections 364, 366 and 376 of I.P.C. Ultimately, the trial Court held that the accused with intention to cause death of the deceased had strangled her and burnt her body to cause disappearance of evidence. The accused was thus convicted and sentenced as already stated hereinbefore.

6. Heard Mr. B.C. Ghadei, learned counsel for the accused-appellant and Miss Suvalaxmi Devi, learned Addl. Standing Counsel for the State.



7. To assail the order of conviction, Mr. Ghadei has put forth the following grounds:-

- (1) Even though the case rests on circumstantial evidence, the chain is incomplete.
- (2) The trial Court could not have referred to the so-called electronic evidence as the same was inadmissible without the mandatory certificate under Section 65-B(4).
- (3) Prosecution could not prove that the deceased was last seen with the accused before recovery of her dead body.
- (4) The evidence relating to discovery of certain articles purportedly at the instance of the accused under Section 27 of the Evidence Act lacks credibility for want of any independent corroboration.
- (5) There are serious contradictions regarding identification of the dead body.
- (6) Despite claiming that the accused and deceased were in a love relationship, prosecution could not prove any motive for the accused to kill her.



8. Per contra, Miss Suvalaxmi, learned Addl. Standing Counsel argues that the following circumstances clearly prove the guilt of the accused:-

- (i) The deceased and the accused were in love relationship and owing to such relationship, the deceased once had an abortion.
- (ii) The marriage proposal given from the side of the deceased was refused by the father of the accused.
- (iii) The deceased went missing from her house on 3.1.2013 at around 12 O' clock midnight.
- (iv) Her brother received a call from the phone number of the deceased on the next morning during which the accused admitted to have eloped with her and residing in Bhubaneswar.
- (v) The half-burnt dead body found at the spot was identified by her father and family members.
- (vi) The Post-mortem report proved that the death was homicidal in nature.



- (vii) The accused gave recovery of incriminating articles under Section 27 of the Act.
- (viii) Most importantly, the accused gave recovery of the mobile phone belonging to the deceased from which the accused had made a call to her brother.
- (ix) The Call Detail Records (CDRs) of the accused phone number showed his presence in Balanga. The accused did not explain how the mobile of the deceased was in his possession and how both of them were present near Balanga at the relevant time.
- (x) The accused did not explain as to under what circumstances the deceased met with her death.

9. Having heard learned counsel for the parties at length and having perused the evidence on record including the impugned judgment, we find that, this is a case that rests on circumstantial evidence. We are fully conscious of the settled position of law that in such a case the circumstances put forth must be of a clinching character and not admitting of any possibility other than the guilt of the accused.



10. We have gone through the evidence on record carefully. It is clearly proved from the testimonies of P.Ws.16,17,29,30,36 and 32 that the accused and the deceased were in a love relationship. In fact, the elder sister of the deceased had married in the village of the accused to P.W.17 and used to visit the house of her sister at times during which the relationship appears to have formed. It is also borne out from the evidence of these witnesses that both of them had physical relationship resulting in the deceased becoming pregnant in the past, which had to be aborted. No medical evidence was, however, adduced to support the claim of abortion. What is important to note is the response of the accused himself to certain questions put to him in his examination under Section 313 of Cr.P.C. We extract the questions and answers (translated into English) to question Nos.33 and 34.

“33. He further stated that his elder daughter Pratima got married in your village Nuasahi and the deceased was frequently going to the house of Pratima and during that time your relationship developed. What have you got to say?”

Ans. Pratima has married, but I had no relationship with Kumudini.

34. He further stated that when he came to know about the same you insisted to marry Kumudini therefore, he mooted the proposal to your parents for your marriage with Kumudini, but your parents did not accept the proposal stating that you were



unemployed and after getting employment you would marry her. What have you got to say?

Ans. Yes, my father was agreeable.”

The above answers, though apparently contradictory do amount to admission that there existed an intimate relationship between the accused and the deceased. So we have no doubt that the accused and the deceased were in a relationship.

11. The second significant aspect is the evidence of the deceased missing from her house on 03.1.2013. The evidence of her father (P.W.16) is clear and credible in this regard. In fact, on the next morning P.Ws.16 and 17 had lodged a missing report before Balanga P.S. Of course, it is not forthcoming from the evidence as to if the report was submitted in writing or not. Nevertheless, fact remains that the deceased was not at home on the previous night, at least after midnight.

12. The half-burnt dead body found at the spot was identified to be that of the deceased at the DHH, Puri. Learned counsel for the accused has forcefully argued that the evidence relating to identification is full of contradictions. He refers to the evidence of the autopsy surgeon (P.W.11), who admitted in cross-examination



that he did not find nor record any specific mark of identification such as tattoo mark or mehendi anywhere on the dead body of the deceased. This contradicts the evidence of P.Ws.16 and 18 who claimed that they had identified the body looking at the tattoo mark and earrings worn by the deceased.

We have carefully gone through the evidence of P.Ws.16 and 18 as also that of the doctor P.W.11. We are not much impressed with the defence argument as noted above for the reason that P.W.16 being the father is always expected to identify his daughter from her features that were still identifiable. In fact, the evidence shows that the dead body was not completely burnt but only partially burnt and was identifiable. Only because the autopsy surgeon, for whatever reason did not find or note any special mark of identification cannot *ipso facto* lead to the conclusion that the dead body belongs to somebody else and not the deceased.

13. As regards the nature of death, we may once again refer to the evidence of the autopsy surgeon who, after noting his findings upon dissection, opined as follows:



“4. After receipt of the P.M examination report the I.O made a query about nature of death of the deceased. With reference to the findings of our examination we gave our opinion that the nature of death of deceased was homicidal and the compression of neck was due to strangulation. This is our opinion marked Ext 13 and Ext 13/1 is my signature and Ext 13/2 is the signature of Dr. Nandita Gupta.

5. In the said opinion we also informed the I.O that the burn injuries sustained by the deceased were post mortem in nature but not antemortem in nature.”

14. This clearly suggests that the deceased was first strangled to death and thereafter her body was set on fire, evidently to cause disappearance of evidence. We therefore, find nothing wrong in the finding of the trial Court that the death of the deceased was homicidal in nature.

15. The case diary shows that the accused was arrested on 05.1.2013 from a house at Sudarpada, Bhubaneswar. While in police custody, he confessed to his crime and agreed to lead the police, in the presence of witnesses, to the spot of occurrence and the place of concealment of match box, mobile phones, a bottle used for drawing petrol, wearing apparels and the place where he had physical relation with the deceased. On the next day, he led the Police to an apartment at Sudarpada and gave recovery of a black coloured bag containing two mobile sets, pen drive, sim



card, plastic bottle, etc. He also gave recovery of a motor cycle bearing registration no.0R-02-AP-6371 from the parking place of the said Apartment which he allegedly used to travel from Bhubaneswar to Balanga on 3.1.2013 night, to the house of the deceased and carried her to Tarajanga., where he kept physical relation with her. Thereafter, they moved by the same motor cycle to Samarei Sasan, where he killed the deceased and left with the same motor cycle.

16. Prosecution has cited two witnesses to the seizure of the recovered articles namely, P.W.17 and P.W.43. P.W. No.43 turned hostile, but P.W.17 held his ground and completely supported the prosecution story in all its particulars. We find nothing in the cross-examination to even remotely discredit it. On the contrary, we find that the defence elicited from his mouth in the cross-examination the following:-

“From the house of the friend of the accused the red colour pulsar motor cycle was seized. At the time of the seizure of wearing apparels of the accused from his house the father of the accused and other family members were present. The black colour bag contained with mobile phone and other articles was seized from the house of the friend of the accused at Hitech colony. In my presence the seizure was made and I saw each of the articles before its seizure. One Saroj Pradhan also accompanied us at the time of seizure.”



Thus, ex facie, we find nothing to disbelieve the testimony of P.W.17. Learned counsel for the accused has, however, questioned the acceptability of the version of P.W.17 on the ground of interestedness inasmuch as he happens to be the brother-in-law of the deceased. We do not accept the above argument for the reason that there is no proposition of universal application that the evidence of relatives cannot be accepted on the ground of interestedness. In fact, the law is other way round that being a relation, it would only be reasonable to hold that the person would spare no efforts in speaking the truth rather than deliberately speak falsehood which would result in screening the actual offender. From what we have stated before, we reiterate that the evidence of P.W.17 is credible and acceptable.

17. Having held so, we are of the view that the circumstances enumerated hereinbefore still do not conclusively prove the guilt of the accused. As already stated, there are no eye witnesses to the occurrence and the case rests entirely on circumstantial evidence. There is no evidence of anyone having seen the accused with the deceased prior to the occurrence. Prosecution has made



an attempt to link the accused to the crime by relying upon the evidence of P.W.29 to the effect that on 4.1.2013 morning the accused allegedly called him from the mobile phone of the deceased bearing No.8984264708. P.W.29 has stated in cross-examination that his mobile number is 789412245. The I.O. seized two mobile phones from the Apartment in Bhubaneswar at the instance of the accused. It is alleged that one of the seized mobiles was the one used by the accused to call P.W.29 i.e. 8984264708. The I.O. (P.W. 44) stated that he sought permission of the S.P. to obtain Call Detail Reports of four mobile phones including the aforementioned mobile and one supposedly belonging to the deceased. The CDRs were obtained from the service provider and proved as Exts.37,38 and 39. Analyzing the CDRs the I.O. (P.W.44) found that the accused was using the SIM Card bearing Nos.9040105399 and 9668359665. Analyzing the mobile No.9040105399, the I.O. found that the same was last utilized on 03.1.2011 at 11.15 P.M. to make calls to 8984657067, which was registered in the name of one Rajesh Kumar Sahoo of Village Osakana, Nuagaon, Jagatsinghpur.



Again, P.W.44 placed requisition before the S.P. to move the service provider for supply of mobile tower location corresponding to the tower numbers mentioned in the CDR. The details were provided by the service provider and proved as Ext.42. On such basis, the I.O. claims that on 03.1.2013 the accused called mobile No.8984264708 22 times between 8.50 A.M. and 10.43 P.M. He has also described the usage of mobile No.9040105399 under various telecom towers at different times. However, there is no other evidence to conclusively show that mobile no.8984264708 belonged to the deceased and was actually used by the accused on 04.1.2013 by him to call P.W.29 and inform him about his elopement to Bhubaneswar with the deceased. The Sales Head of TATA Tele Services Limited was examined as P.W.45. He stated that the Call Detail Reports vide Exts.38,43 and 40 as well as the details of tower locations vide Ext.42, were generated from their office computer and supplied to the office of Superintendent of Police, Puri on their requisition. But in cross-examination, he admitted that no document is available with him to show in whose name the mobile numbers were registered.



18. Thus, even bereft of the secondary electronic evidence adduced, vide Exts.38, 43 and 40, there is otherwise no evidence to show that the mobile number used to call P.W.29 belonged to the deceased or that the other mobile seized by the I.O. belonged to the accused.

19. Turning to the secondary electronic evidence, we may briefly refer to the law governing the field. It would be profitable to refer to Section 65-B of the Evidence Act. Sub-Sections (1),(2) and (4) being relevant are reproduced below;

“65B. Admissibility of electronic records. — (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: — (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer; (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities; (c) throughout the material part of the said period, the computer was operating properly or,



if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) *xx xx xx*

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, — (a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer; (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.”

Thus, law permits admission of secondary electronic evidence but in the manner provided by the statute. Admittedly, no certificate as required under sub-section (4) of Section 65-B was produced. In the case of **Anvar P.V. v. P.K. Basheer**¹, the Supreme Court held that the certificate must accompany the electronic record when produced in evidence. In a later case

¹ (2014) 10 SCC 473



namely, **Harpal Singh v. State of Punjab**², the Supreme Court, relying upon **Anvar P.V. (supra)** reiterated as follows:

“56. Qua the admissibility of the call details, it is a matter of record that though PWs 24, 25, 26 and 27 have endeavoured to prove on the basis of the printed copy of the computer generated call details kept in usual ordinary course of business and stored in a hard disc of the company server, to co-relate the calls made from and to the cellphones involved including those, amongst others recovered from the accused persons, the prosecution has failed to adduce a certificate relatable thereto as required under Section 65-B(4) of the Act. Though the High Court, in its impugned judgment, while dwelling on this aspect, has dismissed the plea of inadmissibility of such call details by observing that all the stipulations contained under Section 65 of the Act had been complied with, in the teeth of the decision of this Court in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] ordaining an inflexible adherence to the enjoinders of Sections 65-B(2) and (4) of the Act, we are unable to sustain this finding. As apparently the prosecution has relied upon the secondary evidence in the form of printed copy of the call details, even assuming that the mandate of Section 65-B(2) had been complied with, in the absence of a certificate under Section 65-B(4), the same has to be held inadmissible in evidence.”

20. Again referring to **Anvar P.V. (supra)**, the Supreme Court in the case of **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal**³, observed as follows:-

"34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In

² (2017) 1 SCC 734

³ (2020) 7 SCC 1



cases where “the computer”, as defined, happens to be a part of a “computer system” or “computer network” (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of Anvar P.V. which reads as “... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...”. This may more appropriately be read without the words “under Section 62 of the Evidence Act,...”. With this minor clarification, the law stated in para 24 of Anvar P.V. does not need to be revisited. ”

By way of classification and disagreeing with **Shafhi Mohd. v. State of H.P.**⁴, it was further observed:

"61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. , and incorrectly “clarified” in Shafhi Mohammad. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor, which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

62. In view of the above, the decision of the Madras High Court in K. Ramajayam , which states that evidence aliunde can be given through a person who was in charge of a computer device in the place of the requisite certificate under Section 65-B(4) of the Evidence Act is also an incorrect statement of the law and is, accordingly, overruled."

21. In the present case, no certificate was granted by the service provider. In the absence of the same, oral evidence adduced

⁴ (2018) 5 SCC 311



through P.W.45 has no value. Secondary electronic evidence adduced in the case must be held to be inadmissible. If the electronic evidence is discarded, it creates a gap in the evidence. In other words, there is a missing link in the chain of circumstances projected by the prosecution against the accused. For the reasons indicated, we are unable to rely only upon the statement of P.W.29 that he had received the call from mobile No.8984264708. Even accepting his statement as correct for a moment, in the absence of clear evidence showing that the aforesaid phone in fact belonged to the deceased, no link can be established.

22. Reading of the impugned judgment reveals that the trial Court has taken note of the law relating to admissibility of electronic evidence but appears to have brushed aside the same and relied upon other evidence to hold the accused guilty. We may observe that the other incriminating circumstances, which we have discussed in detail hereinbefore can only create a suspicion that the accused may have been involved, but suspicion is not proof. We are therefore, unable to concur with



the findings of the trial Court that the circumstances arising from the evidence form a complete chain proving the guilt of the accused.

23. Thus, from a conspectus of the analysis of the evidence, contentions raised and the position of law, we are of the considered view that this is a case where there are reasonable doubts in the evidence, the benefit of which ought to go in favour of the accused. For such reasons therefore, the impugned judgment cannot be sustained and warrants interference.

24. In the result, the appeal succeeds and is therefore, allowed. The impugned judgment of conviction and sentence dated 18.1.2016 passed by Sessions Judge, Puri in S.T. Case No.188/2013 is hereby set aside. The accused being on bail, is discharged from his bail bonds.

.....
(Sashikanta Mishra, J)

Manash Ranjan Pathak, J I agree.

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

Signature Not Verified

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