

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No.27 of 2011

From the judgment of conviction and order of sentence dated 18.01.2011 passed by the learned 2nd Additional Sessions Judge, Cuttack in S.T. Case No.345 of 2009.

Chandan Maharana

....

Appellant

-versus-

State of Orissa

....

Respondent

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant

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Mr.Lalatendu Jena
(Advocate)

For Respondent

-

Mr.Soubhagya Ketan Nayak
Additional Govt. Advocate

**CORAM:
JUSTICE D.DASH
JUSTICE M.S. SAHOO**

Date of Hearing : 09.11.2022 : Date of Judgment:23.11.2022

D.Dash,J. The Appellant, by filing this Appeal, from inside the jail, has called in question the judgment of conviction and order of sentence dated 18.01.2011 passed by the learned 2nd Additional Sessions Judge, Cuttack in S.T. Case No.345 of 2009 arising out G.R. Case No.195 of 2009 corresponding to Mangalabag P.S. Case No.31 of 2009 of the Court of the learned Sub-Divisional Judicial Magistrate, Cuttack.

The Appellant (accused) thereunder has been convicted for commission of offence under section 302/201 of the Indian Penal Code,

1860 (for short, 'the IPC') and sentenced to undergo imprisonment for life and pay fine of Rs.20,000/- (Rupees Twenty Thousand) in default to undergo rigorous imprisonment for one year for the offence under section 302 IPC and rigorous imprisonment for a period of five years and pay fine of Rs.5,000/- (Rupees Five Thousand) in default to undergo rigorous imprisonment for three months for the offence under section 201 IPC with the stipulation that the substantive sentences to run concurrently and a sum of Rs.15,000/- (Rupees Fifteen Thousand), from out of the realized fine, would be paid to the father of the deceased.

2. Case of the Prosecution:-

On 12.03.2009, during noon hours, the deceased, Somanath Maharana @ Somu, one seven year old male child, who happens to be nephew of Bijan Kumar Maharana (Informant-P.W.2) was playing Holi holding a Holi Sprinkler (Pichkari Bandhuk). After an hour or so, finding the deceased to have not gone back home with his brother, namely, Jagannath (P.W.7), sister-in-law, namely, Pravati (P.W.9), who are the parents of that boy and Sankar Nayak (P.W.1) went for the search of that boy. In course of search, having touched the houses of the relations, tank, drains, they finally entered into the back yard of their neighbor, namely, Raj Kishore Mishra. While searching at that place at a distance of 3 to 4 feet from the latrine sump of Raj Kishore, they noticed that the sprinkler held by the deceased was lying. So, they shifted the slab of the sump and put a hook inside to find out as to if the boy was inside. Then, they could detect the leg of the deceased there inside. They finally removed the body of the deceased from that sump. Having done so, they found the neck of the deceased to have been tied with a rope on

both the ends with two pieces of bricks hanging therefrom on each end. Having removed the rope from the neck of the deceased, they immediately shifted the deceased to S.C.B. Medical College & Hospital and on the way, the deceased succumbed.

When the parents of the deceased were searching for the deceased and proceeding towards the latrine sump of Raj Kishore, they saw the accused coming from their opposite direction. That accused then told them that he having already searched for the deceased near the sump area did not find. Such information of the accused was found to be false as the body was recovered from the sump. Since the accused was bearing grudge against them as having purchased the land from the person to whom the accused had sold that land they had constructed the house thereon and as for that, the accused was scolding them; they suspected the accused as having the hand in causing the murder of the deceased.

The Informant (P.W.2) lodged a written report (FIR-Ext.1) before the Inspector-in-Charge of Mangalabag Police Station on that day around 3.00 p.m. Receiving the information, immediately Mangalabag P.S. Case No.31 of 2009 was registered and the investigation was taken up.

3. In course of investigation, inquest was held over the dead body of the deceased and post mortem examination was conducted on police requisition. The Investigating Officer visited the spot, seized the bricks with ropes and one spade like instrument, which had been used for lifting the deceased from the sump and seized the Sprinkler from the spot. Witnesses present were examined and seizure lists were prepared

in support of seizure of the incriminating articles as aforesaid. The statement of the witnesses were recorded by the learned Magistrate under section 164 Cr.P.C on the prayer of the Investigating Officer. Finally, on completion of the investigation, the accused was placed to face the trial for commission of offence under section 302/201 IPC.

4. Learned S.D.J.M. (S), Cuttack, on receipt of the final form, took cognizance of the offences and after observing the formalities, committed the case to the Court of Sessions for trial. That is how the accused faced the trial.

5. In the trial, the plea of the accused is that of complete denial and false implication on account of previous enmity due to the land dispute.

In the Trial, the prosecution has examined the Informant as P.W.2, who happens to be the paternal uncle of the deceased. It has also examined Sankar Nayak as P.W.1, who was a member of the team engaged in search of the deceased. P.Ws.4 & 5 have been examined from the side of the prosecution as before them, the accused is said to have made the confession as to his act of intentionally causing the death of the deceased. P.W.6 is a witness in support of the fact that the deceased was last seen in the company of the accused. Parents of the deceased have come to the witness box as P.W.7 & 9 and another paternal uncle of the deceased has also been examined as P.W.8. The official witnesses such as the Medical Officer, Scientific Officer and the Investigating Officer are P.Ws.16 to 18 respectively. Besides the above, the prosecution has proved several documents such as the FIR (Ext.1), inquest report (Ext.3/2), post mortem report (Ext.9), seizure lists (Ext.4/2 to 8/2) and chemical examination report (Ext.20) etc. The two

pieces of bricks, rope and sprinkler have also been produced during trial, which have been marked as material objects (M.O.IV, V, VI & IX).

6. The Trial Court, on going through the evidence of the Doctor (P.W.16), who had conducted the autopsy over the dead body of the deceased on 12.03.2009 at about 4.50 p.m. on police requisition as well as other evidence, has come to a conclusion that the deceased had met a homicidal death. Next, coming to the circumstances as to the last seen theory as the deceased was playing Holi where the accused was present and the confession made by the accused before P.W.4 & 5 and that the accused was not pulling well with the family members of the deceased, being taken together with the explanation given by the accused before the parents of the deceased terming it as false, the Trial Court has held that the prosecution has been able to prove its case beyond reasonable doubt that it is the accused, who has murdered the deceased by intentionally causing the death.

7. Mr.L.Jena, learned counsel for the Appellant submitted that the evidence as to the extra judicial confession, as projected by the prosecution through P.Ws.4 & 5; are not only unreliable but unbelievable. In support of the same, he has taken us to the evidence of P.Ws.4 & 5, which would be dealt later in course of discussion of the evidence as to acceptance of their evidence as to said confession of the accused before them. He submitted that the evidence that the deceased was last seen in the company of the accused is also not acceptable under the factual settings as narrated by the witnesses, when those are viewed in their proper perspective. He further submitted that in this case, when there is no direct evidence, the prosecution has not established any such

clinching circumstance through clear, cogent and acceptable evidence. According to him, even if for a moment, it is taken that all those circumstances, as above noted, have been proved beyond reasonable doubt, those being cumulatively viewed as such, the chain is not so complete to rule out all the hypothesis other than the guilt of the accused. He submitted that the evidence on record in support of the circumstances are not at all consistent with the guilt of the accused and rather those are not inconsistent with his innocence. In view of all these, he urged that the finding of the Trial Court holding the accused guilty for commission of offence under section 302/201 IPC is liable to be set aside.

8. Mr.S.K.Nayak, learned Additional Government Advocate for the State, in support of the finding of guilt returned by the Trial Court, submitted that the circumstances proved from the side of the prosecution unerringly point at the guilt of the accused and those being cumulatively viewed make the chain so complete that it is consistent only with the hypothesis of the guilt of the accused. He submitted that the complete chain of events as proved in evidence in the case are enough to sustain the conviction as those lead to the only conclusion that the accused alone committed the murder and/or killed the deceased and there is no escape from the conclusion that within all human probability, the crime was committed by the accused and non-else. He further submitted that P.Ws.4 & 5 are the natural witnesses and their evidence is clear as to the confession made by the accused and as there surfaces no such suspicious/doubtful facet/feature so as to feel unsafe for a moment to rely upon, the said confession since has all the trapping of voluntariness

and truthfulness and as the same receives corroboration, the finding of guilt returned by the Trial Court should not be upset. According to him, when such confession of the accused is found to be totally true and voluntarily made in a fit state of mind using unambiguous words in clearly expressing that it is he who is the perpetrator of crime and that too inspires confidence in mind, the conviction recorded has to sustain.

9. Keeping in view the submissions made, We have carefully read the judgment passed by the Trial Court. We have also gone through the depositions of the witnesses examined and perused the documents admitted in evidence from the side of the prosecution (Ext.1 to 21)

10. The death, in the case, is of a boy of seven years old. The Doctor (P.W.16), who had conducted the post mortem examination over the dead body of the deceased, has noticed several injuries, which are ante mortem in nature and his opinion is that those injuries has resulted from smothering or forcible shutting of mouth. He has, however, stated on oath as also indicated in his report (Ext.9) that the internal abnormality detected in respiratory track and stomach are ante mortem in nature and consistent with the case of drowning in sewerage water media. That according to him was due to asphyxia as a result of ante mortem drowning

11. The prosecution story from the beginning is that the neck of the deceased was tied with a rope made of vegetable bark and two bricks were tied at both the ends. So, it is acceptable that the deceased had been placed like that inside the sump in that manner, as the boy could not have done that and taken that step under any circumstance and this is

clearly leads us to say that there was / were the hand/hands of other/others. This view is fortified from further evidence of the Doctor (P.W.16) that the internal abnormality, which he found although would be there in case of accidental fall inside the septic tank and getting drowned, yet the external injury, which he noticed would not be there in that event. His evidence is also to the effect that mouth and pharynx walls were found stained with sewage materials emitting decomposed putrid smell and on cut section, the lungs were congested and exudes similar sewerage materials on squeezing, the stomach too contained semi-digested food particles mixed with similar sewage materials and turbid water.

With the above stated medical evidence, when We find that the body of a body of seven years old has been recovered from latrine/sewage sump being tied with a rope on his neck carrying two bricks on both the ends, the question of accidental drowning is totally ruled out. Thus, We are led to hold that the boy in that tied condition as stated by the prosecution witnesses which have remained unshaken, has been placed inside the latrine sump which has ultimately led to his death by drowning. With this, instead of getting further stuck at this point, let us now straightway proceed to consider as to how far the prosecution has established the complicity of the accused in this happening of the boy being pushed or placed inside the latrine/sewage sump from where the body was recovered.

12. Admittedly, the prosecution case does not rest with direct evidence. We will deal with the first important evidence on which the prosecution relies is the extra judicial confession of the accused.

It is the settled principle of criminal jurisprudence that the extra judicial confession is a weak piece of evidence by itself and it has to be examined by the court with greater scrutiny care and caution. It should be truthful and should inspire confidence. An extra judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution witnesses.

Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult to base a conviction on such a confession. In such circumstances, the Court would be fully justified in eschewing such evidence from the arena of consideration. (Ref: Pancho -V- State of Haryana; (2011) 10 SCC 165); S.K. Yusuf -V- State of West Bengal; (2011) 11 SCC 754; Sahadevan & Another -V- State of Tamil Nadu; (2012) 6 SCC 403; and Jagroop Singh -V- State of Punjab; (2012) 11 SCC 768.

13. Coming to the sufficiency of circumstantial evidence to conclude the guilt of the accused, We may profitably take note of the quote by the Hon'ble Supreme Court in case of Ramananda -V- State of Himachal Pradesh; AIR 1981 SC 738 that “Perfect Proof is seldom to be had in the imperfect world and absolute certainty is a myth”. The concept of circumstantial evidence comes in such cases where the direct evidence

could not be found when the Court has to rely on the circumstantial evidence for ruling upon the matter. A circumstance if proved through clear and cogent acceptable evidence has to be accepted as such and the same does never betray or mislead. The last seen theory is based in that line as in some criminal cases where there is no direct or tangible evidence as to how the offence has been committed or who committed the offence, then the last resort in order to decide the case is that theory based on circumstances of the case. In that scenario when a person is last seen with the deceased before his death or within a reasonable period before his death that no other person could have intervened in between them then the presumption can be made that he i.e. the person who was last seen is the author of the crime and thus the onus of the proof then shifts upon him who seeks to negate this fact and it is only when he is not able to give a cogent and sufficient explanation about his innocence then the presumption gains more strength.

14. The term circumstantial evidence defined by Peter Murphy as *evidence from which the desired conclusion may be drawn which requires the Tribunal of fact not only to accept the evidence presented but then to draw an inference from it.* The term circumstantial evidence in India was used by Sir James Stephen for the first time stating that *these facts depend on other facts and exist if it is proved that the other fact existed.* This means that the inference is drawn according to the reasonable prudent man based upon pre-existing fact that has already been proved. Thus the circumstantial evidence does not establish complete guilt until every evidence is negating the innocence of the accused. The whole chain of fact and circumstance of the case should be

so complete that from the same the existence of principal fact can legitimately be inferred or presumed and no suspicion or conjecture comes in the minds of the Court regarding the guilt of the accused when he can be convicted on the basis of circumstantial evidence.

The term 'circumstantial evidence' has not been used directly in the Evidence Act. However, in section-3 of the Act, the definition of the word 'proved' reads that if the existence of any fact is so probable which a prudent man will believe it to exist then that is considered to be proved. This implies that the admissibility of circumstantial evidence that is based on logical inferences that direct evidence and circumstantial evidence are at par if the whole chain of events which happened collectively point unerringly at the guilt of accused. But if there is doubt that the accused is innocent and the chain of event is not complete then the benefit of the doubt has to go in favour of the accused.

15. In case of **Sudama Pandey -V- State of Bihar; (2002) 1 SCC 679,** the following points have been stated to be kept in mind for holding the matter to have been proved with the aid of circumstantial evidence:

- a) circumstances from which the inference had been drawn should be fully proved that they existed;
- b) all the facts that have been proved support the hypothesis of the guilt of accused;
- c) the chain of circumstances should be well connected and thus be completed so that it is conclusive; and
- d) the circumstances should toss out every possibility of the accused of being innocent.

16. Coming to the last seen in the theory doctrine, it be noted that this theory is found upon the principle of probability, cause and connection as no fact exists or takes place in isolation. Basically, it means that if an event happens then other event also occurs which are the probable consequences of the major event or is related to it either retrospectively or prospectively. These inferences or presumptions are drawn logically, according to how a reasonably prudent man will connect the dots in the prevailing scenario. It has its root with section-7 of the Indian Evidence Act called the 'Doctrine of Inductive Logic'. That states that if any fact related to the occasion cause or effect lead to the circumstance in which that thing occurred or it provided an opportunity in the occurrence of that thing then those facts will be relevant and in the last seen theory also a person who was last present with the victim would have a reasonable opportunity to commit the crime.

This presumption of fact is taken under section-114 of the Evidence Act under which the Court can presume that certain facts exist, if some other facts are proved to be in cases of natural events, human conduct and public and private business. As for example if a person was the last person seen with another just before his murder, then it can be presumed that such a person murdered the other under this theory since that person had adequate scope and opportunity to commit the crime. Be that as it may, the presumption is not considered as conclusive proof of the guilt of the person and these are rebuttable. It only shifts the onus upon the person to prove that he is innocent which is an exception in the criminal law as the burden of the proving the guilt of the accused always lies upon the prosecution. Though the last seen theory relieves the prosecution of the onus of proving the guilt yet it is weak evidence and

it needs to be corroborated with other factors like if there is motive with the person who was last seen with the deceased or he could have even inflicted the kind of injury that caused the death.

17. In case of **Jaswant Gir -V- State of Punjab; (2005) 12 SCC 438** it has been held by the Apex Court that if other links are not present to corroborate the theory, then it is not safe to solely base the finding on this theory. The fact of last seen should also be supported by other facts in such a way that the circumstances are unerringly determinative in nature and conclusively prove the guilt of the person. The Court thus has to be on guard when deciding these kind of matters as even minute details can change the whole scenario of the case.

18. The settled law for a case to be held proven entirely based on circumstantial evidence, as has been detailed out in catena of decision are that:-

- (a) every circumstance that leads to the guilt of the accused should be proved beyond reasonable doubt by the prosecution; and
- (b) all the circumstances should cogently depict the guilt of the accused leaving no incongruities, suspicions so as to lead to the establishment of the guilt beyond reasonable ground and not in a half-backed situation.

19. In case of **Digambar Vaishnab -V- State of Chhatisgarh; (2019) 4 SCC 522**, it has been held that there should be reasonable proximity between the time of seeing the person and recovery of the body to point the needle towards the person last seen with the deceased. However simply that they were last seen together cannot be the sole criteria to convict the accused. Last seen theory with other obtained circumstances

negating the innocence of the accused can lead to base the conviction banking upon the doctrine of last seen. In some cases though there are huge time gap between the occurrence of the event and the time when last seen together still if the prosecution establishes the fact that no other person could have interfered or intervened as there was exclusive possession of the accused to the place where the incident occurred, then based on this, also the last seen theory can be established and presumption can be taken despite a huge time gap. **(Ref:-Satpal Singh -V- State of Haryana; (2010) 8 SCC 714.**

20. to sum up, it can doubtlessly be said that the last seen theory is an important legal doctrine. Once proved, the onus shifts on the accused to prove his innocence. However, it does not completely discharge the prosecution of its legal obligation of the burden to prove the guilt of the accused beyond reasonable doubt. The prosecution has to present a complete linkage of the accused with the murder of the deceased i.e. there was an opportunity with him as they were last seen him together, he had the motive to do the crime and then the other circumstantial evidence like his behaviour, non-explanation of the situation to prove the guilt. This is based on the fact that in criminal law, the yardstick for proving the guilt of the accused is beyond all reasonable doubt. The decision should not be based on suspicion and in a case where even a single circumstance leads to the suspicion that the accused is innocent then he cannot be convicted. The accused will be given the benefit of doubt because our criminal law is based on the principle that no innocent should be punished. The Court should be extra careful while deciding the case based on circumstantial evidence so that there is no

miscarriage of justice. But if the last seen theory is applied, proved and corroborated by other evidence then it can be adhered to convict the accused based on the circumstantial evidence only and it would be a conviction standing valid.

21. Keeping in mind the above said legal position, in order to address the rival submission in judging the sustainability of the Trial Court's finding holding the accused guilty of the charges; let us now have a look at the evidence to see that the same if pass through the tests as aforesaid.

22. As per the prosecution case, the accused has made confession before P.Ws.4 & 5. P.W.4 claims to be a friend of the accused. It is his evidence that on 12.03.2009, when he was standing near the betel shop of P.W.5, the accused came and told him to have committed a great blunder/mistake by killing a small boy. The exact version is "MUU MASTA BADA BHUL KAMA KARI DEICHI, GOTE PILA KU MARI KARI". The name of the boy or his father's name is not stated although this P.W.4 was knowing that boy and thus for the accused not disclosing the name is suggestive of the accused making a clean breast of the incident. The witness has further stated that when he returned to his area, he learnt about the death of the deceased. This witness is not stating that when accused told him about the sin in killing a boy, it was also to the hearing of betel shop owner (P.W.5). The normal human conduct and response/reaction is completely lacking with this witness when he has remained silent on hearing this, he did not even ask as to who is that body and how the accused did that blunder when the fact remains that he hails from the same area (Sahi), moreover he claims to be a friend of the accused. This conduct of the witness is irreconcilable.

The witness states to have been standing in the betel shop to procure betel, the accused, according to this witness, came towards the betel shop when the witness was standing there. P.W.5, the betel shop owner, however, has stated that he had opened the betel shop on that day and when he was going to close the betel shop around 2.00 p.m., both P.W.4 and the accused came to his betel shop to procure betel. He thus clearly states that both came together and then he states that in his presence, accused told P.W.4 that he has committed a sin and then P.W.4 enquired from him as to what is that sin/blunder which is not so stated by P.W.4. His exact version is only that “GOTE BADA BHUL KAMA KARI DEICHI”, i.e., *one big blunder/mistake has been done/committed*, which is not regarding killing of a boy. Except the above, nothing more is stated by him.

On comparison of evidence of P.Ws.4 & 5 inconsistency is seen as to how the accused came to that betel shop and how also the conversation began and words exchanged. When P.Ws.4 & 5 state to have prior acquaintance with the accused, their conduct in they not further enquiring the matter from the accused, raises eye brows, which under the circumstance, is very unnatural when in such a situation, ordinarily human mind would tend to probe further. Furthermore, it does not stand to acceptance for a moment that the accused would be coming and revealing before P.W.4 such an important matter in presence of P.W.5 and thereafter, the matter would be over as if everything is normal, which gives rise to a definite doubt in mind as to if accused had ever made such disclosure before P.Ws.4 & 5. P.W.4 is not stating as to whether P.W.5 then was in shop or outside although he states that he was waiting to procure betel.

P.W.5 stating that he was then about to close the shop and at that time being engaged to comply the demand of the customer, (P.W.4), he would be lending his ears to the conversation between P.W.4 and the accused and then even on hearing something disturbing, he would be showing no anxiety, are certainly some features that lead to doubt the version of P.W.5. P.W.5 states that both P.W.4 and the accused had come to procure the betel. If We accept the evidence of P.W.5 that both P.W.4 and the accused had come to his shop, then they were already together for some time prior to their arrival in the shop. It then is rendered doubtful that accused despite meeting P.W.4 and finding him alone would not reveal anything about his misdeed but would come to the betel shop to say it to P.W.4 to the hearing of P.W.5. Nothing more is available on record to show as to how and under what circumstance, the accused reposed confidence upon P.W.4 as well as P.W.5 in expressing before them that he committed a wrong/mistake. Moreover, such statement has no direct nexus with the particular incident and there stands discrepancies in the evidence of P.W.4 as well as P.W.5. P.W.5 states that accused said that a great blunder or mistake has been committed by him whereas it is said by P.W.4 that the accused stated to have committed blunder by killing small boy. Such variance on material particular is irreconcilable. When P.W.4 was being informed, on his return to his place, that a boy of their locality has been killed, he is not stating in his evidence to have shown any such immediate reaction in disclosing anything before the co-villagers or taking any step there when for that disclosure on his part, there was no threat or other impediment. The conduct of P.W.4 also suffers from inherent improbability that having heard from the accused, he acted all normal. Similarly, the P.W.5

after hearing went on with his usual day-to-day activity and it was only on the next day evening, he disclosed before the police about the said fact for the first time. Thus, We are of the considered view that the evidence falling from the lips of P.W.4 and P.W.5 that the accused confessed before them to have committed murder in intentionally causing the death of a boy is not worthy of credence and as such not at all reliable.

23. Now, coming to the other circumstance, the first circumstance to be dealt with is the last seen theory. In the case at hand, no evidence has been let in from the side of the prosecution in support of the fact that at the relevant time; it was only the accused and the deceased playing Holi at the particular place. Furthermore, it being a day of observance of Holi festival in a sahi, judicial notice of the fact can be taken that many persons would be there at the place. That Sankar Nayak (P.W.1) states that after having seen the deceased playing Holi with accused, when he came back again after twenty minutes, he searched for the deceased and did not find him. Though he states that the deceased had gone with the accused, he has not seen that and it is his mere inference and no other person present nearby has come forward to state so. P.W.2 is the witness in front of whose house, the deceased was playing Holi. He is stating that accused and deceased were playing Holi together. It is his simple evidence that accused was near the deceased and he was also playing Holi. The conduct of this witness appears to be suspicious in view of the fact that having heard from his brother that the deceased was missing, he has not suspected the accused and nor has taken any step to search out the accused at least to ask him about the whereabouts of the deceased.

The evidence of P.W.1 is again not to the effect that he, at any point of time, had seen the accused in course of his search of the deceased. He is even going to say that it is the accused, who had put/inserted the body of the deceased in the sump after tying two pieces of bricks on both ends of the rope tied around the neck of the deceased to see that the body is not traced out and kept concealed in the sump. Furthermore, it has not been stated by any of the witnesses that by the time they arrived near the sump, they had noticed any such feature of lifting of that cover some time before or that it was closed as it ought to be. This aspect is also not clarified and that person namely, Raj Kishore Mishra is not cited as a witness at least to indicate that aspect.

24. Thus We are of the view that the prosecution has not been able to establish the last seen theory through the evidence of its witnesses beyond reasonable doubt. Having said as above, even if We accept for a moment that the accused having met the parents of the deceased told them to have not found the deceased despite search in the area, the same is of no such significance and cannot be treated as enough evidence that would unerringly point the finger at the accused. If for a moment, it is taken that accused had said so with the circumstances as discussed, the same does not appear as a circumstance consistent with his guilt. The dead body having been recovered from the latrine sump, when there is no such direct evidence against the accused that he had come to that place with the deceased and that apart as in the state of affair in evidence, his statement before the parents (P.W.7 and P.W.9) too cannot taken to be even a false one for the simple reason that the accused might not have any knowledge about that, like others and thus it cannot be said

that the accused knowingly had told so. The evidence of P.W.7 and P.W.9 are of no avail to the prosecution. Thus the prosecution is held to have failed to prove the circumstances unerringly pointing at the guilt of the accused and that puts an end to our journey from proceeding further to view as to if those complete the chain ruling out all the hypothesis other than the guilt of the accused.

25. For the aforesaid discussion and reason, We hold that the finding of guilt recorded by the Trial Court against the accused that it is he, who committed the murder of the deceased by intentionally causing his death and had caused the evidence to disappear and by giving false information with the intention to screen himself from legal punishment cannot be sustained. Accordingly, We find that the judgment of conviction and order of sentence are liable to set aside.

26. In the result, the Appeal stands allowed. The judgment of conviction and order of sentence dated 18.01.2011 passed by the learned 2nd Additional Sessions Judge, Cuttack in S.T. Case No.345 of 2009 are hereby set aside.

The Appellant (accused person), being on bail, the bail bonds shall stand discharged.

**(D. Dash),
Judge.**

M.S. Sahoo, J I agree.

**(M.S. Sahoo),
Judge.**

Basu