

AFR IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.23 of 2009

From the judgment dated 24.12.2008 passed by the learned Additional District and Sessions Judge, Nayagarh in S.T. Case No.197 of 2007.

Charan Behera

.... *Appellant*

-versus-

State of Odisha

.... *Respondent*

Advocates appeared in this case through Hybrid Mode :

For Appellant : Mr.Satya Narayan Mishra, Advocate
(Legal Aid Counsel)

For Respondent : Mr.J.Katikia, Addl. Govt. Advocate

CORAM:

**JUSTICE S.TALAPATRA
AND
JUSTICE SAVITRI RATHO**

.....
Date of Judgment : 29.11.2022
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Savitri Ratho, J. In this appeal, the sole accused has challenged the judgment and order dated 24.12.2008 of the learned Additional District and Sessions Judge, Nayagarh in S.T. Case No.197 of 2007 convicting him for the offence under Section 302 Indian Penal code (in short “IPC”) and sentencing him to undergo imprisonment of life and to pay a fine of

Rs.1,000/- (Rupees one thousand) only, in default to undergo R.I. for six months more.

2. The case of the prosecution case is that the marriage of the appellant and the deceased had taken place in 1999 and they are blessed with two daughters. Cash of Rs 30,000/- and other articles had been given to the appellant at the time of marriage. In the year 2005, the appellant demanded an amount of Rs 10,000/- and started torturing the deceased for its non payment. He had threatened to kill her if it was not paid and had assaulted her one month before the occurrence. On 31.5.2007 in the afternoon, the accused had killed his wife the deceased using a pick axe (tangia) in his house. On receiving information about this incident, P.W 4 - the uncle (father's younger brother) of the deceased, went to the house of the appellant in the evening and found people gathered near the house of the appellant. The appellant was present in the house and the deceased was lying dead inside the house with bleeding injuries on her neck. The tangia (pickaxe) was lying there in the room. On being asked, the appellant admitted to have killed the deceased with the tangia. P.W 4 went to the Daspalla Police Station (seven kilometers away) and lodged written report that night. After registration of the FIR Ext. 4 at 10.00 pm on 31.05.2007, P.W – 13, the Officer in Charge of the Daspalla Police Station came to the spot and apprehended the appellant and seized the

tangia and wearing apparels of the appellant. The dead body was guarded by police constable and inquest was held on the next morning. Postmortem examination was conducted by two doctors of Daspalla Medical, P.W.9 and one Dr B.K.Panda, on the same day. After completion of investigation, charge sheet was submitted against the appellant for commission of offences under Sections - 498-A and 302 IPC and Section-4 of the Dowry Prohibition Act (in short “the D.P Act”). He was charged for the same offences in the trial.

3. The plea of the appellant was one of denial. In his statement recorded under Section 313 Cr.P.C. the appellant admitted that the deceased was his wife and was found dead in his house with incised injuries on her body. He took the plea of alibi and stated that on the date of occurrence, he was in his tailoring shop and on getting information, he reached his house at 10.00 P.M. and found the deceased lying with cut injuries. Subsequently police came being brought by the informant.

4. The prosecution examined thirteen witnesses to prove its case while no witness was examined by the defence. P.W.1 Dinabandhu Rana, P.W. 2 Lokanath Pradhan, P.W. 3 Manoranjan Bariki, P.W. 5 Bharat Barik, P.W. 7 Biranchi Sahu and P.W. 8 Akhaya Kumar Nanda are co-villagers of the appellant. P.W.4 Nabakishore Behera and P.W.6 Anand Charan Behera are uncles of the deceased and P.W. 4 is the informant.

P.W.9 Dr. Sk. Maniruddin is one of the doctors who conducted post mortem examination . P.W 10 Rama Chandra Sahoo is a witness to the inquest. P.W. 11 Sudam Parida @ Tunia is the front door neighbour of the appellant. P.W.12 Sukadev Barik, is the barber who participated in the marriage rituals. P.W.13 Amulya Kumar Champati Ray, is the investigating officer (in short “the I.O.”). Out of these witnesses, P.Ws.1, 2 and 8 were declared hostile as they did not support part of the prosecution case.

Thirteen exhibits were marked for the prosecution which includes the F.I.R., seizure lists, post mortem examination report, inquest report, query to and opinion of the doctor, spot map and chemical examination report. The seized weapon of offence, lungi of the appellant, saree, saya and blouse of the deceased were marked as M.Os I to V, respectively.

5. The learned trial Court on an analysis of the evidence of the prosecution found that the deceased Rashmita Behera had died on 31.05.2007 in the afternoon and her death was homicidal. It also found that the prosecution had proved beyond reasonable doubt that the appellant had the motive to cause her death. It found that the nature of injuries indicated the intention to cause homicidal death and the appellant had caused the murder of his wife and consequently convicted him for

commission of the offence of Section – 302 I.P.C. and sentenced him to undergo imprisonment of life and to pay a fine of Rs.1,000/- (Rupees one thousand) only, in default to undergo R.I. for six months more. It also held that the evidence was insufficient so far as the allegations of demand for dowry and cruelty to meet unlawful demand of Rs.10,000/- was concerned and acquitted the appellant of the offence under Section – 498A I.P.C. and Section 4 of the D.P. Act.

6. Mr.S.N.Mishra, learned counsel appointed by the Orissa High Court State Legal Aid Services (in short “*OHCLSC*”) for the appellant submits that the case is based on circumstantial evidence and the chain of circumstances have not been proved for which the conviction of the appellant is liable to be set aside. He has also submitted that the learned trial Court should not have relied on the evidence of P.W.4 and P.W. 6 who are uncles of the deceased and therefore interested witnesses to convict the appellant and when the evidence of witnesses so far as the commission of offences under Section – 498 – A IPC and Section – 4 of the D.P. Act were disbelieved, the evidence of the same witnesses should not have been relied upon to convict the appellant for the offence under Section – 302 IPC. His additional submission is that the purported extra judicial confession does not inspire confidence and should not have been relied upon to convict the appellant.

7. Per contra, Mr. J.Katikia, learned Additional Government Advocate submits that the prosecution has proved the circumstances which unerringly point to the guilt of the appellant, for which the impugned judgment does not call for any interference. He has further submitted that merely because the learned trial court did not accept the evidence of P.W. 4 and P.W. 6 to be sufficient to convict the appellant for the offences under Section - 498 A of the IPC and Section – 4 of the D.P. Act, their testimony should not be discarded as their evidence has been corroborated regarding circumstances in which the dead body was found by P.W.11, an independent witness. He has also submitted that the extra judicial confession of the deceased has been rightly believed and that even if it is kept out of consideration, the chain of circumstances pointing to the guilt of the appellant has been proved. In support of such submission, he relies on the decisions of the Supreme Court in *Maghar Singh v. State of Punjab* reported in (1975) 4 SCC 234 and *Baldev Raj v. State of Haryana* reported in 1991 Supp (1) SCC 14. He has finally submitted that the prosecution having proved the presence of the appellant in the same room where the dead body of the deceased was lying with incised injuries on her body, it was incumbent on him to submit a plausible explanation as per the mandate Section – 106 of the Evidence Act. His failure to do so is an added circumstance pointing to his guilt. In

support of this submission, he relied on the judgment of the Supreme Court in the case of *Trimukh Maroti Kirkan v. State of Maharashtra* reported in *(2006) 10 SCC 681*.

8. Admittedly there are no eye witnesses to the occurrence, and the prosecution has relied on circumstantial evidence in order to prove that the appellant had murdered the deceased, his wife. So we need to examine the evidence of the relevant witnesses in order to ascertain if the chain of circumstances have been proved beyond reasonable doubt against the appellant.

9. It is not disputed by the defence that the death of the deceased was homicidal, but we think it necessary to go through the evidence of P.W.9 who conducted post mortem examination to examine if such finding of the trial court was correct.

P.W.9 - Dr. S.K.Maniruddin was working as Medicine Specialist in Area Hospital, Daspalla, on the relevant date. He has stated that on the date of occurrence, on police requisition, he conducted post-mortem over the dead body of the deceased alongwith his colleague- Dr. B.K.Panda, Surgery Specialist of the aforesaid Hospital. The dead body was identified to them by constable Karunakar Sethi, Gramarakshi Gagan Naik and relatives of the appellant, namely Nabakishore Behera and

Dandadhar Behera. The following injuries indicated in the post-mortem report, Ext. 6 were found on the deceased:

“A fresh body, Rigormotis present on all four limbs. There were 4 numbers of injuries over the dead body confined only to neck.

Injury No.1-One incised wound 2” below one middle of lower jaw involving the floor of the mouth of size 3” length 2” breadth and 1 ½ ” depth.

Injury No.2- Incised wound over the front of the right side of neck 2” below injury No.1 extending towards right side of neck involving only skin of the neck. It was of size 3 c.m. x 2 c.m. x skin death.

Injury No.3- Incised wound out throat of size 8” length 3” width 5” depth cutting all the muscles, vessels, wind pipe, food pipe, carotid artery, jugular vein and separating 5th vertebra from 6th vertebra. It was present below the thyroid swelling. Blood clots were also detected on all the wounds.”

He has also stated that on dissection, all the internal vital organs were found in tact. Inside the uterus 16 weeks embryo was detected. All the injuries are ante-mortem in nature and homicidal caused by sharp cutting heavy weapon. Injury No.3 was fatal and lethal. All the injuries were sufficient to cause death in ordinary course of nature. Cause of death was homicidal, cut throat due to haemorrhage and shock. Death of deceased was caused within 18 to 24 hours at the time of his

examination. After examining the weapon of offence the tangia – M.O. I , he has opined in Ext 7, that all the injuries described in the post mortem examination report - Ext 6 are possible by the said weapon. In cross examination he has said that all the injuries are possible by successive blows.

After going through the evidence of P.W 9, the post mortem examination report Ext 6 and his opinion Ext 7, there is no doubt in our minds that the death of the wife of the appellant was homicidal and possible by the tangia M.O. I. Therefore no interference is called for in the findings of the learned trial Court that the death of the deceased was homicidal and possible by the tangia M.O. I.

10. It is by now well-settled by a catena of decisions that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. A witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused. A relation of the deceased is not always an “interested witness” as he/she will not spare the real assailant. Therefore

the testimony of the relations of the deceased cannot be discarded only on the ground that they are related witnesses.

Regarding discrediting the testimony of a related witness, the Supreme Court in the case of ***Dalip Singh vs State of Punjab*** reported in ***AIR 1953 SC 364***, has held that close relatives would be the last persons to screen the actual culprits and falsely implicate an innocent person. When they have personal enmity against the accused, they may implicate him falsely. Therefore merely because they are relations, their evidence cannot be discarded.

In the case of ***Hari Oboula Reddy vs the State of Andhra Pradesh*** reported in ***(1981) 3 SCC 675***, the Supreme Court has held that it is not an invariable rule that evidence of interested witnesses can never form the basis of conviction unless corroborated in material particulars by independent evidence. What is necessary is that the evidence of such witnesses should be carefully scrutinised and if found to be intrinsically reliable or inherently probable, it may be sufficient to base a conviction.

11. As regards disbelieving the evidence of a witness in toto as part of his / evidence was disbelieved, it is no longer *res integra* that the principle “*falsus in omni falsus in omnibus*” has no application in India. It is not a mandatory rule of evidence and is a rule of caution only.

If the evidence of a witness was found to be deficient to prove the guilt of one accused it is upto the court to examine if it is sufficient as regards another accused. Similarly, if a portion of the evidence of a witness has been disbelieved, it is not mandatory that such a witness has to be branded as a liar and his / her entire testimony has to be discarded. The Court is expected scrutinise the evidence of such a witness carefully to see if it is possible “*to separate the grain from the chaff*” in his / her evidence.

12. We therefore have to carefully scrutinize the evidence of P.W. 4 and 6 as the defence has alleged that they are interested witnesses as well as the evidence of P.W. 11 who the prosecution claims has corroborated the evidence of P.W. 4 and 6.

P.W.4 Nabakishore Behera, uncle of the deceased is the informant. He has stated that the deceased had married the appellant about 8 years back and they have two daughters. She was killed by the appellant as his demand for dowry was not satisfied. On getting the information regarding her death, he had gone to the house of the appellant and found the appellant and the dead body of the deceased inside a room of the house. When asked by the villagers, the appellant said that he had murdered her. On the same day he went to the police station and lodged FIR Ext. 4 at 10.00 pm which was scribed by one Manas as per his

dictation. Police went to the spot with him and broke open the door and on being asked, the accused admitted to have murdered the deceased by tangia which was recovered from the room. Police took the tangia and the accused to the police station. Inquest was held the next day and he has signed on the inquest report Ext 5. He has also stated that his brother Ananda Behera (P.W.6) and others had gone to the spot and that there was a cut injury on the neck of the deceased.

In cross - examination he has stated that he was looking after the deceased as her parents had expired and he has gone at least 25 times to their house after their marriage. He was unable to state about the exact date of dowry demand. He has stated he learnt about her death from Dinabandhu Patra and went to the spot with his wife and others and then went to the police station to lodge FIR and that he remained in the village for about two hours and about 100 people had gathered there and he did not enter the house of the accused.

P.W.6—Anand Chandra Behera is another uncle of the deceased. He has stated the deceased got married to the appellant about 8 years back and at the time of marriage, cash of Rs.16,000/- and other articles worth of Rs.30,000/- were given as dowry. After marriage, the deceased went to the house of her in-laws and stayed there. Prior to six months, the accused claimed cash of Rs.10,000/- and assaulted and

tortured the deceased and drove her out of the house as they did not pay the amount and he started “*gandagol*” repeatedly. They had left their niece to reside with the accused after convincing him. One year and four months back, after getting information, he went to house of the accused with P.W 4 and his wife and found the door bolted from inside. Through the window they saw the accused inside the room and dead body of the deceased lying inside the room in a pool of blood and he stated that he had murdered his wife. P.W. 4 went to the police station where FIR was scribed as per his direction and lodged at 10.00 pm. Then police came to the spot and accused opened the door on being asked by the police. They found the dead body of the deceased and tangia lying on the floor. The police took the accused and tangia to the police station. Inquest was held the next day in presence of the Executive Magistrate and he has signed on the inquest report.

In cross-examination, he has admitted that he does not remember the exact date when the deceased told him about demand for Rs.10,000/- by the accused. He has stated that they went to the house at about 9.00 pm and came back after half an hour and about 50- 60 persons had gathered there.

P.W.11- Sudam Parida @ Tunia is the neighbour of the appellant and has stated that the appellant and deceased were blessed with

two daughters and one daughter has died four months back. The deceased died about 1 year and 4 months back. He had gone to the spot on hearing hullah and on being called, the appellant opened the door and on being asked said that “*Mo streeke mun haanili tumara kaan gala*”. (I have killed my wife, how does it matter to you). On repeated request, the appellant opened the door and let out both the children and remained inside with the dead body of the deceased. The dead body was lying in a pool of blood with deep cut injury on her throat. In cross examination, he has admitted that about 30-40 persons had gathered at the spot prior to his arrival and at about 2.30 pm he had gone to the spot and remained there for half an hour and had not entered the room.

P.W.10- Charan Sahoo has also stated about the death of the deceased in her in-laws house about 1 year 4 months back being assaulted and murdered by her husband. On learning from the informant, he went to the spot and found the dead body of the deceased with her throat cut. He was witness to the inquest and proved his signature on the report.

13. The evidence of P.W. 4 and P.W. 6 regarding dowry demand has been disbelieved by the learned trial Court as they could not state the date when such demand was made. We have carefully scrutinised their evidence and found one discrepancy in the evidence of P.W. 4 regarding the time he went to the spot. He has stated in cross examination that he

had gone to the spot at 10.00 pm and stayed there for two hours. This is not correct in view of the evidence of P.W 13 the I.O. and other witnesses that FIR has been registered at 10.00 pm on his information. This is however a minor discrepancy. Minor discrepancies and contradictions in the evidence of witnesses is natural when they are deposing in Court after many years. But they do not have any axe to grind with the appellant to falsely implicate him and shield the actual guilty person. So we find no reason to discard their testimony especially when P.W.11, an independent witness has stated about the circumstances in which the appellant was found in the same room with the dead body of his wife. He has given a vivid account of the circumstances in which he saw the appellant through the window of the room in which he and his children were present and the dead body of the deceased was lying in a pool of blood with cut injuries. The evidence of P.W 11 has not been shaken in cross examination. The evidence of P.W.4, P.W.6 and P.W 11 finds some support from the evidence of P.W 10.

14. After careful scrutiny of the evidence of P.W 4, P.W 6 and P.W 11, we are satisfied that from their evidence , the prosecution has been able to prove the following circumstances:

- i) the appellant was present in the same room with the dead body of the deceased, which was lying in a pool of blood,
- ii) a tangia was found in the room, and

- iii) The appellant confessed that he had murdered his wife, the deceased.

15. In the case of **Trimukh Maroti Kirkan** (supra), the Supreme Court has held as follows:

....“12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See **Stirland v. Director of Public Prosecution 1944 AC 315** quoted with approval by Arijit Pasayat, J. in **State of Punjab vs. Karnail Singh (2003) 11 SCC 271**). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him”...

...“16. In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law

which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See **State of Tamil Nadu v. Rajendran** (1999) 8 SCC 679 (para 6); **State of U.P. v. Dr. Ravindra Prakash Mittal** AIR 1992 SC 2045 (para 40); **State of Maharashtra v. Suresh** (2000) 1 SCC 471 (para 27); **Ganesh Lal v. State of Rajasthan** (2002) 1 SCC 731 (para 15) and **Gulab Chand v. State of M.P.** (1995) 3 SCC 574 (para 4)].

17. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In **Nika Ram v. State of Himachal Pradesh** AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In **Ganeshlal v. State of Maharashtra** (1992) 3 SCC 106 the

appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. **In State of U.P. v. Dr. Ravindra Prakash Mittal AIR 1992 SC 2045** the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. **In State of Tamil Nadu v. Rajendran (1999) 8 SCC 679** the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which

resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.

During his examination under Section – 313 Cr.P.C, the appellant has admitted that the deceased was his wife and was found in the house with bleeding injuries. But he has not led any evidence in support of his plea of alibi that he was at his shop and arrived in his house at 10.00 pm after being informed . His presence in the same room as the dead body of the deceased having been proved by the prosecution , it was incumbent upon him to offer a plausible explanation for the injuries on her body as per the mandate of Section 106 of the Evidence Act.. As decided in the case of **Trilok Motichand** (supra), the failure of the appellant to come up with any plausible explanation when confronted with all the circumstances regarding death of the deceased is an additional circumstance pointing to his guilt.

16. We think it proper to examine the evidence of other prosecution witnesses which include the witnesses to seizure and the I.O.

P.W.1-Dinabandhu Rana , P.W 2 Lokanath Pradhan and P.W.8 Akhaya Kumar Nanda who are co villagers have been declared hostile by the prosecution.

P.W.2 and P.W 3 have admitted their signatures on the seizure lists – Ext 1 (seizure of tangia), Ext 2 (wearing apparel of the accused) and Ext 3 (blood), but denied knowledge about the rest of the prosecution case. P.W.8 only admitted his signature in the inquest report but denied knowledge about the rest of the prosecution case.

P.W. 5 Bharat Barik is a co villager of the appellant. He is witness to the inquest. He has admitted his signature on the inquest report but denied knowledge about the cause of death and seeing the dead body.

P.W.7 is Biranch Sahu, a co – villager of the appellant has stated that the deceased died about 1 year 4 months back in her house and he found a gathering and came to learn that the appellant had murdered his wife. He has admitted his signature on the inquest report but denied knowledge about its contents. He has stated in cross-examination has stated that 100-150 persons had gathered at the spot.

P.W.12 Sukadev Barik has stated that he knows the informant who belongs to his Sahi and that the marriage between the niece of the informant and the appellant took place about eight years back and he was the barber in the marriage ceremony and he came to know

from the informant and his family that the appellant murdered the deceased about one year six months back.

P.W.13-Amulya Kumar Champati Ray was the Officer in Charge Daspalla Police Station and the investigating officer. He has stated that he registered the case on receipt of the written information of P.W 4 . He has proved his written endorsement on the FIR and the formal FIR Ext. 4/3. He went to the spot at about 10.30 P.M. and found the dead body inside the room where the appellant was standing, in a pool of blood with injuries on her body. He has stated that he prepared the spot map Ext.8 and apprehended the appellant and seized the axe M.O.I at 10.45 pm produced by the appellant under the seizure list Ext.1. He seized the blood stained lungi of the appellant at 10.55 P.M., under seizure list Ext 2 and blood sample from the floor under Ext 3 and the wearing apparel of the deceased on 01.6.2007 from the command constable Karunakar Sethi under seizure list Ext. 11. At about 11.00 P.M., he arrested the appellant preparing arrest memo. He has proved the dead body challan, Ext 9 and the command certificate Ext 10. He has stated about receipt of the P.M. report on 19.06.2007 and making query about weapon of offence from P.W.9 and sending of the exhibits to S.F.S.L. Rasulgarh for chemical examination and proved the forwarding requisition Ext. 12. He proved the chemical examination report, Ext.13. The lungi of the appellant was

marked as Mo.II , the saree, saya and blouse of the deceased were marked as M.O. III, IV and V at his instance . He identified the tangia M.O.I. He has stated that P.W 1 and P.W.2 had stated that on hearing about the death of the deceased, they had gone to the spot and through the window of the house they had seen the dead body of the deceased lying in a pool of blood and when asked the accused stated that he had murdered his wife. P.W 1 had stated that the two daughters were crying in panic and on his request the accused allowed the daughters to come out and then he closed the door and after police came the accused opened the door and he saw the severe injuries on the neck of the deceased. P.W.2 has stated the police seized the handle of one tangia with iron portion and one lungi and blood stain sample in his presence. He has also stated P.W 8 had stated before him that through the window, he had seen the dead body of the deceased lying on the floor and on being asked the accused had said that *“Mo streeke mun murder karichhi kehi munda khela nanhi”*. Nothing substantial has been elicited during his cross-examination. He has denied the suggestion that M.O. I was not seized either from the accused or on his production and has stated that the seized articles were kept in his custody till they were sent to the S.F.S.L Rasulgarh.

17. Merely because P.W.2 and P.W 3 the witnesses to seizure, have denied knowledge about the circumstances of the seizure

and were declared hostile, the inquest and seizures cannot be disbelieved as they have admitted their signatures in the seizure lists and other witnesses have stated about being present during inquest. That apart there is no reason to disbelieve the evidence of P.W 13, the I.O. who has proved the seizure of the tangia, the blood stained lungi and the blood samples and wearing apparel of the deceased under seizure lists Exts 1 , 2 3 and 11, respectively.

18. In the case of **Maghar Singh** (supra), relying on the decision in **Rao Shiv Bahadur Singh and Anr. v. The State of Vindhya Pradesh (1954) SCR 1098** where conviction was based on the extra judicial confession, it has been clarified by the Supreme Court that an extra judicial confession is not tainted evidence and is an important link in the chain of circumstantial evidence.

In the case of **Baldev Raj** (supra), the Supreme Court, has held:

“An extra-judicial confession, if voluntary, can be relied upon by the court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the court should not accept the evidence, if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the

evidence or not. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence. Keeping these principles in mind, we find that the confession has been properly accepted and acted upon by the courts below and there is no scope for any doubt regarding the complicity of the appellant in the crime. The confession of the appellant was voluntary.”

In the case of ***State of Rajasthan vs Raja Ram*** reported in (2003)

8 SCC 180, the Supreme Court has held as follows:

...19. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extra judicial confession.

In the present case, P.W 4, P.W 6 and P.W 11 have stated about the extra judicial confession of the appellant. P.W 11 has stated about the exact words uttered by the appellant. No force or coercion was exercised by them or the villagers on the appellant to extract such a confession. He confessed before the FIR was lodged or the police had come to the spot. We therefore find no reason to disbelieve the evidence of these witnesses regarding the extra judicial confession of the appellant. This is an additional circumstance to prove the guilt of the deceased.

19. As this is a case based on circumstantial evidence, it would be apposite to refer to a few decisions of the Supreme Court on this aspect.

In the case of *Sharad Birdhichand Sarda v. State of Maharashtra* reported in (1984) 4 SCC 116, a case based on circumstantial evidence, the Supreme Court has held as follows : -

“ 153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in **Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra** reported in (1973) 2 SCC 793 where the following observations were made:*

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”...पञ्चशैल

...“159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.

(2) *the said circumstance point to the guilt of the accused with reasonable definiteness, and*

(3) *the circumstance is in proximity to the time and situation.*

160. *If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in **Shankarlal's** case (supra) where this Court observed thus:*

"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused."

161. *This Court, therefore, has in no way departed from the five conditions laid down in **Hanumant's** case. Unfortunately, however, the High Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. Where the prosecution is unable to*

prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea..."

These principles were reiterated in the case of ***State of Rajasthan vs Raja Ram*** reported in ***AIR 1990 SC 79*** and a catena of other decisions.

20. After hearing the submissions Mr S.N.Mishra, learned counsel for the appellant and Mr.J.Katikia, learned Additional Government Advocate for the State of Odisha and going through the impugned judgement, the post mortem examination report and the evidence of the witnesses we find that the following circumstances have been proved by the prosecution beyond reasonable doubt and these circumstances form a complete chain pointing to the guilt of the appellant and none else :

- i) The appellant and deceased were husband and wife and living together in one house with their two minor daughters.
- ii) On the date of occurrence, the appellant was seen inside the room alongwith the body of the deceased lying in a pool of blood with cut injuries on her body.

iii) The door was closed from inside and a tangia was lying in the room. The other persons in the room were their two minor daughters.

iv) The appellant confessed to P.W 4, P.W 6 and P.W 11 that he had killed the deceased with the tangia. He allowed his two daughters to come outside the room, but he remained inside till the arrival of the police.

v) Police arrived after FIR was registered at about 10.00 pm on the information of P.W 4 at the Police Station located seven kms away.

vi) After arrival of the police, the appellant opened the door and P.W 13 seized the tangia M.O.I from the spot and arrested the appellant.

vii) Inquest and post mortem examination were held on the next day.

viii) P.W 9 found all the injuries to be ante-mortem in nature and sufficient to cause death in ordinary course of nature, injury No.3 to be fatal and lethal, the nature of death to be homicidal and due to haemorrhage and shock and caused within 18 to 24 hours from the time of examination.

ix) As per opinion of P.W.9, the injuries on the deceased were possible by the tangia, M.O.I which was seized from the room

These circumstances are of the standard and principles enunciated in the case of *Sharda Birdichand* (supra). They unerringly point to the guilt of the accused and are inconsistent with his innocence. On account of these circumstances, there is no doubt in our minds that anybody other than the appellant could have committed the crime.

21. The deceased was found dead in a pool of blood with cut injuries on her neck in a room alongwith the appellant. Though the incriminating circumstances were put to the appellant during his examination under Section 313 Cr.P.C., he came up with a plea of alibi which he has not tried to prove and could not submit any reasonable explanation for having been found in a room closed from inside with the deceased with incised injuries on her body and a tangia which the doctor has opined can cause the incised injuries. The appellant in his statement under Section 313 Cr.P.C. did not offer any explanation as to how she received the injuries which were found on her body. This is an added circumstance against the appellant.

22. We therefore find no infirmity in the findings of the learned trial court and no reason to interfere with the impugned

judgment convicting the appellant for commission of offence under Section 302 IPC.

23. The appeal being devoid of merit, fails and is dismissed. The conviction and sentence of the appellant under Section – 302 IPC is confirmed.

The Trial Court Records be sent back to the trial court forthwith.

S.Talapatra, J. I agree.

(Savitri Ratho)
Judge

(S.Talapatra)
Judge

Orissa High Court, Cuttack
Dated 29th November, 2022/Bichi

