

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK
GA No.17 of 1991

State of Orissa *Appellant*

-versus-

Benu Behera and others *Respondents*

Appeared in this case:

For Appellant : Mr. J. Katikia,
Additional Government Advocate

For Respondents : None

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

JUDGMENT
05.09.2022

Dr. S. Muralidhar, C.J.

1. This appeal by the State of Orissa is against a judgment and order dated 16th January 1991 passed by the learned 2nd Additional Sessions Judge, Puri (hereafter, "the trial court") acquitting the accused persons i.e., Respondent Nos.1 to 28 of the charges under Sections 302/149 IPC and 302/149/148 IPC in Sessions Trial No.9/61 of 1990.

2. It requires to be mentioned at the outset that during the pendency of the present appeal, Accused No.1 (A1) Benu Behera, A3-Sankar Behera, A8-Bihari Palei, A10-Gatiswar Lenka, A11-

Jogi Lenka, A18-Bidyadhar Pradhan and A20-Narayan Pradhan have expired. It must also be noted that leave was granted to the State to appeal against the impugned judgment and order of the trial court by this Court by an order 22nd April, 1991. By orders dated 18th June and 26th June 1991, the Respondents were directed to be released on bail on furnishing bonds of Rs.2000/- each with one surety for the like amount to the satisfaction of the trial court.

3. From time to time, this Court has adjourned the case and on 26th February 2021, the Registry was asked to obtain instructions from the Superintendent of Police (SP), Puri and the Inspector-In-Charge (IIC), Pipili Police Station (PS) as to the whereabouts of the Respondents.

4. The reports submitted confirm that apart from the above six persons who had expired, 22 remaining are available of which 16 persons are residents of village Baligaon, PS-Pipili, District-Puri and remaining 6 persons belong to different villages in PS-Pipili.

5. This Court has heard the submissions of Mr. J. Katikia, learned Additional Government Advocate for the State-Appellant.

Case of the prosecution

6. The case of the prosecution is that the Officer-In-Charge (OIC) of Pipili PS Nibaran Samal (P.W.23) received information at around 10.15pm on 2nd March 1989 from one Sri Naresh Chandra

Bastia (P.W.7) that the motorcycle of the deceased Banambar Padhan was lying near the canal embankment, but he was not available there. This fact was then entered by P.W.23 in S.D. Entry No.39 dated 2nd March 1989 (Ext.24). P.W.23 immediately proceeded to the spot where he found a motorcycle lying near the Mangulia Khata by the side of the canal embankment. However, he found the dead body of the deceased lying in the Bari (garden) of A5-Jayakrishna Rout. There he found Labanya Dei (P.W.3), the mother of the deceased and Purna Chandra Pradhan (P.W.4), the father of the deceased weeping.

7. It is stated that on the oral report of one Nisamani Bewa (P.W.1), P.W.23 drew up a plain paper FIR (Ext.1/1). In that report, P.W. 1 mentioned about a long-standing enmity between the accused persons headed by A5 on the one hand and the deceased on the other. Apparently, several OLR cases were pending between them. Her report further stated that two days prior to the occurrence, there was a dispute between the accused persons and the deceased regarding catching of fish from the village tanks. On 2nd March 1989, the deceased had been to Pipili in his motorcycle and in his absence, between 4 and 8 pm, all the accused were stated to have held a meeting in the shop of A18 - Bidyadhar Pradhan and decided to kill the deceased when he returned from Pipili on his motorcycle.

8. The report of P.W.1 was that while at around 9 pm when she was going to bed, she heard the sound of the motorcycle coming

from the side of Mangulia Jora. When she came to the Danda, she could hear the voice of A5 and his party men who were exhorting that the deceased should be killed. She also heard the sound of beating and the voice of the deceased who was raising hullah seeking help. P.W.1 then stated that she had gone to the parents of the deceased to report the matter. When they proceeded towards Mangulia Khata to know what happened to the deceased, they could see Sankar Behera (A3); his son Banka Behera (A4) and Jogi Lenka (A11), Gatiswar Lenka (A10), Bhagi Palei (A13), Gandu Khatei and Surendra Palei (A12) running away towards their houses. When they further proceeded, they saw the accused Gadadhar Das (A25) and certain others running away towards Nuagodi. They further proceeded and noticed the dead body of the deceased lying in the Bari of A5 in a pool of blood with injuries on his legs, hands and head.

Investigation

9. On receipt of report of P.W.1, P.W.23 is stated to have taken up the investigation. The plain paper FIR was sent to the PS where it was formally registered and PS Case No.33 dated 3rd March 1989 was registered. It is stated that P.W.23 held an inquest over the dead body and then sent it for post mortem. P.W.23 examined P.W.1 (the Informant) and the parents of the deceased i.e., P.Ws.3 and 4.

10. P.W.23 sent a requisition to the Scientific Officer (P.W.19) Sri Achutananda Baliarsingh to assist him in the investigation.

After P.W.19 visited the spot, P.W.23 seized a sword (MO-V) from the water of Mangulia Khata. He also seized a napkin (MO-VI) on production of Kishore Malik (not examined), which was suspected to be stained with blood. A piece of bamboo, a bamboo lathi, a blue model Rajdoot motorcycle, a hand bag, documents relating to the motorcycle, one helmet, a pair of Chapals, one goggles, coins of 75paise in different denominations were all seized by P.W.23 from the spot near Mangulia Khata.

11. On 3rd March 1989, P.W.23 seized the wearing apparels of the deceased and certain other articles on production of the Constable after the postmortem examination.

12. On 7th March 1989, P.W.3 handed over the charge of investigation to Narayan Mallick (P.W.22), the then Circle Inspector (CI) of Pipili. On the same date, P.W.22 seized one Hawaii shirt of A25 and one cotton check Lungi of A6-Subash Palei suspected to be stained with blood.

13. Meanwhile, the post mortem of the deceased was performed by Dr. Brajaraj Samantray (P.W.18) who found that there were nine external injuries and four internal injuries on the body of the deceased. All the external injuries were incised wounds, punctured wounds on the vital parts of the body such as on the parietal regions, chest, abdomen, scapulas, elbow joint, ankle joint, left leg ankle joint etc. On dissection, he found a fracture on the skull bones and membranes were turned at places. All injuries

were opined to be ante mortem and the cause of death was due to hemorrhage and shock as a result of all the injuries which were sufficient in ordinary course of nature to cause death. He also opined that later the sword (MO-V) was shown to him that the injuries could have been caused by that sword. It was plain therefore that the death was homicidal which fact is unable to be disputed by anyone.

14. On the requisition of P.W.22, the Sub-Inspector (SI) Gautama Kumar Das (P.W.13) is stated to have arrested A9-Fagu Palei on 23rd April 1989 at Delang Railway Station and forwarded him to the Court on the next day.

15. On 2nd May 1989, P.W.22 is stated to have seized the OLR case records. He also examined certain witnesses including Gopal Guru (P.W.10) on whose information P.W.7 is supposed to have gone to the PS to give information.

16. It appears that all the remaining accused other than A9, who had been arrested, surrendered in the court. After completion of investigation, P.W.22 filed a charge sheet against the 28 accused persons for the aforementioned offences. All of the accused denied their guilt and claimed trial. In addition, two of the accused i.e., Anama Charan Swain (A17) and Fagu Behera (A22) pleaded alibi.

17. In support of those respective pleas, while on behalf of A17, one Kasinath Sahu (D.W.1) was examined to prove the tour particulars of A17 between 19th January and 9th March 1989 including his TA bill marked as Exts.B and C, one Jadumani Naik (D.W.2) proved tour programme of A22-Fagu Behera showing that D.W.2 and A22 were at Kolhana camp on 2nd March 1989 at night. The tour diary maintained by A22 was marked as Ext. E and the counterfoil receipt book regarding collection of revenue by A22 on 2nd March 1989 at the Kolhana camp was marked as Ext. F. 23 witnesses were examined for the prosecution.

The trial Court judgment

18. On a detailed analysis of the entire evidence, the trial court acquitted all the accused for the following reasons:

(i) P.Ws. 5 and 6 were projected as the eye witnesses to the occurrence. They were both stated to be the vegetable sellers. Both were on the date of occurrence supposed to have been returning after selling brinjals and other vegetables at the Delang Railway Station Bazar. Both were projected as accidental/chance witnesses. However, they did not belong to the village Baligaon to which the deceased and some of the accused belonged. In fact, the village of these two witnesses Subudhipara was not even a neighbouring village since the village Alarpur and another village intervened. Neither of these witnesses could produce receipts in support of payment of tax for selling brinjals although both

admitted that they had to pay such fee for which receipts were granted.

(ii) Strangely, both of these witnesses supposedly reported the matter to Naresh Chandra Bastia (P.W.7). However, from the evidence of Gopal Guru (P.W.10), it appeared that he had reported the matter to P.W.7 and requested P.W.7 to report the matter to the PS. It transpired that both P.Ws.5 and 6 were earlier working under P.W.7 as his servants. The trial court noted that P.Ws.5 and 6 did not go to the house of the parents of the deceased first to report the matter although it was only 50 cubits away from the place of occurrence. They also did not inform this to anyone except P.W.7.

(iii) From the evidence of P.Ws.5 and P.W.6, it appeared that according to them the deceased was being assaulted inside a water ditch full of mud and slush and in the ditch, the water was up to six inches deep. In the cross-examination of P.W.6, it transpired that according to him the deceased including his dress was soaked with water and covered with mud and slush. The Doctor (P.W.18) who conducted the post mortem stated that he had not noticed the presence of the foreign materials on any part of the injuries on the body of the deceased. In particular, he stated “if the injuries are caused inside a pond or tank, muddy water were likely to enter into the punctured wounds if those injuries were coming in contact with that of the muddy water”. He added

“I have not mentioned the presence of muddy water in any of the punctured wound.”

(iv) From the evidence of P.W.23, it transpired that he did not notice any marks of violence near the ditch nor any bloody stain was found at the spot. On the contrary, the dead body was found in the Bari of A5 which was nearly 300 cubits away from Mangulia Khata. There was no evidence to show how the dead body came to the Bari of A5. Therefore, it could not be said that Mangulia Khata was the place of assault. Therefore, it was difficult to believe P.Ws.5 and 6 when they said that they saw the deceased being assaulted inside the ditch at Mangulia Khata.

For all of the aforementioned reasons, the evidence of P.Ws.5 and 6 was held to be full of inconsistencies and improbabilities and did not inspire confidence that they were in fact eye witnesses to the alleged assault.

(v) Turning to the evidence of Laxmidhar Lenka (P.W.12) and Manu Behera (P.W.21), who are supposed to have witnessed the conspiracy hatched by the accused when they met at the grocery shop of Bidyadhar Pradhan (A18), the trial court noted that both P.Ws.12 and 21 were stated to have gone to the backside of the shop standing at a distance of 20 cubits and they could not hear Bhagaban Palei (A13) and Surendra Palei (A12) saying that they would obstruct the deceased when he returned from Pipili and would kill him. Apparently, P.W.10 informed P.W.21 about the

meeting and requested him to go there to know about the discussion. When P.W.21 and P.W.12 went to the meeting venue, they had found 10 to 15 persons were in the meeting including Gadadhar Das (A25) and Dharanidhar Sahu (A24). They were supposed to have heard that Bhagaban Palei (A13) and Suria Palei stated at the meeting that they would kill the deceased. P.W.21 was supposed to have informed P.W.10 about this before returning home. According to P.W.12, the room where the meeting was conducted was only 8ft. X 10 ft and only five persons were sitting inside the room and 20 to 25 persons were outside. The trial court rightly wondered when so many persons were present outside the room, how they did not notice P.W.12 and 21 overhearing the discussions. For this, it was strange that while P.Ws.12 and 21 heard the discussion regarding the murder of the deceased, “they could not hear other discussions of the accused persons”.

(vi) It transpired that P.W.12 was a party man of the deceased; was an accused in a G.R. Case initiated relating to school affairs and was a delinquent in a proceeding under Section 107 Cr.P.C. along with the deceased. He was also a witness in an OLR case for Manu Behera (P.W.21). Likewise, P.W.21 was an accused in a criminal case concerning school affairs; was also a delinquent in proceedings under Section 107 Cr.P.C. Therefore, the trial court concluded that both P.Ws.12 and 21 were “partisan witnesses”. Strangely, despite supposedly hearing the discussions amongst the accused that they would kill the deceased, these two

witnesses i.e., P.Ws.12 and 21 did not inform the family of the deceased or any public officer considering that the house of the deceased was only 50 cubits from their own houses and also from the place of the meeting. Nothing was indicated as to what prevented them from reporting the matter to the parents of the deceased when they were fully aware that the deceased has gone to Pipili in his motorcycle and was expected to return in the evening. They did not even tell the police soon after their arrival to P.W.23 about the discussion supposedly held at the meeting in the shop of A18 and only on the following day i.e., 3rd March 1989 at 3PM, they were supposed to have informed the police when they were examined. Therefore, in these circumstances, the trial court declined to place reliance on the evidence of P.Ws.12 and 21.

(vii) The trial court also found interpolations of the date on the FIR. To the naked eye, it was clear that the date '3.3.89' which was first written was subsequently corrected as '2.3.89' in all the places whereas the carbon copy of the FIR produced in Court shows the date as '2.3.89' in all places without correction. Therefore, it was concluded that the date had been corrected subsequently in the original FIR produced in the Court.

(viii) From the evidence of P.W.2, it transpired that he had signed the document in the following night i.e., only on 3rd March, 1989. In fact, statements of P.Ws.3 and 4 were also recorded only on 3rd March, 1989. The trial court therefore

concluded that “the present FIR was lodged on the Friday not during the night of occurrence. The delay of 24 hours in lodging the FIR in a case of murder was fatal to the case of the prosecution.” Further, the corrections made in the FIR cast a serious doubt as to the story of the prosecution.

(ix) Next, it was noticed by the trial Court that the Scientific Officer (P.W.19) mentioned in his report (Ext.14) that “some unknown criminals” committed murder of the deceased on 2nd March 1989 at 9PM in the night. If P.W.23 was present throughout with P.W.19 and he prepared his report, there was no reason why it should be stated that the criminals who committed the murder were ‘unknown’ since by then P.W.23 did have information from P.Ws.3 and 4 about the names of the accused. Further, it was found that originally the name of P.W.3 was mentioned as Complainant but subsequently it had been corrected and the name of P.W.1 Nisamani Bewa showing her to be wife of Bhikari Pradhan (P.W.4) was inserted. Later, it transpired that P.W.1 was in fact the wife of Bhikari Pradhan but of Kelu Mallick. This probalilized the submission of the defence that the original FIR lodged had been suppressed and the present FIR showing it to have been lodged by the P.W.1 was planted. The trial court therefore concluded as under:

“18. ... If this report, Ext.16 where originally the name of P.W.3 was written as Complainant and if Ext.14, the spot visit report of the Scientific Officer where it is mentioned that some un-known criminals committed murder and when interpolations in the original FIR now produced in the court are taken into

consideration together, the stand taken by the accused persons that some unknown culprits committed the murder of the deceased Banambar Padhan and finally the accused persons are roped with the case on account of previous enmity cannot be altogether ignored.”

(x) A further factor was that from the evidence of P.W.23, it transpired that P.W.5 had stated before him that when the deceased was being assaulted, he uttered the name of one Bhaiga saying “*bhaiga bhai marigali, mote marana mu kali nispati karidebi*”. None of the accused were called as Bhaiga and only four of them i.e., Surendra Palei (A12), Narayan Pradhan (A20), Fagu Behera (A22) and Fagu Palei (A9) were the actual assailants. If without uttering their names the deceased had only shouted about Bhaiga Bhai, the real assailants were perhaps not any of the aforementioned four accused.

(xi) There were numerous inconsistencies in the evidence of P.Ws.3 and 4 on the one hand and P.Ws.12 and 21 on the other hand for the directions in which some of the accused had run away from the spot. This was discussed in detail by the trial court in para 20 of the impugned judgment.

(xii) Lastly, the trial court considered the plea of alibi put forth by A17 and A22 and held it to be proved on preponderance of probabilities.

For all of the aforementioned reasons, the trial court concluded that the prosecution had been unable to prove the case against the accused beyond all reasonable doubts.

Submissions on behalf of the State

19. Mr. Katikia, learned Additional Government Advocate for the State-Appellant submitted that the judgment of the trial court was perverse and called for interference by this Court based on the settled principles explained by the Supreme Court in ***Chandrappa v. State of Karnataka (2007) 4 SCC 415***. He submitted that the eye witness testimony was clear and cogent and reliable and that the trial court was in grave error in rejecting the eye witness testimony.

20. Mr. Katikia submitted that grave crime had been committed where 28 persons got together to murder a person and with there being direct evidence in the form of independent eye-witnesses P.Ws.5 and 6, even if the trial court were to discard the testimonies of the interested witnesses i.e., P.Ws.3 and 4, there was no reason to acquit the accused. He further submitted that the eye testimony was fully corroborated by the medical evidence of P.W.18 and therefore, should have been accepted by the trial court as proving the case of the prosecution beyond all reasonable doubt. The contradictions in the testimonies of these eye witnesses were minor and did not affect the credibility. Merely because the name of 'Bhaiga Bhai' was mentioned, did not mean that the other accused were not involved.

21. Mr. Katikia submitted that motive for the crime had been clearly proved since there was previous enmity between the deceased on the one hand and the accused persons led by A5 on the other and OLR cases were pending involving all of them. The conspiracy evidence was also clearly proved by the testimonies of P.Ws.12 and 21. P.Ws. 5 and 6 were natural witnesses and having witnessed the occurrence, they were not prepared to go to the house of the deceased to risk their lives. Further, the evidence of all these witnesses clearly pointed the place of assault as Mangulia Khata and therefore, the evidence in this regard ought not to have been ignored. Merely because the Scientific Officer (P.W.19) did not mention the names of the accused and wrote 'unknown persons' did not throw any doubt on the involvement of the accused. The finding that the original FIR was suppressed was unwarranted in view of the direct evidence to the contrary.

Analysis and reasons

22. The Court has considered the above submissions. Indeed, the grounds on which an order of acquittal can be reversed by this Court is well settled in a series of decisions of the Supreme Court of India which have been discussed in threadbare and the legal position has been summarized in ***Chandrappa v. State of Karnataka*** (*supra*) as under:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

23. Keeping the above principles in view, the Court now proceeds to examine the evidence in some detail.

24. To begin with, the case is projected as one based on eye witness testimony. Apart from the testimonies of P.Ws.3 and 4 i.e., the parents of the deceased who were not witnesses to the actual assault, but to the running away of the accused from the scene of crime, the actual witnesses to the assault were projected as P.Ws.5 and 6, who were, according to the prosecution both 'chance witnesses' as well as 'natural witnesses'. Since P.Ws.3 and 4 are the parents of the deceased, they are 'related' witnesses and in any event, their testimonies would have to be carefully perused; the Court would have to look for independent corroboration. Perhaps, conscious of this, the prosecution has placed reliance basically on the testimonies of P.Ws.5 and 6 who were supposed to be the direct eye witnesses.

25. The four of the accused named by PWs 5 and 6 as assaulting the deceased by swords and *farsas* were Fagu Palei (A9), Surendra Palei @ Suria Palei (A12), Narayan Pradhan (A20) and Fagu Behera (A22). While both these witnesses maintained that the deceased was being assaulted inside a ditch filled with water of six inches at Mangulia Khata and that the entire body was covered by mud and slush, it is indeed surprising that neither P.W.22 who went to the spot found any blood stains there since the motorcycle was lying at Mangulia Khata, but even the doctor who conducted the postmortem i.e., P.W.18 was unable to find

any traces of mud on the open cut injuries of the deceased. Most importantly, the prosecution was unable to explain how the dead body of the deceased who was supposed to have been assaulted at Mangulia Khata ended up in the Bari of A5, 300 cubits away. Interestingly, neither P.Ws.3 and 4 say that they saw anyone carrying the dead body of the deceased from Mangulia Khata to the Bari of A5.

26. Both P.Ws.5 and 6 were supposed to be the vegetable vendors who were returning after selling vegetables at the Delang Railway Station Bazar and both admitted that normally a receipt was issued for the fee paid for them for the purpose, it cannot be a mere matter of coincidence that neither of them was able to produce any such receipt in proof of they having sold vegetables at the said Bazar on the night of 2nd March, 1989. This was definitely a suspicious circumstance against them.

27. Secondly, it is not understood how PWs 5 and 6 would only choose P.W.7 to report the matter to and not to the parents of the deceased who would obviously be the persons who would have to be informed. This could perhaps be explained by the fact that they did not belong to the village of the deceased. However, the question remains why would they be going past that village at all when they did not belong to it. This has not been satisfactorily explained by the prosecution. Even if they did not know the parents, that PWs 5 and 6 did not speak about this incident to

anyone either in their own village or of the village of the deceased, but only P.W.7 is indeed suspicious.

28. Even if the witnesses were projected as purportedly independent witnesses, they were shown to have been earlier working with P.W.7 as his servants. This, therefore, makes it imperative their evidence would have to be carefully evaluated. In similar circumstances, the Supreme Court in *Surinder Singh v. State of Punjab 1989 SCC (Cri) 649* observed as under:

“12. The conduct of PW 2 after the occurrence had taken place has certainly to be viewed with suspicion. If he had been a witness to the murderous attack on Manjit Singh, it would be natural to expect him to go and inform the parents and relations of Manjit Singh of the occurrence and also the police authorities. On the other hand what PW 2 had done was to go to his house and sleep for some time and then go and inform the matter to PW 3 and some others. The story of PW 2 that because of the threats of the appellant he did not go and inform anyone forthwith cannot be readily accepted. If he was so frightened at that time to go and tell others about the occurrence, it is not known how he was able to get over his fears a few hours later and go and inform PW 3 and others about what had happened.”

29. The trial Court has also rightly observed that the above suspicious circumstances surrounding the testimonies of P.Ws.5 and 6 make it difficult for the Court to be satisfied that it is safe to base the conviction of the accused persons on such testimony. The grave nature of the crime would require the Court to be even more cautious in analyzing the evidence and in coming to the conclusion that the case of the prosecution stands proved beyond

reasonable doubt. Clearly, the quality of evidence of P.Ws.5 and 6 in the present case does not lend that assurance to the Court.

30. Once, the eye-witnesses to the assault are discarded, then the prosecution case stands on relatively weak footing. It must be mentioned at this stage that even the evidence of PWs.3 and 4, the parents of the deceased have not been fully corroborated by the evidence of P.Ws.5 and 6 on the material particulars about who was found running away from the spot and in which direction. This has been discussed in detail by the trial court in para 20 of the impugned judgment. It is indeed a meticulous analysis of the evidence which cannot be found faulted.

31. Turning to the witnesses to the so-called conspiracy hatched by the accused in the shop of A18-Bidyadhar Pradhan. Apart from the fact that both these witnesses seem to have themselves being involved in criminal cases, it is indeed strange that they would hear some part of the conversation concerning the conspiracy to kill the deceased but not the other parts of the conversation. That they found all the accused assembled at the shop, some inside the room and many outside also makes it improbable that their presence would go unnoticed by the accused. Indeed, the evidence of P.Ws.12 and 21 does not inspire confidence of their speaking the entire truth and in clear and consistent manner. The trial court cannot be faulted in discarding their evidence as supporting the case of the prosecution. They are

indeed “partisan witnesses” whose testimonies cannot be considered to be reliable or consistent.

32. Finally, the two witnesses who pleaded alibi i.e. A17-Anam Charan Swain and A22-Fagu Behera have satisfied the legal requirement of having to discharge the onus on them to prove the plea of alibi on ‘preponderance of probabilities’. Here again the Court is unable to find any error having been committed by the trial Court in accepting their plea of alibi.

33. For all of the aforementioned reasons, the Court finds that no ground is made out by the State to interfere with the well-reasoned judgment of the trial Court acquitting all of the accused of offences they were charged with. Accordingly, there is no merit in the present appeal and it is dismissed as such. The bail bonds of the accused will hereby stand discharged.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Guin/PA