



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLA No. 320 of 2004

From judgment dated 17.09.2004 passed in S.T. Case No. 38/15 of 2002 of learned Addl. Sessions Judge, Deogarh.

Ranjan Sahu & Others		Appellants
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-Versus-

State of Odisha		Respondent
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Advocate(s) appeared in this case :-

For Appellants	: Ms. D. Mahapatra Advocate
For Respondent	: Ms. S. Devi, [Addl. Standing Counsel]

CORAM:

THE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
AND
THE HON'BLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing: 19.02.2026

Date of Judgment: 26.02.2026

SASHIKANTA MISHRA, J.

The appellants seek to challenge the judgment dated 17.09.2004 passed by learned Additional Sessions Judge, Deogarh in Sessions Trial No.38/5 of 2002 whereby,



they were convicted for the offences under Sections 302/34 of I.P.C. and 201/34 of I.P.C. along with Section 120(B) of IPC and were sentenced to undergo imprisonment for life.

2. The prosecution case is as follows:-

On 21.08.2001, materials worth Rs.4,45,02,302.01/- were being transported in a truck belonging to Lakhotia Transport Company Private Ltd. from Hindustan Lever Ltd., C&F Agents Transport India, at Vapi, Gujrat to Hindustan Lever Ltd. C&F Agents, United Agencies (Quality Service) Chakhmur, West Bengal. The truck was being driven by Om Prakash Yadav (deceased). On 28.01.2001, the company came to know from the driver of another truck belonging to it that the truck in question was found abandoned in a sloping condition at Bayapandadhar near Suakati Outpost with its driver and helper missing. Further, the rear tarpaulin was open and the materials were missing. The company's representative proceeded to the spot from Calcutta and arrived there on 29.08.2001 and found the truck as described with sizable quantity of cases missing. The Director of the company submitted a report at Suakati Outpost on 30.08.2001 alleging that the driver and helper



may have committed theft or misappropriated the materials being transported. The FIR was sent to Keonjhar Sadar Police station, where it was registered and investigation commenced.

3. In course of investigation, the dead body of the deceased was found in a jungle under the jurisdiction of Parjang police station. Further investigation revealed that the accused persons had boarded the truck at Ranja at Golabandha in the district of Deogarh and demanded the driver to provide them liquor. Then they invited the driver for taking liquor with them in the village. After some time, the appellants returned with the driver. Appellant Ranjan drove the truck towards Talcher and stopped the truck on the plea of attending call of nature. After some time, they went and stopped near Gambharia bridge and went to the jungle with the deceased. They returned without the deceased and drove away the truck. The helper had already fled away by then out of fear. Investigation also revealed that the three appellants had killed the deceased by assaulting him. Their complicity having been unearthed, charge-sheet was submitted against them under Sections 364/302/201/379/34 of IPC read with Section 120(B) of



IPC. Be it noted that three other persons, namely, Guru Charan Gagrai, Rabindra Kumar Haiburu and Mithu@Balmukunda Chaudhury@Jaiswal, from whose possession some of the materials were recovered during investigation, were also charge-sheeted under Sections 411/34 of IPC.

4. To prove its case, prosecution examined fourteen witnesses and proved twenty-two documents. Prosecution also proved seven material objects. Defence did not adduce any evidence.

5. The trial Court, relying on the evidence of P.W.6 held that he had last seen the deceased with the accused persons. The report of Test Identification Parade, medical evidence and the evidence of discovery and seizure of the alleged weapons of offence were also relied upon to hold that the chain of circumstances was complete and proved that the three appellants had committed the murder of the deceased. No evidence was however, found against the other persons who stood trial with the appellants for which they were acquitted. The appellants were however, convicted of murder and sentenced as aforesaid.



6. Heard Ms. Deepali Mahapatra, learned counsel for the appellants and Ms. Subhalaxmi Devi, learned ASC for the State.

7. Ms. Mahapatra assails the impugned order of conviction raising the following grounds :-

i. There is no finding that death of the deceased was homicidal in nature for which the conviction under Section 302 of IPC is not sustainable.

ii. Prosecution never proved any motive on the part of the appellants for allegedly committing the crime.

iii. The evidence of P.W.6 on whom prosecution heavily relied upon is beset with serious contradictions which demolishes the last seen theory.

iv. Prosecution could not establish an unbroken chain of circumstances to show the guilt of the appellants.

8. Per contra, Ms. S. Devi would argue that not only that P.W.6 stated about seeing the deceased for the last time in the company of the accused persons but also there was other evidence such as medical evidence, discovery and



seizure of weapons of offence etc., which clearly reveal a complete chain of circumstances proving the guilt of the appellants.

9. We have given our anxious consideration to the contentions raised and have also carefully perused the case record along with the impugned judgment. As already stated, the FIR was lodged alleging theft and misappropriation of the materials transported in the truck against the driver (deceased) and the helper (P.W.6). In course of investigation, it was found that an unidentified dead body was found lying inside the bushy jungle near Gambharia bridge on N.H.-23, in a decomposed state. The dead body was identified by the authorized representative of the company as being that of the deceased. On such facts, we are surprised that the trial Court took it for granted that the death of the deceased was homicidal in nature. We find that as many as five points were framed by the trial Court for determination but no point was framed regarding the nature of death. Whether the death was natural, accidental, suicidal or homicidal does not appear to have been a consideration for the trial Court at all. In a case of murder, particularly when the dead body is recovered, it has to be



first proved that the death was homicidal in nature. Even if there is some evidence to show that the deceased was last seen in the company of the accused persons, they cannot be convicted for his murder unless it is first proved that the deceased had met with a homicidal death. In the case of **Madho Singh vs. State of Rajasthan**, reported in AIR OnLine 2002 SC 681, the Supreme Court held as follows:-

“6. In the absence of proof of homicidal death the appellants cannot be convicted merely on the theory of last seen – ‘they having gone with the deceased in the manner noticed hereinbefore. The appellants’ conviction cannot be maintained merely on suspicion, however strong it may be, or on their conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that all the three were good friends for over a decade.”

10. We are conscious that prosecution can still prove homicidal death by circumstantial evidence but then such circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim had met a homicidal death. As already stated, the trial Court has overlooked this vital aspect of the matter for which, the impugned judgment becomes vulnerable.

11. Nevertheless, with a view to further satisfy ourselves, we have gone through the evidence of P.W.6 in detail as he is said to be the only person who had seen the



accused persons with the deceased but we find that almost all of his testimony implicating the accused persons was found to be improvements from his original version before the I.O.

We deem it proper to reproduce the testimony of P.W.6 whereby he implicated the accused appellants-

“ xxx xxx xxx xxx

At that time, the accused persons-Ranjan, Parkhit and Khetrabasi who were in a nearby shop called, shouting the name of the driver-Prakash. When the driver stopped the truck these three accused persons came to him and demanded to and demanded to provide them liquor, to which, the driver replied that he has no money with him. Thereafter, these three accused persons invited the driver for taking liquor with them and accordingly they went inside the village, while I remained in the truck. After sometime these three accused persons with driver-Prakash returned to the truck, where after, accused-Ranjan started driving the truck and driver-Prakash took rest inside with the other two accused persons. After reaching Pallahada accused-Ranjan diverted the route towards Talcher. When the driver enquired as to why the route is diverted accused-Ranjan replied that they would go via-Talcher. After Pallahada while the truck was passing through a forest accused- Ranjan stopped the truck and be with Khetrabasi intended to go to attend the call of nature and asked me to accompany them. Out of fear; I woke up the driver and on his instruction gave water to Ranjan and Khetrabasi but they did not go for attending the call of nature. Thereafter, we all proceeded in the truck upto a bridge where at the toll gate Rs.40/- was paid and the truck proceeded ahead. Thereafter we reached Gambharia bridge after Talcher. At the bridge the truck was stopped and these three accused persons with driver-Prakash went to take theis bath. Driver-Prakash was then wearing a full pant and a ganjee and was also wearing a boot. He was also having a belt. I remained in the truck. After half an hour accused- Parkhit returned to the truck and asked me



for the knife kept in the truck so that they would bring some jungle meat. Out of fear and suspicion I concealed the knife in my pocket and told him that it is not available. He then directed me to climb to the cabin to bring a rope and on my refusal he directed me to get down and then went away saying to proceed for cooking. After that I went to jungle. Before that accused-Parkhit himself climbed to the cabin and took the rope. After that I fled away towards the jungle out of fear. I concealed inside the forest and kept watching and saw that these three accused persons returned to the truck and then proceeded ahead with the truck. Though the driver-Prakash was not seen with them I presumed that he might have come earlier to the truck. After that I returned to my house. Since then I have not seen driver-Prakash.

xxx xxx xxx xxx”

[Emphasis added]

Now, we reproduce the statement of the I.O. (P.W.14) relating to the testimony of P.W.6-

“ xxx xxx xxx xxx

P.W.1 Kuna Jit was examined by me on 1.9.01. Krushna Chandra Patra (P.w.6) was examined by me on 5.9.01. It is not a fact that no register of the Samal barage toll-gate was seized by me. Krushna chandra Patra has not stated before me the names of the persons who obstructed the truck at Golabandha calling the name of the deceased. He has stated that two persons calling the name of the deceased obstructed the truck. He has not stated about payment of Rs.40/- at the Toll gate. He has also not stated to have concealed the knife in his pocket.

xxx xxx xxx xxx”

[Emphasis added]

12. As can be seen, he had not even named the accused persons before the police during investigation but had referred to ‘two persons’ calling the name of the deceased



who obstructed the road. This demolishes his credibility greatly and therefore, his subsequent statements implicating the accused persons cannot be relied upon.

13. The witness to discovery and seizure of the alleged weapons of offence, P.W.4, turned hostile. The other witness to seizure, P.W.9 also turned hostile. Under such circumstances, the so-called disclosure/confessional statement of the accused persons loses its evidentiary value.

14. The trial Court accepted that there is no direct evidence and that the case is based on circumstantial evidence. Strangely, ignoring the material contradictions in the evidence of P.W. 6, the trial Court thought it proper to rely upon it. On the question of homicidal death, the trial Court itself observed that the medical evidence was not helpful and that there was no medical opinion as regards cause of death. Having held so, the trial Court still relied upon the so-called confessional statement of the accused. Again, ignoring the lack of credibility in the evidence of P.W.6, the trial court held that the last seen theory was proved.

15. From what has been narrated hereinbefore, we are unable to persuade ourselves to concur with the findings of



the trial Court. It is stated at the cost of repetition that from the evidence on record, only a feeble suspicion can be aroused against the appellants but then, it is trite that suspicion, howsoever strong, cannot take the place of proof required to hold the accused guilty of the offence. We therefore, hold that the order of conviction cannot be sustained in the eye of law.

16. In the result, the appeal succeeds and is, therefore, allowed. The impugned judgment of conviction and sentence dated 17.09.2004 passed by learned Addl. Sessions Judge, Deogarh in S.T. Case No. 38/15 of 2002 are hereby set aside. The appellants being on bail, their bail bonds be discharged.

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Sashikanta Mishra,
Judge

Manash Ranjan Pathak, J. I agree.

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Manash Ranjan Pathak,
Judge