

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.736 of 2017

(From the judgment dated 25th November, 2017 passed by the learned Additional Sessions Judge, Bhubaneswar in Crl. Trial No.29 of 2011)

Bai @ Nilu @ Niranjan Behera ***Appellant***
(In Jail Custody)

-versus-

State of Odisha ***Respondent***
Appeared in this case:-

For Appellant : Mr. Smruti Ranjan Mohapatra,
Mr. B.R. Mohanty,
Mr. S. Harichandan,
Mr. M.K. Mohanty,
Mr. M. Swain,
Mr. L. Pattanaik and
Mr. S. Mohanty
Advocates for the Appellant.

For Respondent : Mrs. Saswata Pattnaik,
Addl. Government Advocate for
the Respondent.

CORAM:
THE CHIEF JUSTICE
JUSTICE A.K. MOHAPATRA

Date of Hearing : 02.12.2021 | Date of Delivery :24.01.2022

A.K. Mohapatra, J.

1. The present criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against a judgment of conviction and sentence dated 25th day of September, 2017 passed

in CrI. Trial No.29 of 2011 by the learned Additional Sessions Judge, Bhubaneswar, whereby the Accused-Appellant has been found guilty of offence under Sections 302/394 of Indian Penal Code (in short the 'I.P.C.') and accordingly he has been sentenced to undergo imprisonment for life with payment of fine of Rs.5,000/- (Rupees five thousand) only in default to undergo R.I. for six months for the offence U/s.302 of I.P.C.. Further sentence to undergo R.I. for 10 years with payment of fine of Rs.3,000/- (Rupees three thousand) only in default to undergo R.I. for six months for the offence u/s.394 of I.P.C. Both the sentences shall run concurrently.

2. The prosecution case, in brief, is that on 31st August, 2010, a written FIR was lodged before the ASI of Khandagiri P.S. against an unknown accused person. In the FIR, it is stated by the informant that on 31st August, 2010 at about 9.30 A.M. while he was working as ASI of Khandagiri P.S., he along with Havildar Bharat Ch. Mallick were performing patrolling duty and during such patrolling, he got information from the police station that a dead body was lying near Bhajji Restaurant, Patrapada. The informant immediately took the help of the local police and searched the nearby places and

could find that the dead body of a male person was lying in the Patasbania bushy jungle, Patrapada. Upon a close inspection, he found several injuries on the body of the deceased. Two stone pieces stained with blood were lying at a nearby place. One gamucha (towel) was tied around his neck. The informant suspected murder of the deceased. As such, directed Havildar Bharat Ch. Mallick to guard the place and came back to police station and lodged a written FIR before the Inspector-in-Charge, Khandagiri P.S.

3. Basing on the aforesaid preliminary information, Khandagiri P.S. case No.313 of 2010 was registered. One A.K. Sethi, S.I. of Police took up investigation of the case. During investigation, the I.O. visited the place of occurrence, seized incriminating materials lying near the spot conducted inquest over the dead body of the deceased, took photograph of the same, sent the dead body for post mortem examination under dead body challan and completed all other formalities. One Purna Ch. Naik, the cousin brother of deceased identified the dead body from the photograph taken by the I.O. During investigation, it is alleged that while the appellant was in police custody, he confessed to have

committed murder of the deceased for the auto rickshaw and laid the I.O. and the witnesses to the place of concealment of auto rickshaw, mobile phone, identity card of the deceased and his wearing apparels. On recovery of such articles, the I.O. seized the same and the seized articles were sent for chemical examination.

4. That after completion of investigation, the I.O. submitted Charge-Sheet No.426 against the appellant under Sections 302/394 of I.P.C. and as such, the accused was made to face trial.

5. To bring home the charges, the prosecution has altogether examined 16 witnesses in support of its case. It is made clear here that there is no eye witnesses to the occurrence. Out of the 16 witnesses, P.W.1 is the informant, P.W.2 is the Medical Officer, who examined the appellant on police requisition, P.W.3 is cousin brother of the deceased and the owner of the auto rickshaw , which was being driven by the deceased, P.W.4 is the witness to the seizure of the auto rickshaw, P.Ws.5 and 9 are police constables of Khandagiri police station and witnesses to the seizure of wearing apparels of the deceased, P.W.6 is a pharmacist of Bolgarh Area Hospital and is a witness to the seizure of OPD Register, P.W.7 is a

police constable, who carried the dead body for postmortem examination, P.W.8 is a Havildar of Khandagiri Police Station and a member of patrolling party on the date of occurrence, P.W.10 is a Medical Officer, who conducted postmortem examination, P.W.11 is an independent witness, P.W.12 is a witness to inquest, P.W.13 is the owner of the brick factory, P.W.14 is the I.O. in this case, P.W.15 is a witness to the inquest and seizure, P.W.16 is a witness to the seizure. Apart from the above noted witnesses, the prosecution also relied on Exhibits 1 to 24. However, no material object is marked. On the contrary, the defence did not adduce any evidence either oral or documentary in this case.

6. The plea of the accused appellant in the trial is one of complete denial and further he took the stand that he has been roped in this case on false accusation.

7. Learned trial court formulated two points for determination in the trial:

- i) Whether the accused on 31.08.2010 in the morning inside Pattasbania near Patrapada committed murder intentionally or knowingly causing death of Ramesh Nayak?

ii) Whether on the above date, time and place the accused committed robbery of the property of the deceased Ramesh Nayak i.e. an auto rickshaw bearing Regd. No.OR-02-AH-0934, mobile phone, identity card and cash of Rs.300/- and that as such voluntarily caused murder of deceased Ramesh Nayak?

8. That the learned trial court has answered the aforesaid two points in the affirmative relying upon the circumstantial evidence produced before the learned trial court from the side of the prosecution. Since there are no eye witnesses to the occurrence, the judgment of conviction by the trial court is entirely based on circumstantial evidence. Now we have to examine whether on the basis of evidence placed before the trial court, the trial court was right in its approach to hold the appellant guilty for commission of offences punishable under Sections 302 read with section 394 of I.P.C.

9. That before scanning and analyzing the evidence adduced from the side of the prosecution in this case, let us remind ourselves of the golden principle that is being followed consistently by all the Courts since the year 1952. The evidence in the present case needs to be scanned in the light of the principle laid down by the Hon'ble Supreme Court of India in a land mark judgment in the case of

Hanumant Govind Nargundkar Vrs. State of M.P., reported in ***AIR 1952 SC 343***. It is extremely important to keep in mind the principle laid down in the aforesaid case. While considering an appeal against conviction based on circumstantial evidence, observed thus:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

10. Further it is also equally important to keep in mind the principle laid down by Hon’ble Supreme Court in the case of ***Sharad Birdhichand Sarda Vrs. State of Maharashtra***, reported in ***AIR 1984 SC 1622***, while dealing with a case based on circumstantial evidence, it has been held by the Hon’ble Apex Court that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. Further, the conditions precedent

in the words of the Hon'ble Supreme Court of India, before conviction could be based on circumstantial evidence, the following conditions must be satisfied;

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis except the one to be proved; and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

11. In *Padala Veera Reddy Vrs. State of A.P.*, reported in *AIR 1990 SC 79*, the Hon'ble Supreme Court of India has held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) 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 none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

12. Similarly, in the case of *State of U.P. Vrs. Satish*, reported in (2005) 3 SCC 114, the Hon'ble Supreme Court has observed as follows;

“14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

17. When the evidence on record is analyzed in the background of principles highlighted above, the inevitable conclusion is that the prosecution has established its accusations.”

With the touchstone of the above noted principles laid down by the Hon'ble Supreme Court of India, the evidence adduced by the prosecution in the present case needs to be examined carefully.

13. Dr. Arati Jena (P.W.10) had conducted the post mortem examination over the body of the deceased. She had also proved the post mortem examination report (Ext.12). On examination (P.W.10) found the ligature mark around the neck of the deceased. The doctor found multiple lacerated injuries and abrasions. In toto, the doctor has reported three external injuries on the body of the deceased. Further on dissection of skull and brain, she found that the temporal bone is fracture and compressed with the brain mater bulging out. Further it was observed by the doctor internal maxillary facial and orbital bones are also fractured and the internal organs were congested.

P.W.10 in his post mortem examination report has finally opined that all injuries are ante mortem in nature. Ligature mark around the neck suggests that the person strangled by means of violent attack. The cause of death is due to asphyxia. According to P.W.10 the time of death is within 48 hours of post mortem examination. On the basis of evidence of P.Ws.1, 8 and 14 coupled with inquest report and the aforesaid medical evidence, the trial court has come to a conclusion that the death is homicidal.

14. The next question that falls for consideration is whether the Appellant is the perpetrator of the crime. It is apt to mention here that there are no eye witnesses to the occurrence. The prosecution case is entirely based upon circumstantial evidence. Therefore, the oral evidence of some of the material witnesses needs to be examined carefully and cautiously.

15. To establish the charges, the prosecution has broadly relied upon the following chain of circumstances:-

- (i) Motive;
- (ii) Disclosure statement of the accused;
- (iii) Last seen of the deceased with the accused;
- (iv) Recovery of auto rickshaw of P.W.3, Identity Card of the deceased and bloodstained wearing apparels of the accused; and
- (v) Conduct of the accused after the occurrence.

16. So far the allegation that the deceased and the Appellant were last seen together is concerned, the trial court has relied upon the evidence of P.Ws.3, 4 and 11 to come to the conclusion that the deceased was last seen by P.W.3 in the company of the accused on 30th August, 2010 at 8.00 P.M. It is, therefore, necessary to re-examine the evidence of P.W.3 in this case.

17. P.W.3 is the cousin brother of the deceased and the owner of the auto rickshaw. In his evidence, he has stated that on 30th August, 2010 at about 8.00 P.M., he found both the deceased and the Appellant were standing near the gate of the house with auto rickshaw. When he asked both of them as to whether they would go anywhere, they told that they will go to Khurda.

18. Learned counsel appearing for the Appellant vehemently submitted that the aforesaid piece of evidence of P.W.3 is an improvement over the statement which he had initially made before the Investigating Officer (P.W.14). P.W.3 in his Examination-in-Chief has stated as follows:-

“At about 8.00 P.M. I returned to my house. By that time the deceased Ramesh Naik along with accused Niranjana Behera were standing near the gate of my house with auto rickshaw. I asked both of them as to whether they would go anywhere and they told that they will go to Khurda. Thereafter, the accused and the deceased went to Khurda.”

Whereas the Investigating Officer (P.W.14) in his cross-examination at Paragraphs-42 and 43 has controverted the evidence of P.W.3. The said two paragraphs are quoted here in below;

“42. P.W.3 has not stated before me that Ramesh Naik and the accused Niranjana Behera were standing near the gate of his (P.W.3) house with his (P.W.3) auto rickshaw. He has not stated before me that he asked both of them (Ramesh Naik and Niranjana

Behera) as to whether they would go anywhere. It is a fact that P.W.3 has stated that Ramesh has telephoned him. Ramesh has telephoned P.W.3 on 30th August, 2010 at about 10 p.m.”

“43. P.W.3 has not stated before me that Ramesh told him that he along with the accused are leaving for Khurda.”

19. In view of the aforesaid inconsistencies in the evidence of P.W.3, it would not at all be safe to rely upon the evidence of P.W.3 to come to a conclusion that the appellant and the deceased were last seen together by P.W.3. The P.W.3, who happens to be the cousin brother of the deceased and as such is a interested witness has made material improvement in his evidence before the court. His evidence doesn't inspire the confidence of this Court to hold that the P.W.3 had seen them together in the absence of any other piece of evidence to corroborate the evidence of the P.W.3.

20. P.W.4 is another witness upon whose evidence the trial court has laid much emphasis to establish that the deceased and the Appellant were last seen together at 6.00 P.M. on 30th August, 2010. P.W.4 is also a cousin brother of the deceased as such he is an interested witness. Merely because P.W. 4 is an interested witness, his evidence cannot be thrown out lightly. In view of the settled position of law his evidence needs to be examined carefully

and cautiously. P.W.4 was also an auto rickshaw driver and used to park his auto at Gapabandhu Chhak Auto Stand, Bhubaneswar. In his Examination-in-Chief although he has stated that on 30th August, 2010 in the evening at about 6.00 P.M., he had seen the deceased and the Appellant together. In his cross-examination at Para-6, he has stated as follows:-

“06. It is a fact that, I had given my evidence (examination-in-chief) before the court in this case on dated 23.11.2011 as per the direction of the police. On that day i.e. on 23.11.2011, the police had accompanied me to the court and that, the police had tutored me by giving that to depose against the accused.”

In view of the aforesaid evidence of the P.W.4 in his cross-examination it would not at all be safe to rely upon his evidence solely to come to a conclusion that the deceased and the appellant were last seen together.

21. The trial court has relied upon the evidence of P.W.11. P.W.11 was working at Bishnupriya Cement Factory at Patrapada where the Appellant was previously working with him as a helper. In his Examination-in-Chief, he has stated that more than one and half years ago, on one night at about 10.00 P.M., the Appellant came in an auto rickshaw to the factory and by that time both the gates of the factory were closed. The Appellant kept the auto

rickshaw outside the factory gate and entered into the factory premises by climbing over back gate and came to P.W.11. By that time, P.W.11 saw that there was another person on the same auto rickshaw. The Appellant although called the other person to come inside the factory premises but he did not come. The Appellant slept near P.W.11. P.W.11 said that he went to sleep at about 10.30 P.M. and on the next day morning when he woke up, he found the Appellant as well as the other person in the auto rickshaw were absent. P.W.3 in his cross-examination has stated that although he woke up in the night for urination, at that time he had seen that the Appellant was on the bed and finally when he woke up in the next day morning he found that the Appellant was absent on the bed. The prosecution could have shown the photograph of the Appellant to the P.W.3 for identification of the person who had accompanied the deceased to the factory, but for the reasons best known to the prosecution, no photograph was shown to P.W.11 for identification of the person, who was alleged to be with the Appellant outside Bishnupriya Cement Factory.

In such view of the matter, it can never be safely concluded that P.W.11 had actually seen the deceased and the Appellant together in the night of 30th August, 2010.

22. In view of the aforesaid inconsistencies in the evidence of P.Ws.3, 4 and 11, the trial court has apparently committed an error by relying upon their evidences and by coming to the conclusion that the Appellant and the deceased were last seen together in the night of 30th August, 2010. Thus, the prosecution has miserably failed to prove the last seen together of the Appellant and the deceased by adducing reliable and trustworthy evidence. Thus a very important link in the chain of circumstances has not been established by the prosecution to complete the chain.

23. The 2nd circumstance that the trial court has relied upon to hold that the Appellant is guilty of the offence is an alleged disclosure statement of the Appellant before the police and recovery of the stolen auto rickshaw, Identity Card of the deceased and bloodstained wearing apparels of the Appellant. The Investigating Officer (P.W.14) in his evidence has stated that disclosure statement of the Appellant (Ext.7) was recorded in presence of P.Ws.4 and 16 and that the same was prepared at the Khandagiri Police Station at about 6.30 A.M. after the Appellant was arrested. Thereafter, the Appellant led the Investigating Officer to village Maradabadi and gave recovery of auto rickshaw, its key and R.C.

Book, Insurance and fitness certificate inside the box and other incriminating materials as per (Exts.4, 5 and 6). The Appellant also gave recovery of wearing apparels i.e. bloodstained red colour T-shirt and Pant and also gave recovery of mobile phone, identity card of the deceased.

24. After careful scrutiny of the evidence adduced by the prosecution in this case, this Court finds that the prosecution has miserably failed to prove that the place of recovery of the alleged incriminating articles was a confined place and the public had no access to such place and moreover, the Appellant had special knowledge of the place. The prosecution has not led any evidence to rule out that the incriminating articles could not have been planted at the place from where the alleged recovery took place. Moreover, law is fairly well settled that the confessional statement and disclosures made to police are not admissible in evidence.

25. After carefully considering the entire evidence on record in this case, this Court is of the considered opinion that it may not be safe to rely upon the Ext.7, i.e. disclosure statement of the Appellant for the following reasons:

- I. Ext.7 was prepared at the police station as admitted by the Investigating officer in his evidence.
- II. None of the seized articles pursuant to the disclosure statement of the Appellant were produced before the trial court and the same were not marked as M.O.
- III. There is nothing on record that during search and seizure the Investigating Officer (P.W.14) has neither taken the assistance of the local police station (Bolagarh Police Station) nor any independent witnesses of the locality have been cited as witnesses to the search and seizure in compliance of section 100(4) of the Cr.P.C.
- IV. A close scrutiny of Ext.7 reflects some discrepancies and material omissions in such statement thereby making it untrustworthy for the purpose of the present case.
- V. The seizure list does not disclose specific place of auto rickshaw except from the village Maradabadi.
- VII. The witnesses to the disclosure statement i.e. P.W.4 and P.W.6 have turned hostile during trial as they did not support the prosecution case. Further these two witnesses in their depositions have stated that the Appellant had not told anything in their presence to the police.

In view of the aforesaid discrepancies and inconsistencies in the evidence of seizure witnesses and non-production of seized articles before the trial court, this Court is compelled by law to come to a conclusion that the prosecution has failed to discharge its

duty and has failed to establish the seizure of incriminating articles by leading reliable and trustworthy evidence during trial and as such this Court has no other option but to differ with the conclusion arrived at by the trial court in this regard.

26. In the aforesaid context, the learned counsel for the Appellant relied upon a judgment of the Hon'ble Supreme Court of India in the matter of *Sattatiya@Satish Rajanna Kartalla Vrs. State of Maharastra, reported in (2008) 39 OCR (SC) 662*. The said reported case was a case u/ss.302/34 I.P.C. and based on circumstantial evidence. The prosecution in that case relied on the circumstantial evidence of last seen, recovery of blood stained pant and shirt from a building, blood stained half blade and handkerchief near body of the deceased. The question that was raised before the Apex Court was whether the prosecution had succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the Appellant had committed the crime. Discussing the evidence, the Apex Court has answered the question in the negative.

27. In *Ramreddy Rajesh Khanna Reddy & another Vrs. State of A.P.* reported in (2006) 10 SCC 172 it has been observed by the Hon'ble Supreme Court of India as follows;

“It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.”

28. The next question that falls for consideration in this case is motive. In the present case, the prosecution has failed to establish motive of the Appellant to commit the crime by leading credible and trustworthy evidence. The Appellant is no doubt the owner of an auto rickshaw as per the materials available on record, however, the failure of the prosecution to produce the seized articles before the trial court has complicated the matter and in a case based on circumstantial evidence, the motive forms a very important link in the chain of links or the chain of evidences so that the evidence collected by the prosecution when read in its entirety would lead to a conclusion that the accused is the only person who could have

committed the crime and none else. As such in a case of this nature, it would not be safe to come to a conclusion that the prosecution has conclusively proved the guilt of the accused without proving the motive behind the crime.

29. The learned Counsel appearing for the Appellant relies upon a judgment of the Hon'ble Supreme Court of India in the matter of *Varun Chaudhury Vrs. State of Rajasthan*, reported in AIR 2011 SC 72. Paragraph-23 of the said reported judgment is quoted here in below;

“23. It is also pertinent to note that the prosecution could not establish the purpose for which the deceased was murdered by the accused. Of course, it is not necessary that in every case motive of the accused should be proved. However, in the instant case, where there is no eye witness or where there is no scientific evidence to connect the accused with the offence, in our opinion, the prosecution ought to have established that there was some motive behind commission of the offence of murder of the deceased. It was the case of the prosecution that the deceased, an Income Tax Officer had raided the premises belonging to some scrap dealers and, therefore, he had received some threats from such scrap dealers. It is an admitted fact that the accused are not scrap dealers or there is nothing to show that the accused had been engaged by scrap dealers to commit the offence. Thus, there was no motive behind the commission of the offence so far as the accused are concerned.”

30. No doubt the Hon'ble Supreme Court of India has held in many judgments that failure to establish motive in a criminal trial by the prosecution is not fatal and the conviction can still be

sustained on the basis of other corroborative evidence on record, however, cases based on circumstantial evidence are different. To complete the chain of circumstance and to come to conclusion that the accused, in fact, had committed the crime, the motive receives significance and the same is required to be proved by the prosecution to complete the chain of circumstances. In other words, failure on the part of the prosecution to establish motive in a case based on circumstantial evidence, it would not be safe to convict the accused in such cases. Considering the evidence led by the prosecution in the present case, this Court is of the opinion that the prosecution has failed to establish the motive behind the crime.

31. The other material circumstances which the trial court has relied upon while convicting the Appellant under Sections 302/394 of I.P.C. are the injuries on the body of the appellant and seizure of bloodstained wearing apparels of the Appellant as well as the deceased. The Appellant in his statement recorded under Section 313 of the Cr.P.C. in reply to two question i.e. nos.14 and 15 has denied the allegation that he was treated at the Bologarh hospital for the bite injury. Further upon careful scrutiny of the evidence of P.W.2 -Dr. Pravat Kumar Sahu, who had examined the Appellant

on 3rd September, 2010, it is found that P.W.2 is not the doctor, who initially treated the Appellant for the injuries sustained by the Appellant. Although he had stated that the injuries seen by him could be caused by teeth bite. He has further stated that during his examination he found injuries partially filled up. In cross-examination, the P.W.2 has stated “since I examined the injured after three days it is difficult to assume that the injuries caused were definitely by teeth bite. Lacerated injury can be caused by lathi. All the injuries may be caused by lathi.” Ext.10/2 which has been cited by the prosecution to prove that the Appellant had undergone treatment at Bolagarh hospital. The doctor who is the scribe of the said document, namely, Dr. Ram Prasad Panda has not been examined in this case. Moreover, a mere photo copy of the relevant column of the OPD Register produced by pharmacist (P.W.6) is not admissible in evidence as the same has not been proved as secondary evidence in views of the provisions contained under Section 65 of the Evidence Act.

32. So far the bloodstained wearing apparels of the Appellant and the deceased are concerned, the seizure list containing the seized bloodstained wearing apparels has not been brought on

record during trial. As such, it is difficult to come to a conclusion as to whether blood stains found on the wearing apparels are that of the either Appellant or the deceased. Although the blood stains found on the wearing apparels were found to be of group 'B', however, the prosecution is silent with regard to the blood group of the deceased as well as the Appellant. As such the seizure of the blood stained wearing apparels could not be connected with the present crime. The confusion over the seizure and identification of bloodstained wearing apparels has complicated the issue further and the same does not conclusively prove anything. Therefore, the prosecution has failed to prove by cogent, trustworthy and unimpeachable evidence this important link in the chain of evidences and as such the same is of no help to the prosecution.

33. In the context of the seizure of blood stained wearing apparels of both the deceased as well as the Appellant, the learned counsel for the Appellant places his reliance on a judgment of the Hon'ble Supreme Court of India in the matter of *Inspector Police, Tamilnadu Vrs. Balaprasanna, reported in (2008) 11 SCC 645*, where in it has been observed as follows;

“27. The alleged statement made by the accused led to discovery of knife, bloodstained clothes, rope, etc. Unfortunately, for the prosecution there is no evidence

to show that in fact the wearing apparels containing bloodstains belonged to the accused, save and except the alleged confessional statement. No witness has spoken that those clothes were worn by the accused at any time far less at or about the time of occurrence. It is also to be kept in view that those articles were recovered from the house of P.W.3 and at the initial stage of investigation, P.W.3 himself was one of the suspected person and he was arrested. Therefore, the statement of P.W.3 and his mother that those articles were brought by the accused and left in the upstairs room is to be considered with a pinch of salt. Moreover, there is nothing to indicate that in fact the bloodstained clothes and rope had tallied with the blood grouping of the deceased. The knife did not contain any bloodstain. Therefore, the aspect relating to recovery of articles from the house of P.W.3 and his mother cannot be considered as a link to complete the chain of circumstantial evidence.”

34. With regard to the failure of the Appellant to give any explanation or a satisfactory explanation about the existence of other materials facts which are within his special knowledge in the context of the case on hand, it is apt to refer to a latest judgment of the Hon’ble Supreme Court of India in the matter of *Nagendra Sah Vrs. State of Bihar, reported in 2021 (4) Crimes 334 (SC)*, it has been observed in paragraph 21 of the said judgment as follows;

“21. When a case is resting on circumstantial evidence, if the Accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the Accused to discharge the burden Under Section 106 of the Evidence Act is not relevant at all. When the chain is not

complete, falsity of the defence is no ground to convict the Accused.

35. In view of the aforesaid analysis and meticulous scrutiny of the evidence led by the prosecution to establish the involvement of the Appellant in the present crime, this Court is not at all satisfied with the manner in which the prosecution has discharged its obligation in this case. There are several lacunas, inconsistencies and infirmities in the evidence led from the side of the prosecution. Since there are no eye witnesses to the occurrence and entire prosecution case is based on circumstantial evidence, it would not be safe to accept the findings arrived at by the trial court.

36. Therefore, we are of the considered view that the guilt of the Accused has not been established beyond all reasonable doubt. Hence, the appeal must succeed and we hereby set aside the impugned judgment passed on 25th day of September, 2017 in Crl. Trial No.29 of 2011 by the learned Additional Sessions Judge, Bhubaneswar and the Appellant stands acquitted from the charges framed against him for the offences punishable Under Sections 302/394 of the Indian Penal Code. The Appellant shall be forthwith set at liberty and Bail bonds stand discharged, unless he is required in connection with any other case.

37. The Appeal is accordingly allowed. There shall be no order as to costs.

**(A.K. Mohapatra)
Judge**

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

U.K. Sahoo, PA-cum-Secy

