

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

**JCRLA No.77 of 2006
&
CRLA No. 432 of 2006**

Sudhir Ojha@ Mitu ***Appellants***
(In JCRLA No.77 of 2006)

Pradeep Mohanty and others
(In CRLA No.432 of 2006)

-versus-

State of Orissa ***Respondent***

Advocates appeared in the cases:

For Appellants : Mr. Pulakesh Mohanty, Advocate
(In JCRLA No.77 of 2006)

Mr. Gautam Misra, Sr. Advocate
(In CRLA No.432 of 2006)

For Respondent : Mr. Ishwar Mohanty
Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
01.08.2022

Dr. S. Muralidhar, CJ.

1. These are two appeals challenging the same judgment of the trial Court and are accordingly being disposed of by this common judgment. Both these appeals are directed against the Judgment of conviction and sentence dated 8th June 2006, passed by the learned Additional Sessions Judge, Bhanjanagar in S.C. No.28 of

2001 (S.C. 205/2001- GDC), convicting the Appellants for the offence punishable under Section 302 read with 34 of IPC and sentencing each of them to undergo imprisonment for life and pay a fine of Rs.2,000/- and in default to undergo further rigorous imprisonment for a period of one year.

2. The Appellant in JCRLA No.77 of 2006 was enlarged on bail by the order dated 27th April, 2009 of this Court. As far as the three Appellants in CRLA No.432 of 2006 are concerned, while Appellant Nos.2 & 3 were released on bail by the order dated 3rd December 2009, Appellant No.1 was released on bail by order dated 10th December, 2009.

3. This Court has heard the submissions of Mr. Gautam Misra, learned Senior Counsel appearing for the Appellant in CRLA No.432 of 2006 and Mr. Pulakesh Mohanty, learned counsel appearing for the Appellants in JCRLA No.77 of 2006. In both the appeals, Mr. Ishwar Mohanty, learned Additional Standing Counsel (ASC) appeared for the State.

Case of the prosecution

4. The case of the prosecution was that one E. Mohan Rao Patra (PW-1) lodged an FIR at the Surada Police Station in the District of Ganjam on 13th September, 2000 that on the same day at around 10 am his son E. Krishna Rao Patro (deceased) and a co-villager, Ladu Dala Behera (also deceased) went to the village Daringibari in a Hero Honda Motorcycle for collecting money in connection with their business. At around 3pm, PW-1 heard about

two dead bodies lying at Baimala Ghat No.1, which is around 3 kms away from village Gajalabadi. E. Bijay Kumar Patra (PW-2), the younger son of PW-1, and S. Sarat Chandra Prusty (PW-3) along with two others went to the spot by motor cycles and found the two dead bodies lying on the road. They found the dead body of Krishna Rao Patro with cut injuries in the neck, left arm and the right side waist. As far as Ladu Dala Behera is concerned, the body had been split into different parts by cutting.

5. The case of the prosecution as spoken by Upendra Sahoo (PW-25), the Investigating Officer (IO) was that after reaching the spot, he re-examined the complainant and the aforementioned four witnesses and then contacted 'sources'. According to him, he 'ascertained from my sources that the accused persons are six in number within the age group of 20 to 30 who got down from bus near the spot at Ramanabadi chhak and all of them were wearing full pant and shirts, wearing boot sandle etc.'

Investigation

6. What happened thereafter was also supposed to have been based on the contact of the IO with his 'sources', and his making 'secret enquiries' which revealed the ill-feelings of the accused persons with the deceased; about the business rivalry between the deceased Krishna Rao Patro with one Krishore Prusty son of late Gangadhar Prusty of village Asurabandho relating to rice business. On 14th September, 2000 at 1.15am, PW-25 left for Asurabandho and at 2.30 am, he left Asurabandho for Sorada. At Sorada near the Block office at Kaithapalli Sahi he could trace the

bus in which the accused traveled. He is stated to have examined the conductor Swaraj Rout (PW-13), the helper Kanhu Nayak (PW-4) and the driver Pradip Kumar Sing (not examined as a witness) and recorded their statements.

7. According to PW-25, after recording the statements of the above three persons, he could ascertain that the six accused boarded the bus from Govindapur, got down at Ramanabadi chhak on 13th September, 2000.

8. The IO then stated that during the investigation, he examined one Durjodhan Bisoi (examined as Defence Witness) (DW-1) and T. Maheswari Reddy (PW-21) of village Masiakhali and Ambapua who were proceeding towards Daringibadi side in a Maruti Van. After proceeding to the spot on 13th September, 2000 he held inquest over the dead bodies and prepared the inquest reports. The Scientific Officer of the DFSL, Chatrapur and the Police dog arrived at the spot during the inquest. The dead body challans were prepared.

9. In course of the investigation, the police conducted raids in the houses of Brundaban Sahoo and Namita Sahoo, wife of Pravakar Sahoo simultaneously at village Daha in Bhanjanagar and arrested the Appellants 1, 2 and 3 in CRLA No.432 of 2006. During interrogation, they are supposed to have admitted to have committed the crime along with the Appellant Sudhir Ojha@ Mitu in JCRLA No.77 of 2006 and Ranka Sabat and Kishore Prusty. The Appellant No.1 in CRLA No.432 of 2006, Pradip

Mohanty (A-2) is supposed to have made a statement while in custody in the presence of Ramachandra Swain (not examined), Simanchal Sahoo (PW-11), Punia Sahoo (not examined) and Srinibas Behera (PW-12) leading to the recovery of one gold ring which he presumably had kept under his bed in the house of the said Brundaban Sahoo (not examined). Santosh Pradhan (A-4) is stated to have produced before the IO a cash of Rs.7005/-. Thereafter, the IO examined Namita Sahoo (A-5) and is stated to have recovered one big tin trunk along with one small wooden box containing the clothes of the accused persons in the presence of the same aforementioned witnesses. He arrested her on 15th September, 2000 itself.

10. The IO proceeding to state that at 9.15pm on the same day, i.e., 15th September, 2000 he had information that Sudhir Ojha, the Appellant in JCRLA No.77 of 2006 had concealed himself in the house of one Uma Ojha of village Sanakodanda, PS-Bhanjanagar. He is supposed to have reached there and then arrested the said accused Sudhir Ojha (A-1). A-1 is supposed to have made a statement leading to the recovery of a country-made revolver and a sword. A-1 apparently took them to the place of concealment and helped recover the said weapons in the presence of one Khadal Pradhan (PW-10) and Krushna Pradhan (PW-8). He is supposed to have also seized the wearing apparels of A-1 and his driving licence. However, the IO could not trace out the other accused Ranka Sabat and Kishore Prusty (the absconding accused).

11. On 21st September 2000, the IO made a prayer to the J.M.F.C., Sorada for holding a Test Identification Parade (TIP) in respect of the suspects as well as the seized gold ring. Meanwhile, he obtained the opinion of Dr. Mamata Choudhury (PW-23) who conducted the postmortem of the deceased Ladu Dala Behera and Dr. Karunakar Pradhan (PW-9) who conducted the postmortem of the other deceased Krishna Rao Patro. The IO obtained their opinions on the possibility of the injuries on the deceased being caused by the sword, knife and pistol.

12. TIP was conducted on 28th and 30th September, 2000. Finally a charge sheet was filed against the seven accused persons, two of whom i.e., Ranka Sabat and Kishore Prusty were shown absconding. The remaining five accused persons pleaded not guilty and claimed trial.

13. On behalf of the prosecution, twenty-six witnesses were examined. Durjyodhan Bisoi (DW-1) was examined on behalf of the defence.

Judgment of the trial Court

14. By the impugned judgment, the trial Court convicted four of the accused persons (who are the four Appellants before this Court) of the offence punishable under Section 302 read with 34 of the IPC while acquitting A-5 Namita Sahoo. The four accused were sentenced in the manner indicated hereinbefore.

15. It must be mentioned that against the acquittal of Namita Sahoo, no appeal has been filed by the State.

16. A perusal of the impugned judgment of the trial Court reveals that the following circumstances were culled out by the trial Court as forming a continuous chain, with each of the links in the chain having been proved by the prosecution:

(i) The recovery of the weapon of offence and the gold ring belonging to the deceased Krishnarao Patro.

(ii) The conduct of the accused after the occurrence; it was admissible as evidence under Section 8 of the Indian Evidence Act, 1872 (IE Act).

(iii) The identification of the seized gold ring (MO-IV) by PWs-1 and 2 confirming that it belonged to the deceased Krishnarao Patro. It was confirmed that the procedure for holding a TIP was followed by Ashok Kumar Agrawal (PW-7) the J.M.F.C., Sorada.

(iv) Seizure of the wearing apparels of Jayram Behera (A-3) upon his statement made to the Police while in custody. The seizure of the wearing apparels of Pradip Mohanty (A-2) and Santosh Kumar Pradhan (A-4) on 15th February 2000 on the statements.

(v) Detection of human blood on the wearing apparels of accused persons although the blood group could not be detected due to

deterioration. The absence of the explanation for the presence of human blood in the wearing apparels of A-3.

(vi) The evidence of Maheswari Reddy (PW-21) who identified the four male accused persons (A-1 to A-4) both in the TI Parade as well as later in the Court correctly. DW-1 who identified all the suspects whereas Kanhu Nayak (PW-4) identified A-1 and A-3 only and Laxmidhar Das and Swaraj Rout (PW-13) did not identify any of the suspects.

(vii) The evidence of PW-21 coupled with the recovery of the incriminating articles and weapons of offence at the instance of the accused persons fully established their role in the commission of the crime.

(viii) The evidence of PWs-19 and 20 showed that on the relevant date, the deceased had been to Daringibadi and after collecting money were returning when they were killed in the manner indicated hereinbefore.

(ix) Neither PW-12 nor PW-18 has said anything incriminating against the accused Namita Sahu and therefore, she stood acquitted by the trial Court.

Law relating to circumstantial evidence

17. This is a case of circumstantial evidence and the law in that regard is well settled. In ***State of Tamil Nadu v. Rajendran (1999) 8 SCC 679*** the Supreme Court held:

"6... the law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved, must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. It has been held by a series of decisions of this Court that the circumstances proved must lead to no other inference except that of guilt of accused."

18. In ***Trimukh Maroti Kalan v. State of Maharashtra (2006) 10 SCC 681***, the Supreme Court held:

"12...The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence."

19. In ***Brijesh Mavi v. State (NCT of Delhi) (2012) 7 SCC 45*** the Supreme Court explained:

"27....From the several decisions of this court available on the issue the said principles can be summed up by stating that not only the prosecution must prove and establish the incriminating circumstance(s) against the accused beyond all reasonable doubt but the said circumstance(s) must give rise to only one conclusion to the exclusion of all others, namely, that it is the accused and nobody else who had committed the crime."

Analysis and reasons

20. The Court now proceeds to deal with each of the circumstances in order to examine whether they have been sufficiently proved by the prosecution and more importantly whether all the links of the chain have been established by it.

21. As regards the deaths of two deceased, the evidence of two doctors, PW-9 who conducted the postmortem of E. Krishnarao Patro and PW-23, who conducted the postmortem of Ladu Dala Behera is sufficient to show that the deaths were homicidal caused by the grievous incised wounds to the various parts of their bodies. What is significant was that the weapons of offence shown to each of these doctors were not in a sealed cover when they examined them. The opinion was that the injuries to the deceased could be possible by sword and knife. There was no role for the pistol that had been recovered, in the commission of the crime. Both witnesses do say that these weapons of offence were in an open condition and not in a sealed condition. PW-23 could not say if she found any blood stains on the sword and knife.

22. While it could be said that the deaths were homicidal and that the injuries could have been caused by the two weapons that were seized, viz., the sword and the knife it is significant that neither had any bloodstains. This was particularly since the knife was recovered admittedly from the spot and yet had no blood stains. The fact that the seized weapons were not kept in a sealed condition creates grave doubts on that portion of the evidence by

which it is sought to be proved that these were the very weapons used in the commission of the crime.

23. The next circumstance is the seizure of the gold ring belonging to the deceased Krishnarao Patro pursuant to the statement made by A-2, Pradip Mohanty. Here, the seizure witnesses, PWs-11, 12 and PW-18, Ramachandra Swain who are supposed to be the witnesses to the seizure, have turned hostile and have not supported the case of the prosecution. The trial Court noted in its Judgment in Para-7 as under:

“7..... Similarly, p.ws.11 & 12 and 18 have not supported the prosecution and not corroborated the version of the IO regarding the seizure of gold ring and statement of accd. Pradip giving recovery of the gold ring and cash. As a matter of fact, even if seizure witnesses have not supported the prosecution, yet, there is nothing to disbelieve the evidence of p.w.25, as nothing has been stated against the IO so as to discredit his worth as a witness.....”

24. It is stated that the three witnesses supposed to be the independent witnesses to the seizure have all turned hostile and yet the trial Court has chosen to go by the evidence of the IO.

25. It must be recalled that the IO's own course of investigation was entirely based on secret 'sources' which remain undisclosed till the end. This kind of evidence has been doubted by the Supreme Court in **Kanhai Mishra@ Kanhaiya Misar v. State of Bihar (2001) 3 SCC 451**, where it was observed:

“18. The last circumstance which has been used against the appellant is that after the alleged occurrence he absconded from his house and

surrendered in court only after about a month from the date of alleged occurrence. The only evidence on this circumstance is of the Investigating Officer (PW.10) who has stated that during the course of investigation he received secret information to the effect that the appellant was seen fleeing away wearing only undergarments and in order to verify the same, he left the police station along with the armed forces in search of the accused, went to the house of one Mithlesh Jha (husband of appellant's sister) at Village Murli where he was informed that Chandra Mohan Mishra, father of the appellant, had gone there in search of him and he having not found him there, went to the place of other relatives for searching him. This witness has nowhere stated from whom he received the secret information inasmuch as such information cannot be made a basis to prove this circumstance for being used against the appellant. The other portion of the evidence of this witness that he learnt at the place of the appellant's brother-in-law, Mithlesh Jha, that his father, Chandra Mohan Mishra had come to the house of Mithlesh Jha and gone to the places of other relatives in search of the appellant could have been proved by examining Mithlesh Jha and Chandra Mohan Mishra who could have been the best persons to prove this fact, but, for the reasons best known to the prosecution, they have been withheld. It may be stated that the Investigating Officer has nowhere stated that he ever visited the house of the appellant nor any other witness stated that the appellant was not present in his house after the occurrence. Thus, we find there is no credible material to prove this circumstance. In any view of the matter, this circumstance cannot be used against the appellant as from his statement recorded under Section 313 of the Code of Criminal Procedure, it would be amply clear that this circumstance was never put to him and consequently the same cannot be used. Reference in this connection may be made to a decision of this Court in the case of Kehar Singh vs. State (Delhi Admn.)."

26. The Delhi High Court too has, following the above judgment, held that the circumstances of arrest of the accused, which was sought to be proved in the case before it, was not reliable. The following observations of the Delhi High Court in ***Sunil v. State (2018) 251 DLT 639*** are significant:

“42. A circumstance not discussed by the trial Court is the arrest of the accused persons themselves. As has become routine in a large number of cases, the move to arrest an accused person always begins with information passed on by a ‘secret informer’. In the present case too, according to PW-19, on 23rd May 2010, when they reached the liquor shop at Alipur, a secret informer met him and informed him that the accused persons wanted in the present case were present in the bushes behind Khampur Radio Station. At this time, PW-19 was supposedly accompanied by PW-11. When PW-11 was questioned about this in his cross-examination, he had to admit that in his previous statement (Ex.PW-11/DA), there is no mention of secret information disclosed to the witnesses in the PS. In *Kanhai Mishra@ Kanhaiya Misra v. State of Bihar*, (2001) 3 SCC 451, the Supreme Court observed that “the witness has nowhere stated from whom he received the secret information inasmuch as such information cannot be made a basis to prove this circumstance for being used against the appellant”.

43. But for the secret information, PW-19 could not have proceeded to arrest the accused persons. Even then, the circumstances of the arrests are shrouded in mystery.”

27. In the present case, the identity of the accused and their location was based solely on information obtained by the IO through secret ‘sources’ who were therefore not produced before the Court and therefore could not be confronted by any of the accused. This is a serious lacuna in the entire investigation and

throws grave doubts in the case of the prosecution and the role played by each of the accused persons.

28. One of the significant witnesses who is supposed to have helped the case of the prosecution is Kanhu Nayak (PW-4), the helper in the bus in which the four accused persons were said to have travelled. In Court when he deposed, he did not help the prosecution at all. He stated in the Court that:

“On that day I was helper in that bus. Four to five passengers on that day got up into the bus at Maniakathi chhak and they got down from the bus at Ramanabadi chhak, and after leaving them our bus went to Daringibadi and in our return journey from Daringibadi to Surada we reached near the aforesaid ghati at 3 P.M. and we found two dead bodies lying by the side of the road. I do not know if any of these accused persons inside the dock had boarded in the bus or got down on that day. I was taken inside the jail to identify the culprits arrested in this case where I had identified one of them. The witness went near the accused persons and replied to have identified none of them.”

29. Interestingly, PW-4 was not taken for the TIP although he would have been in the best position to identify the four accused persons if they had in fact travelled in the bus to the spot of the occurrence. He stated how he was taken inside the jail to identify the culprits and is supposed to have identified one of them and yet when he was shown each of them in the Court, he could not identify any of them. In the normal scheme of things, the prosecution ought to have declared PW-4 hostile. However, for some reason, it failed to do so. The consequences of not declaring such a witness hostile would mean that the said evidence cannot

be brushed aside. This has been noted by the Supreme Court in ***Raja Ram v. State of Rajasthan (2005) 5 SCC 272*** and the legal position has been explained therein as under:

“9. But the testimony of PW 8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. *It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (sic declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8’s testimony can be sidelined.*” (emphasis in original)

30. One of the key witnesses for the prosecution was T. Maheswari Reddy (PW-21) who was supposed to have been travelling in the van along with certain others, who have not been examined, coming from the opposite side towards Daringibadi. According to her, one person on a motor cycle chased the van and when he neared it, he smashed the wind-shield glass of the van with a wooden lathi. She stated as under:

“1... The person who was following us by Herohonda motorcycle reached near our vehicle and stationed the vehicle (motorcycle) and he being armed with a wooden lathi had given several blows on the wind-shield glass of the vehicle and destroyed it...”

31. However, the IO himself has contradicted the above evidence by saying as under:

“20. I did not find any mark of violence or damage of the wind shield glass or side glass of the said Maruti Van during the investigation...”

32. The person who is supposed to have followed in the van was himself examined as a prosecution witness. He was Dillip Kumar Naik (PW-5) who stated as under:

“On 13.9.2000 at 2.30 P.M. I picked up Bhabanisankar bus at Surada and went to Daringibadi in the said bus. When the bus reached near the spot and driver told that something has been happened and accordingly stopped the bus. We the passengers got down from the bus and saw the two dead bodies are lying on the road side being murdered. I also found one Hero Honda motor cycle lying at the spot. The driver of the bus told that a car passed through that route towards Surada at which I picked up the Hero Honda Motor cycle which was lying at the spot and followed the car and found the car was occupied by three gents and three ladies including the driver. On our enquiry, the occupants of the car told to have seen a scuffle between the accused persons in one hand and five to six on the other hand and out of fear they returned towards Surada. So I went to the police station taking the car with me. The Hero Honda motor cycle in which I came to police station was kept in the police station.

33. Yet, PW-21 does not identify PW-5 as the person who was seen at the spot attacking the deceased. PW-21 herself appears to be not saying the entire truth and her evidence does not inspire confidence. In particular her strange behavior of not disclosing to the villagers who arrived near the van when six persons were assaulting the two deceased by means of knife and sword or even telling the police about the occurrence appears to be odd. In her deposition, she states as under:

“8. I did not disclose to the villagers arrived near our van while we were returning from the place of occurrence that six persons were assaulting two persons by means of knife and sword at a distance of 3 to 4 Kms. from Gajalbadi towards Daringibadi. I also did not (*sic*) disclose the police personnel at the place where our vehicle was stopped due to want of fuel that I have seen six persons were assaulting two persons by means of knife and sword at a distance of about 3 to 4 Kms from G Gajalbadi towards Daringibadi.”

34. This kind of behavior of a PW creates doubts about the credibility of her testimony. For instance, in ***Shankarlal v. State of Rajasthan (2004) 10 SCC 632***, the unreliability of a person who could be termed as a purely ‘chance witness’, which is what PW-21 was, led to acquittal of the accused in that case.

35. Then again, there are glaring discrepancies when one compares the depositions of PW-5 the person who was supposed to have chased the van in a motorcycle and the evidence of PW-21 herself. These are the serious contradictions which appear to have been missed by the trial Court and throw grave doubts on the case of the prosecution. The circumstance of the arrest of the accused and their identification by PW-21 thus becomes doubtful. This was one of the key circumstances pointed out by the trial Court. This circumstance cannot be said to have been proved by the prosecution beyond reasonable doubt or even convincingly.

36. The absence of blood on the seized weapons is significant, particularly, since the knife used in the commission of the offence

was in fact recovered from the spot. It is another matter that these were not kept in a sealed condition after such recovery.

37. The mere presence of blood on the wearing apparels is by itself not sufficient since it is not shown to be of a blood group belonging to the deceased. In ***State v. Rajamani 2013 SCC OnLine Mad 340***, the Madras High Court rejected the recovery evidence on the ground that there was no blood stain on any other weapons and therefore the prosecution had failed to link them in the crime. To the same effect, the decision of the Orissa Court in ***Mahendra Bhoi v. State of Odisha (2021) SCC OnLine Ori 1981***, it was observed as under:

“13. In the present case, it is not proved by prosecution that the human blood found on the wearing apparels of the accused is the blood of the deceased. As mentioned earlier, the blood stains noticed on the axe as well as on the wearing apparels have not been established on record to be of the deceased only. The chemical examination report under Ext.16 speaks clearly on this aspect. When the blood patches or smears have not been proved to be that of the deceased, then drawing an adverse presumption against the Appellant is not permissible.”

38. The recovery by itself was doubtful since it was from an open place and none of the recovery witnesses have supported the case of the prosecution. In ***Akhilesh Hajam v. State of Bihar (1995) Supp (3) SCC 357***, the legal position was explained as under:

“11. As regards the seizure of blood stained iron angle on the basis of disclosure statement said to have been made by the appellant the same is also not free from doubt. According to the prosecution the appellant made the disclosure statement that he had kept the

iron angle in the room concealed beneath the fuel wood which was used as a weapon of offence but according to the statement of PW 6 the witness of disclosure and seizure of the alleged iron angle the same was not found concealed beneath the fuel wood in the room but the iron angle was found in the verandah which is an open and accessible place. Such a seizure from an open and accessible place can hardly be said to be a recovery on the basis of disclosure statement. It is therefore difficult to accept that the seizure of iron angle was on the basis of the disclosure statement made by the appellant. Even if the iron angle would have been recovered from a concealed place then also on the basis of this circumstance of recovery alone, in the absence of any report of Serologist as to the presence of human blood on the same the conviction of the appellant could not be founded. Thus, in our considered opinion, the circumstantial evidence discussed above does not conclusively lead to the only irresistible conclusion that the appellant was the perpetrator of the crime and none else. The prosecution case does not travel beyond the realm of doubt, the benefit of which has to be given to the appellant.”

39. As already noticed the seized apparels of the accused did not have recognizable bloodstains which is significant since the blood group of both the deceased, i.e., E. Krishnarao Patro (Group-B) and Ladu Dala Behera (Group-O) was known. In this context, reference could be made to the decision in ***State of Rajasthan v. Raja Ram (2003) 8 SCC 180***, where it was observed that the presence of blood stains by itself would not be a circumstance linking the accused to the crime.

40. Next turning to the TIP, the report in the present case indicates that it was not held in compliance with the Rule 236 which

requires that the suspects should be mixed up with 8 or 10 men similarly dressed. The word used in Rule 236 is 'suspect' and not the plural 'suspects'. The evidence of PW-7 shows that the TIP was conducted with all the accused being herded together. As explained in *State of Goa v. Sanjay Thakran (2007) 3 SCC 755*, this creates grave doubts on the efficacy and fairness of the TIP.

41. In a case of circumstantial evidence, motive forms an important link in the chain of circumstances. As explained in *Jayaram Sahoo v. State of Odisha (2022) SCC OnLine Ori 988* as under:

“31. In a case based on circumstantial evidence, motive is indeed an important link in the chain of circumstances. As explained by the Supreme Court in *Shivaji Chinatappa Patil v. State of Maharashtra (2021) 5 SCC 626 : AIR 2021 SC 1249*, it forms an important link to complete the chain of circumstances and failure to prove motive would be a failure to prove the case of the prosecution.

33. In the present case, the prosecution has failed to prove the motive for the crime and, therefore, yet another important link of chain of circumstances has not been established by the prosecution. The result is that neither are the circumstances relied upon by the prosecution of a conclusive nature nor do they exclude every possible hypothesis except the one to be proved. Further the chain of evidence is not so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. It does not unerringly point to the guilt of the accused.”

42. PW-16 was supposed to have identified the accused for the first time in the Court and this is again unacceptable as explained

by the Supreme Court in *Thankayyan v. State of Kerala (1994) SCC (Cri) 1751*, as under:

“3. The only question that arises for consideration is whether the prosecution has established its case beyond reasonable doubt. Admittedly, the case rests on circumstantial evidence. The three circumstances relied on by prosecution are that the deceased was found alive on the previous day and she was found dead on the next day, namely, May 30, 1987. The appellant and A-1 were seen in the locality on the previous day. On arrest, the appellant was found to be in possession of MO-4, earrings said to be belonging to the deceased. The chain of circumstances have not been conclusively established to connect the appellant with the commission of the crime. Admittedly, the appellant was not a resident of that locality. He was said to be working in that locality. PW-1 and PW-3 had no personal acquaintance with him. *After the arrest, no attempt was made to hold Identification Parade for PW 1 and PW 3 to identify the appellant. For the first time he was identified in the court. So it is difficult to place reliance on such evidence.* The earrings MO-4 said to be belonging to the deceased and claimed to have been recovered from the appellant. When the recovery was said to have been made under Panchnama, independent persons were said to be the witnesses for the recovery of MO-4 but no independent witness was examined. On the other hand, the Head Constable was examined. There is no explanation for non-examination. That apart, it is hazardous to convict an accused for offence under Section 302 on mere recovery under Section 27 of the Evidence Act. The circumstances are sufficient to hold that the prosecution has not proved its case beyond all reasonable doubt. The appeal is allowed and the conviction and sentences of the appellant are set aside. The appellant be set at liberty forthwith unless he is required in any other case.” (emphasis in original).

43. There is no consistency in the evidence of the prosecution witnesses who purportedly support the case of the prosecution. The inconsistencies in the testimonies of the PWs-4 & 5 and that of PW-21 have been noticed already. Even the IO (PW-25) has not spoken in the manner consistent with the depositions of the above PWs, particularly, on the alleged breaking of the wind-shield glass of the van by PW-5.

44. While there have been two deaths in the present case and it is a ghastly crime, that by itself would not permit a dilution of the standards of proof. If at all it would put the Court on a greater caution to ensure that the conviction is based on reliable evidence which establishes the guilt of the accused beyond all reasonable doubt. Such caution was administered by the Supreme Court in *Arjun Marik v. State of Bihar (1994) Supp (2) SCC 372*, where it was observed as under:

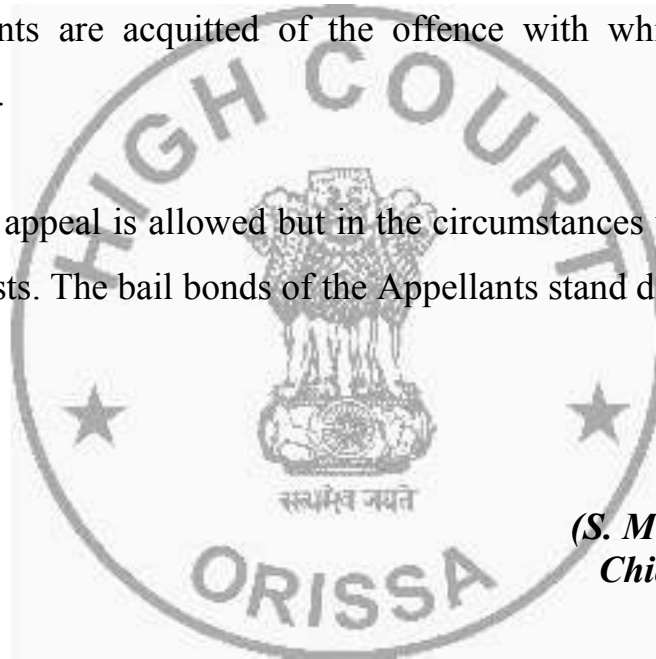
“15. We are also aware of the fact that as a rule of practice, in appeal against conviction for offence of murder Supreme Court is slow to disturb a concurrent finding of fact unless it is shown that the finding is manifestly erroneous, clearly unreasonable, unjust or illegal or violative of some fundamental rule of procedure or natural justice. Further it has also to be remembered that in a murder case which is cruel and revolting it becomes all the more necessary for the Court to scrutinize the evidence with more than ordinary care lest the shocking nature of the crime might induct instinctive reaction against a dispassionate judicial scrutiny of the evidence in law.”

45. For all of the aforementioned reasons, the Court finds that each of the links of chain of circumstances cannot be said to have

been established by the prosecution in the present case. These links are crucial and in the absence of their proof, it is not possible to conclude that the proved circumstances taken collectively, unerringly point to the guilt of the accused.

46. Consequently, this Court is of the view that none of the accused can be held guilty for the offence punishable under Section 302 read with 34 of IPC. The impugned Judgment and order of sentence of the trial Court is hereby set aside. The Appellants are acquitted of the offence with which they were charged.

47. The appeal is allowed but in the circumstances with no orders as to costs. The bail bonds of the Appellants stand discharged.



(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S. Behera/ Jr. Steno