

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA 50 of 2005 and CRLA No.338 of 2004

Baidhar Mahalik @ Baina
(In JCRLA 50 of 2005)

....

Appellants

Smt. Shanti Parida and others
(In CRLA No.338 of 2004)

-versus-

State of Odisha

....

Respondent

For Appellants

:

Mr. Ambika Prasad Mishra,
Advocate
(In JCRLA 50 of 2005)

Mr. Sangram Kumar Das,
Advocate
(In CRLA No.338 of 2004)

For Respondent

:

Mr. A. P. Das,
Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

JUDGMENT
04.04.2022

Dr. S. Muralidhar, CJ.

1. These two appeals challenge the same impugned judgment dated 8th October, 2004 passed by the learned Additional Sessions Judge, Bhadrak in Sessions Trial No.4/1/2001 and 21/23 of 2001.

2. Appeal JCRLA No.50 of 2005 is by Accused No.3 (A3) Baidhar Mahalik @ Baina whereas CRLA No.338 of 2004 is by A2 (Shanti Parida), A1 (Sudarsan Parida) and A4 (Prasanta Parida @ Babua).

3. By the impugned judgment, the trial Court has held all the four accused guilty of the offence punishable under Section 302 IPC read with Section 109 and 34 IPC, for committing the murder of Rita Pal and her brother, Mana Pal. Each of them has been sentenced to undergo imprisonment for life with the further condition that A3 (Baidhar Mahalik @ Baina) and A4 (Prasanta Parida @ Babua) will not be released from prison unless they have individually served out at least 20 years of imprisonment.

4. This Court has heard the submissions of Mr. Ambika Prasad Mishra, learned counsel appearing for the Appellants in JCRLA 50 of 2005 and Mr. Sangram Kumar Das, learned counsel appearing for the Appellants in CRLA No.338 of 2004. Mr. A. P. Das, learned Additional Standing Counsel made submissions on behalf of the State in both the appeals.

5. The case of the prosecution is that in 1982, A1 (Sudarsan Parida), who hailed from Odisha and was serving in the Indian Railways in West Bengal as a driver, married deceased Rita Pal, a Bengali and lived in different places in West Bengal. Sudarsan had railway quarters. They had a son, Bapi Parida and a daughter, Manisha Parida (P.W.20).

6. According to the prosecution, it was a troubled marriage on account of A1 (Sudarsan Parida) developing an intimate relationship with A2 (Shanti Parida), the wife of his cousin, Suresh Chandra Parida (P.W.7). As a result, Rita left the matrimonial home with her two children to stay initially with her mother Smt. Bina Pal (P.W.24). Later, she took a separate accommodation on rent. She also initiated proceedings against A1 (Sudarsan Parida) claiming maintenance under Section 125 Cr. P.C. On contest, maintenance for a sum of Rs.1,500/- per month was awarded to her and the two children.

7. According to the prosecution, A1 (Sudarsan Parida) and A2 (Shanti Parida) were upset with this development and devised a plan to eliminate Rita. The prosecution story is that A1 (Sudarsan Parida)'s errand boy (Prasanta Parida @ Babua) (A4), who happened to be Sudarsan's step mother's son, and a friend of his Baidhar Mahalik @ Baina (A3) persuaded one Debendra Mahalik (P.W.1), a sorcerer in Bhadrak, Odisha, in mid-February 1999 to come to the residence of A1 and A2 at Garden Reach in Calcutta to do their bidding of killing Rita by practising sorcery. Apparently P.W.1 refused to do so and returned. Thereupon, A4 (Prasanta Parida @ Babua) approached Rita at her mother's place and informed her that A1 had married A2 in Bhadrak, Odisha. A4 convinced Rita that he would obtain the Court marriage papers of A1 and A2 if she accompanied him to Bhadrak. Rita's mother, Smt. Bina Pal (P.W.24) was apprehensive about sending Rita

alone and persuaded her son, Mana Pal (the second deceased) to accompany his sister, Rita and A4 Babua.

8. Rita, Mana and Babua together left Calcutta and arrived at Bhadrak on the intervening night of 14th and 15th March, 1999. Rita and Mana waited as Babua left to locate the advocate who was supposed to bring the Court marriage papers. Instead, Babua returned with Baina (who was squint eyed), who pretended to be the advocate. He informed Rita and Mana that the papers were available at Tihidi and took them there. After a pretentious search, Babu and Baina returned in the evening to tell Rita and Mana to stay for the night in the house of Baina, which was nearby. Rita and Mana walked led by Babua and Baina. At a solitary place near villages Sadanandapur and Balijhari, Babua and Baina inflicted multiple injuries on Rita and Mana with sharp cutting weapons. While Rita died on the spot, a badly injured Mana managed to reach the house of Binay Kumar Jena (P.W.21) a resident of Balijhari who happened to be its Sarpanch. The villagers gathered there. Mana is said to have disclosed to P.W. 21 the names of the assailants and requested the villagers to save his sister, Rita. Mana was taken to the Tihidi CHC and thereafter to the District Headquarters Hospital (DHH) in Bhadrak, where he died while receiving treatment on 17th March, 1999.

9. Manoj Kumar Rout (P.W.23), the Investigating Officer (IO), was working as the Officer In-Charge (OIC) at Tihidi Police Station on 15th March, 1999. At 11.30 pm on that date, one

Kamalakanta Jena (P.W.2) gave an oral complaint regarding the killing of Rita and the injuries on Mana. On the basis of the said complaint an FIR (Ext.1/3) was registered. P.W.23 proceeded to the spot, examined witnesses and held an inquest over the dead body of Rita Pal. He seized the sample earth and the blood stained earth from the spot where her body was lying. He seized a red coloured air bag by the side of her body. The service of sniffer dogs was requisitioned. He sent the dead body of Rita to the DHH in Bhadrak. While at the Tihidi CHC, Mana Pal made a statement which was recorded (Ext.26). Later, Mana was shifted to the DHH, Bhadrak, where he succumbed to his injuries. P.W. 23 then proceeded to the DHH and conducted an inquest over the dead body of Mana Pal.

10. On 19th March, 1999, P.W.23 arrested Baina, seized a terry cotton full shirt, a yellow grey colour full pant and collected his nail clippings. The statements of Smt. Bina Pal (P.W.24), Chhabi Pal and Manisha Parida (P.W.20) were recorded by P.W.23. Exhibits were sent to the SFSL, Rasulgarh for chemical examination.

11. On 5th April 1999, P.W.23 recorded the statements of Khageswar Mahalik (P.W.11) and Debendra Mahalik (P.W.1) under Section 164 Cr.P.C. On 9th June, 1999, he seized a compromise petition between A2 (Shanti Parida) and her husband Suresh Chandra Parida (P.W.7). He then proceeded to Bhubaneswar to record the statement of Uttam Parida, the brother

of the A2 (Shanti Parida). From there proceeded to Calcutta. He found A2 (Shanti Parida) at Basir Hat. He arrested and brought her and Uttam Parida to the Tihidi Police Station and forwarded A2 (Shanti Parida) to the Court. On 5th July, 1999, he submitted a charge sheet.

12. All four accused pleaded not guilty and claimed trial. On behalf of the prosecution, 24 witnesses were examined. The defence examined one witness (D.W.1 Baina). The defence plea was that A1 had a good relationship with Rita and had no extra marital relationship with A2; that this was improbable as he was related to Suresh (P.W.7). The claim was that P.W.7 inimical towards Shanti due to estrangement following torture and dowry demands.

13. The trial Court took up the following two issues:

- "i. Whether accused Sudarsan and Shanti abetted commission of the murder of the deceased?
- ii. Whether in consequence of the abetment and in furtherance of the common intention accused Babua and Baina murdered the deceased ?"

14. P.Ws.2 to 16, 20 and 22 turned hostile. The trial Court considered the evidence of P.Ws 1, 7, 21 and 24 to be significant. The trial Court then came to the following conclusions:

(i) The deaths of Rita and Mana were homicidal. This was proved by the evidence of P.Ws.17 and 18 the respective doctors who conducted their Post-Mortems (PM).

(ii) The evidence of P.W.1, Debendra Mahalik proved the involvement of A1 to A4 in the plans for eliminating Rita by sorcery. This was around 14th February 1999, just 3 to 4 weeks before the occurrence.

(iii) A1 (Sudarsan Parida), who hailed from Tihidi in Odisha had married deceased Rita, a Bengali girl while working in Bengal sometime in the early 80s. In the mid 80s, Sudarsan's cousin Suresh (P.W.7), who was serving as a school peon married A2 (Shanti Parida), a village girl. Their marriage broke due to incompatibility. Shanti was residing at her parental house at Kharif Patna, which place A1 would frequent and the two of them developed an intimate relationship. A2 then stayed with A1 at Calcutta, as a result of which Rita was driven out of the house along with her children. Once Rita succeeded in the proceedings for maintenance, A1 and A2 chalked out a plan to eliminate her. Through the evidence of PWs 7 and 24, the prosecution was successful in proving the motive which was an important link in the chain of circumstances.

(iv) By 1999, A1 had already put in 20 years of service in the Railways and could hold out promises about providing jobs to

persons and that is how he was able to lure Babua and Baina to do his bidding.

(v) Although Ext.26, the dying declaration of Mana did not appear credible but the evidence of (P.W.1) Debendra Mahalik, Suresh (P.W.7), Binay Kumar Jena (P.W.21) and Bina Pal (P.W.24) were trustworthy.

(vi) The Chemical Examination Report (Ext.21) showing the blood group on Rita's wearing apparels matching the blood found on the wearing apparel of Baina was a strong factor to establish his involvement in her murder.

(vii) Babua and Baina were found to have killed Rita and Mana in furtherance of their common intention. Sudarsan's absence from his residence at Garden Reach, Calcutta soon after the occurrence was compatible with his guilty conduct. The plea that he had a good relationship with Rita was a myth and plainly false.

(viii) The story put forth by Baina that he had political rivalry with P.W.21, Binay was not established by any credible evidence. Baina was arrested on 20th March, 1999 but refused to participate in Test Identification Parade.

15. On the above findings, the trial Court held all the four accused to be guilty of the offence under Section 302 read with Section 34

and 109 IPC and sentenced them in the manner indicated hereinbefore.

16. The following arguments have been advanced on behalf of the Appellants:

(i) The so-called dying declaration of Mana before the Tahasildar at the DHH Bhadrak was suppressed that must be taken to be a circumstance in favour of the accused and an inference should be drawn that it was in favour of the accused;

(ii) There was a delay in forwarding the FIR to the Magistrate's Court. Although the date of despatch of the FIR to the Court of SDJM., Bhadrak was mentioned as 16th March, 1999 in the register, the case diary did not reveal when exactly it was sent and by what means. There must have been two FIRs and the 1st FIR was perhaps suppressed;

(iii) Mana Pal must have spoken in Bengali which was not understood by the Gramrakhi (P.W.11) and so the statement made by him to P.W.21 regarding the involvement of Babua and Baina was not believable. This is strengthened by the evidence of P.W.2 (Kamalakanta Jena), who states that he was unable to understand what Mana Pal was saying;

(iv) There were inconsistencies in the evidence of P.W.21. His evidence was neither reliable nor truthful. In his examination in

chief, he stated that Mana fell down in the rear of the house whereas in the cross-examination, he stated that Mana fell in front of the house.

(v) The statement of P.W.1 under Section 164 Cr.P.C. contradicted his deposition in the Court and, therefore, his evidence was not trustworthy or reliable.

(vi) The evidence of P.W.24, Bina Pal, was also not believable as she could not even state when exactly the marriage between A1 and Rita Pal took place.

(vii) There was no independent witness to the seizures and so, an important link in the chain of circumstances was not proved. The murder weapon was not seized.

(viii) D.W.1 Baina's statement that there was a political rivalry between him and P.W.21 was not challenged by the prosecution. There was no cross-examination on this point.

(ix) The essential elements for a case of circumstantial evidence viz., that each link in the chain of circumstances must be conclusively proved and that they must point unmistakably to the guilt of the accused and none else has not been fulfilled in the present case.

(x) Motive was an important link in the chain and it has not been satisfactorily proved. Reliance is placed on the decision in ***Gedu @ Parameswar Patra v. State of Orissa, (2016) 65 OCR—159.***

(xi) As far as Baina is concerned, it is submitted that the trial Court based its finding on the statement of P.W.21 referring to him as “Tera Akhia” (squint eye) and that the wearing apparels (MO 16 and 17) contained ‘B’ Blood group which matched the blood group of the deceased Rita Pal. This is despite the trial Court finding fault with the IO for not recording a dying declaration (Ext.26) in his own hand. Reliance was wrongly placed on the contents of an FIR when it was obvious that at 11.30 PM on 15th March, 1999 the details were not known to anyone. The informant (P.W.2) did not support the FIR’s contents and was declared hostile;

(xii) The findings of the trial Court regarding allurement by A1 of A3 and A4 through promise of a job was based on surmises and conjectures and not on any evidence;

(xiii) Baina was arrested nearly three days after the incident, which showed that he had not fled away or remained absent. Section 8 of the Evidence Act is therefore not applicable as far as Baina is concerned. P.W.1 did not mention about Baina accompanying him to Calcutta although he had made a statement to that effect under Section 164 Cr.P.C. (Ext. 22). In cross-

examination, he did not say anything about Baina's presence although he mentioned the other accused.

(xiv) Baina was hardly 21 or 22 years at the time of his arrest and had suffered a lot. He needed sympathetic consideration.

17. On the other hand, Mr. A.P. Das, Additional Standing Counsel for the State submitted that the four important witnesses for the prosecution viz., P.Ws.1, 7, 21 and 24 were reliable, truthful and consistent and had conclusively established various links in the chain of circumstances. The evidence of P.W.1 and P.W.7 were critical for establishing motive for the crime and the evidence of P.W.24 pointed that the involvement of accused Babua and through him accused Baina. P.W.21 was a crucial witness, who spoke of the involvement of accused Baina as spoken to him by the deceased, Mana Pal just before his death.

18. The crucial fact of Baina being squint eyed and coupled with the matching of the blood group of Rita with the blood found on his clothes clinched his involvement in the occurrence. The conduct of A1 going absconding soon after the commission of the offence was a pointer to his involvement. The inconsistencies if any in the statements of the witnesses was not significant enough to discredit their testimonies.

19. On the question of delay in submission of FIR, it is submitted that these irregularities in the course of investigation should not

come in the way of returning a finding of the guilt against the accused if the overall evidence otherwise points unerringly to their involvement. It is submitted that this it was a case of a ghastly double murder which cannot go unpunished and that the involvement of the four accused have been conclusively proved by the prosecution beyond all reasonable doubt.

20.1 The above submissions have been considered. At the outset, the Court would like to recapitulate the law in relation to circumstantial evidence. In *Ram Avtar v. State 1985 Supp SCC 410* the Supreme Court explained that:

"...circumstantial evidence must be complete and conclusive before an accused can be convicted thereon. This, however, does not mean that there is any particular or special method of proof of circumstantial evidence. We must, however, guard against the danger of not considering circumstantial evidence in its proper perspective, e.g., where there is a chain of circumstances linked up with one another, it is not possible for the court to truncate and break the chain of circumstances. In other words where a series of circumstances are dependent on one another they should be read as one integrated whole and not considered separately, otherwise the very concept of proof of circumstantial evidence would be defeated.

20.2 In *State of Tamil Nadu v. Rajendran (1999) 8 SCC 679* the Supreme Court held:

"... 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."

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

"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.

20.4 In *Brajesh Mavi v. The State (2012) 7 SCC 45* the Supreme Court explained:

"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 accused and nobody else who had committed the crime."

21. In the manner of narration of events and in the manner that the prosecution has projected the case, the chain of circumstances that the prosecution has sought to prove are as under:

(a) The troubled marriage of A1 (Sudarsan Parida) with the deceased Rita Pal on account of his having an intimate relationship with A2 (Shanti Parida);

(b) Rita being compelled to live away from her matrimonial home with her children and succeeding in getting a judicial order against A1 for payment of monthly maintenance of Rs.1,500/- for her and her two children;

(c) A plan being hatched by A1 and A2 some time around 14th February, 1999 with the help of A4, Babua and A 3 Baina in getting P.W.1 to eliminate Rita through sorcery;

(d) Babua approaching Rita at her mother's (P.W.24) residence to lure her to Bhadrak with the promise of giving her copies of the marriage papers of A1 and A2;

(e) The incident of the intervening night on 14/15th March, 1999 in which Rita Pal was murdered and her brother Mana Pal was grievously injured by Babua and Baina with sharp edged weapons;

(f) Mana Pal reaching the door step of P.W.21 and naming Babua and Baina as killing Rita and injuring him;

(g) Mana succumbing to the injuries soon thereafter at the DHH in Bhadrak;

(h) The PMs of both Rita and Mana and their proof by PWs 17 and 18 confirming their homicidal deaths;

(i) Arrest of Baina and recovery of his blood stained wearing apparels with the blood stains thereon matching the blood group of Rita;

(j) The conduct of Sudarsan in absconding after the event.

22. The Court takes up for discussion the evidence of each of the PWs relied upon by the prosecution to bring home the guilt of the accused. As regards the plan devised by the accused for the commission of the offence, the evidence of P.W.1 is instructive. He stated that on Jagar day i.e. 14th February, 1999 at 4 PM he was called by accused Babua to his shop where A2 Shanti was present and was asked to accompany them to Calcutta. On the following day, he along with Khageswar and accused Babua went to the house of A1 and at 2 PM, he was informed by Babua that the purpose of getting him to Calcutta was to kill Rita by witchcraft. On the following day, A2 told him to kill Rita Pal by witchcraft, promising to pay Rs.5,000/-.

23. Interestingly, P.W.1 made a statement under Section 164 Cr.P.C. in which he did mention about Baina accompanying him to Calcutta. In fact, he did say in his cross-examination in chief that it was Baina who called him saying that he was required by Babua and he went along with Baina to the shop of Babua at

around 4 PM on the date of Jagar. He is clear about the statements made to him by accused Shanti and about her offering Rs.5,000/- for killing Rita by witchcraft, which he flatly refused. Nothing much has been able to be elicited in his cross-examination except that he did not disclose to any of the villagers about Babua asking him to kill his sister-in-law and her brother by witchcraft. That is not unnatural as these are strange happenings, which P.W.1 may not have wanted to share with anyone. There are some improvements over the statement under Section 164 Cr.P.C. but these are not material. The fact that he was taken to Calcutta to the house of A1 where A2 was present was clearly proved. The fact that he was asked to kill Rita through witchcraft has also proved. The involvement of both Baina and Babua in the plan is also proved. P.W.1 was given to understand that A2 was the married wife of P.W.7. Therefore, he is clear about the identity of the accused and their involvement. The evidence of P.W.1 thus inspires confidence as regards the four accused being involved in planning the commission of the crime.

24. The motive for the crime becomes clear from a series of statements made by P.W.24, Bina Pal, the mother of Rita and Mana Pal, the two deceased and to some extent by Suresh (P.W.7), the husband of accused Shanti. Bina Pal in her deposition talks about Shanti's involvement in the life of Sudarsan leading to Rita coming away with her children to stay with her mother. She also speaks about the monthly maintenance of Rs.1,500/- being awarded to her daughter Rita Pal by a Court. She also speaks

about Babua coming to the rented house of Rita Pal stating that Sudarsan had married Shanti and that he (Babua) would make available their marriage documents to Rita if she accompanied him to Bhadrak. Bina Pal doubted the intentions of Babua and was afraid for the safety of Rita. She, therefore, asked her son Mana to accompany Rita and Babua to Odisha.

25. P.W.24 was subjected to intense cross-examination by the defence counsel but on the material particulars she could not be shaken. There are some improvements made by her over her previous statement to the police which was put to her in the cross-examination. But these were not so material as to throw doubts on the credibility of her deposition. The fact that she may not have been able to say the exact date of the marriage of Sudarsan with Rita is but natural since it took place more than 20 years prior to her deposition. The Court is not able to find anything in cross-examination of this witness, which persuades it to disbelieve the veracity of her statements.

26. If one reads the evidence of P.W.24 along with the evidence of P.W.7, Suresh, it is clear that he was estranged from his wife accused Shanti and that she did develop intimacy with Sudarsan and “used to accompanying him to Calcutta very often.” It becomes clear that there was sufficient motive for A1 and A2 to conspire to eliminate Rita Pal. The Court is satisfied therefore an important link in the chain of circumstances viz., the motive for commission of the crime stands proved. In this regard, the

following exposition of the law by the Supreme Court of India in *State of Uttar Pradesh v. Kishan Pal (2008) 16 SCC 73* is relevant:

".....the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

This was reiterated in *Babu v. State of Kerala (2010) 9 SCC 189*.

27. P.W.21 is an important witness to the prosecution. This assumes significance in light of the fact that there were several other P.Ws. who were villagers, who turned hostile. On the night of the occurrence, P.W.21 heard Mana Pal shouting 'Banchao, Banchao'. When he came out of his house, he found Mana Pal in an injured condition with blood all over his body. Mana asked P.W.21 to save Rita Pal. P.W.21 did not know either of them as they were total strangers. With the torch light when he proceeded

he found Rita Pal lying dead. Mana Pal then informed P.W.21 and the other villagers, who were gathered there that Babua and Baina (whom he described as squint eyed) had assaulted them.

28. At that point in time, P.W.21 was the Sarpanch of the Talapada Gram Panchayat. Before the police, he stated that one person came and fell “in front of their house”. The defence points a contradiction in his deposition in which he stated that Mana Pal had come to the rear of the house. This, in the considered view of the Court, cannot be stated to be material discrepancy as the essential fact that Mana Pal came in a bleeding condition to the house of P.W.21 remains uncontroverted.

29. It is true that P.W.21 acknowledges the presence of the Gram Rakhi i.e. the informant Kamalakanta Jena (P.W.2). It is also true that P.W.2 does not appear to have understood what Mana Pal was saying. But P.W.2 is a hostile witness. The fact that Mana Pal came in an injured condition is confirmed by him in his examination in chief. He denied having scribed the FIR. However, even in cross-examination, P.W.21 maintains that “when Mana Pal first came and fell he told me alone the names of the assailants as Babua and Baina”. The words “Banchao, Banchao” are common to Oriya and Bengali and would not be difficult to understand. The Court is satisfied that the evidence of P.W.21 is credible and has not been able to be shaken by the prosecution. He has been useful in proving the involvement of Babua and Baina in the crime. His evidence comes across as natural and trustworthy.

30. The trial Court has discussed the contents of the statement (Ext.26) stated to have been made by Mana Pal while undergoing treatment. This is however unsigned by any doctor or nurse and the IO also did not record it in his own hand. In this statement Mana Pal talks about one of the assailants (Baina) being squint eyed. In his deposition as D.W.1, Baina tried to project that he is not the only “Tera Akhia” having a squint eye. However, the trial judge was observant recorded that “while in the witness box a close observation of his eyes indicated that the right eye of accused Baina is smaller than the left eye. The right eye is a squint in nature.” Baina did not examine anyone else from the village who could be squint eyes. Further, as noted by the trial Court although Baina tried to discredit P.W.21 saying that he had a political rivalry with him, he did not adduce any evidence on this point.

31. P.W.18 conducted the PM of Rita Pal and noted as many as seven injuries. Two of which were penetrating wounds and 3 of which were incised wounds. Her opinion that all the injuries are ante-mortem caused by sharp cutting weapon and that the cause of death was due to shock and haemorrhage has gone unchallenged. Likewise the evidence of P.W.19, the doctor who conducted the PM of Mana Pal and found as many as 16 injuries of which 12 were incised wounds and his opinion that the death was on account of the multiple injuries, has also gone unchallenged.

Therefore, that the deaths of both Rita Pal and Mana Pal were homicidal has been conclusively proved by the prosecution.

32. P.W.23, the IO himself withstood rigorous cross-examination which continued over several months and was unable to be shaken on the material aspects of the investigation.

33. The forensic evidence, which showed that the blood on the wearing apparels of the accused Baina matched the blood group of deceased Rita and there was no explanation to be offered by the accused for this. The forensic evidence also therefore supported the prosecution in full measure.

34. There are of course defects in the investigation in terms of not recording the dying declaration supposedly made by the Mana Pal to the Tahasildar and not recording Ext.26 in the presence of the doctor or nurse. But, as pointed out by the trial Court, defective investigation by itself will not be a ground for rejecting the entire case of the prosecution if it is otherwise substantiated by credible evidence. In *State of H.P. v. Lekh Raj (2000) (1) SCC 247*, it was held as under:

“The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion

regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case. The social position of the victim and the accused, the larger interests of the society, particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial. Criminal Jurisprudence cannot be considered to be a Utopian thought but has to be considered as part and parcel of the human civilisation and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and the mankind.”

35. Regarding delay in the lodging of the FIR, in the circumstances in which the occurrence took place, there appears to be sufficient explanation for the delay. It was lodged two hours after the occurrence at 11.30 PM. Although P.W.2 did not support the recording of the FIR, the Court has no reason to disbelieve P.W.23, the IO, in this regard.

36. The Court is satisfied that each of the links in the chain of circumstances has been proved by the prosecution and that the proved circumstances point unerringly to the guilt of the four accused and no one else. The analysis and conclusion reached by the trial Court, does not appear to suffer from any legal infirmity whatsoever.

37. As far as the sentence is concerned, it is modified in respect of accused Babua and Baina only to the extent of sentencing each of them to imprisonment for life without the further condition that they should serve a minimum 20 years of imprisonment as that is not permissible for the trial Court to do in terms of the judgment of the Supreme Court in *V. Sriharan @ Murugan v. Union of India (2014) 4 SCC 242* and as reiterated by the Supreme Court recently in *Narendra Singh @ Mukesh @ Bhura v. State of Rajasthan* (order dated 28th February 2022 in SLP (Crl.) 7830 of 2021].

38. With only the limited modification as above, the appeals are dismissed, but in the circumstances, with no order as to costs. The bail bonds of each of the accused are cancelled and they are directed to surrender forthwith. If the accused do not surrender within a period of two weeks, the concerned IIC will immediately take steps to have them arrested in order to serve out the remainder of their sentences.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda