

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRA No.198 of 2001*****Srinibas Sahu and others* *Appellants******-versus-******State of Orissa* *Respondent*****Advocates appeared in these cases:*****For Appellants* : Mr. Manoj Mishra,
Senior Advocate*****For Respondent* : Mr. J. Katikia,
Additional Government Advocate****CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK****JUDGMENT
11.07.2022****Dr. S. Muralidhar, CJ.**

1. This appeal is directed against the judgment and order dated 14th September, 2001 passed by the Additional Sessions Judge, Angul convicting the Appellants under Sections 302 read with 34 IPC in Sessions Trial No.74 of 1994/18 of 1998 and sentencing them to undergo rigorous imprisonment for life.

2. It must be mentioned at the outset that during the pendency of the present appeal, Appellant Nos.3, 4 and 5 expired and the appeals as far as they were concerned stood abated. The Appellants in the fray are Appellant Nos.1, 2 and 6 to 10 and are herein referred to in the same order in which they were arraigned

as accused i.e. Accused Nos.1, 2 and 6 to 10 (A1, A2 and A6 to A10 respectively).

3. The case of the prosecution is that at around 8 am on 23rd May 1994 at village Kanjara in the house of Trinath Pradhan (P.W.3), the accused intentionally committed the murder of the deceased Biswamitra Behera in furtherance of their common intention. The case of the prosecution further is that prior to the said incident there was a dispute between the accused persons and the deceased with one Tapan Sahu, son of Srinibas Sahu (A1) misbehaving with Umakanti, the daughter of the deceased Biswamitra Behera, with whom he is stated to have had an affair. A meeting had been called in the village, but no settlement could be reached.

4. It is stated that on the date of the occurrence while the deceased was cutting wood, Tapan went to his house presumably to attack him. The deceased is said to have chased Tapan with a Tangia in his hand and assaulted Tapan in the shop of Debarchan Rana (D.W.1). When Baidyanath Sahu (A6) went there, the deceased is said to have assaulted him as well. Thereafter, all the accused persons got together armed with lathis and Tangia and chased the deceased. Out of fear, the deceased entered the house of P.W.3 who at that time was sitting at a betel shop of Satrugan Sahu (D.W.2). Thereafter, the accused Srinibas Sahu (A1), Subal Sahu (A7) asked P.W.3 who was at the betel shop of D.W.2 to bring the deceased from out of his house. Thereafter, all the accused persons entered the house of P.W.3 and assaulted the deceased. When P.W.3 entered his house, he saw the deceased lying dead with bleeding injuries in the courtyard. He then reported the

incident to the police. After completion of investigation, a charge sheet was laid against all the accused persons who pleaded not guilty and claimed trial.

5. Ten witnesses were examined on behalf of the prosecution and five on behalf of the defence. The trial court in the impugned judgment dated 14th September 2001 analyzed the evidence and came to the conclusion that the prosecution had been able to prove the case against each of the accused for the offence punishable under Section 302 read with 34 IPC beyond all reasonable doubt. The trial court accordingly proceeded to convict the accused and sentenced them in the manner indicated hereinbefore.

6. This Court has heard the submissions of Mr. Manoj Mishra, learned Senior Advocate for the Appellants and Mr. J. Katikia, learned Additional Government Advocate (AGA) for the State.

7. Mr. Mishra, learned Senior Advocate for the Appellants submitted as under:

(i) Although the prosecution projected Sukanti (P.W.5), the wife of P.W.3 and daughter-in-law of PW 4 as an eye-witness to the incident, she was a completely unreliable witness. Her statement that she viewed the incident from the kitchen of the house of the neighbour Ramesh Chandra Pradhan (D.W.3) was improbable as she appeared for the first time in the court and never spoke to the police earlier. In her cross-examination, she made an admission to this effect.

(ii) According to P.W.5, A1 and A6 were inside the house and the others stood on the veranda and she could not have seen such occurrence from the kitchen of D.W.3 because of the location of the house. While in her examination-in-chief, she named all the accused as being armed and entering her house, in the cross-examination, she stated only A1, A6 and A7 entered the house, while others stood on the veranda. There were numerous other inconsistent statements made by P.W.5 which were not supported by the evidence of the other PWs. In sum and substance, P.W.5 was an interested eye-witness who was not reliable and her testimony could not form the basis of the conviction of the accused.

(iii) P.W.4 i.e. Kerali Pradhan, spoke of the presence of only three of the accused i.e. A6, A7 and A10 and according to her, A10 was not armed. She went away to the rear side of Bari and actually did not see the occurrence as she got scared. She also admitted not having proper eyesight and was unable to identify even her own relatives. In the FIR, P.W.3 made no mention of the presence of P.W.4 and he did not do so even before the police. P.W.4 did not depose about the incident at any time before deposing in Court. She did not raise a hullah on seeing the accused. P.W.4 further suggested that she had heard that the deceased had assaulted Tapan and in turn Tapan assaulted the deceased. Therefore, it was not safe to rely even on the evidence of P.W.4.

(iv) P.W.3, who was the informant was a post occurrence witness even as per the case of the prosecution. His FIR version however was as if he had himself witnessed the occurrence. In the FIR, he had named five accused persons holding badi, tangia and chasing

the deceased. Neither in the FIR, nor before the Police during investigation, P.W.3 mentioned that his mother (P.W.4) and wife (P.W.5) were present in the house and informed him about the occurrence. According to P.W.3, A1 was armed with a crowbar and others were armed with lathi which was contrary to what had been deposed by P.W.5. In fact, in the FIR, he did not say so and appeared to have introduced a story of A1 holding a crowbar only while deposing in the court. The crowbar had not been seized. There was also inconsistency with his first saying that there was a bloodstained lathi at the spot and again saying that the police seized the lathi, tangia and crowbar from the spot. It only showed that he had not gone to the spot at all.

(v) In his cross-examination, P.W.3 denied that he had stated before the police that P.Ws.4 and 5 were present, but he stated that he heard from them about the occurrence. This only showed that P.W.3 was not speaking the truth. Although, he stated in the FIR that the deceased and Tapan assaulted each other, he denied this in his cross-examination. At the highest, P.W.3 could have only seen A1 and A7 and not the other accused. D.W.2's shop was in another block so the version of P.W.3 in the FIR as also in his chief examination that he saw all the accused chasing the deceased was not believable.

(vi) None of the witnesses P.Ws.3, 4 and 5 were able to explain the injuries on A6 and they also suppressed the presence of Tapan in the house of PW 3. P.W.4 was a planted witness and P.W.3 was also an interested witness and P.W.6 also did not support the case of the prosecution. It was submitted that their evidence should be

discarded in toto. Reliance was placed on the decision in *Satia Sahu v. State of Orissa 39 (1973) CLT 1269*.

(vii) Pradyumna Behera (P.W.6), the son of the deceased stated that at 6.30 AM in the morning on the date of the occurrence, the deceased was cutting wood and that hearing the hullah, he came out and saw that his father was chasing Tapan and all the accused persons were following his father. After the arrival of police, P.W.6 is stated to have gone to the spot and found the dead body of his father at the door of P.W.3. This was a false statement since the dead body was found in the courtyard of the house and not at the door. Despite P.W.6 saying that he was following the persons who were chasing his father, he could not name the persons or their position. P.W.6 was an interested witness and his evidence was not clear or trustworthy. While according to P.W.3, the incident took place at 8am, P.W.6 stated that it took place at 6.30 am.

(viii) Turning to the deposition of the seizure witnesses i.e., P.Ws.1, 7 and 8, it is pointed out at the outset that P.W.8 did not support the case of the prosecution and turned hostile. P.W.1 admitted in the cross-examination that he was at the police station (PS) and cannot say from whom the cloth was seized. Therefore, he was an unreliable seizure witness.

(ix) P.W.7, was the Grama Rakhi. Although in the examination-in-chief, he stated that a bloodstained dhoti had been seized from A1 and a white cloth from Antar Sahu (A3), in his cross-examination, P.W.7 stated that the IO had shown the cloth to him at the PS and the contents of the seizure list were not read over to him. He further stated that the seized articles were not in the court.

The IO (P.W.10) in his deposition did not refer to witness P.W.7 or to Exts.4 and 5. In sum, it was submitted that the versions of P.W.10 and P.W.7 are contradicting each other.

(x) P.W.8 did not support the version of the prosecution, was not aware of the contents of the seizure list and said it was not read over to him. Therefore, as per P.Ws.7 and 8, only one bloodstained dhoti and lathi were seized from A1's house. However, not a single material object was produced in the court. Therefore, the seizure was totally pointless and was not proved at all. The chemical examination report Ext.21 is not admissible because the seizure itself was doubtful.

(xi) Apart from the fact that oral testimonies of the witnesses contradicted each other and the seizure witnesses did not support the seizures, the material objects and the weapon of offence were not produced and to top it all, there was also rivalry between the parties and therefore, the entire case of the prosecution was unbelievable.

(xii) No crowbar was sent for examination or seized by the IO. P.W.9, the doctor also stated that the injuries could be caused due to assault by an axe, lathi and even a single person could cause such injuries. Therefore, the evidence of P.Ws.3 and 5 that A1 was armed with crowbar and the oral evidence of P.W.3 that the crowbar was seized from the spot was totally false and unbelievable.

(xiii) The defence version was that it was Tapan who had assaulted the deceased by way of a tangia consequent upon a quarrel between Tapan and the deceased. Therefore, it could not

be ruled out that the deceased was in fact killed by Tapan who also sustained severe injuries and subsequently, succumbed to them. In fact, PS Case No.26 of 1994 was registered against the deceased under Section 307/324 IPC.

(xiv) The I.O. (P.W.10) admitted that A6 had been taken into the custody only on 2nd June 1994 after he was discharged from the hospital on 24th May 1994 having suffered grievous injuries. He also admitted that P.W.3 did not state before him about the presence of P.Ws.4 and 5. If A6 himself had been attacked, then it was clear that the prosecution story was not proved and created serious doubts as regards the guilt of the accused.

(xv) The DWs maintained that when they reached the house of P.W.3, they found both the bodies of the deceased and Tapan lying injured there. D.W.3 also disproved the testimony of P.W.5 when he said that there was no window in his house facing the house of P.W.3. Therefore, the version of P.W.5 that she saw the accused assaulting the deceased from the kitchen window of the house of D.W.3 was totally false.

(xvi) D.W.4 was the front door neighbour of P.W.3 and hearing the hullah, he came to the spot and found the deceased and Tapan with bleeding injuries. He also heard the deceased chased Tapan. D.W.5, the father of Tapan stated that PW 3 belonged to a political party and the accused to another. PW-3's dealership had been cancelled and given to Tapan. Therefore, the case had been foisted on the accused. It was, therefore, submitted that it was in the interest of P.Ws. to implicate the accused due to political rivalry.

(xvii) The questions put to each of the accused under Section 313 CrPC were identical and therefore, the entire exercise was an empty formality leading to a serious miscarriage of justice. The circumstances relied upon by the prosecution pointing to the guilt of each of the accused were not specifically put to each of the accused except asking in a general manner about the bloodstained dhoti of A-1 and also the bloodstained cloth and lathi seized from A3. No other questions regarding seizure were put to the accused persons in their examination under Section 313 Cr PC. Reliance was placed on the decisions in ***Ranvir Yadav v. State of Bihar (2009) 43 OCR 562***; ***Maheshwar Tigga v. The State of Jharkhand AIR 2020 SC 4535*** and ***Asraf Ali v. State of Assam (2008) 16 SCC 328***.

(xix) It was submitted that D.W.5 exhibited the FIR concerning the attack on Tapan as Ext.A and the Final Form as Ext.B. However, Ext. B was not made part of the trial court record. As per Ext.A, Tapan was assaulted in the shop of D.W.1 from where he was shifted to Angul Hospital. On the combined reading of Ext.A and Ext.B, it was evident that due to grudge, the deceased was chasing Tapan on the village road with a Tangia and at the shop of D.W.1., he dealt a tangia blow on the shoulder of Tapan and on intervention of A6, the deceased also assaulted him. According to D.W.1, Tapan then ran away and the deceased chased him and both of them entered the house of P.W.3. Sometime thereafter all the accused persons came and Tapan was shifted to Angul Hospital. This version was supported by D.Ws.3 and 4 and also supported by P.W.5 who stated that after she heard that the deceased and Tapan had assaulted each other. It was

probable that being a father D.W.5 had not stated about the presence of his son at the house of P.W.3 hoping that if Tapan recovered from injuries, he might be implicated in the murder of the deceased. This conduct of D.W.5 was neither improbable nor unbelievable as he was only looking to save his son. However, Ext.A made it clear that the deceased brutally assaulted Tapan and also assaulted A6. Therefore, Ext. B ought not to have been withheld by the trial court. The evidence pointed to both Tapan and deceased being found together in the house of P.W.3 from where the accused took Tapan to the Hospital after having chased the deceased. It was accordingly submitted that the prosecution has miserably failed to bring home the guilt of the accused.

8. Mr. Katikia, learned AGA on the other hand supported the trial court judgment in full. He submitted that apart from the fact that P.W.5 was a believable eye-witness and spoke naturally and withstood cross-examination, her eye-witness testimony was also corroborated by the bloodstained clothes recovered from A1 and the weapons were recovered from the spot. The bloodstains were of human blood of Group-‘B’ which was not the blood group of the accused. No questions were put in the cross-examination to any of the accused to bring forth the alternative theory of Tapan having killed the deceased. The presence of the accused at the spot was also not doubted.

9. Mr. Katikia submitted that each of the incriminating pieces of evidence were indeed put to the accused who gave mechanical denials to those questions. No prejudice was shown to have been caused to any of the accused as a result of the manner of

administering the questions under Section 313 Cr PC. Mr. Katikia submitted that the serological and medical evidence fully collaborated with the eye-witness testimony of the deceased having been brutally murdered by the accused.

10. The above submissions have been considered. There are three witnesses whose testimonies were relied upon by the prosecution to bring home the guilt of the accused. One of those witnesses i.e. P.W.5 is also an eye-witness. These three witnesses are P.W.3, his wife P.W.5 and his mother P.W.4.

11. The Court would first like to begin with the evidence of P.W.4, the mother, who admitted that her eyesight was not very well. It must be remembered that the accused and the deceased were all in the same village and therefore, the accused were not complete strangers to each other or to P.W.4. It is not as if she would not recall whom she saw that day. The fact that she admits that her eyesight is not very good only shows that she is being truthful. She was deposing seven years after the incident and therefore, some margin has to be provided for imprecise recall. She was clear that she and her daughter-in-law i.e. P.W.5 were present in the house. She was at the cattle shed removing cow dung. She clearly mentioned the presence of A7 with the Badi, A6 with a wooden plank and A10 unarmed and further A7 exhorting the others to kill the deceased who had just entered the house.

12. The statement of P.W. 4 that out of fear, "I went away" is natural. The fact that she did not name every one of the accused

since she only saw three of them in a flash is actually natural and free of embellishments. Her statement that when she returned to the house five minutes later, she found the deceased dead inside the house with bleeding injuries is also natural. All that the cross examination does is to bring forth the fact that P.W. 4 was at a distance of 30-40 cubits from the house. She repeats in her cross-examination that “Subal, Baidya and Nila were found at the inner verandah where Biswamitra was”. Her statement “I have not stated these things anywhere before deposing this court” does not actually bring out the fact that she had not made any statement to the police earlier.

13. Nevertheless, even if one would go by the deposition of P.W.10 i.e. the IO, what had been elicited from him in the cross-examination was a denial that “it is not a fact that I had not examined Umakanti and Kerali Pradhan”. The only other statement from P.W.10 is about P.W.3 not stating to him about presence of P.Ws.4 and 5 in the house. But, this does not discredit P.W.4 at all. Reading the evidence of P.W.4 with that of P.W.10, she appears to be a natural witness present at the spot, running away out of fear after seeing three of the accused, two of whom were armed and one seen exhorting that the deceased should be killed.

14. The Court is unable to be persuaded by Mr. Mishra’s argument that P.W.4 is a planted witness who should be disbelieved. She comes across as a natural witness who inspires confidence as she was not trying to embellish what she knew precisely. In fact, the cross examination does not throw any doubt

on the credibility of her testimony. It also supplies the element of motive where she said that she did hear about the “love affairs of Tapan with Uma daughter of Biswamitra and heard that Biswamitra assaulted to Tapan and Tapan assaulted to Biswamitra”. This by no means shifts the entire blame on Tapan as is sought to be projected. It in fact substantiates the case of the prosecution that Tapan entered the house of the deceased trying to assault and then the deceased chased Tapan and assaulted him.

15. Turning next to the deposition of P.W.3, one has to examine his evidence rather carefully. He was sitting at the shop of D.W.2 Satrugan Sahu, who confirmed in his deposition that on the date of occurrence, P.W.3 was at his shop. The statement of P.W.3 that he saw all the accused chasing the deceased with lathi and the deceased concealing himself in the house of P.W.3 was not contradicted by D.W.2. He only stated that “the accused never asked Trinatha to bring out Biswamitra from his house”. This could be a self-serving statement made by the D.W. Whereas if one compares what is stated in the FIR with what P.W.3 deposed in court, the contradictions are not as serious as sought to be made out by Mr. Mishra, learned Senior Advocate for the accused.

16. The only deviation sought to be brought out is that in the FIR, P.W. 3 did not say that A1 was holding a crowbar, which in any event was not seized. However, P.W.3 does mention that the bloodstained lathi was lying at the spot. It is quite natural for P.W.3 who was sitting at the shop of D.W.2 to reach his house to find the deceased. The fact that he said in the FIR that he found

the deceased in the inner courtyard and in the Court that he found him at the inner door cannot be viewed as a serious contradiction. Also, merely because P.W.3 may not have said that his mother and wife were present in the house, does not discredit his evidence. An FIR is supposed not to be an encyclopedia of all the facts known to a witness.

17. About who was carrying which weapon there may be some differences in the testimonies of P.W.3 and 5. Both of them were deposing seven years after the incident and therefore, this cannot be held to be a serious inconsistency. The Court is also unable to make much of the fact that P.W.3 did not mention about the presence of P.Ws.4 and 5 in the house and was also not prepared to therefore infer that P.Ws.4 and 5 were planted witnesses. If Tapan was in fact lying injured at the shop of D.W.1 and was taken to the hospital from there, it is natural that P.Ws.3, 4 and 5 would not have stated about Tapan being found in the house of P.W.3.

18. The third witness in this group is P.W.5 i.e., the wife of P.W.3. Her evidence is crucial for the prosecution. She has named all the accused. On material particulars her testimony is corroborated by P.Ws.3 and 4. It is also corroborated by the medical evidence and the serological evidence, which will be discussed in detail hereafter.

19. As already noted, the fact that the presence of P.W. 5 is not stated by P.W.3 in the FIR or before the police cannot be seen as a great infirmity so as to completely discredit her. If one examines

her examination-in-chief and then compares it with her cross-examination, it is immediately noticed that nothing much has been elicited in her cross-examination. She mentions how A1, A6 and A7 were inside the house whereas the others stood in the verandah. Her not raising any hullah is not unnatural. Anyone in her position would in the circumstances described, easily get frightened. The fact that she immediately left the place is also not surprising. Her statement that after the death of the deceased she heard that he and Tapan had assaulted each other is again a natural statement. She denied the suggestion that there was no window in the kitchen of D.W.3 or that she had not seen anything. Her cross-examination does not indicate that she was speaking falsehood or that she was not present at the spot. The fact that she was consistent in her version to the police comes out clearly.

20. A vague statement was sought to be elicited from P.W.5 in her cross-examination that “I have not told this incident anywhere before deposing in this Court”. This is not the same thing as asking her clearly whether she said anything earlier to the police. Clearly, the cross-examiner was not confident of the answer that she would give to such a question. The above statement by her does not mean that she did not speak to the police earlier. If one goes by the testimony of P.W.10, his denial of the suggestion that he had not examined her is consistent with this reply of hers. The Court is, therefore, not prepared to accept the submission that she is somehow a planted witness.

21. The spot map was not shown to the IO who prepared it and no suggestion was given to IO about there being no window in the kitchen of the house of D.W.3. The version put forth by the defence seems to be an afterthought. It can only be said to be a desperate attempt on their part to discredit P.W.5. Otherwise, she appears a solid witness who stood her ground and was unable to be shaken in cross-examination. The fact that the body was found in the courtyard and in the door would not make a serious dent in her testimony or that of P.W.3.

22. On the material particulars of the prosecution case that all the accused chased the deceased and then murdered him in the house of P.W.3, the three witnesses i.e., P.Ws.3, 4 and 5 are consistent and cogent. In that sense this is a case of direct evidence where P.W.5 being an eye-witness to the actual assault, and P.W.4 being a witness to the accused chasing the deceased into the house with weapons and then coming back to find the deceased dead.

23. There are two solid pieces of corroboration of the above testimonies of P.Ws.3, 4 and 5. The first is of course the medical opinion of P.W.9, the doctor who performed the autopsy on the deceased. He noticed the following injuries on the deceased:

“External injuries

- i). Abrasion 1” x $\frac{3}{4}$ ” over centre of right cheek
- ii). Abrasion $\frac{1}{2}$ ” x $\frac{1}{4}$ ” over lateral aspect of right eye brow.
- iii). Abrasion 1” x $\frac{1}{2}$ ” over maxillary of prominence of left cheek.

iv). Abrasion (transverse) 3" x $\frac{3}{4}$ " over left lateral aspect of face extending from left gaigomatic area to maxillary area.

v). Laceration with surrounding bruise 2" x $\frac{1}{2}$ " x $\frac{1}{4}$ " over upper aspect of right eye extending to eye brow.

vi). Laceration oblique 1" x $\frac{1}{2}$ " x $\frac{1}{2}$ " covering entire thickness of lip over right lateral aspect of upper lip.

vii). Sharp cutting injury $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{4}$ " over lateral aspect of right thigh over middle 3rd.

viii). Sharp cut 1" x $\frac{1}{2}$ " x $\frac{1}{4}$ " over lateral aspect of right arm over middle 3rd.

ix). Punctured wound 3cm in diameter and 1cm in depth over left lateral aspect of middle 1/3rd of left arm.

x). Bruise (vertical) 6" x 4" x $\frac{1}{2}$ " on lateral aspect of left arm covering lower 2rd of the arm.

xi). Bruise (oblique) 4" x 2" x $\frac{1}{2}$ " over right chest extending from nipple to clavicle.

xii). Bruise (transverse) 5" x 1" x $\frac{1}{3}$ " over the umbilical region of abdomen.

xiii). Bruise (transverse) 10" x 4" x $\frac{1}{4}$ " over the epigastrium of abdomen.

xiv) Laceration (oblique) 3" x 1 $\frac{1}{2}$ " x 2" over the right lateral occipital region of scalp.

(the brain matter is seen clearly through the wound)

15). Bruise (oblique) 3" x 1 $\frac{1}{2}$ " x $\frac{1}{2}$ " over the left parietal region of scalp.

Internal injuries- On dissecting the scalp I found the following injuries:-

1). Comminuted fractures of skull bone of right occipital region over a diameter of 3" some bone spicules have pierced the meninges and brain matter and blood vessels under the same area giving rise to laceration of the cerebral cortex 1" x $\frac{1}{2}$ " x $\frac{1}{2}$ " over the same area. about 15 ml. of semy clotted blood found collected at the base of the skull.

2). Subdural hematoma 4" x 3" over the left parietal region of cerebra cortex extending to sagittal region.

3). Entire cerebral cortex along with the meninges are congested with punctate hemorrhages cuts over the grey matter.

4). Fracture of 5th 6th and 7th ribs on right chest wall entirely and laterally. 2 small bony spicules pierce the right parietal pleura under the same region given rise to haemothorax of right chest. The lower half of right plural cavity is full of blood, laceration of right middle lob of lung ½” x ½” x ¼”. Fracture of left humerus oblique in nature at junction of upper 1/3rd and middle 1/3rd with gross displacement of upper fragment. Cause of death is due to shock as a result of hemorrhage inside the cranial cavity and respiratory failure as a result of injury to right pleura and lungs causing haemothorax right side. The intracranial hemorrhage is as a consequence of above noted injuries to brain matter and to the right haemothorax which was sufficient in course of ordinary nature for death. The above injuries are ante mortem in nature. Time of examination since death is 8 to 12 hours. Ext. 12 is my report. Ext. 12/1 is my signature.

I examined the weapon of offence on police requisition. I examined the 9 lathies both wooden and bamboo, two axes and one pointed iron with bamboo handle produced before me and opined that the injuries mentioned in the P.M. report of the deceased Biswamitra are possible by these weapons. Ext.13 is my report. Ext. 13/1 is my signature. The punctured wound can be caused by crow bar. Incised wound is sharp cutting wound can be caused by axe. Abrasion and laceration can be caused by lathi.”

24. The entire cross-examination of P.W.9 is of three lines and reads as under:

“The colour of injury are not mentioned. Bruise can be caused by a pressure. It is a wound beneath the skin. By assault with axe, lathi, a single person can also cause such injury.”

25. In other words, the testimony of P.W.9 has gone completely unchallenged by the defence. It is plain that the manner of description of the assault by P.W.5 on the deceased by the accused is fully supported by the medical evidence. P.W.9 also examined the weapons and confirmed that they would have caused the injuries found on the deceased. A specific question was put to him about the punctured wound being caused by the crowbar and the incised wound by axe and the abrasion and laceration by the lathi. Therefore, the involvement of these weapons in the assault is clearly brought out.

26. Another piece of corroboration of the testimonies of P.Ws.3, 4 and 5 is the serological examination report which the IO has proved and which clearly brings out the presence of human blood on the dhoti seized from A1 and it belonging to Group-B. This apart from the weapons seized, the earth, the towel, the wooden chheli all being found to have human blood of Group-B. This is a strong incriminating piece of evidence that completely supports the case of the prosecution. It is totally inconsistent with the plea that it was Tapan alone and no one else who assaulted the deceased. The serological report fully implicates A1 as well as the other accused who were armed with weapons.

27. Turning to the seizure witnesses, the Court is unable to agree with the submissions of Mr. Mishra that they have to be disbelieved. P.W.7 by himself is sufficient to prove the case of the prosecution when he says that the police seized the bloodstained dhoti from A1 and the white cloth from A3. The seizure of dhoti

from A1 is indeed a very strong incriminating piece of evidence. A1 sought to examine himself as D.W.5 and tried to project a false story which completely stands disproved by the above serological evidence. While P.W.8 may have turned hostile, P.W.7 by himself was sufficient to lend assurance about the seizure. The non-production of the material objects for their identification is insignificant because they were all shown to the doctor P.W.9 and his cross-examination has brought out no contradiction whatsoever.

28. Turning now to the D.Ws, it appears to the Court that a desperate attempt has been made by the accused to project a different story through these D.Ws without in fact confronting the P.Ws with such a story. This has been correctly noticed by the trial court in the impugned judgment.

29. On the witnesses not mentioning who gave which blow to the deceased as rightly noted by the trial court when a person is attacked by several persons, it may not be possible on the part of a witness to describe the blows given by each accused. It is only a tutored witness who can give a photographic recall of events even seven years after the event. In ***Baldeo Singh v. State of Bihar*** AIR 1972 SC 464 it was observed as under:

“15.In a melee where several people are giving blows at one and the same time it will be impossible to particularize the blows, and if any witness attempts to do it, he may invite grave suspicion with regard to his veracity.”

30. Again in *Amrik Singh v. State of Punjab 1998 (2) Crimes (SC) 4*, it was observed as under:

“Merely because the witnesses have not specifically stated which blow was given by which accused, their evidence cannot be discarded.”

31. The evidence of the D.Ws in fact appeared to be tutored and they seem to be parrot like repeating things just to somehow create an alternative version which is not supported by the medical evidence or serological evidence on record. The Court is unable to agree that there is any withholding of the evidence with the trial court referring to the FIR as Ext. A which clearly brings out the earliest version namely that Tapan was found injured in the shop of D.W.1 and taken from there. While it may be true that Tapan assaulted the deceased and in return the deceased assaulted Tapan, this in no way detracts from the fact that thereafter the deceased was chased by the accused and done to death in the house of P.W.3. The testimonies of D.Ws.1 to 5 do not inspire confidence at all.

32. As regards the questions put to the accused under Section 313 CrPC, this is not a case of circumstantial evidence where each circumstance incriminating the accused has to be put to each of the accused. In *Ranvir Yadav v. State of Bihar (supra)*, it was explained as under:

“4. The purpose of Section 313 of the Code is set out in its opening words- ‘for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.’ In *Hate Singh, Bhagat Singh v. State of Madhya Pradesh AIR 1953 SC 468* it has been laid down by Bose, J that the statements

of accused persons recorded under Section 313 of the Code 'are among the most important matters to be considered at the trial'. It was pointed out that the statements of the accused recorded by the committing magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box and that they have to be received in evidence and treated as evidence and be duly considered at the trial. This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.

5. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.

6. The word 'generally' in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and

in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.

7. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

8. In order to appreciate the stand relating to not putting the relevant questions during the examination under Section 313 of the Code, the factual scenario needs to be noted.”

33. The above legal position has been reiterated in other decisions and, therefore, needs no further reiteration. In *Asraf Ali v. State of Assam* (*supra*), it was again explained as under:

“21. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do

so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in *S. Harnam Singh v. The State* (Delhi Admn.) AIR 1976 SC 2140, while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.”

34. Reading the questions put under Section 313 to the accused in the present case, the Court is unable to be persuaded that it was an empty formality as is contended. On the other hand, it appears that the accused attempted to reduce it to an empty formality by giving standard replies of denial. The accused have not been able to show what was the prejudice caused to them insofar as the above exercise under Section 313 Cr PC is concerned.

35. For the aforementioned reasons, the Court finds that no grounds have been made out for interference with the impugned judgment of the trial court. There is no merit in this appeal and it is dismissed as such with no order as to costs.

36. The bail bonds of A1, A2 and A6 to A10 are hereby cancelled. They are directed to surrender forthwith and, in any event, not later than 25th July 2022 failing which the IIC concerned will take steps to take them into custody for serving out the remainder of their sentences. LCR, if any, be returned forthwith.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin/ Sr. Stenographer

