



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 80 of 2006
ODHC010019292006

[An application under Section 374 of the Code of Criminal Procedure from the judgment and order dated 24.12.2005 passed by learned Addl. Sessions Judge (F.T.C), Bolangir]

AFR **Darasingh@ Niladri Bihari Nag** **Appellant**

-Versus-

State of Orissa **Respondent**

Advocate(s) appeared in this case through hybrid mode:

For Appellant : Mr. C.R Sahu, Amicus Curiae

For Respondent : Mr. Partha Sarathi Nayak,
Addl. Government Advocate

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing :04.08.2026 :: Date of Judgment:13.08.2026

SASHIKANTA MISHRA, J.

The appellant, Darasingh@ Niladri Bihari Nag, faced trial in Sessions Case No. 37-B/5 of 2004 in the Court of the Additional Sessions Judge (F.T.C.), Bolangir, for



committing the murder of one Sumitra Singh. By judgment dated 24.12.2005, the trial Court convicted him under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life.

2. Prosecution case, briefly stated, is as follows.

On 11.09.2003 at about noon, the deceased Sumitra Singh was alone in her house when the appellant (Darasingh) entered the house and committed her murder by pressing her neck. At that time, the informant (PW-10), who is the only daughter of the deceased, had gone to Khemjee Crusher Mill to collect her wages. While returning from the crusher mill, she was informed by Adi Mahala (PW-3) that her mother had died. On reaching the house, she found her mother lying dead on a cot. On enquiry, she learnt from Jadav Dehuri (PW-1), Sari Dehuri (PW-2) and other co-villagers that they had seen Darasingh running away through the back (bari) door of the house immediately after the occurrence. On such information, she lodged the FIR. On the basis of the FIR, Sadar P.S. Case No.150 of



2003 was registered under Section 302 IPC. Upon completion of investigation, charge-sheet was submitted against him under Section 302 IPC.

3. The defence of the accused person was one of complete denial and false implication. Defence also stated that there existed an illicit relationship between Jadav Dehuri (PW-1) and the informant (PW-10) and on account of such relationship, he had been falsely implicated.

4. To prove its case, prosecution examined seventeen witnesses and exhibited eleven documents. That apart, prosecution also proved four material objects. Defence, on the other hand, did not adduce any evidence.

5. After analyzing the evidence on record, the trial Court held that the death of the deceased was homicidal in nature. Since there was no eyewitness to the occurrence, it held that the prosecution established a complete chain of circumstances pointing towards the guilt of the appellant. It



found that the prosecution established the following incriminating circumstances against the appellant:

(i) the evidence of PW-3 that he heard groaning sound of the deceased coming from her house immediately before the occurrence; (ii) the evidence of PW-1 and PW-2 that they had seen the appellant running away through the back (bari) door of the house immediately after the occurrence; (iii) the medical evidence establishing that the death was homicidal due to pressing of the neck; (iv) the fingerprint of the appellant detected on the steel bowl recovered from the spot; and (v) the motive arising out of the land dispute between the appellant and the deceased.

On the basis of above circumstances, the trial Court held that prosecution had proved the guilt of the appellant beyond reasonable doubt and accordingly, convicted the appellant and sentenced him as stated hereinbefore.



6. Heard Mr. C.R. Sahu, learned *Amicus Curiae* for the appellant and Mr. Partha Sarathi Nayak, learned Addl. Government Advocate for the State.

7. Mr. Sahu assails the impugned judgment of conviction on the following grounds:

- i) The prosecution failed to establish a complete and unbroken chain of circumstances pointing towards the guilt of the appellant.
- ii) Except the evidence of PW-1 and PW-2 that they had seen the appellant running away from the house immediately after the occurrence, there is no other evidence to connect the appellant with the crime.
- iii) The prosecution failed to establish as to who obtained the specimen fingerprint impressions of the appellant for comparison with the chance fingerprint allegedly lifted from the spot.



iv) The seizure of the steel bowl is doubtful as the seized article was not sealed before being sent for fingerprint examination. Consequently, the fingerprint evidence is unreliable.

v) Fingerprint expert was not examined.

8. Per contra, Mr. P.S Nayak would argue that the prosecution has successfully established all the incriminating circumstances forming a complete chain pointing unerringly towards the guilt of the appellant. The evidence of PW-1 and PW-2 that they had seen the appellant running away from the house immediately after the occurrence, coupled with the evidence of PW-3 regarding the groaning sound from the house of the deceased, the medical evidence proving homicidal death, the fingerprint evidence and the motive arising out of the land dispute, clearly establish the guilt of the appellant beyond all reasonable doubt.



9. We have heard learned counsel for the parties and have taken note of the rival contentions. We have also perused the case record and the impugned judgment. It is seen that in the absence of direct ocular evidence, the prosecution case rests entirely on circumstantial evidence. Several circumstances have been put forth by the prosecution and accepted by the trial Court, which are said to be incriminating enough to point the finger of guilt unerringly at the appellant. It is well settled that in a case resting solely on circumstantial evidence, each incriminating circumstance relied upon by the prosecution must be fully established. The circumstances so established must be consistent only with the hypothesis of the guilt of the accused, must be of a conclusive nature and tendency, must exclude every possible hypothesis consistent with the innocence of the accused and must form a complete chain leaving no reasonable ground for any conclusion other than that the accused is guilty. It is also well settled that a false explanation or mere denial by the accused under Section 313 Cr.P.C. cannot be used to fill up gaps in the



prosecution case and can, at best, provide an additional link only after the prosecution has otherwise succeeded in establishing a complete chain of circumstances. Reference in this regard may be had to the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***¹.

10. Keeping the above principle in mind, we shall now proceed to analyze the evidence on record in light of the rival contentions raised before us.

Circumstance No. I – Groaning sound from the house of the deceased

11. The first circumstance relied by the prosecution is the evidence of PW-3, Adi Mahala that he heard the groaning sound of the deceased coming from her house immediately before the occurrence. PW-3 stated that while returning home after grazing his goats at about noon, he heard a groaning sound from the house of the deceased. Thereupon, he went to call PW-2, Sari Dehury, informing her that the deceased was groaning in her house. According to him, PW-2 then went towards the house of the deceased

¹ (1984) 4 SCC 116



whereas he himself returned with his goats. Thus, the deposition of PW-3 shows that he heard groaning sound coming from the house of the deceased shortly before her death.

Circumstance No. II – Evidence of PW-1 and PW-2 regarding the appellant running away from the house

12. The next and the most important circumstance placed by prosecution is the evidence of PW-1 and PW-2. It is claimed that they had seen the appellant coming out of the house of the deceased through the back (bari) door immediately after the occurrence.

13. PW-1 stated that on being informed by PW-3 that the deceased was groaning, he along with his wife (PW-2) rushed to the house of the deceased. Finding the front door closed, they entered through the bari side and at that moment saw the appellant coming out of the back door of the house. They thereafter entered the house and found the deceased lying dead on a cot with nail marks on her neck. PW-2 also stated substantially the same version and that she first reached the house and saw the appellant running



away through the back side door before entering the house. The evidence of PW-1 and PW-2 is substantially consistent on this aspect. PW-2 version also receives corroboration from her statements made under Section 164 Cr.P.C., wherein she stated before the Magistrate that she found the appellant fleeing through the back door of the house immediately before she entered the house. Their testimony has remained unshaken during cross-examination.

14. At the same time, it cannot be lost sight of that except PW-1 and PW-2, no other witness has supported the prosecution case that the appellant was seen running away from the house. PW-3, though cited as an eyewitness to this circumstance during investigation, did not support the prosecution in Court and denied having seen the appellant fleeing from the spot. Similarly, PW-4, PW-7, PW-8 and PW-9 also did not support the prosecution and were declared hostile. The evidence of seeing the appellant coming out of the house immediately after the occurrence is undoubtedly a relevant circumstance. Therefore, considering the proximity of time between the groaning sound heard by PW-



3 and the arrival of PW-1 and PW-2 at the house of the deceased, it can be inferred from the evidence of PW-1 and PW-2 that the appellant was present in the house of the deceased at or about the time when the deceased was being subjected to the assault. Also, the appellant coming out of the house of the deceased finds importance under Section 8 of the Evidence Act and points towards the accused. We, shall now proceed to examine the remaining circumstances.

Circumstance No. III – Medical Evidence

15. The third circumstance is the medical evidence. PW-12, the doctor, found nail marks over the upper part of the neck, swelling over both temporomandibular joints, fracture of both mandibles with bruising on the inner side of the lips, congestion of the trachea and larynx and petechial haemorrhage over the lungs. According to her, the injuries were ante-mortem in nature and the cause of death was asphyxia due to suffocation and smothering with hands. In her opinion, the death occurred within 12 to 24 hours prior to her examination. This according to us, unequivocally shows the death of deceased was homicidal in nature.



16. The medical evidence also corroborates the evidence of PW-1 and PW-2 regarding the condition in which the deceased was found immediately after the appellant was seen coming out of the house. Both witnesses had noticed nail marks and bleeding injury on the throat of the deceased. Though the medical evidence by itself does not connect to the appellant but corroborates the evidence of PW-1 and PW-2.

Circumstance No. IV – Fingerprint Evidence

17. The next circumstance relied by the prosecution is the fingerprint of the appellant detected on a steel bowl said to have been recovered from the spot. The fingerprint report shows that one chance fingerprint marked 'A-1' detected on the outer surface of the steel bowl was found to tally with the specimen left middle finger impression of the appellant. The trial Court has placed considerable reliance on this circumstance while holding him guilty.

18. Mr. Sahu, has seriously questioned the foundation of this evidence. He argued that the prosecution failed to establish who obtained the specimen fingerprint



impressions of the appellant and in what manner the same were obtained for comparison with the chance fingerprint allegedly found on the steel bowl. He also contends that the spot visit report of the Scientific Team does not record that specimen fingerprints of the appellant were taken. We have carefully examined this contention.

19. The spot visit report of the Scientific Team shows that the spot was thoroughly searched for physical clues and the chance fingerprints were detected, developed and photographed in the presence of the IO and witnesses. The report further shows that specimen ten-digit fingerprints of the deceased was taken in the presence of the IO and witnesses. However, the report is silent regarding the collection of specimen fingerprints of the appellant. Also as can be seen from the case diary, it contains reference to the fingerprints of the accused being taken on 12.09.2003. The fingerprint report also proceeds on the basis that the specimen fingerprints of the appellant were available for comparison and records an opinion regarding the



correspondence of the fingerprint found on the steel bowl with that of the appellant.

20. So now the question that falls for consideration is whether the omission in the spot visit report to specifically record the taking of the specimen fingerprints of the appellant is sufficient to discard the entire fingerprint evidence. In our considered view, it is not. The evidence of the IO and the fingerprint report have to be considered jointly. The only fact that the Scientific Team, while preparing its spot visit report, did not specifically mention the collection of specimen fingerprints of the appellant cannot, by itself, lead to the conclusion that no such specimen fingerprints were ever obtained. Human error or inadvertent omission in recording every detail in investigative document cannot be completely ruled out. As observed by the Supreme Court in the case of ***Inder Singh v. State (Delhi Admn.)***² the criminal justice system cannot proceed on a degree of hypersensitivity which treats every omission or discrepancy as fatal to the prosecution case.

² (1978) 4 SCC 161



The Court has to distinguish between a material contradiction which goes to the root of the prosecution case and an omission or irregularity which does not affect the substance of the evidence. The observation of the Supreme Court is reproduced below-

“2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic.”

21. In the present case, the fingerprint report itself proceeds on the basis that specimen fingerprints of the appellant were available and compares the same with the chance fingerprint detected from the steel bowl. There is no material on record to suggest that the fingerprint attributed to the appellant was that of some other person or that the



report was based on an altogether non-existent specimen. The omission in the spot visit report, therefore, may at the highest be regarded as an infirmity in the documentation of the investigation. Such an omission, without more, cannot render the entire fingerprint evidence inherently unreliable.

22. The other objection raised by the Mr. Sahu is that the steel bowl was not sealed after seizure. PW-17, the IO, admitted in cross-examination that he had not sealed the seized bowl after seizure. This is undoubtedly a lapse in investigation. The IO ought to have properly sealed the seized article so as to eliminate any possibility of tampering or substitution. However, an investigation lapse, by itself, does not necessarily render otherwise admissible evidence wholly worthless. The effect of such lapse has to be assessed in the context of the entire evidence and the other circumstances proved in the case.

23. It is also significant that fingerprint evidence is essentially a corroborative piece of evidence. It may support other circumstances pointing towards the involvement of an accused, but in the facts of the present case, it is not the



sole foundation of the prosecution case. Even if the fingerprint evidence is kept out of consideration because of the aforesaid investigative lapses, the prosecution case does not necessarily collapse. The evidence of PW-1 and PW-2, which places the appellant at the house of the deceased immediately after the occurrence, has to be independently examined.

Circumstance No. V – Motive/Prior enmity

24. The other circumstance relied by the prosecution is the motive arising out of the land dispute between the appellant and the deceased. PW-1 stated that there was a dispute between the deceased and the appellant as the latter had encroached upon a portion of the house of the deceased. PW-2 also stated that the appellant was not pulling on well with the deceased and there was a dispute relating to the homestead land. PW-10, the daughter of the deceased, stated that about two years prior to the occurrence the appellant had quarrelled with her mother and her mother had instituted a civil case relating to the homestead land, in which she had obtained a decree. The IO



also seized the revenue records and the demarcation report was subsequently obtained.

25. Thus, the existence of animosity between the appellant and the deceased on account of the homestead land cannot be said to be without foundation. The evidence on record shows that the parties were on inimical terms. Motive, however, is only a supporting circumstance. It cannot, by itself, establish the guilt of the accused. On the other hand, the absence of a proved motive is not necessarily fatal where the other evidence is otherwise cogent. In the present case, the motive assumes some significance because it provides a possible reason for the appellant's presence in the house of the deceased and hostility towards her.

Circumstance No. VI-Conduct of the appellant

26. The evidence of PW-1 and PW-2 shows that the appellant was seen coming out and running away from the house through its back door immediately before they entered the house and found the deceased dead. The deceased was an elderly woman who was alone in her



house. The appellant has not given any reason for being inside the house at that particular time as also of his running away. His coming out of the house immediately before the discovery of her death is a circumstance relevant under Section 8 of the Evidence Act. The expression 'last seen' is generally invoked where the deceased and the accused are shown to have been together shortly before the death and the interval is so small that the possibility of any other person intervening is excluded. In the present case, the evidence goes a step further. PW-1 and PW-2 did not state about the appellant's presence in the vicinity of the deceased; they saw him coming from the house in which the deceased was found dead. PW-3 had heard the groaning sound from the house shortly before PW-1 and PW-2 reached there. The sequence of events, therefore, assumes significance.

27. It is true that merely running away from the place of occurrence cannot, in every case, be treated as proof of guilt. A person may leave a place for several innocent reasons. However, the conduct of an accused is to be



considered in the context of the surrounding circumstances. Here, the appellant was seen coming out and running away from the back door of the deceased's house immediately before the deceased was found dead inside, the deceased had sustained ante-mortem injuries caused by smothering and the appellant had an existing dispute with the deceased. These circumstances, taken in toto, make his presence and fleeing from the house highly incriminating.

28. Having examined each of the circumstances individually, we are of the view that the prosecution has established that: (i) the deceased suffered a homicidal death inside her house; (ii) shortly before her death, groaning sound was heard from the house; (iii) PW-1 and PW-2 saw the appellant emerging from the house and running away immediately thereafter; (iv) the deceased was found dead immediately after the appellant's departure; (v) the appellant has offered no satisfactory explanation for his presence inside the house and of running away; and (vi) there was prior hostility between the appellant and the deceased. The fingerprint evidence, though subject to the investigative



lapses which is observed above, provides additional corroboration. These circumstances, when considered cumulatively, form a chain pointing towards the guilt of the appellant and exclude any reasonable hypothesis consistent with his innocence.

29. We are also conscious of the fact that every investigative lapse cannot be converted into a benefit of doubt. As held in by the Supreme Court in the case of ***Shivaji Sahabrao Bobade v. State of Maharashtra***, the rule of benefit of doubt cannot be stretched to embrace every fanciful or speculative doubt. At the same time, the Court must ensure that the doubt raised is a reasonable doubt arising from the evidence. The exact observation of the Supreme Court is reproduced below-

“The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent



martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty."

30. In the present case, the lapses concerning the fingerprint evidence do not create such reasonable doubt when the principal circumstance of the appellant's presence inside the house immediately before the discovery of the deceased's dead body is independently established.

31. Thus, from a conspectus of the analysis of the evidence, reasoning of the trial Court and its findings, the contentions raised and the discussions made, we are left with no doubt that the accused was rightly convicted for the offence of murder. We, therefore, find no reason to interfere with the impugned order.



32. In the result, the appeal fails and is therefore, dismissed. The accused-appellant being on bail, his bail bonds be cancelled and he be taken to custody forthwith to serve the remaining part of the sentence.

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(Sashikanta Mishra, J)

Manash Ranjan Pathak, J. I agree.

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(Manash Ranjan Pathak, J)

Orissa High Court, Cuttack
The 13th August, 2026/A.K. Rana, P.A.