

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRA No. 81 of 2001**

***Hemanta Kumar Patel @ Hemanta Patel and another*** .... ***Appellants***

***-versus-***

***State of Odisha*** .... ***Respondent***

**Advocates appeared in this case:**

***For the Appellants*** : Mr. Dharanidhar Nayak  
Senior Advocate

***For the Respondent*** : Mr. J. Katikia  
Addl. Government Advocate

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE R.K. PATTANAİK**

**JUDGMENT**

**19.07.2022**

**Dr. S. Muralidhar, CJ.**

1. This appeal is directed against the judgment dated 24<sup>th</sup> February, 2001 passed by the Additional Sessions Judge, Jharsuguda in S.T. Case No.132/87 of 1997-99 convicting both the Appellants for the offence punishable under Section 302 read with Section 34 IPC and Section 323 read with 34 IPC in sentencing each of them to undergo rigorous imprisonment (RI) for the first mentioned offence and R.I. for six months for the second mentioned offences. During the pendency of the present appeal while Appellant No.2 was enlarged on bail by order dated

14<sup>th</sup> July, 2011 passed by this Court, Appellant No.1 was enlarged on bail by another order dated 29<sup>th</sup> July, 2011. By that time both the Appellants had spent more than ten years in jail.

2. The case of the prosecution was that on 29<sup>th</sup> December, 1996 in the evening between 7 and 7:30 pm, Dubraj Oram (PW 8), the informant was coming back with his father, the deceased (Saheb Oram). The deceased had gone to Brajaraj Nagar colliery for some labor work. Since the father was in inebriated condition, PW 8 had gone to fetch him. While they were returning and crossing the house of Kirtan Naik (PW 3) at around 8 pm, they met both Appellant Nos.1 and 2 who were coming in the opposite direction. Upon seeing Appellant No.2, the deceased is stated to have embraced Appellant 2 (Lalit Oram) saying 'nati nati' i.e. 'grandson, grandson'. According to PW 8, immediately both the Appellants started assaulting the deceased with fist blows and slaps. PW 8 then intervened and separated his father from them at which point Appellant No.1 dealt a blow with a torch light on the head of PW 8 and Appellant No.2 also dealt him a punch blow. Thereafter, the Appellants went inside the village and the informant and the deceased began returning to their residence.

3. At around 8:30 pm both the Appellants, each being armed with tangi ran towards PW 8 and the deceased. PW 8 then suggested to his father that he should run away from the spot. Both the Appellants are stated to have dealt successive blows to the head of the deceased with tangis. The deceased then fell down. In order to save himself, PW 8 concealed himself nearby 'amari' bush. In the

version of PW 8, who lodged the FIR, both the Appellants then dragged the deceased to a ditch near a *mahul* tree, threw him there and ran towards Thelubandha with their tangis. This occurrence is stated to have been witnessed by Gopal Oram, the uncle of PW 2 and his 'Badabapa', Lachhaman Oram (PW 9). Later, accompanied by PW 3 and certain others villagers, they all proceeded to the spot where the deceased was lying with three deep cuts on his forehead and head. Besides, the thumb and index finger of the left hand of the deceased was found amputated and he was found battling for his life. PW 8 offered water to the deceased but he could not take it. PW 8 removed the injured deceased to his house where he succumbed.

4. On 30<sup>th</sup> December, 1996 an FIR was lodged at the instance of PW 8 before the Officer-in-Charge, Loikera Police Station (PS). It is stated that because of fear of wild animals like bears and elephants and since the road from village Kelda to Kolabira is a jungle road, PW 8 could not come to the PS on the previous day i.e. the day of the incident.

5. On receipt of the FIR the police took up the investigation, held inquest over the dead body and sent it for post-mortem examination. On completion of the investigation, a chargesheet was laid against the Appellants. They pleaded not guilty and claimed trial.

6. The plea of Appellant No.1 was that the case was foisted against him. As far as Appellant No.2 Lalit Oram is concerned, he

claimed that on 29<sup>th</sup> December, 1996 he was on duty as a Guard in the District Intelligence Bureau (DIB) and functioning at the regional office of the Superintendent of Police (SP), Jharsuguda. His further plea was that his signature was taken on blank papers by the police.

7. The prosecution examined 16 witnesses. PWs 8 and 9 were projected as the eyewitnesses. The doctor, who conducted the autopsy was examined as PW 10. PW 16 was the other doctor who examined the injured PW 8. On behalf of Appellant No.2, two defense witnesses (DWs) were examined. DW 1 Arun Kumar Sethi was an ARP Constable a colleague of Appellant No.2, who spoke about the presence of A-2 on the date of occurrence. DW 2 Khatu Kallo was a co-villager, who deposed in favour of the accused about their absence. On an analysis of the evidence, the trial Court convicted the Appellants for the aforementioned offences and sentenced them in the manner indicated hereinbefore.

8. It must be mentioned that as regards the additional charge under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1985, the trial Court acquitted the Appellants of the said offence on the ground that only a Dy.SP could submit a chargesheet for the said offence whereas here it was submitted by the IO, who was not a Dy.SP. Further, there was no evidence that the deceased and PW 8 belonged to the Scheduled Tribe.

9. Mr. Dharanidhar Nayak, learned Senior Advocate appearing for the Appellants, submitted as under:

(i) There were serious contradictions in the testimonies of the two so-called eyewitness i.e. PWs 8 and 9 and therefore, no reliance could be placed on them. From the statement of PW 8, it was seen that according to him, his uncle Gopal Oram was present at the time of the incident. However, Gopal Oram was not examined. Lachhman Oram (PW 9) had arrived after the assault took place and therefore, could not claim to be an eye witnesses to the occurrence. Further, it is stated that they went to the house of PW 3 and brought some water for the deceased to drink. However, PW 3 did not say so.

(ii) Further, in the FIR PW 8 stated that immediately after the occurrence, PWs 3 and 5 arrived at the spot. However, neither of them supported the statement of PW 8. The '*amari*' bush behind which PW 8 was supposed to have concealed himself was 150 feet from the spot. Therefore, it was not possible for him to have seen the assault from that distance. It was further submitted that it was raining on that date and continued to rain through the night. This made it even more difficult for PW 8 to witness the occurrence from such a long distance. He therefore could have gone to the spot only after the assault concluded. PW 9 also arrived after the assault. Therefore, neither of them could have actually seen the assault.

(iii) In one part of his testimony, PW 8 stated that he had told the Dy SP that the occurrence took place near Gai Gotha and later stated that the occurrence took place at the back side of the house of Baisakhi. Therefore, the exact place of occurrence was not known. Reliance was placed on decision of the Supreme Court in ***Syed Ibrahim v. State of Andhra Pradesh, Manu/SC/8237/2006*** where it was held that where the place of occurrence itself has not been established, it would not be proper to accept the prosecution version.

(iv) According to PW 8, there were eight houses at Talipada but except Ram Krishna Oram (PW 5) and Moti Oram, nobody else appeared to know about the death of the deceased. Moreover, PW 5 had turned hostile and stated that although he went to the spot to see the dead body and PWs 8 and 9 were present there, they did not tell him regarding the incident. No other witnesses were examined from the Pada.

(v) PW 8 admitted that the houses of Shyamlal and Baisakha were near the place of occurrence. Neither of them was examined by the prosecution. In the circumstances, the failure to examine the independent witnesses and to base the conviction only on interested witnesses like PW 8 and 9 was unsafe. Reference is made to the decision in ***Devi Prasad Panda v. State of Orissa (2002) 22 OCR 714.***

(vi) PW 8 stated that they were wearing clothes that were blood stained when they carried the deceased from the spot and the

police had seen the clothes. Yet the Investigating Officer (IO), PW 12 did not seize the wearing apparels of the eyewitnesses for chemical examination. This created a doubt about their presence at the spot. Reliance is placed on the decision in ***State of Punjab v. Harbans Singh (2004) 29 OCR (SC) 5.***

(vii) Turning next to the deposition of PW 9, it is pointed out that he stated that on raising a hullah Gopal and PW 8 arrived there. He further stated that he did not raise a hullah when the assault started and reached after the accused persons left and hearing his shouts, nobody came there except Dubraj (PW 8) and Gopal. Therefore, according to PW 9, he was the sole eyewitness and both PW 8 and Gopal, were post occurrence witnesses. On the other hand, PW 8 seems to suggest that PW 9 came there after the assault was over. In view of the serious contradictions neither PW 8 nor PW 9 could be believed. Reliance is placed on the decision in ***Noushad @ Noushad Pasha v. State of Karnataka (2015) 60 OCR (SC) 515.***

(viii) PW 9 further stated that the assault took place with a tangi behind the house of Khatu whereas according to PW 8 it took place on the rear side of the house of Baisakhi and near Gai Gotha. Here again therefore, the place of occurrence was in doubt. Where the prosecution evidence relied on the deposition of the interested witnesses, it was imperative for the evidence to be corroborated by independent witnesses. Reliance is placed on the decision in ***Harbeer Singh v. Sheeshpal AIR 2016 SC 4958.***

(ix) There was also discrepancy in what clothes the accused was wearing. PW 9 stated that A-1 was wearing white full pant and a T-Shirt, the colour of which he could not recall and he could not recall the colour of the cloth worn by A-2. However, the full pant of A-1 which was seized, was of a brown yellow colour. This made the deposition of PW 9 unbelievable. PW 9 is further supposed to have said that when he was 30-35 cubits away he could see A-2 assaulting Saheba from the front side and A1 from the back side by tangi. He denied the suggestion that he did not tell the IO that when he questioned the accused, they replied that they are going to kill "Dui Godia". He denied the suggestion that he did not say that he saw the occurrence from a distance of 30 feet, therefore, there was uncertainty whether he had seen the event from 30 feet cubits. The exact location was also not specified by PW 12 in the site map prepared (Ext.12). This threw grave doubts on the version of PW 9. He also did not mention anything about the assault by the accused persons on PW 8. No independent witnesses were examined from the village to support the case of the prosecution.

(x) As regards the discovery of the weapon of offence, the case diary of PW 12 did not show when he arrested the accused. Further PW 12 recorded the disclosure statement of A-2 at the police station before his arrest. Therefore, whether the disclosure statement was made before or after the arrest, was doubtful. The statements of PW 2 and PW 15 did not corroborate that of PW 12. According to PW 2, A-2 led them to the place where the tangi was concealed i.e. the land of Jogeswar Kallo under the water in a

ditch. He then brought out a tangi from the place with a broken handle (MO I). The other tangi (MO II) was also recovered. Later, PW 2 stated that in his presence A-2 was not asked about the place where the weapon was concealed and at that place no documents were prepared. From this statement, it appeared that PW 2 was not present when the disclosure statement was made by A2 and no document was prepared in his presence about such recovery of the weapon. The other person, Bhaskar Rout who was present during such discovery of the weapon was not examined.

(xi) Sashibhusan Barik (PW 15) stated that he was not at all present when the disclosure statement was made. The police had simply called him and obtained his signatures on a paper. He turned hostile.

(xii) The weapon discovered was already visible when the police were taken by A-2 to the place from which it was discovered. Such recovery therefore, could not be used against the accused persons. Reference is made to the decision *Gagua @ Gagan Jethy v. State of Odisha (2015) 60 OCR 1087*.

(xiii) As regards the plea of alibi taken by A-2, two letters i.e. Ext.28 which is a typed one and the other one which was hand written had the same format with the same contents. Therefore, there was a doubt as to their genuineness. PW 14 had not verified from any official source about the absence of A-2 before submitting the report.

(xiv) PW 13 admitted that he had no personal knowledge of the absence of A-2 from duty. PW 12 had not given either Ext.27 or Ext. 28 to PW 13 in the seizure list. He had given Ext. 17 to PW 13. The inconsistency of the statements of PWs 13 and 14 as regards this Ext. points to a contradiction in those depositions.

(xv) DW 1 clearly mentioned that A-2 was present in the office from 10 am to 12 noon and thereafter between 6 pm and 8 pm. There was no occasion to disbelieve DW 1. Relying on the decision in **Bapi @ Debadutta Ratnakumar Patra v. State (2009) 43 OCR 507** it is submitted that equal weight is to be given to the versions of the DWs and PWs and there is no justification to disbelieve the DWs and accept the PWs.

(xvi) As regards Dr. K.C. Dash (PW 10) who conducted the autopsy of the deceased, his statement, after examining MO I and MO II, that the size of the injury can be larger than the edge of MO II or MO I if the blow is given with force creates a strong doubt about the genuineness of the weapon of offence seized by the IO and produced before the doctor.

(xvii) Further, PW 10 stated that he did not recall MO I and MO II being stained with blood. Further the SFL report stated that no blood grouping was made and there was no finding whether the blood was human blood. It was submitted that where two views or interpretation is possible, that which helped the accused had to be taken into consideration. Reliance is placed on the decisions in **Dev Kanya Tiwari v. The State of U.P. (2018) 70 OCR (SC) 423;**

***Prakash Gochhi v. State of Odisha 2018 (II) OLR 824; Arjuna Pradhan v. State of Odisha (2011) 50 OCR 825 and State of Odisha v. Pitambar Goipoi (2016) 1 OLR 418.***

10. Mr. J. Katikia, learned Additional Government Advocate, in reply submitted as under:

(i) Referring to the injuries found by the doctor (PW 10) who conducted the post-mortem and which according to him, clearly pointed out that the injuries could be caused by the MOs shown to him. The medical evidence fully corroborated the eyewitnesses i.e. PWs 8 and 9. The death was homicidal and was clearly proved to have been caused by the two accused from the clinching evidence of the two eyewitnesses (PWs 8 and 9). There was hardly any cross-examination of the two eyewitnesses to bring home the plea of defence. There was no suggestion by either of them, of the absence of either accused or the presence of rain making it difficult for them to witness the occurrence. Reference is made to the decision in ***Kashiram v. State of M.P. (1998) 7 SCC 450.***

(ii) The fact that the independent witnesses may not have been examined was not fatal to the case of the prosecution. It was the call of the public prosecutor as to who should be examined. Reference is made to the decisions in ***Hukam Singh v. State of Rajasthan (2000) 7 SCC 490*** and ***Nand Kumar v. State of Chhatisgarh (2015) 1 SCC 776.***

(iii) The statement of PW 8 was also recorded under Section 164 Cr PC. It could be relied on to corroborate his deposition in the Court although it could not be treated as substantive evidence. Reliance is placed on the decision in ***Dhanabal v. State of T.N. (1980) 2 SCC 84.***

(iv) Both PWs 8 and 9 were consistent in all the material particulars and corroborated each other. Their evidence was clinching as far as the prosecution is concerned. Reliance is placed on the decision in ***Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793.***

11. The above submissions have been considered. The Court first turns to the testimony of PW 8 who witnessed the occurrence. He was the injured eyewitness. No doubt he is a related witness and therefore, is an interested witness. However, that is by itself not a reason to discard his testimony. Before beginning to analyze the evidence, it is apposite to recall the legal position concerning appreciation of evidence of interested witnesses.

12. In ***Dalip Singh v. State of Punjab AIR 1953 SC 364*** it was held as follows:

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.

It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

13. In *Piara Singh v. State of Punjab AIR 1977 SC 2274* the Supreme Court held:

"4... It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

14. In *Hari Obula Reddy v. The State of Andhra Pradesh (1981) 3 SCC 675* the Supreme Court observed:

"13.... it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence.

All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

15. Again in *Ramashish Rai v. Jagdish Singh (2005) 10 SCC 498*, it was held:

"7...The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

16. Turning to the case on hand, what is clear from the deposition of PW 8 is that the assaults of the deceased by the accused were at two stages. The first was around 8 pm when soon after the deceased embraced A-2 saying 'nati nati', both the accused attacked him. When PW 8 shouted and intervened, he was too attacked by A-1 with a torch light, punched by A-2. The second assault was around 8.30 when both the accused ran towards PW 8 and the deceased with tangis in their hands. PW 8 was very much present at the spot when the attack with the tangis took place on the head and forehead of the deceased. When he referred to his uncle running away from that place, he obviously meant Gopal. PW 8 actually did not speak with PW 9 at this stage.

17. It is clear from the evidence of PW 9 that he was walking behind the two accused. PW 9 states that "when they reached at the tube-well, he saw both the accused persons proceeding towards Uparapara with tangi in their hands. I asked them and they replied that they were going to kill 'Dui Godia' (two-legged animal). They ran and seeing this, he also followed them." The word 'followed' clearly meant that PW 9 was behind the two

accused and not ahead of them. It is possible therefore, when PW 8 says that PW 9 arrived there after the assault, he meant the assault with the tangis. However, he may not have noticed that PW 9 was behind the accused. This did not mean that PW 9 did not witness the occurrence. Again, PW 9 clearly denies the suggestion that he did not tell the IO about the accused saying that they were going to kill 'Dui Godia'. PW 9 raised hulla, he says 'Gopal and PW 8 arrived there'.

18. It must be recalled that after seeing his father being attacked with tangis, PW 8 went behind the '*amari*' bush. It is only after the assault was over and the accused threw the dead body of the deceased in the ditch and ran away that PW 8 emerged from behind the '*amari*' bush and reached the spot where the deceased lay in an injured condition. There is no inconsistency therefore, in the version of PW 8 and 9, it appears that it is a natural sequence of events. The Court is unable to see any inconsistency of contradiction in the versions of PW 8 and 9 as suggested by Mr. Nayak, learned Senior Counsel, much less any serious contradictions. It does show that both PWs 8 and 9 were very much present and both clearly witnessed the occurrence.

19. The suggestion that it was raining that night and therefore, neither of them could clearly see the occurrence was not put in the cross-examination to either PW 8 or PW 9. There is also no suggestion that because he was in '*amari*' bush which was 150 feet away, PW 8 could not see the Appellants from that distance. There is also no suggestion to PW 9 that because he was at a

distance of 30 to 35 cubic away, he could not see the occurrence. It is clear from the depositions that it was a moonlit night. Also there is nothing to indicate that at the very time the occurrence took place, it was raining so heavily that neither witness could see the occurrence. Therefore, there is no merit in these submissions.

20. At this juncture, the Court would like to refer to the following passages in *Nand Kumar* (*supra*):

“25. The submission of learned Counsel for the appellants that since PWs 1 and 3 were in close relation with the deceased persons being wife/mother or daughter/sister and that they should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in *Dalbir Kaur and Ors. Vs. State of Punjab*, (1976) 4 SCC 158, and *Harbans Kaur and Anr. Vs. State of Haryana*, (2005) 9 SCC 195, which lays down the following proposition:

“There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.” In *Namdeo Vs. State of Maharashtra*, (2007) 14 SCC 150, this Court further held:

“38. .... it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his

evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

XX

XX

XX

32. The law does not say that the prosecution must examine all the eye-witnesses cited by the prosecution. When the evidence of two eye-witnesses, PWs 1 and 3 was found worthy of acceptance to prove the case then it was not necessary for the prosecution to examine any more eye-witnesses. It is for the prosecution to decide as to how many and who should be examined as their witnesses for proving their case. Therefore, we find no merit in this submission.”

21. There could be minor variations of the statements of PWs 8 and 9 but on the essential particulars including the place of the occurrence they are consistent with each other. In this context, the following observations in *Shivaji Sahabrao Bobade (supra)* are relevant:

“8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge as

at some length. dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the postmortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity and ingenious untruthfulness, of persons who swear to the facts before him. Nevertheless, where a judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the court of first instance. Nor can we make a fetish of the trial judge's psychic insight."

22. The criticism that other independent witnesses were not examined and therefore, PWs 8 and 9 should be disbelieved deserves to be rejected in view of the clear and cogent evidence given by PWs 8 and 9. In circumstances like the present one, it is not unusual for other villagers who have witnessed the events not to come forward to speak in support of the prosecution. They may also reasonably apprehend being subjected to intimidation. That cannot be entirely ruled out. The decision as to who should be examined is that of the public prosecutor. In that context, the following observations in *Hukam Singh v. State of Rajasthan* (*supra*) are relevant:

“7. Bhupender Pal (PW.4) and Ram Pyari (PW.5) were the two eyewitnesses examined by the prosecution. The fact that they were present at the scene of occurrence could not be disputed nor the same has been disputed by the accused. They sustained injuries at the hands of the assailants and the doctor who noted such injuries had testified about them in the court as PW.9. The version spoken to by PW-4 in court is substantially a reiteration of the version which he supplied to the police as early as 8.40 P.M. on the same night. That became the basis for the FIR. The Sessions Court refused to believe the testimony of those witnesses on the erroneous perception that they are interested witnesses. The only premise for dubbing them as interested witnesses is that they were the kith and kin of the deceased. Why should such witnesses be termed as interested witnesses? If they had seen the occurrence they would certainly have the interest to bring the offenders of the murder of their breadwinner to book. Normally the kith and kin of the deceased, if they had seen the occurrence would not absolve the real offenders and involve innocent persons for that murder. [Vide Dalip Singh vs. State of Punjab (1954 SCR 145), Guli Chand vs. State of Rajasthan (1974 3 SCC 698) and Dalbir Kaur Vs. State of Punjab (1976 4 SCC 158)].

xx

xx

xx

12. In trials before a Court of Sessions the prosecution shall be conducted by a Public Prosecutor. Section 226 of the Code enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the court that fact. Alternatively, he can wait further

and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

13. When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged to take all such evidence as may be produced in support of the prosecution. It is clear from the said Section that the Public Prosecutor is expected to produce evidence in support of the prosecution and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution for relieving itself of the strain of adducing repetitive evidence on the same point but also helps the court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice.

14. The situation in a case where the prosecution cited two categories of witnesses to the occurrence, one consisting of persons closely related to the

victim and the other consisting of witnesses who have no such relation, the Public Prosecutors duty to the court may require him to produce witnesses from the latter category also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip that witness being examined as a prosecution witness. It is open to the defence to cite him and examine him as defence witness. The decision in this regard has to be taken by the Public Prosecutor in a fair manner. He can interview the witness before hand to enable him to know well in advance the stand which that particular person would be adopting when examined as a witness in court.”

23. The Court finds that the medical evidence of PW 10 fully corroborates the two versions of PW 8 and 9 . He has noted the following injuries on the deceased:

“(i) Incised wound 3” x 1” x 3/4” over the forehead 1” above the middle of both the eye-brows in a horizontal manner. The frontal bone below the injury was fractured and the meninges bone and the brain materials below the fracture bone was injured.

ii) Incised wound, 1” x 1/2” x 1/6”, 1” behind the injury no. (i) on the left parietal area from the mid-line towards the left side.

iii) Incised wound, 2” x 1/2” x 1/6”, 3/4” behind the injury no. (ii) on the right parietal area from the mid-line towards the right side. The parietal bone below the injury was fractured sharply causing injuries to the meninges and brain matters.

iv) Incised wound  $5\frac{1}{2}$ " x 1" x  $\frac{3}{4}$ " at the junction of both parietal bone and the occipital bone causing fracture of occipital bone and distal parts of both the parietal bones sharply causing injury to meninges and brain.

v) Incised wound 1" x  $\frac{1}{2}$ " x  $\frac{1}{6}$ " horizontally in face in front of right ear.

vi) Bruise 4" x  $\frac{1}{4}$ " x  $\frac{1}{6}$ " on the front of right shoulder joint.

vii) Left thumb was cut off with a portion of the palm having laceration on the cut margin.

viii) 2<sup>nd</sup> and 3<sup>rd</sup> phalanx of middle finger of left palm were missing having a lacerated cut on the top.

ix) Half of 3<sup>rd</sup> phalanx of ring finger of left palm also was missing with laceration on the top.

x) Incised wound 1" x  $\frac{1}{4}$ " x  $\frac{1}{6}$ " on the junction of thumb and index finger of right palm.

xi) Incised wound  $\frac{1}{2}$ " x  $\frac{1}{4}$ " x  $\frac{1}{6}$ ",  $\frac{1}{2}$ " above the injury no. (x).

xii) Incised wound 5" x  $\frac{1}{6}$ " x  $\frac{1}{8}$ " on the back side of left thigh vertically downwards.

xiii) Incised wound 2" x  $\frac{1}{6}$ " x  $\frac{1}{8}$ ", 1" lateral to the injury no. (xii) placed horizontally.

xiv) Incised wound 1" x  $\frac{1}{4}$ " x  $\frac{1}{6}$ " on the left gluteal region and was situated horizontally.

xv) Incised wound 2" x  $\frac{1}{4}$ " x  $\frac{1}{6}$ ", 1" above the left iliac track placed horizontally.

24. That the IO did not find the blood stains in the weapon is not surprising because it was recovered from water ditch. The injuries described completely corroborate the version of PWs 8 and 9 as the manner of attack on the deceased by the two accused brutally with their tangis on the vital parts of the deceased, who was a defenseless old man. The opinion given by the doctor on the two MOs that the injuries are possible to be caused by the said weapons supports the case of the prosecution. Merely because a bigger wound could be caused by such weapons when used with force, in no way suggests that they were not used.

25. As regards the recovery of the weapons under Section 27 of the Evidence Act pursuant to the statement of the accused, the Court finds that the discrepancies pointed out in the evidence of PWs 2 and 12 are not significant enough to doubt the testimonies. Even, one witness is sufficient to prove the recovery of the weapon of offence at the instance of the accused. The Court is satisfied that the statements made by PW 2 by and large support the case of the prosecution about the recovery. That it was in a water ditch is sufficient not to doubt the place from which it was recovered. Merely because a portion of the weapon may have been visible does not mean that the entire recovery evidence should be discarded. The Court finds that the facts in ***Gagua @ Gagan Jethy (supra)*** were different from the facts of the present case and therefore, the decision is distinguishable in its applicability to the case at hand.

26. The Court does not find any great discrepancy as regards the place of occurrence. The occurrence took place in two stages. In other words, there are two parts to the occurrence, one was the Gai Gotha and the other at the actual point of attack. The Court has also seen the spot map and finds that the versions of PWs 8 and 9 do get probabalized by the spot map. The Court is not satisfied that the discrepancy as pointed out in *Syed Ibrahim (supra)* or *Harbeer Singh v. Sheeshpal (supra)* is present in the case. The discrepancy regarding the wearing apparels of the accused are also not so material when one looks at the evidence of PWs 8 and 9 in toto. This again cannot be pulled out of context to doubt the credibility of the witnesses.

27. The Court tends to concur the view of the trial Court that A-2 has miserably failed to prove the defense of alibi. As pointed out by Mr. Katikia, the defense of alibi is tricky and if it is not made good, can work negatively against the accused. The following observations in *Kashiram v. State of M.P. (supra)* are relevant in this context:

“8. The main plank of the argument of the appellant's counsel was 'alibi'. According to him the evidence of the DWs and the records produced by DW3 prove that the appellant attended the Court of Naib Tehsildar on that day situated about 60 to 70 kms away and the appellant could not have been present at the place of occurrence. There are several circumstances which disprove the case of alibi. There was no consistency in the suggestions made to prosecution witnesses when they were cross-examined. A suggestion was made to PW2 that he himself and the members of his group attacked the appellant and his driver. The

suggestion could be only on the basis that the appellant was present at the spot. No suggestion was made to PW2 that the appellant was not there at the time of occurrence. There was no suggestion to PW13 that the appellant was not present there. When the appellant was questioned under s.313, he did not say that he was not present at the spot. All his answers were mere denials of the evidence put to him.

XX

XX

XX

10. The evidence of DW4 does not inspire any confidence. He claims to have been present in the court of Naib Tehsildar along with the appellant. But Ex. D-7 disproves his statement. In that case he was non-applicant and the order discloses that he was not present in Court and he should be informed of the order. DW3 who produced the records from the court of Naib Teshildar proves equally unreliable. His version that cases in the Court of the Naib Tehsildar started only at 2 P.M. is too big a pill to be swallowed. He could not state clearly the time at which the statements containing the signature of the appellant were recorded. It is quite obvious that he is a partisan witness and no reliance can be placed on his evidence.”

28. In the present case, the cross examination of DW 1 brings out the weakness of the defence evidence when he states:

“There is no duty register in respect of D.I.B. guards. We simply issued a command certificate.”

29. As regards DW 2, he admits to not to voluntarily appearing before the Police to make any statement. He further states “accused Lalit and his father eight-ten days back requested him to

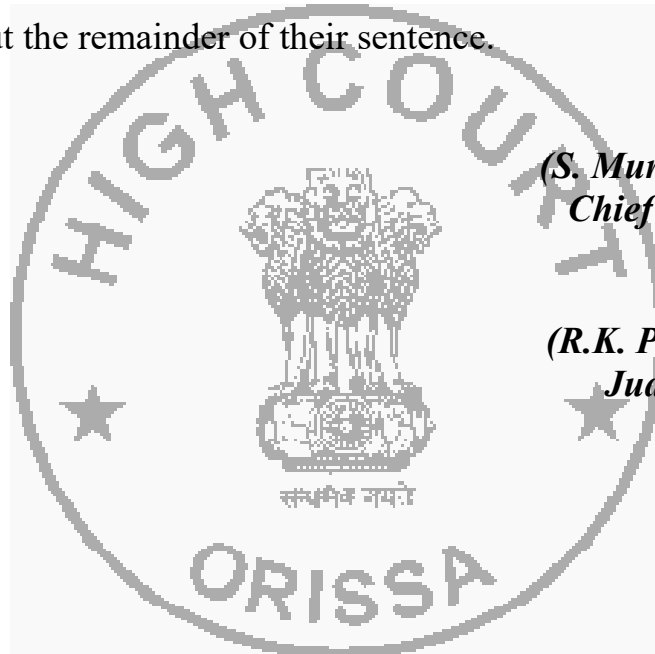
depose in the case as defense witness.” Neither DW 1 nor DW 2 inspire any confidence that they are speaking the truth.

30. The Court is satisfied that after giving the same weightage to the evidence of DWs and the PWs in the present case, the trial Court is justified in discarding the evidence of the DWs. The facts in the present case are distinct and different from the facts in ***Mahendra Singh v. State of M.P. 2022 LiveLaw (SC) 543.***

31. This case is about a brutal murder of an innocent man, who was defenceless and was only trying to show his affection to one of the accused. That they reacted so violently and disproportionately appears to be wholly unjustified. The Court is conscious of the caution expressed by this Court in ***Bhatamunda v. State (supra)*** that merely because the murders are ghastly should not end in conviction if the evidence is not convincing. However, here this is a case based on direct evidence resting on the unimpeachable testimonies of PWs 8 and 9, who inspire confidence and whose testimonies are fully corroborated by the medical evidence. While it is true, as explained in a series of decisions including ***Arjuna Pradhan (supra)***, ***Prakash Gochhi (supra)***, ***Pitambar Goipoi (supra)*** and ***Dev Kanya Tiwari (supra)*** that if two views are possible, the one favouring the accused should be preferred, the Court is not satisfied that in the present case, two views are possible on the depositions of PWs 8 and 9. Their testimonies unerringly and beyond all reasonable doubt bring home the guilt of the two accused for the offences which they have been charged and found guilty.

32. For all of the aforesaid reasons, the Court finds no reason to interfere with the well-reasoned and analysed judgment of the trial Court. There is no merit in this appeal. It is dismissed as such.

33. The bail bonds of the Appellants stand cancelled. They are directed to surrender forthwith in any event not later than 1<sup>st</sup> August, 2022 failing which the IIC of the concerned police station will take immediate steps to have them brought back to custody to serve out the remainder of their sentence.



**(S. Muralidhar)**  
**Chief Justice**

**(R.K. Pattnaik)**  
**Judge**

*S.K.Jena/Secy.*