

FORM-A**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHANJANAGAR, DISTRICT: GANJAM.**

Present: Shaikh Md. Quais, M.A., LL.M.,
Additional Sessions Judge, Bhanjanagar,
Dist.Ganjam.

JO Code No: OD-0300

Dated the 10th day of August, 2026

CASE No.-ST.108 of 2021
(CNR No.ODGM09-000013-2022)

(Arising out of GR. Case No.602/2021 corresponding to Bhanjanagar PS
Case No.209/2021 committed by learned SDJM, Bhanjanagar.)

COMPLAINANT	STATE OF ODISHA
REPRESENTED BY	Ms. Dipanjali Mahapatra, Addl.PP.
ACCUSED	Ami @ Amita Swain , aged about 32 years, W/o.Sushanta Swain, of Vill.Badapathara, Uttar Sahi, PS.Bhanjanagar, Dist.Ganjam.
REPRESENTED BY	Sri R.P. Pradhan & Associates, Advocates.

FORM-B

Date of Offence	22.05.2021
Date of FIR	23.05.2021
Date of Charge sheet	29.08.2021
Date of Framing of Charges	08.04.2022
Date of commencement of evidence	02.12.2022
Date on which judgment is reserved	27.07.2026

Date of the judgment				10.08.2026			
Date of the Sentencing Order, if any				N.A			
Accused Details:							
Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of section 428, Cr.PC
1.	Ami @ Amita Swain	25.05.2021	UTP	U/s.302 IPC	Acquitted	Nil	N.A.

J U D G M E N T

The accused Ami @ Amita Swain stands charged for the offence punishable U/ss.302 of Indian Penal Code (in short 'IPC') for committing murder of one Sangita Swain (the deceased) by setting fire on her.

2. Prosecution case in brief is that:-

On 23.05.2021 the informant Smt. Kuni Bhuyan appeared at Bhanjanagar PS and presented a written report alleging therein that eight years prior to the date of lodging of FIR, her daughter Sangita Swain had married to one Santosh Swain of village Badapathara. They were blessed with one daughter. On 21.05.2021 Sangita had been to her in-laws' house for performing "Sradha" of her deceased mother-in-law. Accused Ami Swain who is the the sister-in-law (Jaa) of Sangita started quarreling with her and did not allow her to perform any ritual of "Sradha". On 22.05.2021 at about 9 AM, the accused Amita Swain set Sangita on fire for which Sangita was severely burnt. The injured was first shifted to

SDH, Bhanjanagar, then to MKCG MCH, Berhampur and thereafter she was shifted to SCB MCH, Cuttack for treatment.

Basing upon such report of the informant, Bhanjanagar PS case no.209 dtd.23.05.2021 for offence U/ss.307/506 of IPC was registered and the matter was investigated into. During investigation, the injured Sangita succumbed to her injuries at S.C.B. M.C.H., Cuttack and the case turned to Sec.302 of IPC. The accused was arrested on 25.05.2021 and after completion of investigation, charge sheet for offence U/s.302 of IPC was submitted against the accused to face her trial in court of law.

The case being committed to this court by learned SDJM, Bhanjanagar, charge for the same offence was framed against the accused. Hence the trial.

3. Plea of the accused is complete denial and false implication.

4. Point to be determined in this case is whether on 22.05.2021 at 9 AM at village Badapathara, the accused committed murder, intentionally or knowingly causing death of the daughter of the informant, namely Sangita Swain by setting fire on her?

5. In order to prove its case, prosecution has examined as many as twenty-seven witnesses on its behalf. PW.9 is the mother of the deceased and informant of this case. PW.10 is the brother of the deceased. PW.11 is the father of the deceased. PW.12 is the brother-in-law (Bhinoi) of the

deceased. PW.13 is the younger sister of the deceased and wife of PW.12. PW.16 is the husband of the deceased. PW.7 is the father-in-law of the deceased. PW.1 to PW.6, PW.8, PW.14, PW.19 and PW.21 are the villagers of the spot village Badapathara and the post-occurrence witnesses. PW.15 is an auto driver and is a post-occurrence witness. PW.17 is a photographer who downloaded and printed copies of photographs of the deceased. PW.18 is the scribe of the FIR. PW.20 is the Medical Officer who preliminarily treated the deceased and recorded her dying declaration. PW.22 is the Investigating Officer of this case. PW.23 and PW.26 are the constables of police who deposited the seized exhibits at RFSL, Berhampur. PW.24 is an OAPF of Out -post, SCB MCH, Cuttack in whose presence the biological samples of the deceased were seized. PW.25 is the Medical Officer who conducted autopsy over the dead body of the deceased. PW.27 is the IO of UD case of SCB MCH, Cuttack Out-Post under Mangalabag PS. Apart from oral evidence, prosecution has proved certain documents which are marked as Ext.P-1 to Ext.P-25.

On the other hand, defence has examined one Kailash Chandra Gouda and Rama Chandra Gouda as DW.1 and DW.2 respectively on its behalf. No documentary evidence has been adduced from the side of defence.

6. In the instant case, the accused is charged for offence punishable U/s.302 of IPC. While deciding a case under the charge of murder, it is imperative to ascertain first if

the death of the deceased is homicidal or not. A death can be natural, accidental, suicidal or homicidal. As such it is in the humble opinion of the court to decide first as to what is the cause of the death of the deceased. In this regard the medical evidence adduced by PW.25 assumes primacy. It reveals from the evidence of PW.25 that on 04.06.2021 he was working as Associate Professor, Department of FM & T, SCB MCH, Cuttack. On that day at 11.55 AM on police requisition he along with Dr. Soumyaranjan Jena conducted postmortem examination over the dead body of the deceased Sangita Swain, aged about 29 years, wife of Santosh Swain of Vill.Pathara, PS.Bhanjanagar, Dist.Ganjam and found as follows:-

External Features.

Rigor mortis was present only on fingers and toes, postmortem lividity could not be appreciated, surgical bandage present on entire body except head and face, IV line attached to the body.

External injuries.

- i. Infected 2nd degree Dermo epidermal burn injuries with yellowish white base and greenish necrotic slough formation present involving face, neck, front of chest, upper half of front of abdomen, both thighs and legs in patches, entire back of chest, upper half of back of abdomen and both upper limbs.
- ii. Eye brows, eyelashes and axillary hairs were singed. All other body hairs were intact. No smell of any

inflammable substance coming out of the body during autopsy.

Internal findings.

Skull and dura intact. Brain was intact and place. Stomach was found to contain bilious fluid. Moderate amount of pleural effusion found within thoracic cavity. Abdominal cavity was found to contain one litre ascetic fluid. Kidneys were slightly enlarged in size with ill distinct cortico medullary junction. Uterus was intact, small in size and empty. All other internal organs were intact and pale.

Opinion.

- i. The burn injuries detected on the body were found ante mortem in nature and could have been due to application of dry heat in the form of fire and flame.
- ii. Death of the deceased was due to burn injuries sustained involving 70 to 80% body surface area.
- iii. Time since death was within 24 to 36 hours prior to autopsy.

It further reveals from the evidence of PW.25 that scalp hairs, nail clippings and air dried blood samples were collected and handed over to the escort police in sealed packet. PW.25 proved the PM report vide Ext.P-19 and his signature thereon vide Ext.P-19¹. He also proved the signature of Dr. Soumyaranjan Jena on the PM examination report vide Ext.P-19².

It further reveals from the evidence of PW.25 that on 09.08.2021 he received a query from SI of Police, Bhanjanagar PS in connection with Bhanjanagar PS case no.209 dtd.23.05.2021 with following questionnaires.

- i. Whether the burn injuries detected on the body of the deceased could be possible due to pouring of kerosene and setting of fire?

On 10.08.2021 PW.25 along with Dr. Soumyaranjan Jena on verification of the copy of the PM report opined that the ante-mortem burn injuries detected on the dead body of the deceased Sangita Swain as reflected in PM report was possible due to pouring of kerosene and setting fire. PW.25 proved the query report vide Ext.P-20 and his signature thereon vide Ext.P-20¹. He also proved the signature of Dr. Soumyaranjan Jena thereon vide Ext.P-20².

PW.25 has not specifically opined the cause of death of the deceased to be homicidal in nature. From the evidence of PW.25 three views can be taken as to the cause of the death of the deceased i.e. homicidal, suicidal or accidental.

Since the medical evidence of PW.25 is not sufficient enough to hold the nature of the death of the deceased to be homicidal in nature other evidence adduced from the side of the prosecution is to be looked into for coming into conclusion about the nature of the death of the deceased.

7. PW.1, PW.2, PW.3, PW.4, PW.5, PW.6, PW.8, PW.14, PW.19 and PW.21 have not supported the case of the prosecution. Hence, their evidence is of no help to the

prosecution.

8. PW.7, PW.9, PW.10, PW.11, PW.12, PW.13 and PW.16 are the close relatives of the deceased. Let us see if their evidence is clear, cogent and reliable to hold that the deceased died a homicidal death caused by the present accused.

All such witnesses have categorically stated that the deceased Sangita Swain had married to PW.16, Santosh Kumar Swain and they have been blessed with one daughter. PW.9, the mother of the deceased and informant of this case has deposed that her deceased daughter Sangita and her husband Santosh used to reside at Surat and they had come to Odisha to attend the 'Sradha' ceremony of the mother-in-law of the deceased Sangita and resided in the house of the informant. Such evidence of PW.9 has been corroborated by PW.10, PW.11, PW.12, PW.13, PW.15 and PW.16. It further reveals from the evidence of PW.9 that on being called by the in-laws, her deceased daughter and PW.16 and their child had been to the house of PW.16 to perform the rituals of 'Sradha' of the mother-in-law of the deceased. Such evidence of PW.9 has also been corroborated by PW.10, PW.11, PW.12, PW.13 and PW.16. Hence, the presence of the deceased at the time of occurrence in her in-laws' house is established from the evidence of the aforesaid witnesses.

9. It reveals from the evidence of PW.9 that when the deceased tried to perform the rituals of her mother-in-law in their house at village Badapathara, the present accused who

is the sister-in-law (wife of the younger brother-in-law of the deceased) quarreled and did not allow her to perform such rituals. PW.9 further stated that getting such information she sent her son Kanhu in an auto-rickshaw to bring back the deceased from her in-laws' house to the house of the informant at Ambadoli. It further reveals from the evidence of PW.9 that after sometime her son Kanhu informed her over telephone that the deceased Sangita was set fire by the accused Ami by pouring kerosene when the deceased was leaving her in-laws' house. It further reveals from the evidence of PW.9 that she immediately came to SDH, Bhanjanagar where the deceased was shifted for treatment and immediately the deceased was referred to MKCG MCH, Berhampur and then shifted to SCB MCH, Cuttack. It further reveals from the evidence of PW.9 that while undergoing treatment at SCB MCH, Cuttack, the deceased succumbed to her injuries. PW.9 testified that for the occurrence she had lodged a written report at Bhanjanagar PS which was scribed by one Surendra Mohanty as per her narration and she was read over and explained the contents of FIR on which she put her LTI. She further deposed that her statement was recorded by police as well as by the Magistrate.

On being cross-examined, PW.9 stated that she got the news of fire on the deceased at about 8.30 AM to 9 AM. She further deposed that her son Kanhu had started his journey to village Badapathara at about 5 AM on the same day.

PW.10, Kanhu Bhuyan is the son of the informant and he has deposed as a witness to occurrence. He deposed that on the date of occurrence he was sent by the informant to bring back the deceased to their house by an auto-rickshaw of one Anil Parichha, as the accused quarreled with the deceased and did not allow her to perform the 'Sradha' ceremony of her mother-in-law. It further reveals from the evidence of PW.10 that when he along with the deceased were leaving the in-laws' house of the deceased and he was holding the daughter of the deceased, the accused Ami poured kerosene over the deceased and set fire on her. It further reveals from the evidence of PW.10 that hearing the scream of the deceased, the local people rushed to extinguish fire on her, but at that time she was almost burnt. PW.10 further deposed that the deceased was shifted to SDH, Bhanjanagar in an ambulance and he had accompanied her to the hospital. He further deposed that the deceased was referred to MKCG MCH, Berhampur as her condition was critical and thereafter she was shifted to SCB MCH, Cuttack where during her treatment she succumbed to her injuries. PW.10 deposed that his statement was recorded by a Magistrate under Ext.P-3 and he was also examined by police.

On being cross-examined, PW.10 contradicted his statement given to police regarding his presence at the spot during occurrence and that he had stated before police that after the incident the husband of the deceased and others

had intimated them and thereafter they went to the spot.

PW.11, the father of the deceased, PW.13, younger sister of the deceased and PW.12, the husband of PW.13 have all deposed that PW.10, the brother of the deceased was sent on the date of occurrence to bring back the deceased to her parental house from her in-laws' house and PW.10 had intimated over telephone that the deceased was set fire by the accused Ami by pouring kerosene while the deceased was about to leave her in-laws' house. All such witnesses have also deposed that hearing the occurrence they had been to SDH, Bhanjanagar to see the deceased. They also deposed that the deceased was shifted to MKCG MCH, Berhampur and then to SCB MCH, Cuttack and while undergoing treatment there, she succumbed to her injuries.

PW.11 during cross-examination contradicted his statement given to police that after incident the husband of the deceased and other villagers had intimated him. PW.11 deposed that he received the news of incident at 8 AM.

PW.12, the brother-in-law of the deceased has deposed during cross-examination that he got news of incident of fire at about 7 AM to 7.30 AM and reached SDH, Bhanjanagar at 8 AM. He further deposed that PW.10 had been to the house of the deceased in the previous day of occurrence to bring back his sister.

PW.13 during her cross-examination deposed that her brother had intimated the occurrence of fire to her husband (PW.12) at about 7 AM and at about 8 AM she along

with her husband reached at SDH, Bhanjanagar. She contradicted her statement given to police regarding the presence of her brother Kanhu at the spot during the occurrence.

PW.15 is an auto-rickshaw driver who deposed that on 21.05.2021 he had taken the deceased Sangita and her mother in his auto-rickshaw from Ambadoli to the in-laws' house of the deceased at Badapathara. On the next day i.e. on 22.05.2021 he also had been to bring the deceased from her in-laws' house with PW.10, Kanhu. He further deposed that while he was parking his auto-rickshaw outside of the house of in-laws of the deceased, he heard noise "Podigala, Podigala". Thereafter he went inside the house of the deceased and found the deceased was burning on fire and people were trying to rescue her. Thereafter the deceased was shifted to SDH, Bhanjanagar by an ambulance. Later he heard that the accused Ami Swain had set fire to the deceased by pouring kerosene. PW.15 deposed that his statement was recorded by the Magistrate at Bhanjanagar Court vide Ext.P-5.

PW.16 the husband of the deceased has deposed that on the previous day of occurrence he along with the deceased had returned to their house to perform the Sradha ceremony of his mother. He further deposed that the accused and the deceased were not pulling well. It further reveals from the evidence of PW.16 that since his younger brother Sushanta had performed the last rites of his mother, he along

with his wife insisted to perform the 'Sradha' of his mother to which the deceased opposed. On the next morning when the deceased was worshiping near Chaura, the accused pushed her and the deceased reported such matter to PW.16. It further reveals from the evidence of PW.16 that he advised the deceased to leave her in-laws' house and to proceed to her parental house as her brother had come by an auto-rickshaw to take them. He further deposed that while he was on the roof top of his house, he heard noise "Podigala Podigala" and came down through the stairs and found the deceased was burning on fire. He intimated such fact to his brother-in-law Sushanta and called 108 ambulance. Thereafter the deceased was shifted to SDH, Bhanjanagar. It further reveals from the evidence of PW.16 that when he asked the deceased as to the cause of fire, she did not tell the name of the person who set fire on her. The deceased was shifted to MKCG MCH, Berhampur then to SCB MCH, Cuttack and after about 13 days while undergoing treatment, the deceased succumbed to her injuries. PW.16 deposed that he was present when the statement of his wife was recorded by a doctor at SDH, Bhanjanagar and as per his evidence such statement was marked vide Ext.P-4 and his signature thereon vide Ext.P-4².

PW.16 was declared hostile by the prosecution and was cross-examined by learned Addl.PP, but nothing could be elicited from his mouth.

On being cross-examined by the defence, PW.16 stated that when he came down through stairs from the roof

top, he found none else was present near the deceased. He admitted that his brother-in-law Kanhu reached at the spot after occurrence. He deposed that on earlier occasion the deceased had attempted to commit suicide. He further deposed that he was not present when the doctor recorded the statement of her wife and as per instruction of police, he had only put his signature on such statement. He again stated that the deceased had not told him that the accused set fire on her.

PW.7 is the father-in-law of the deceased. He testified that about two years prior to his deposition in court (PW.7 deposed on 01.02.2023) one day while he had been to outside of his house and while he returned he found the deceased had sustained burn injuries on her person. PW.7 failed to depose as to how the deceased sustained burn injuries.

On being cross-examined, PW.7 deposed that when he entered into his house he found the accused was talking with other neighbours in the backside of his house and she came to the spot after PW.7 reached there. He further deposed that when he entered into his house, he found the deceased came out of the kitchen.

10. From the evidence of the aforesaid witnesses like PW.7, PW.9, PW.10, PW.11, PW.12, PW.13, PW.15 and PW.16, it reveals that only PW.10 has deposed as a witness to occurrence. Other witnesses have deposed as post-occurrence witnesses and out of them PW.9, PW.11, PW.12 and PW.13 have admitted that they could know about the occurrence

from PW.10. Hence the evidence of PW.10 assumes primacy. Let us see if his evidence is clear, cogent and reliable. PW.10 has deposed that just prior to occurrence he had reached at the spot to bring back the deceased in an auto-rickshaw being driven by PW.15 and while he along with the deceased were leaving the house, the accused set fire on the deceased by pouring kerosene. The presence of PW.10 at the spot during occurrence is contradictory to his statement given to police U/s.161 CrPC. During his statement given to police, PW.10 Kanhu Bhuyan has deposed that the husband of the deceased and some other villagers of Badapathara (the in-laws village of the deceased) intimidated him and his family members after rescuing the deceased and thereafter he along with others took the deceased to SDH, Bhanjanagar. Hence the presence of PW.10 at the spot during occurrence is contradictory to his statement given to police U/s.161 CrPC and the same cannot be relied upon. The absence of PW.10 at the spot during occurrence is also corroborated by the evidence of PW.16, the husband of the deceased who deposed during cross-examination that PW.10 Kanhu arrived at the spot after occurrence. Hence the evidence of PW.10 to have seen the occurrence is not believable. Since the evidence of PW.10 himself regarding his presence at the spot and to have seen the accused setting fire to the deceased is not reliable, then the evidence of other witnesses who heard the occurrence from PW.10 regarding accused setting fire to the deceased is also not trustworthy.

Similarly, PW.9 who is the mother of the deceased and informant of this case has contradicted her statement given to police as well as to the Magistrate regarding presence of her son (PW.10) at the spot during occurrence and receiving intimation about the occurrence from PW.10 over mobile phone. In her statement recorded U/s.161 CrPC as well as her statement recorded U/s.164 CrPC, PW.9 has specifically stated that on 22.05.2021 she had been to the in-laws house of the deceased in the auto-rickshaw of PW.15, Anil Parichha and found the deceased in burnt condition. In her statement recorded U/s.161 CrPC and U/s.164 CrPC, she is silent about receiving intimation of the occurrence from her son Kanhu Bhuyan. Hence the evidence of PW.9 regarding setting fire to the deceased by accused is also not trustworthy.

The other witness PW.15 has deposed that during occurrence he was present outside of the in-laws house of the deceased with his auto-rickshaw and heard “Podigala Podigala” and then entered into the house of the deceased and found her in burnt condition. Such evidence of PW.15 regarding his presence near the spot is also not believable as during his statement given to police U/s.161 CrPC and to the Magistrate U/s.164 CrPC, he has stated that he had taken PW.9 the informant to the in-laws house of the deceased and found the deceased had already sustained burn injuries on her person.

PW.16, the husband of the deceased has deposed that at the time of occurrence he was on the roof top and hearing hullah, he came to the house and found the deceased was burning. He further stated that when he asked the deceased about the cause of fire, the deceased had not disclosed before him as to who set fire on her. PW.7, the father-in-law of the deceased is also silent about the cause of fire on the deceased. On the other hand, PW.7 has deposed that when he entered into the house, he found the deceased was burning and she came out of the kitchen. He further deposed that the accused was at the relevant time talking to neighbors on the backside of her house. PW.7 was never declared hostile by the prosecution. Hence his evidence just cannot be thrown away. From such evidence of PW.16, that the deceased had not disclosed the name of accused just after occurrence and from the evidence of PW.7 who deposed that the accused was present on the backside of his house talking to neighbors when he found the deceased coming out of kitchen in burning condition, a reasonable suspicion arises in the mind of the court regarding homicidal death of the deceased. P.W.16 who is the husband of deceased has also admitted that the deceased had previously attempted to commit suicide. In view of evidence of PW.16 and PW.7 the 'suicidal' nature of death of the deceased cannot be ruled out.

11. During argument learned Addl.PP has strongly relied upon the dying declaration of the deceased recorded by the treating doctor (PW.20). It is contended that the evidence

of PW.20 coupled with dying declaration of the deceased marked vide Ext.P-4 alone leads to establish and prove the homicidal death of the deceased caused by the accused.

On the contrary, learned counsel for the accused has vehemently argued that Ext.P-4 is a created document of the prosecution and the same has been prepared in suspicious circumstances. Hence contended that the evidence of PW.20 and Ext.P-4 cannot be relied upon to hold guilt of the accused.

12. Let us see if the dying declaration of the deceased vide Ext.P-4 is a reliable document which can form the basis of conviction of the accused. It is settled principle of law that a dying declaration can form the basis of conviction, if it is trustworthy and it is proved that the person making such statement was not influenced by any exterior factor and that such statement is free from any infirmities.

Let us examine the evidence of PW.20 who recorded the dying declaration. It reveals from the evidence of PW.20 that on 22.05.2021 she was working as Asst. Surgeon at SDH, Bhanjanagar. On that day while she was performing her duty at OPD, the deceased was received with severe burn injuries on her person. PW.20 deposed that she gave her first-aid and the patient was admitted to surgery ward where she was given necessary supportive treatment. PW.20 further deposed that as per direction of police, she remained present when the dying declaration of the patient was recorded. She reduced the statement made by the patient

Sangita Swain into writing in presence of the sister of the patient namely Minati Mallik and the husband of the patient Santosh Kumar Swain. PW.20 proved such dying declaration as Ext.P-4 and her signature therein vide Ext.P-4³.

On being cross-examined, PW.20 deposed that the dying declaration was recorded in the afternoon as the patient was admitted to hospital in the afternoon. She further deposed that she has not given any endorsement in the bottom of the dying declaration that such statement was read over and explained to the victim. However PW.20 deposed to have read over and explained the gist of the dying declaration to the victim. PW.20 admitted to have not given any certificate on the body of dying declaration regarding the fitness of the patient to give her statement. But PW.20 deposed that the patient was fit to give her statement.

The sister of the deceased Minati Mallik has been examined as PW.13. It reveals from the evidence of PW.13 that the dying declaration was recorded in her presence by the doctor and the deceased disclosed that the accused Ami Swain poured kerosene over her and set fire on her. On the other hand, the husband of the deceased who has been examined as PW.16 has denied during his cross-examination by stating that he was not present when the statement of the deceased was recorded and he had only put his signature on such statement as per direction of police.

The dying declaration vide Ext.P-4 has been recorded in question-answer form in Odia language. As many

as six questions have been asked to the deceased, the first question as to her name, the second question is about her age, the third question is about the name of her husband and the forth question is about the address of the deceased. The answers to such questions are found to be correct as per record. The fifth question has been asked about the time of occurrence and in answer to such question, the deceased has stated that in the morning after she took bath and she was preparing to leave for the house of her sister. The sixth question is about the details of the occurrence which has been answered in Odia language which is translated into English as follows.

“There was quarrel relating to family dispute. The elder brother of my husband had not married. The wife of the younger brother of my husband told for partition. I told if there will be partition I will reside outside and will not reside in the same house. There was settlement for maintaining father-in-law on monthly basis, but father-in-law denied to accept such settlement for which I went to Surat. On 25.05.2021 returned from Surat. Yesterday returned from my parental house. The wife of younger brother of the husband took all the articles of mother-in-law and did not give anything to the elder brother of my husband nor to me.

The wife of younger brother of my husband had kept kerosene in one mug and threw on me and set fire through matches. I was wearing saree which was burnt. She destroyed my house where I was residing. She told me to give the “Brata” (ornament) which I was wearing, claiming the same to be of our mother-in-law. When I denied she quarreled, when worshiping near Tulsi Chaura in the evening, she told, why I offered incense stick to her plant. She

bite on my left hand, assaulted on my face and tried to assault by means of bamboo. I chased her to assault by means of one kitchen knife (Paniki). She disclosed before the villagers that I had cut her by kitchen knife. I have not done anything. She is telling lie.”

PW.12 who is the husband of PW.13 has deposed that such statement of the deceased was recorded in his presence. But he remained silent what the deceased disclosed. He further deposed that the dying declaration was videographed by him and had downloaded the same and handed over it to police. PW.12 and PW.13 have deposed that they reached SDH, Bhanjanagar at 8 AM and thereafter the dying declaration was recorded.

In dying declaration vide Ext.P-4 although there is signature of PW.20, PW.13 and PW.16, there is no signature of PW.12. There is also no signature or LTI of the deceased in Ext.P-4. There is no explanation either in Ext.P-4 or stated by PW.20 for not taking signature of the deceased in Ext.P-4. No certificate is given by the doctor (PW.20) regarding the mental condition/fitness of the deceased to give her statement. Under such circumstances, it is to be seen if the statement is the truthful statement given by the deceased in conscious state of mind and the same can be relied upon.

Certainly PW.20 is a doctor and is not a interested witness. However her evidence has to be scrutinized carefully in view of the suspicious circumstance, as narrated in the foregoing paragraphs, in which the deceased died. It is the admitted case of the prosecution and

evident from the statement of the witnesses that the mother, brother and father of the deceased had met the deceased at SDH, Bhanjanagar before recording of the dying declaration. It is natural that a daughter sustaining burn injuries must disclose about the cause of injury at least to her mother. None of the above witnesses including the mother has whispered anything about disclosure of anything by the deceased regarding the cause of her injuries. All such witnesses remained silent as to whether the deceased was even in talking condition. While all the witnesses have deposed that the deceased was preparing to go to her parental house, the dying declaration discloses that the deceased was preparing to go to her sister's house (the parental house and the house of sister are in two different villages as reveals from the evidence of witnesses). It further reveals from Ext.P-4 that the deceased disclosed the date of her return from Surat on 25.05.2021. The dying declaration was recorded on 22.05.2021. Hence as per evidence of the aforesaid close relatives of the deceased like mother, brother, father and husband and the statement given in the dying declaration regarding a future date of return of the deceased from Surat and preparing to proceed to a different place i.e. to the house of her sister, a reasonable suspicion arises in the mind of the court regarding the conscious state of mind of the deceased well oriented to time, place and person. No certificate has been given by the doctor in Ext.P-4 as to the mental fitness of the maker of such statement, particularly when the burn

injuries found on the body of the deceased as per PM report is 70% to 80% including the face, neck, chest and upper half of the front abdomen. PW.20 has also remained silent and has not given any explanation as to what prevented her to obtain the signature or LTI of the deceased in Ext.P-4. Such circumstances creates reasonable suspicion in the mind of the court regarding the genuineness of Ext.P-4 to be the truthful statement of the deceased.

Almost all the witnesses have deposed that they reached at hospital at about 8 AM to 8.30 AM and PW.9, the mother of the deceased has specifically deposed that immediately after reaching of the deceased at SDH, Bhanjanagar she was referred to MKCG MCH, Berhampur. On the contrary, PW.20 has deposed that the dying declaration was recorded in the afternoon. The husband of the deceased who is a witness to dying declaration has stated that he was not present during recording of the statement of the deceased and he has put his signature on such paper as per direction of police. The doctor herself has deposed that the dying declaration was recorded as per direction of police. When the dying declaration was recorded on 22.05.2021, the FIR has been lodged on 23.05.2021 at 8.28 PM. Hence the evidence of PW.20 that such dying declaration was made as per instruction of police is also not believable. Moreover if such dying declaration was made as per instruction of police, what prevented the doctor and police to record such dying declaration through a Magistrate. No explanation has been

given by PW.20 to that effect.

Learned Addl.PP has relied upon the authorities of Hon'ble Apex Court in the matter of **Bahadur Singh vs State of Punjab** reported in **2007 CrLJ 2885** and contended that even if no certificate of doctor as regards to the fitness of mind of the declarant is appended to the dying declaration, the same can be accepted. The authority relied upon by the learned Addl.PP is not applicable to the facts and circumstances of the present case and is distinguishable on the ground that in the case *cited supra* the eye-witnesses had deposed about the fitness and conscious state of mind of the declarant, whereas in the present case in hand no witness including the close relatives of the deceased have deposed about the mental fitness of the deceased at the time of recording of her statement.

Learned Addl.PP has further relied upon the authority of **Narendra Kumar vs State of NCT of Delhi** reported in **2016 CrLJ 623** and argued that the dying declaration cannot be thrown away only because there is no signature or thumb impression of the declarant in the same. The authority relied upon by the learned Addl.PP as above is also not applicable to the present case in hand and is distinguishable on the ground that in the case *cited supra* the dying declaration was recorded by the Magistrate and the condition of the patient and the capability of the deceased to make the statement was endorsed by the Magistrate in such dying declaration, which lacks in the present case in hand.

Ld. Addl.PP further relied upon the authority of **Chirra Shivraj vs State of Andhra Pradesh** reported in **AIR 2011 SC 604** which is also not applicable to the facts and circumstances of the present case and is distinguishable on the ground of recording of the dying declaration in the cited case was made by a Judicial Magistrate recording the conscious and fit mental condition of the deceased in the dying declaration which also lacks in the present case in hand.

It is settled principle of law that “*the court has to be extremely careful when it deals with a dying declaration, as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused persons. A mechanical approach in relying upon a dying declaration just because it is there, is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration.*” (**Puran Chanda Vs State of Haryana**, reported in **2010 (6) SCC 566 – Para-15**)

In the instant case, there are suspicious circumstances relating to recording of the dying declaration by PW.20 including the non-disclosure of conscious state of mind of the deceased, the absence of mentioning of the time

of recording of the dying declaration in Ext.P-4 and the contradiction of witnesses with the Medical Officer to that effect, presence of witnesses and voluntary statement of the deceased in making such statement. Hence Ext.P-4 is not believed to be the truthful statement of the deceased beyond suspicion and the same cannot form the basis of conviction.

13. Graver the offence, stricter is proof. Suspicion however grave cannot take the place of proof. From my discussions made in the foregoing paragraphs, I find that the prosecution has failed to prove the death of the deceased to be homicidal in nature as well as the accused to be the author of such crime. Consequently it is held that the prosecution has miserably failed to bring home the charge against the accused for offence U/s.302 of IPC beyond all reasonable doubt.

14. In the result, I hold the accused Ami @ Amita Swain not guilty of the offence punishable U/s.302 of IPC and acquit her therefrom U/s.258 (1) of BNSS. The accused be set at liberty forthwith and she be released from custody forthwith, if her presence is not required in any other case.

Enter the case as mistake of fact.

15. The seized articles be destroyed four months after expiry of appeal period if no appeal is preferred and in case of appeal as per direction of the Appellate Court.

Sd/-

Additional Sessions Judge,
Bhanjanagar.

Judgment dictated to the Steno directly on computer, corrected by me and pronounced in the open Court today this the 10th day of August, 2026 under my signature and Seal of this Court.

Sd/-
Additional Sessions Judge,
Bhanjanagar.

FORM-C

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES		
A. Prosecution Witnesses		
Rank	Name	Nature of Evidence (Eye witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, other witnesses)
PW.1	Kabiraj Bisoyi	Seizure witness
PW.2	Ramesh Chandra Bisoyi	Seizure witnesses.
PW.3	Niranjan Gouda	Post-occurrence witness
PW.4	Bhajaram Gouda	Post-occurrence witness
PW.5	Rabindranath Tripathy	Post-occurrence witness
PW.6	Balaram Gouda	Post-occurrence witness
PW.7	Niranjan Swain	Post-occurrence witness
PW.8	Susanta Kumar Gouda	Post-occurrence witness
PW.9	Kuni Bhuyan	Informant
PW.10	Kanhu Bhuyan	Occurrence witness
PW.11	Ranjan Bhuyan	Post-occurrence witness
PW.12	Jitu @ Jitendra Malika	Post-occurrence witness

PW.13	Minati Malika	Post-occurrence witness and a witness to dying declaration.
PW.14	Dillip Swain	Post-occurrence witness
PW.15	Anil Parichha	Post-occurrence witness
PW.16	Santosh Kumar Swain	Husband of the deceased Sangita Swain.
PW.17	Jayakrushna Patnaik	A photographer who downloaded and printed copies of photographs of the deceased
PW.18	Surendra Mohanty	Scribe of FIR
PW.19	Panu Gouda	Post-occurrence witness
PW.20	Dr. Smita Priyadarshini	Medical Officer and a witness of dying declaration of the deceased.
PW.21	Khadala Bisoyi	Post-occurrence witness
PW.22	Manaswini Mohanty	Investigating Officer
PW.23	Sudhansu Chandra Pradhan	Police witness
PW.24	Gangadhar Sabar	Seizure witness
PW.25	Dr. Soumya Ranjan Nayak	Medical Officer
PW.26	Dibyasingh Pradhan	Police witness
PW.27	Jibanananda Jena	Investigating Officer
B. Defence witnesses, if any		
Rank	Name	Nature of Evidence (Eye witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, other witnesses)
DW.1	Mailash Chandra Gouda	Occurrence witness

DW.2	Rama Chandra Gouda	Occurrence witness
C. Court witnesses, if any		
Rank	Name	Nature of Evidence (Eye witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, other witnesses)
--	Nil	--
List of Prosecution/ Defence/ Court Exhibits		
A. Prosecution Exhibits		
Sl. No	Exhibit Number	Description
1	Ext.P-1/PW.1	Signature of PW.1
2	Ext.P-1 ¹ /PW.2	Signature of PW.2
3	Ext.P-2/PW.2	Signature of PW.2
4	Ext.P-3/PW.10	Statement of PW.10 recorded by a Magistrate.
5	Ext.P-3 ¹ /PW.10	Signature of PW.10
6	Ext.P-4/PW.13	Statement of deceased Sangita
7	Ext.P-4 ¹ /PW.13	Signature of PW.13
8	Ext.P-5/PW.15	Statement of PW.15 recorded by Magistrate
9	Ext.P-5 ¹ /PW.15	Signature of PW.15
10	Ext.P-6/PW.16	Statement of PW.16
11	Ext.P-6 ¹ /PW.16	Signature of PW.16
12	Ext.P-4 ² /PW.16	Signature of PW.16
13	Ext.P-7/PW.19	Signature of PW.19
14	Ext.P-4 ³ /PW.20	Signature of PW.20
15	Ext.P-7 ¹ /PW.12	Signature of PW.21
16	Ext.P-8/PW.22	FIR
17	Ext.P-8 ¹ /PW.22	Endorsement-cum-signature of IIC Sri S.K. Ashu
18	Ext.P-8 ² /PW.22	Formal FIR

19	Ext.P-8 ³ /PW.22	Signature of PW.22
20	Ext.P-9/PW.22	Spot map
21	Ext.P-1 ² /PW.22	Seizure list
22	Ext.P-1 ³ /PW.22	Signature of PW.22
23	Ext.P-2 ¹ /PW.22	Seizure list
24	Ext.P-2 ² /PW.22	Signature of PW.22
25	Ext.P-10/PW.22	Statement of Kuni Bhuyan
26	Ext.P-11/PW.22	Prayer for sending the seized exhibits to RFSL, Berhampur
27	Ext.P-11 ¹ /PW.22	Signature of PW.22
28	Ext.P-12/PW.22	Forwarding report
29	Ext.P-12 ¹ /PW.22	Signature of PW.22
30	Ext.P-13/PW.22	Acknowledgment receipt
31	Ext.P-7 ² /PW.22	Seizure list
32	Ext.P-7 ³ /PW.22	Signature of PW.22
33	Ext.P-14/PW.22	Forwarding report of Tahasildar, Ghumusar
34	Ext.P-14 ¹ /PW.22	Sketch map of the spot
35	Ext.P-14 ² /PW.22	ROR
36	Ext.P-15/PW.12	Inquest report
37	Ext.P-15 ¹ /PW.12	Signature of PW.12
38	Ext.P-16/PW.23	Command certificate
39	Ext.P-16 ¹ /PW.23	Signature of PW.23
40	Ext.P-17/PW.23	Acknowledgment receipt
41	Ext.P-18/PW.24	Seizure list
42	Ext.P-18 ¹ /PW.24	Signature of PW.24
43	Ext.P-19/PW.25	PM report
44	Ext.P-19 ¹ /PW.25	Signature of PW.25
45	Ext.P-19 ² /PW.25	Signature of Dr. Soumyaranjan Jena
46	Ext.P-20/PW.25	Report of PW.25

47	Ext.P-20 ¹ /PW.25	Signature of PW.25
48	Ext.P-20 ² /PW.25	Signature of Dr. Soumyaranjan Jena
49	Ext.P-15 ² /PW.25	Signature of PW.25
50	Ext.P-21/PW.26	Command certificate
51	Ext.P-21 ¹ /PW.26	Signature of PW.26
52	Ext.P-15 ³ /PW.27	Signature of PW.27
53	Ext.P-23/PW.27	Dead body challan
54	Ext.P-23 ¹ /PW.27	Signature of PW.23
55	Ext.P-18 ² /PW.27	Signature of PW.27
56	Ext.P-24/PW.27	Final Report
57	Ext.P-24 ¹ /PW.27	Signature of PW.27
58	Ext.P-24 ² /PW.27	Signature of IIC Sri Amitav Mahapatra on Ext.P-24
59	Ext.P-25/PW.27	Seizure list
60	Ext.P-25 ¹ /PW.27	Signature of PW.27
B. Defence Exhibits		
Sl. No	Exhibit Number	Description
--	Nil	--
C. Court Exhibits, if any		
Sl. No	Exhibit Number	Description
--	Nil	--
D. Material Objects:		
Sl. No	Material Object Number	Description
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Sd/-
Additional Sessions Judge,
Bhanjanagar.

