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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.63 of 2001

(An appeal under section 374(2) Cr.P.C. from the Judgment and Order dated 13.02.2001 passed by the Second Addl. Sessions Judge, Cuttack in Sessions Trial Case No.375 of 1999)

1. Laxmidhar Swain .... ***Appellants***
2. Titu @ Deepak Kumar Mohanty

Mr. Dharanidhar Nayak,
Senior Advocate

-versus-

State of Odisha .... ***Opp. Party***

Mr. Jateswar Nayak,
Addl. Govt. Advocate

CORAM:
THE HON'BLE MR. JUSTICE S. K. SAHOO
THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing: 18.11.2025
Date of Judgment: 23.12.2025

Chittaranjan Dash, J.

1. This appeal is directed against the judgment and order dated 13.02.2001 passed by the learned Second Additional Sessions Judge, Cuttack in Sessions Trial Case No.375 of 1999, wherein the Appellants were found guilty of the offence under Sections 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life. However, they were found not guilty for the offence under Section 404 read with Section 34 of the IPC and were accordingly acquitted thereof.

2. The prosecution case, as it unfolds from the case record and the evidence adduced before the learned trial Court, is that on 19.10.1998 at about 8.30 P.M., the deceased, namely Surendra @ Sura Mulia, had gone to the house of one Judhistir Routray (P.W.11) on his Luna moped bearing Registration No. OR-05-E-6125 for some personal discussion. At around midnight, Akhaya Pradhan (P.W.6) of the same village and Ajaya Mohanty (P.W.7) of a neighbouring village informed the son of the deceased, who is the Informant, that his father was lying dead with injuries. Upon receiving such information, the Informant, along with his family members and villagers, rushed to the spot and found the dead body of his father lying on the river embankment with bleeding injuries on the neck and left eye extending across the ear. The Luna moped of the deceased was found lying beside the dead body, along with a pair of chappals. It is further borne out from the prosecution case that Akhaya Pradhan (P.W.6), Ajaya Mohanty (P.W.7), Sujit Nayak, Rasananda Parida (P.W.8), and others stated that at about 11.00 P.M., while the deceased was returning from the house of Judhistir Routray, he was allegedly chased by Deepak Mohanty @ Tutu, Bijan Parida @ Tania of village Mahespur, Naresh Baitharu @ Gaga of village Kharla, Appellant-Laxmidhar Swain @ Nachhia of village Khalarda, Akhaya Swain, and Subash Routray of village Khalarda, and that the said persons were seen returning shortly thereafter at high speed on their motorcycles. Since the deceased had prior enmity with the accused persons, the Informant suspected them to have committed the murder of his father and further alleged that a sum of Rs.200/- was taken away from the pocket of the

deceased. The case record further reveals that the Officer-in-Charge of Cuttack Sadar Police Station (P.W.19) received a telephonic message from an unknown person regarding the dead body of one Sura @ Surendra Mulia lying with injuries near the river embankment at village Khalarda. On receipt of the said information, the Officer-in-Charge, along with his staff, proceeded to Kakatpur Canal Road at village Khalarda, Badasahi, where Tapas Kumar Mulia, the son of the deceased, submitted a written report, which was treated as the First Information Report. On the basis of the said report, Cuttack Sadar P.S. Case No. 251 dated 20.10.1998 was registered, marked as Ext.4, and investigation was taken up thereafter.

3. In course of the investigation, the I.O. (P.W.19) examined witnesses, held inquest, seized the Luna moped, chappals, blood-stained earth, wearing apparel, hair samples, nail clippings, and other incriminating materials, sent the dead body for post-mortem examination, arrested the accused persons from time to time. The weapon of offence (Bhujali) was recovered on 05.11.1998 and seized under Ext.6. After completion of investigation and receipt of medical and chemical examination reports, charge-sheet was submitted against the Appellants showing some as absconder.

4. The case of the defence is one of complete denial and false implication, due to political rivalry.

5. In order to establish its case, the prosecution examined nineteen witnesses in all. However, P.Ws.1, 3, 5, 6, 7, 8 and 9 did not support the prosecution case, P.W.2, Niranjan Parida is a

witness to the inquest. P.W.4, Tapas Kumar Mulia is the Informant being the son of the deceased is a post occurrence witness. He too did not deliver much to the case on material particular. P.W.10, Prashanta Kumar Behera is the eye witness to the occurrence. P.W.11, Yudhisthir Routray is a witness to the circumstances as well as post occurrence witness. P.W.12 is a witness to the seizure. P.W.13 is a witness to the circumstance whereas P.W.14 is also a witness to the circumstance as regards the extra judicial confession. P.W.15 is a witness to the hatching of conspiracy of the murder. P.W.16 is a witness to the seizure of weapon of offence such as Bhujali. P.W.17 is the Medical Officer who conducted the post-mortem examination. P.W.18 is a post occurrence witness as well as witness to the seizure. P.W.19 is the Investigating Officer.

The defence, however, has examined two witnesses in all. D.W.1 being a co-villager who found the Deceased with bleeding injuries, and D.W.2, also a co-villager.

6. The learned trial court, upon assessment of the prosecution evidence, primarily relying upon the testimony of P.W.10 corroborated by the medical evidence of P.W.17, besides other circumstances held that the Appellants were the perpetrators of the crime and caused the murder.

7. Mr. Dharanidhar Nayak, learned Senior Advocate appearing for the Appellants, contended, inter alia, that the impugned judgment of conviction is founded on surmises and conjectures and suffers from serious infirmities in appreciation of evidence. It was submitted that the learned trial Court erred in placing reliance on

the solitary testimony of P.W.10, whose evidence, according to the defence, is wholly unreliable and unsafe to sustain a conviction for an offence as grave as murder. Learned counsel argued that the very claim of P.W.10 to have witnessed the occurrence stands contradicted by the evidence of other prosecution witnesses on record. Pressing upon this contention, learned counsel pointed out that P.W.10 claimed to have been moving about on the relevant night for the purpose of arranging labourers for his cultivation and, during such movement, to have seen Appellant-Deepak Mohanty @ Tutu detaining the deceased on the canal ridge while riding a scooter with co-accused Diga seated on the rear seat. It was further asserted by P.W.10 that Appellant-Laxmidhar Swain and Bijan Parida @ Tania were present on a Rajdoot motorcycle, with all the vehicles in a stationary position and their headlights switched on. P.W.10 went on to claim that he witnessed co-accused Diga delivering a sword blow on the neck of the deceased, followed by assaults by Appellant no.1 with a Bhujali and by Bijan Parida @ Tania with a Farsa. According to learned counsel, the aforesaid narration is inherently improbable and bears clear signs of fabrication.

It was further contended that the improbability of P.W.10's version is fortified by the testimony of P.W.4, the Informant, who stated that on reaching the spot he found both P.W.10 and Judhistir Routray (P.W.11) present and that, upon enquiry, both of them expressed ignorance about the incident. Learned counsel submitted that had P.W.10 actually witnessed the occurrence, he would have disclosed such vital information to the Informant at the earliest

point of time, and his silence on that occasion strikes at the root of his credibility. Learned counsel also assailed the conduct of P.W.10 as being unnatural and suspicious, inasmuch as he claimed to have fled from the spot out of fear despite no threat having been extended to him by the assailants. It was further argued that the delayed examination of P.W.10 by the police casts a serious doubt on the veracity of his testimony. The contradictions between the versions of P.W.10 and P.W.11, particularly with regard to disclosure of the incident, were also highlighted as circumstances which substantially erode the reliability of P.W.10.

It was additionally submitted that the evidence of P.W.11 is, at best, hearsay in nature and cannot be relied upon to implicate the Appellants. Learned counsel urged that the inconsistencies in the prosecution version, especially concerning the presence and conduct of the alleged witnesses at the spot, render the solitary testimony of P.W.10 wholly unsafe to form the foundation of conviction in the absence of independent and cogent corroboration. Lastly, learned counsel argued that the remaining circumstances relied upon by the prosecution, including the alleged extra-judicial confession, the supposed hatching of a conspiracy, and the version relating to the accused persons having chased the deceased on his way back from the house of P.W.11, have been seriously criticised as embellished and artificial. It was contended that the belated examination of such witnesses appears to have been tailored to suit the prosecution case, thereby rendering their evidence unworthy of reliance.

8. Mr. Jateswar Nayak, learned Additional Government Advocate, on the other hand, supported the impugned judgment and order of conviction, contending that the same is in consonance with the evidence available on record and does not call for any interference. It was submitted that the prosecution has been able to establish the guilt of the Appellants beyond reasonable doubt through a coherent and consistent chain of evidence. Learned counsel for the State argued that the testimony of P.W.10, when read in conjunction with the evidence of P.Ws.11, 13, 14 and 15, clearly establishes that the accused persons were the perpetrators of the crime and had jointly assaulted the deceased, resulting in his death. It was contended that the ocular account furnished by P.W.10 inspires confidence and stands fully corroborated by the medical evidence adduced through P.W.17, thereby presenting a clear, cogent, and trustworthy narrative implicating the accused persons as the assailants. It was further submitted that the nature, seat, and multiplicity of the injuries sustained by the deceased, the deadly weapons used in the commission of the offence, and the vital parts of the body targeted during the assault unmistakably demonstrate that the injuries were sufficient in the ordinary course of nature to cause death, as opined by the medical expert. According to learned counsel, such evidence amply establishes that the accused persons acted with intention and premeditation, and the assault was of such severity that it resulted in the instantaneous death of the deceased. On the aforesaid premises, learned counsel for the State contended that the acts attributed to the Appellants squarely fall within the ambit of the offence punishable under Section 302 of the Indian

Penal Code and that the learned trial Court rightly recorded the conviction and imposed the sentence of imprisonment for life, which, according to the State, warrants affirmation by this Court.

9. Before examining the rival submissions, it is necessary to briefly note the evidence of the relevant prosecution witnesses. A concise summary of their depositions is accordingly set out below.

P.W.4, Tapas Kumar Mulia, the Informant, while deposing before the Court, did not support the prosecution case with regard to the identity of the assailants. He stated that he was informed by certain villagers, namely Batakrushna Sana, Subakar Pradhan, Ranjan Parida and Nitayapanda Parida, that his father had been murdered and that the dead body was lying at Hatigada Sahi of village Khalarda. Upon receiving such information, he, along with his relatives and villagers, proceeded to the spot and found the dead body of his father lying there. He proved the lodging of the First Information Report, marked as Ext.4, and his signature thereon as Ext.4/1, stating that he himself had written the report. He further deposed that his statement under Section 164 of the Cr.P.C. was recorded by the Magistrate and that he had taken custody of the Luna moped of his father after its seizure, the zimanama being marked as Ext.5 and his signature thereon as Ext.5/1. In his cross-examination, he stated that Prashanta Behera (P.W.10) and Yudhisthir Routray (P.W.11) were present near the dead body when he reached the spot, but both of them expressed ignorance regarding the assailants. He further stated that the police had already arrived

at the spot before his arrival and admitted that the FIR was written by him on the dictation of Yudhisthir Routray.

P.W.10, Prashanta Kumar Behera, the sole eyewitness to the occurrence, deposed that he was acquainted with all the accused persons as well as the deceased. According to him, on the night of 19.10.1998 at about 11.00 P.M., near Hatigada side at Bada village, close to the canal ridge (Kapal Bandha), he witnessed the occurrence while he had gone there to arrange labourers for his cultivation. He stated that he saw Appellant-Titu alias Deepak Mohanty riding a scooter with co-accused Diga seated on the rear seat, and Appellant-Laxmidhar and Tania on a motorcycle, with all the vehicles in starting condition and their lights switched on. He further deposed that co-accused Diga first dealt a sword blow on the neck of the deceased, causing him to fall to the ground, whereafter Appellant-Laxmidhar assaulted him with a Bhujali on the forehead and co-accused Tania inflicted a Farsa blow on his face. Out of fear, he claimed to have fled from the spot, leaving his bicycle near the canal, and later came to know that the deceased succumbed to the injuries.

In his cross-examination, P.W.10 stated that the place of occurrence was a basti area having about two houses, with 10 to 15 persons residing there, and that the houses were situated at a distance of about 50 feet from the spot. He claimed that he was standing on the canal embankment at a distance of about 10 to 20 feet when he witnessed the assault. He admitted that he did not inform the family members of the deceased nor did he lodge any

report with the police. He further stated that his bicycle was not seized by the police and was later brought back by his family members. He denied any ill feeling towards Yudhisthir Routray and refuted the suggestion that he had falsely implicated the accused due to political rivalry or that he was elsewhere at the time of the occurrence. He also denied being an associate of the deceased or having any role in a conspiracy to murder him, and asserted that his testimony regarding the assault was truthful.

P.W.11, Yudhisthir Routray, stated that he was acquainted with both the accused persons and the deceased. He deposed that on the night of 19.10.1998 at about 10.30 P.M., P.Ws.6 and 7 came to his house on a motorcycle, and shortly thereafter the deceased arrived on his Luna moped. According to him, they discussed political matters concerning an upcoming Yuba Congress meeting, and he paid a sum of ₹200 to the deceased towards pocket expenses. P.Ws.6 and 7 left first, and about five minutes later the deceased left his house on the Luna moped. He further stated that at about 11.50 P.M. the same night, several persons including Akshaya Pradhan and Ajaya Mohanty informed him that the dead body of the deceased was lying on the canal embankment and that the accused persons had been seen following the deceased in their respective vehicles from near Maheshpur Chhak after consuming liquor. On receiving such information, he went to the spot and found the deceased lying with bleeding injuries, including cut injuries on the neck, face and head. P.W.11 further stated that earlier the deceased had supported Appellant-Titu alias Deepak Mohanty, but later shifted his political support to him during the

election, on account of which the accused persons allegedly bore a grudge against the deceased and committed his murder. In his cross-examination, he candidly admitted that his knowledge regarding the actual occurrence was not based on personal observation but was derived from what others had told him. He stated that he had given a telephonic message to the Officer-in-Charge of Sadar Police Station, arranged to inform the family members of the deceased, and noticed blood at the spot where the dead body was lying near the road. He denied the suggestions of false implication on account of political rivalry or any conspiracy involving himself or P.W.10, and asserted that he was deposing truthfully.

P.W.12, Arabinda Jena, deposed on oath that he was acquainted with all the accused persons as well as the deceased, Sura Mulia. He stated that in his presence the police seized the blood-stained wearing apparels of the deceased from the spot. According to him, the seizure list was prepared, read over and explained to him, and he put his signature thereon as a witness. He further deposed that the police also seized one blood-stained shirt belonging to Appellant-Laxmidhar Swain at the police station in his presence, and that he again signed the seizure list prepared in that regard. Beyond the said seizures, he stated that he had no personal knowledge about the occurrence. However, in his cross-examination, the witness stated that the police had told him that the shirt belonged to Appellant-Laxmidhar Swain and that a police constable was holding the said shirt at the time of the alleged seizure, thereby casting a doubt on the manner of seizure.

P.W.13, Sujeet Nayak, in his sworn testimony stated that on the night of the occurrence at about 11.00 P.M., he and Sujit Naik were talking on the other side of the canal at village Khairada. He claimed to have seen the deceased, Suresh Chandra Mulia, standing near the bridge along with another person, while the accused persons, namely Tutu alias Deepak Mohapatra, Digambar Swain, Tania Parida and Appellant-Laxmidhar Swain, were sitting near a paan shop on a cement slab. According to him, the scooter of accused Tutu alias Deepak and the Rajdoot motorcycle of accused Tania were parked nearby. He further stated that after P.Ws.6 and 7 passed by on a motorcycle, the deceased left on his Luna moped and, thereafter, the said accused persons followed him in their respective vehicles. He claimed that after about 15 to 20 minutes, the vehicles returned at high speed towards Pratapnagari village with the accused riding them, and later P.Ws.6 and 7 informed him that the deceased was lying dead.

In his cross-examination, P.W.13 admitted that he could not note the registration numbers of the vehicles and had not seen any document relating to their ownership. He further stated that it was an Amabasya night, that he was standing at a distance of about 700 feet from the place where the accused were allegedly sitting, and that there was no electric light at that spot. He admitted that he had not seen any accused persons other than those named by him. He asserted that he had disclosed these facts to the Investigating Officer during his examination and denied the suggestion that he had not seen the accused persons and was falsely deposing at the instance of P.W.11.

P.W.14, who was examined in support of the alleged extra-judicial confession, stated on oath that on 02.12.1998, while returning from Bhubaneswar, he met accused Tutu alias Deepak Mohanty at Rasulgarh Chhak. According to him, on being questioned, the accused stated that the incident would not have occurred had the deceased, Sura Mulia, not been murdered and further disclosed that Yudhisthir Rout could not come out of his house after the killing of the deceased. He further stated that the accused told him that he had detained the deceased and that the deceased was assaulted by the other accused persons.

However, in his cross-examination, P.W.14 stated that he met the accused at Rasulgarh Chhak while waiting for an auto-rickshaw and that the meeting took place on 02.12.1998. He admitted that he could not say to whom he disclosed the alleged conversation and that he had come to know about the murder of the deceased from villagers. He further admitted that he had heard that Tutu Mohanty and others had killed the deceased and that accused Tutu alias Deepak did not disclose the names of the other accused persons to him. He could not explain how the police came to know about his alleged conversation with the accused prior to recording his statement and admitted that he did not approach the police on his own to report the same. He stated that on 03.12.1998 he was examined by the Investigating Officer at the police station on being called. He denied the suggestion that accused Tutu alias Deepak had not made any extra-judicial confession before him and further stated that he had returned from Bhubaneswar after selling vegetables. He also stated that generally they travel in groups and

sometimes return in groups, and denied the suggestion that he had deposed falsely at the instance of Padmananv.

P.W.15, Suratha Swain, in his sworn testimony stated that he was acquainted with all the accused persons as well as the deceased, Sura Mulia. He deposed that on the night of the occurrence, at about 7.00 P.M., while he had gone near the bridge side to take tea, he noticed the accused persons, namely Appellant-Laxmidhar Swain, co-accused Akshaya Swain, co-accused Diga, co-accused Tania and Appellant-Titu@Deepak, engaged in a discussion amongst themselves. According to him, he overheard them saying that the situation would be resolved if the deceased, Sura Mulia, and Judhistir Routray (P.W.11) were killed. Thereafter, he left the place and returned home. In his cross-examination, he stated that he did not have any bodyguard for security and that he had overheard the conversation from outside the tea stall and identified the accused persons from their voices. He further stated that he had informed the Investigating Officer about the said discussion, although his statement was recorded after a lapse of about 12 to 13 days. He denied the suggestion that he had not heard any such discussion or that he was falsely deposing at the instance of P.W.11.

P.W.16, Bandhu Charan Sahu, deposed that he knew the accused persons as well as the deceased, Surendra Mulia. He stated that on 05.11.1999, in his presence, the police seized one Bhujali, which was traced out from the canal water by Parasuram Behera and Pitapanjan Behera. He further stated that the police prepared a

seizure list in respect of the said weapon, which was read over and explained to him, and that he signed the same after knowing its contents. He proved the seizure list as Ext.6 and his signature thereon as Ext.6/1, along with the signature of another witness. In his cross-examination, he stated that though the seizure list mentioned that the Bhujali was recovered from the canal water in his presence, he could not recollect the length of the weapon or the P.S. case number. He, however, denied the suggestion that no seizure had been effected in his presence.

P.W.17, Dr. Manoj Kumar Jena, a Lecturer in the Forensic Department of S.C.B. Medical College, Cuttack, deposed that on police requisition he, along with Prof. J.K.B. Routray, conducted the post-mortem examination over the dead body of Surendra Kumar Mulia. He described the presence of multiple incised wounds on the face, mouth and other parts of the body, fractures of the cranial bones and contusions of the brain. According to him, all the injuries were antemortem in nature and could be caused by a sharp cutting weapon of moderate weight. He opined that death was due to shock and haemorrhage as a result of cranio-cerebral injuries and that the time since death was approximately 12 hours. He proved the post-mortem report as Ext.7 and his opinion as Ext.9, stating that the Bhujali produced before him could cause the injuries except the abrasion injury. In his cross-examination, he stated that there was no injury on the neck and admitted that he had not opined that any single injury was independently sufficient to cause death, though cumulatively the injuries were sufficient to cause death.

P.W.18, Krushna Chandra Jena, stated that he knew accused Deepak Mohanty as well as the deceased. He deposed that on the night of Dipabali Amabasya, at about 11.00 P.M., on hearing an alarm, he proceeded towards the house of the deceased. On the way, he met Akshaya Pradhan and Ajoy Mohanty sitting on a motorcycle, who informed him that the deceased had been killed. On reaching the spot, he found the deceased lying dead with cut injuries on the head and mouth. He further stated that the police seized the L.F.C. Book, blood-stained earth and other articles from the spot in his presence, and he proved the relevant seizure lists along with his signatures. In his cross-examination, he admitted that several persons, including Judhistir Routray and other witnesses, were present at the spot and described the place of occurrence as a bushy area near the house of Trailokya Samal.

P.W.19, Gyanaranjan Mohanty, the Investigating Officer, deposed that on receipt of a telephonic message at about midnight regarding a dead body lying at village Khalarda, he proceeded to the spot and received the written report from the Informant, which was treated as the First Information Report. He stated that he conducted the investigation, visited the spot, examined witnesses, seized various articles including the Luna moped, chappals, documents and blood-stained earth, and prepared the inquest report as well as the spot map. He further stated that the dead body was sent for post-mortem examination and that the blood-stained wearing apparels of the deceased were subsequently seized. According to him, the accused persons were arrested on different dates, the weapon of offence, namely the Bhujali, was recovered

from the canal after the water level subsided, and the seized articles were sent for chemical examination. After obtaining the medical and scientific reports, he submitted the charge-sheet.

In his cross-examination, P.W.19 admitted certain procedural lapses, including non-examination of some nearby residents, non-seizure of the vehicles allegedly used by the accused persons, and irregularities in the maintenance of case diary entries. He, however, denied the suggestions that the investigation was tainted by political influence, bias or that it was conducted in a perfunctory manner.

10. Having considered the submissions advanced by learned counsel for the respective parties and keeping in view the nature of the offence with which the Appellants stood charged, the foremost question that arises for determination is whether the deceased met a homicidal death. In this context, apart from the ocular version of P.W.10, who gave a graphic account of the assault leading to the death of the victim, the medical evidence assumes considerable significance. P.W.17, the Medical Officer who conducted the post-mortem examination over the dead body of the deceased, deposed that he performed the autopsy on police requisition and recorded the following external and internal injuries: -

> (i) Incised would of size 9 cm × bone deep (eye-socket) present transversely being extended from left side of the face from the lateral angle of eye to the medial angle of right eye where the underlying tissues and the bone cut cleanly

(ii) Incised would of size 4 cm × 0.5 cm muscle deep present transversely over the left maxilla

(iii) Incised would of size 4 cm × 0.5 cm bone deep present over the left ala of nose

(iv) Incised would of size 13 cm × 1 cm mandible deep present over the mouth extending 7 cm away from the right ear and extended to the left being involving the lower lip and the mandible which is cut cleanly at is middle

(v) Incised would of size 4 cm × 1 cm muscle deep extended from the right of external injury no. iv above the face up to 4 cm in length

(vi) Incised would of size 10 cm × 0.5 cm muscle deep present 1 cm below the external injury no. v and placed horizontally

(vii) Incised would of size 10 cm × 0.5 cm muscle deep placed horizontally 1 cm below the external injury no. vi

(viii) Grazed abrasion of size 7 cm × 4 cm present over the left shoulder tip

On dissection, following internal injuries were found:-

(i) The occipital lobes of both cerebral hemispheres are found contused with haemorrhage over it

(ii) The left orbital plate is fractured linearly in length of 4 cms

(iii) The Sphenoid is fractured in a length of 6 cms

11. On the basis of these findings, he opined that all the injuries were ante-mortem in nature and could have been caused by a sharp cutting weapon of moderate weight. He further opined that the cause of death was shock and haemorrhage resulting from cranio-

cerebral injuries and that the time since death was approximately 12 hours prior to the post-mortem examination. He also stated that relevant exhibits were collected, preserved and handed over to the police for necessary examination. The testimony of P.W.17 with regard to the nature of the injuries, the cause of death and the use of a sharp cutting weapon has remained unchallenged. Significantly, during the course of hearing of the appeal, the defence also did not dispute the fact that the deceased met a homicidal death. In the absence of any material to the contrary, and in view of the cogent and unimpeached medical evidence on record, we find no reason to differ from the conclusion reached by the learned trial Court. Accordingly, we concur with the finding that the deceased died a homicidal death.

12. Coming to the question of complicity of the Appellants, it is not in dispute that the prosecution rests its case primarily on the solitary testimony of P.W.10, who has directly attributed the commission of the murder to the Appellants. In his sworn deposition, P.W.10 gave a detailed narration of the overt acts allegedly committed by the Appellants, the weapons said to have been used in the assault, and the manner in which the deceased sustained fatal injuries resulting in his instantaneous death. If such testimony were to be accepted at its face value and without reservation, it would present a complete and coherent account pointing towards the involvement of the Appellants in the murder of the deceased.



However, the defence has seriously assailed the credibility and reliability of P.W.10, thereby necessitating a careful and close scrutiny of his evidence before it can be accepted as truthful. Such an exercise becomes all the more imperative in the present case, as the learned trial Court has substantially founded the conviction on the sole testimony of this witness. It is well settled that it is the quality of evidence and not the quantity that determines its probative value. Though a conviction can legally be based on the testimony of a solitary eyewitness, such evidence must be wholly reliable, free from suspicion, and of sterling quality so as to inspire complete confidence in the mind of the Court.

13. The Hon'ble Supreme Court, in ***Rai Sandeep @ Deepu alias Deepu vs. State (NCT of Delhi)***, reported in **(2012) 8 SCC 21**, has lucidly explained the concept of a "sterling witness", as follows:

> "22. In our considered opinion, the "sterling witness" should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no

> circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

14. The Hon'ble Supreme Court in the aforesaid decision has held that an eye-witness must be of very high quality and calibre, whose version is unassailable. The Court must be in a position to accept the testimony of such a witness at its face value without hesitation. To test the quality of such evidence, the truthfulness of the statement assumes paramount importance, and equal emphasis is required to be placed on the consistency of the version from the inception of the prosecution case till the culmination of the trial. The testimony should be natural, cogent, and in complete harmony

with the prosecution case against the accused, without any material prevarication or embellishment. The witness must also be able to withstand cross-examination of any length or severity, and his evidence should not leave room for any doubt with regard to the occurrence, the persons involved, or the sequence of events.

Viewed in the aforesaid legal backdrop, the testimony of P.W.10 calls for strict and cautious scrutiny. Unless his evidence is found to be wholly trustworthy, consistent and unimpeachable, it would be unsafe to sustain the conviction of the Appellants solely on the basis of his testimony.

15. Having regard to the criticism advanced by the defence that P.W.10 has falsely projected himself as an eyewitness to the occurrence, a careful scrutiny of his evidence reveals certain inconsistencies and prevarications which cannot be brushed aside as inconsequential while assessing the veracity of his testimony. One such circumstance emerges from the contradictory versions regarding disclosure of the incident. While P.W.11 stated that P.W.10 had disclosed the occurrence to him on the very night of the incident, P.W.10 categorically denied having made any such disclosure. Similarly, though there is evidence on record suggesting the presence of P.W.10 at the spot immediately after the occurrence, P.W.10 himself denied being present there at that time.

Significantly, P.W.4, the Informant, stated that immediately after being informed by P.Ws.6 and 7 that his father had been assaulted and was lying injured, he rushed to the spot and found both P.W.10 and P.W.11 present there. He further stated that upon

enquiring from them about the assailants, both P.W.10 and P.W.11 expressed ignorance. This version assumes importance, as it directly contradicts the claim of P.W.10 of having witnessed the assault. Further, while P.W.11 asserted that P.W.10 disclosed the occurrence to him on the very night, P.W.10 denied the same, thereby introducing a material contradiction. In such circumstances, had P.W.10 truly been an eyewitness to the incident, there appears to be no plausible reason for him to deny knowledge of the occurrence either before P.W.4 or before the police, particularly when the investigation had already commenced in the village.

In view of Section 6 of the Evidence Act, the doctrine of *res gestae* refers to facts, statements, or acts made by a person that are so closely connected with the facts in issue as to form part of the same transaction. Such facts are relevant and admissible in evidence. It is an exception to hearsay evidence as it does not allow any time for fabrication of false story which is the reason why hearsay evidence are not admissible as they allow a great deal of doubt to fabricate the false story to dilute the truth. The concept of spontaneity and immediate acts are essential conditions for a fact to be admissible under Section 6. A transaction can include both physical acts done by a person, or a word said or statements connected with the facts in issue and it can be such words spoken by the person who has done such acts, or some other person connected with the issue. The statement given by P.W.10 before P.W.4 immediately after the occurrence at the scene of occurrence having no knowledge as to who killed the deceased is admissible as

res gestae and it creates a serious doubt as to his being an eye-witness to the occurrence and renders his testimony unreliable.

Moreover, though P.W.10 claimed to have disclosed the incident to his family members and other villagers, none of such persons were examined by the prosecution. Even P.W.10 denied having disclosed the occurrence to P.W.11, whereas P.W.1 stated that he had come to know about the occurrence on the very night from P.W.10. An additional and significant circumstance highlighted by the defence is the delayed examination of P.W.10 by the investigating agency. Despite P.W.10 admittedly being present in his house in the same village, and notwithstanding the fact that his family members and villagers would have known about his alleged witnessing of the incident, his statement was recorded only about one and a half days after the occurrence. If the version of P.W.10 was true, such a delay in his examination remains unexplained. The cumulative effect of these discrepancies and contradictions goes to the root of the prosecution case insofar as the claim of P.W.10 being an eyewitness is concerned. These infirmities are not minor or peripheral in nature but strike at the credibility of the witness, thereby creating a serious doubt regarding the reliability of his testimony as an eyewitness to the occurrence.

16. The evidence on record further discloses that the statement of P.W.10 was recorded belatedly, despite the admitted position that he was present in his house throughout and that the police had been frequently visiting the village in connection with the investigation. This delay assumes significance particularly in a situation where the

witness himself categorically stated that no threat or intimidation was extended to him by the accused persons. In such circumstances, a cogent and convincing explanation was required from the prosecution as to why P.W.10, despite allegedly having witnessed the occurrence and being aware of the identity of the assailants, refrained from disclosing the same to the police at the earliest opportunity. This becomes all the more relevant when P.W.10 claimed that he had already disclosed the occurrence to the villagers as well as to his family members, yet chose to wait until his statement was formally recorded by the investigating agency.

Learned counsel for the Appellants has further relied upon the judgment of the Hon'ble Supreme Court in ***State of Orissa vs. Brahmananda Nanda***, reported in **AIR 1976 SC 2488**, to submit that an eye-witness who withholds the identity of the assailant for a considerable period without any plausible explanation cannot be treated as reliable. In the said decision, the Supreme Court held that failure of the witness to disclose the name of the assailant for about one and a half days, despite the presence of police and absence of any real threat, constituted a serious infirmity which destroyed the credibility of the testimony. The principle laid down therein squarely applies to the facts of the present case, where P.W.10, despite claiming to have witnessed the occurrence, neither disclosed the names of the assailants at the earliest opportunity nor offered any convincing explanation for such silence, even when the police had already commenced investigation. Such unexplained conduct casts a serious shadow on the trustworthiness of his version.

The delay in the examination of P.W.10 could have carried some sanctity had the prosecution examined any independent villagers to substantiate the claim that the witness had indeed disclosed the occurrence to them soon after the incident. Likewise, no member of his family was examined to lend assurance and credibility to his version. The absence of such corroborative evidence, when considered in conjunction with the statements of P.W.11 and P.W.4, as discussed hereinbefore, renders the testimony of P.W.10 short of the standard of a "sterling witness" whose evidence could be relied upon implicitly and beyond reproach.

Considering the gravity of the offence alleged against the accused persons, the scrutiny of evidence must necessarily be more rigorous. Where the prosecution seeks to rest its case substantially on the solitary testimony of an eyewitness, such evidence must be free from embellishment, consistent in all material particulars, and must ring true so as to inspire the confidence of the Court. In the facts and circumstances of the present case, the testimony of P.W.10 does not satisfy these essential requirements and, therefore, cannot be accepted as wholly reliable to sustain the conviction on its own.

17. The reliance placed on the issue of delay in recording the statement of P.W.10 is required to be examined in the light of the settled legal position in ***Firoz Khan Akbarkhan vs. The State of Maharashtra***, reported in **2025 SCC OnLine SC 627**, wherein the Hon'ble Supreme Court has clarified the as follows:

> **"21.** Insofar as the delay of 2/3 days in recording the statements of the eye-witnesses under Section 1615 of

the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') is concerned, the said delay has been thoroughly explained by the witnesses, including the Investigating Officer, to the effect that there were riots in the area. On this score, the Investigating Officer was involved in maintaining law and order in the affected area. In the attendant facts and circumstances, the course of action adopted by the police cannot be termed unjustified and no adverse inference can be drawn on this count. No doubt that Court has laid down that an inordinate delay in recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in ***Ganesh Bhavan Patel v State of Maharashtra,*** **(1978) 4 SCC 371**; however, therein, the delay in recording statements of the material witnesses was accompanied by a delay in registering of the FIR and the surrounding circumstances, which led the Court to hold that there was a 'a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.' In ***Jagjit Singh v State of Punjab,*** **(2005) 3 SCC 689** and ***State of A.P. v S Swarnalatha,*** **(2009) 8 SCC 383**, the Court held in favour of the convict/accused, as the inordinate delays therein could not be sufficiently explained. Delay of about 27 days, in a case where communal violence had broken out, was held not fatal, in ***Lal Bahadur v State (NCT of Delhi),*** **(2013) 4 SCC 557**. Delay of over 2 years in recording witness statements was deemed not fatal, when explained, in ***Baldev Singh v State of Punjab,*** **(2014) 12 SCC 473**. Delay in recording witness statements was held not fatal per se in ***Sunil Kumar v State of Rajasthan,*** **(2005) 9 SCC 283** and ***V K Mishra v State of Uttarakhand,*** **(2015) 9 SCC 588**. Delay in recording statements of witnesses was held to have cast serious doubts on the prosecution version in ***Shahid Khan v State of Rajasthan***, **(2016) 4 SCC 96** and ***Jafarudheen v State of Kerala***, **(2022) 8 SCC 440**. It was held, in ***Goutam Joardar v State of W. B.,*** **(2022) 17 SCC 549**, by a Coordinate Bench that 'there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by

> itself cannot result in rejection of their testimonies.'
> Per our understanding, ***Ganesh Bhavan Patel*** (supra) is not an authority to contend that delay in recording witness statements is always fatal to the prosecution's case. Thus, stricto sensu, delay in recording witness statements, more so when the said delay is explained, will not aid an accused. Of course, no hard-and fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it. Our reading of the above shall apply on all fours to delays in the context of Section 164 of the Code."
>
> Emphasis supplied

18. Tested on the anvil of the aforesaid principles, the present case stands on a materially different footing. Here, the delay in recording the statement of P.W.10 is neither satisfactorily explained nor supported by any compelling circumstances such as law and order exigencies, fear, or inability on the part of the investigating agency. On the contrary, the evidence reveals that P.W.10 was available in the village, police were visiting the locality for investigation, and yet no plausible explanation has been offered as to why the witness, who claims to be an eyewitness and to have disclosed the incident to villagers and family members, did not come forward at the earliest opportunity. The delay, therefore, cannot be viewed in isolation but assumes significance when considered alongside the material inconsistencies, contradictions, and omissions in his testimony, as well as the absence of corroboration from independent or natural witnesses.

Though learned counsel for the State has placed reliance on the decision of the Hon'ble Supreme Court in ***Goutam Joardar vs.***

State of West Bengal, (Supra), to contend that mere delay in recording statements of witnesses is not by itself fatal to the prosecution case, the said principle cannot be applied mechanically to the facts of the present case. As consistently held, the issue of delay has to be examined in the backdrop of all the available circumstances, the conduct of the witness, and the overall credibility of the prosecution version. Unlike cases where delay stands convincingly explained, the prosecution herein has failed to furnish any cogent or plausible explanation for the belated examination of this witness or for the manner in which his statement surfaced during investigation. The absence of such foundational facts renders the testimony of the witness shrouded in mystery and fraught with serious doubt.

19. So far as the version of the witness relating to the alleged extra-judicial confession is concerned, the same suffers from glaring infirmities. Before adverting to the appreciation of the evidence, it would be apposite to refer to the settled legal position governing the evidentiary value of such confessions. The Hon'ble Supreme Court in ***Chandrapal vs. State of Chhattisgarh***, reported in **(2022) SCC OnLine SC 705**, has cautioned that an extra-judicial confession, by its very nature, is a weak piece of evidence and must be subjected to strict scrutiny, as follows:

> "11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such

> confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of State of M.P. Through CBI v. Paltan Mallah, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused."

20. In the instant case, at the outset, it is noticed that the witness was examined nearly eight days after the incident, when on the very next day after the alleged confession was said to have been made before him. Moreover, the evidence on record clearly establishes that P.W.14, who is relied upon for the alleged extra-judicial confession, never volunteered to approach the police on his own. It is further evident that the said witness is a resident of a place far removed from the village where the occurrence took place. No evidence, either direct or circumstantial, has been brought on record to disclose the nature or degree of acquaintance between this witness and the Appellants, which could reasonably explain why the accused would repose such confidence in him so as to voluntarily confess their alleged involvement in the crime. There is also a complete absence of any material to even remotely indicate the source from which the I.O. came to know about this alleged

confession or the manner in which the witness was traced as a recipient of such information. Consequently, the purported extra-judicial confession cannot be treated as sacrosanct or relied upon as a credible piece of evidence against the Appellants.

21. Coming to the circumstance relating to seizure, the evidence of the seizure witness with respect to the alleged recovery of the blood-stained shirt of the Appellant-Laxmidhar is found to be prevaricating and unreliable. In his examination-in-chief, P.W.18 stated that the said shirt was seized by the police in his presence. However, in his cross-examination, he materially departed from this version and categorically stated that the police had merely shown the shirt to him and that he had no knowledge about the place from where it was seized or the circumstances under which such seizure was effected. This material inconsistency strikes at the root of the prosecution case so far as the seizure is concerned and renders the alleged recovery doubtful.

Further, the C.E. Report vide Ext.16 does not disclose the blood group detected on the seized article, thereby failing to establish that the blood allegedly found on the shirt was that of the deceased. In the absence of such scientific corroboration, the mere recovery of a blood-stained article, even if assumed, does not advance the prosecution case. Consequently, none of the incriminating articles seized and sent for chemical examination can be said to have established any cogent nexus between the crime and the accused.

22. In view of the foregoing analysis and the discussion made hereinabove, while this Court affirms the conclusion that the deceased met with a homicidal death, the prosecution has failed to establish, by reliable and cogent evidence, whether direct or circumstantial, the guilt of the Appellants beyond all reasonable doubt. The evidence on record suffers from material inconsistencies and infirmities, which go to the root of the prosecution case and render it unsafe to sustain the conviction. In such circumstances, the Appellants are clearly entitled to the benefit of doubt, and the conviction and sentence recorded against them cannot be allowed to stand.

23. In the result, the Criminal Appeal is allowed. The judgment of conviction and order of sentence dated 13.02.2001 passed by the learned Second Additional Sessions Judge, Cuttack in Sessions Trial Case No.375 of 1999 are hereby set aside. The Appellants are acquitted of the charge under Section 302 read with Section 34 of the Indian Penal Code by extending to them the benefit of doubt.

24. Since the Appellants are on bail, their bail bonds stand discharged. They shall be released from all liabilities arising out of the present case, if not required in connection with any other case.

(Chittaranjan Dash)
Judge

I, Agree.

(S. K. Sahoo)
Judge

Signature Not Verified
Digitally Signed
Signed by: ANANTA KUMAR PRADHAN
Designation: Junior Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 23-Dec-2025 16:50:37