IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.64 of 2008

An appeal under section 374 Cr.P.C. from the judgment and order dated 14.07.2006 passed by the Additional Sessions Judge, Sonepur in Sessions Trial No.34 of 2005.

Hadu @ Kusaleswar Manhira ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellant: - Ms. Manaswini Rout
Amicus Curiae

For Respondent: - Mr. Priyabrata Tripathy
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE S.K. MISHRA

Date of Hearing and Judgment: 02.01.2024

By the Bench: The appellant Hadu @ Kusaleswar Manhira faced trial in the Court of learned Additional Sessions Judge, Sonepur in Sessions Trial No.34 of 2005 for commission of offence under

section 302 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that on 15.12.2004 in between 3.00 p.m. to 6.00 p.m., at village Silatimunda under Tarava police station, he committed murder of his wife Sumitra Manhira (hereinafter 'the deceased').

The trial Court, vide impugned judgment and order dated 14.07.2006, found the appellant guilty of the offence charged and sentenced him to undergo imprisonment for life.

Prosecution Case:

2. As per the first information report (hereinafter 'F.I.R.') lodged by one Purna Chandra Bag (P.W.1) before the Officer in-charge of Tarava police station on 15.12.2004, the prosecution case is that the deceased was his sister. On that day, at about 6.00 p.m., while he was binding straw, he heard cries from the side of the house of the appellant and came to that place and found some female members were crying there. P.W.1 asked the reason for their crying and came to know that the appellant and the deceased had gone to jungle to bring fire wood but they did not return. Getting such message from the lady members, P.W.1 along with others went in search of the deceased and they found the dead body of the deceased lying in a field with bleeding injuries and somebody had used sharp

cutting weapon to kill the deceased and a bundle of wood was lying near the dead body. P.W.1 suspected that the appellant might have committed murder of the deceased. It is further stated in the F.I.R. that the appellant and the deceased had been to collect fire wood in the afternoon and they did not return till 6 O' clock in the evening and there was some previous quarrel between the couple.

Basing upon the written report presented by P.W.1, the Officer in-charge (P.W.12) registered Tarava P.S. Case No.82 dated 15.12.2004 under section 302 of the I.P.C. against the appellant. P.W.12 himself took up investigation of the case. During the course of investigation, he examined the informant (P.W.1) and other witnesses. On 15.12.2004, at about 7.20 p.m., the appellant appeared at the police station, confessed his guilt. Accordingly, he was arrested by P.W.12 and the statement of the appellant was recorded. Then the appellant led P.W.12 and other witnesses to his cultivable land and gave recovery of one axe from inside the bush which was seized as per seizure list Ext.4. P.W.12 also held inquest over the dead body and prepared the inquest report (Ext.2) so also the spot map (Ext.12). He also seized the bundle of fire wood and the blood stained earth and sample earth as per seizure list Ext.5, sent the dead body to the Headquarters Hospital, Sonepur for post mortem examination

and seized the blood stained clothes of the appellant as per seizure list Ext.9. The wearing apparels of the deceased were also seized as per seizure list (Ext.6/1), which were produced by the constables, who escorted the dead body for post mortem examination. The I.O (P.W.12) sent requisition to R.I., Tarava for preparing sketch map of the spot. The weapon of offence i.e. axe (M.O.I), was sent to the doctor, who conducted post mortem examination, for obtaining his opinion regarding possibility of injuries sustained by the deceased with such weapon and the seized articles were sent to R.F.S.L., Sambalpur, for chemical examination. The chemical examination report (Ext.15) was received. On completion of investigation, charge sheet was submitted under section 302 of the I.P.C. against the appellant.

Framing of Charge:

3. After submission of charge sheet, the case was committed to the Court of Session where the trial Court framed the charge under section 302 I.P.C. against the appellant. The appellant pleaded not guilty and claimed to be tried for which, the sessions trial procedure was resorted to establish his guilt.

Prosecution Witnesses, Exhibits & Material Objects:

4. During the course of trial, in order to prove its case, the prosecution has examined as many as twelve witnesses.

P.W.1 Purna Chandra Bag is the brother of the deceased and the informant in this case who stated that on the fateful day, he heard sound of crying from the house of the appellant. When he proceeded to appellant's house, he found that some ladies were crying. Upon his query, he was informed that the appellant had killed the deceased. P.W.1 further stated to have seen the deceased lying on the paddy field in a pool of blood with a completely severed throat. He is also a witness to the preparation of the inquest report vide Ext.2.

P.W.2 Mahadev Mahala is a co-villager who stated that on the relevant day, he along with others heard shout from the house of the appellant. Upon hearing the sound, he along with P.W.1 and Santosh went there and saw the inmates of the house crying. He further stated that when P.W.1 enquired about the reason for such crying, he was informed that the appellant had killed the deceased. P.W.2 further stated to have seen the dead body of the deceased lying on the paddy field with the throat almost cut.

P.W.3 Sumanta Bag is the nephew of the deceased who stated that while returning from pond, he heard the sound of crying from the house of the appellant. Accordingly, he proceeded to the house. Upon his query, he was informed that the appellant had killed the deceased. He further stated to have

seen the dead body of the deceased lying on the spot with the head almost completely severed.

P.W.4 Niranjan Dehury is a co-villager who stated that on the date of occurrence, after being informed that the appellant had killed the deceased, he along with others proceeded to the spot and saw the dead body of the deceased lying with her neck almost completely severed. He further stated that the appellant confessed before the police to have killed the deceased. He also stated that the appellant led them to the place of concealment of weapon and gave recovery of the same. He is a witness to the seizure of the weapon of offence, i.e. axe (M.O.I), as per the seizure list (Ext.4).

P.W.5 Murali Bag is a co-villager who stated that the appellant took the deceased to the paddy field and killed her. He further stated that he went to the spot of occurrence and saw the deceased lying there with her neck almost completely severed. P.W.5 is also a witness to the preparation of inquest report vide Ext.2.

P.W.6 Chanchala Bag is the sister-in-law of the deceased who stated that, at about 3 p.m., on the date of occurrence, while the deceased was husking paddy, the appellant came and asked her (deceased) to accompany him to bring fire

wood. However, the deceased asked the appellant to proceed first and she would go at a later stage. After half an hour, the deceased went to collect fire wood. Later, she was informed by P.W.3 that the appellant had killed the deceased.

P.W.7 Bhaskara Podha stated that upon hearing about the murder of the deceased, he went to the spot and saw the dead body of the deceased. He is a witness to the seizure of blood stained earth, sample earth, one pair of chapal, a bundle of fire wood and one 'Dala' (a bamboo basket) from the spot as per the seizure list (Ext.5).

P.W.8 Dr. Santosh Kumar Misra was posted as the Assistant Surgeon at the District Headquarters Hospital, Sonepur who, upon police requisition, conducted post mortem examination over the dead body of the deceased and proved his report vide Ext.7. He also opined that the injuries found from the post mortem examination were possible by the axe (M.O.I) and he proved such opinion vide Ext.8.

P.W.9 Laxman Dehury stated that in the evening hours of the fateful day, he saw the appellant coming from the opposite direction. Upon seeing him, he queried the appellant as to where was he going, to which the appellant answered that he was proceeding towards Tarva. Then they parted their ways and

P.W.9 informed the elder brother of the appellant that the appellant was going towards Tarva. Subsequently, he along with the elder brother of the appellant went to Tarva and saw the appellant near Tarva Police Station and returned home. Next day, P.W.12 called him to the police station and in his presence, seized one banian, a dhoti and a gamucha on production by the appellant, as per the seizure list (Ext.9).

P.W.10 Jangeswara Manhira is the elder brother of the appellant who stated that during the evening hours of the relevant day, he was informed by P.W.9 that the appellant was proceeding towards Tarva. Subsequently, he along with P.W.9 went to search the appellant and found him in the police station. After returning to the village, he came to know that the appellant had killed the deceased.

P.W.11 Kishore Kumar Bhoi was working as the Revenue Inspector, Tarva, who visited the spot on police requisition and prepared his report vide Ext.10 and also prepared the sketch map vide Ext.11.

P.W.12 Prasanta Kumar Nanda was working as the O.I.C. of Tarva Police Station who, on the basis of the written report submitted by the informant (P.W.1), registered the F.I.R. (Ext.1) and took up investigation of the case. Upon completion of

investigation, P.W.12 submitted the charge sheet against the appellant.

The prosecution exhibited fifteen documents. Ext.1 is the F.I.R., Ext.2 is the inquest report, Ext.3 is the confessional statement of the appellant, Ext.4 is the seizure list of tangia, Ext.5 is the seizure list of blood stained earth and sample earth, Ext.6/1 is the seizure list of wearing apparel of deceased, Ext.7 is the post mortem report, Ext.8 is the opinion of the doctor regarding examination of axe, Ext.9 is the seizure list of banian, dhoti and gamucha, Ext.10 is the R.I. report, Ext.11 is the sketch map, Ext.12 is the spot map, Ext.13 is the dead body challan, Ext.14 is the forwarding letter of M.Os and Ext.15 is the chemical examination report.

Four numbers of material objects were admitted in evidence. M.O.I is the axe (tangia), M.O.II is the dhoti, M.O.III is the banian and M.O.IV is the gamucha.

Defence Plea:

5. The defence plea of the appellant is one of denial. During the course of trial, the defence examined the appellant as D.W.1 who stated that the informant (P.W.1) has foisted a false case on him. He further stated that on the date of occurrence, he performed puja from 7 a.m. to 5 p.m. and after performing puja,

he was sitting in the outer verandah of his house when P.W.1 informed him that the dead body of the deceased was lying in the paddy field. He also stated that upon getting such information, he went to Tarva police station to report the incident. He outrightly denied to have any dispute with the deceased. Rather. D.W.1 stated that the informant had a strained relationship with the deceased due to some land dispute.

Findings of the Trial Court:

6. The learned trial Court, after assessing the oral as well as documentary evidence on record, came to hold that there is no direct evidence connecting the appellant with the commission of the crime and the case is based on circumstantial evidence. The trial Court further held that the weapon of offence i.e. axe (M.O.I), was recovered at the instance of the appellant from inside the bush and the place was not accessible to public. Therefore, there was no reasonable apprehension of the weapon of offence being planted to rope in the appellant with the crime. The trial Court further held that the deceased had been to collect the fire wood with the appellant and the evidence of P.W.6 in that respect is quite trustworthy and reliable and the prosecution has successfully proved the circumstantial evidence relating to the appellant being 'last seen' with the deceased. The trial Court

has rejected the contention raised by the learned Public Prosecutor regarding motive behind the commission of crime on the part of the appellant. However, taking into account the seizure of the wearing apparels of the appellant, which was stated to be stained with blood and the findings of the chemical examination report, it was held that the prosecution has proved the chain of circumstances which unerringly pointed towards the guilt of the appellant. Accordingly, the appellant was convicted under section 302 of the I.P.C.

Contentions of the Parties:

7. Ms. Manaswini Rout, learned counsel appearing for the appellant argued that admittedly, there are no eye witnesses to the occurrence and the case is based on circumstantial evidence and the motive behind the commission of crime is absent in the case. The circumstance relating to 'last seen' of the appellant in the company of the deceased, which is deposed to by P.W.6, is not at all acceptable inasmuch as P.W.6 himself has stated that the deceased went to collect fire wood half an hour after the appellant left the spot asking her to accompany him. The learned counsel further submitted that so far as the leading to discovery of the axe (M.O.I) is concerned, even though the I.O. stated that it was recovered on 15.12.2004, but there is no evidence where the weapon of offence was kept after its seizure

and in what condition and why there was such an inordinate delay in sending the same for chemical examination, which was done only on 06.04.2005. The learned counsel further argued that though the I.O. (P.W.12) has stated that the axe was kept in police malkhana before it was sent for chemical examination, but the maklhana register has not been produced. Therefore, any possible tampering with the same cannot be ruled out. Learned counsel for the appellant, by placing reliance upon the case of **Mangala Oyale -Vrs.- State of Odisha reported in (2016) 65 OCR 1097**, contended that it is very difficult to convict the appellant only basing upon the evidence relating to leading to discovery of the axe. Learned counsel concluded her argument by submitting that in this case, the circumstances have not been firmly established and when they are taken together, it does not form a chain so complete in order to arrive at an irresistible conclusion that it is the appellant and appellant alone, who is the author of the crime. Therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Priyabrata Tripathy, learned Additional Standing Counsel appearing for the State of Odisha, on the other hand, supported the impugned judgment and contended that both the deceased and the appellant were last seen together. Thereafter,

the dead body was recovered from a field and the appellant was absent and the axe, which was recovered at the instance of the appellant, which has been examined by the doctor (P.W.8), who opined that the injuries sustained by the deceased were possible by such weapon. Moreover, when the chemical examination report (Ext.15) indicates that human blood was found from the axe (M.O.I), it can be said that prosecution has successfully proved that the appellant is the author of the crime.

Whether the deceased met with a homicidal death?:

8. P.W.8, the doctor conducted post-mortem examination over the dead body of the deceased on 16.12.2004 and he noticed the following injuries.

> "One cut-throat wound in neck of 5" in length cutting throughout the neck caused by a blow with sharp cutting edge of a heavy weapon. The neck is almost completely separated and attached to body by a falp of skin. The wound is at C-3, C-4 level cutting all the vital organs and blood vessels at this region. Multiple cut injury present one below left angle of mouth i.e. 2" x ½" x 1" and one behind right ear 3" x 1" x2". The cause of death is cut-throat of all the vital organs and big blood vessels resulting in bleeding and neck. All the above injuries are ante-mortem in nature."

The homicidal death aspect of the deceased is not disputed by the learned counsel for the appellant. The inquest report (Ext.2), post mortem report (Ext.7) and the evidence of P.W.8 clearly established that the death of the deceased was homicidal.

Whether the deceased was last seen alive with the appellant?:

9. The law is well settled that in order to convict an accused on the basis of the circumstantial evidence, each circumstance has to be firmly established. The circumstance cannot be explained under any other hypothesis. The circumstance taken together must form a complete chain so that there would not be any escape from the conclusion that it is the accused and accused alone was committed the crime. The leading decision on this point is by the Supreme Court in the case of **Sharad Birdhichand Sarda -Vrs.- State of Maharashtra, reported in (1984) 4 Supreme Court Cases 116,** in which five golden principles have been summed up which has been stated to be panchsheel in appreciating the case based on circumstantial evidence.

In this case, where there is no direct evidence on record, we delve to discuss about the evidence relating to 'last

seen theory'. The only witness in this respect is none else but P.W.6, who is the sister-in-law of the deceased, who has stated that on the date of occurrence, the appellant came and asked the deceased to accompany him to bring fire wood. The deceased, on the other hand, told the appellant to go first telling him that she would come later. P.W.6 further stated that after about half an hour, the deceased went to collect the fire wood with a bamboo basket. Subsequently, she came to know from her son (P.W.3) that the appellant had killed the deceased. From this statement, it is very clear that P.W.6 has not seen the appellant and the deceased going together to collect fire wood. The evidence rather indicates that the appellant first left the place. After about half an hour, the deceased went to collect the fire wood. From the statement of P.W.6, it does not appear that the appellant had asked the deceased to come to a particular place to collect the fire wood. Therefore, in our humble view, the evidence of P.W.6 cannot be utilized as a 'last seen' circumstance of the appellant with the deceased. It is a pre-condition for applying the 'last seen theory' that the deceased must have been seen alive in the company of the accused for the last time before he/she was found dead. Here in this case, it is apparent that P.W.6 has seen the deceased alive even after the appellant went ahead alone to collect fire wood. Therefore, it cannot be said that

the deceased was last seen in the company of the appellant before her dead body was discovered. The onus of proving the circumstances, under which the deceased met with her death, cannot be shifted to the appellant. Thus, section 106 of the Evidence Act cannot come into play in the instant case to make the appellant liable to disprove his guilt as the prosecution has failed to discharge its initial burden of proving that the appellant was last seen with the deceased. The possibility of the deceased coming in contact with others after P.W.6 last saw her cannot be ruled out. Nobody has seen the appellant and the deceased together at the spot where the dead body of the deceased was lying. There is no evidence on record as to what was the distance between the house of the appellant where the appellant asked the deceased to accompany him and the place where the dead body was lying. There is no evidence on record that before leaving the house, the deceased informed P.W.6 that she is going to collect fire wood as asked by her husband. In view of the nature of evidence adduced by P.W.6, the circumstance relating to last seen fails.

Whether the statement leading to discovery of axe can be relied upon to convict the appellant?:

10. Coming to the only other circumstance i.e. the recovery of the weapon of offence at the instance of the

appellant, no doubt P.W.12 has stated that on 15.12.2004, at about 7.20 p.m., the appellant came to the police station and confessed before him that he killed the deceased by inflicting axe blows on her neck. But this confessional statement is not admissible in view of the bar provided under section 25 of the Evidence Act. The accused, being examined as D.W.1, has disowned such a statement made to the police officer. The appellant came to the police station on 15.12.2004, at 7.20 p.m. But on that day, no statement of the appellant was recorded. Rather, P.W.12 has stated that on 16.12.2004, at about 5.45 a.m., he arrested the appellant and recorded his confessional statement, which has been marked as Ext.3, and the appellant led him and the witnesses to his cultivable land and gave recovery of an axe from inside the bush of palsa which was seized as per seizure list Ext.4. The I.O. (P.W.12) has stated that on 15.12.2004, at about 8.00 p.m., he reached the spot for investigation but he had not taken the appellant with him to the spot and he could not make detail verification of the spot as it was night though he had a torch light with him. It pre-supposes that perhaps on 15.12.2004 there was no information with the I.O. that any weapon of offence was concealed by the appellant. The other witness to the leading to discovery is P.W.4, who has stated that while in police custody the appellant stated that he

had killed his wife (deceased) with a tangia and the I.O. (P.W.12) recorded the confessional statement of the appellant in a separate paper and then the appellant led them to the place of concealment i.e. palsa tree, where he gave recovery of the axe which was seized by P.W.12 as per seizure list Ext.4. In the cross-examination, he has stated that the place of concealment is towards the south of the spot which is about 3 to 4 cubits away from the place where the dead body was lying and the recovery of the weapon of offence was given at 7.00 a.m.

It is the settled proposition of law that section 27 of the Evidence Act is an exception to sections 25 & 26 which prohibit the proof of confession made before the police officer or a confession made while the person is in police custody unless it is made in the immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police, whether it amounts to confession or not, which relates distinctly to the fact thereby discovered to be proved. For applicability of section 27, two conditions are the key requisites namely (i) information must be such as has caused discovery of the fact, and (ii) information must relate distinctly to the fact discovered.

A Division Bench of this Court in **Mangala Oyale** (supra) discussed the provision under section 27 of the Evidence

Act in the light of the decision of the Privy Council in case of **Pulukuri Kottaya and others -Vrs.- Emperor reported in AIR (34) 1947**, the decision of the Hon'ble Supreme Court in case of **Hanumant Govind Nargundkar and another -Vrs.- State of Madhya Pradesh reported in AIR 1952 SC 343** and the decision of this Court in the case of **Satrughana alias Satura Majhi -Vrs.- State reported in (1969) 35 CLT 351** and held as follows:

> "17. Learned counsel for the accused has argued that a piece of evidence collected under Section 27 of the Act in no circumstances can form the foundation of the conviction and as such the accused is entitled to an order of acquittal. The aforesaid is a favorite argument advanced at the Bar in most of the cases, where only the incriminating evidence is relevant under Section 27 of the Act. But the aforesaid contention is at times fallacious as seen from the law laid down in the case of Pulukuri Kottaya (supra) of the Privy Council. A Division Bench of this Court dealing with the aforesaid in the case of Satrughana alias Satura Majhi -vrs.- State, reported in XXXV (1969) CLT 351, have held at paragraph 8 as follows:
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> > "8. *Kottaya v. Emperor*, is the leading decision on this point. A clear exposition of the evidentiary value of such a statement is

given in para 11 of the judgment. Their Lordships observed thus:-

"Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law."

The effect of this passage has unfortunately been overlooked in most of the subsequent decisions.

The implication of this concept may be explained by an illustration. If the statement made under Section 27 of the Evidence Act leads to discovery of opium, then a conviction can be founded solely on the basis of that statement, as possession of opium without license is by itself an offence under the Opium Act. Similarly discovery of arms without licence on the basis of a statement made under Section 27 of the Evidence Act can constitute the sole basis of conviction. But where the gist of the offence is not possession alone, then the statement leading to discovery in most cases cannot constitute the foundation of the prosecution case. As their Lordships put it, it is only one link in the chain of proof, and the other links must be established beyond

reasonable doubt before the guilt is brought home to the accused."

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A similar view was taken in *In re Periyaswami Thevan*. There the distinction in the effect of discovery of an article belonging to the deceased and to the accused was forcefully brought out. Their Lordships held that if the prosecution had shown that the blood-stains on the chopper belonged to the same group as the blood of the deceased, the answer would have been clinching. They observed thus:

> "Ordinarily in a case of circumstantial evidence where there has been a discovery as a result of confession made under Section 27, Evidence Act, one expects to find the discovery of something which can be associated with the deceased and not with the accused. The question of the weapon with which the offence was committed being discovered as a result of information given by the accused is also probable. But in such a case the mere fact that a weapon, which could have been used for the commission of a crime like this, was discovered with blood-stains on it on information given by the accused, would not, by itself be sufficient to show that he was the murderer".
>
> On the dictum of the Privy Council authority, we are clearly of opinion that the confessional statement leading to discovery,

> in the facts and circumstances of this case, cannot establish the prosecution case that the accused was the murderer, though it raises grave suspicion."

Having regard for the aforesaid position of law, we are of the humble view that the statement made by the appellant before the police in leading to discovery of the axe (M.O.I) cannot *per se* lead to the construction of an imaginary prosecution mansion when the bedrock in the form of clinching evidence against the appellant is conspicuously absent.

Possibility of tampering with seized items:

11. In the case in hand even though the I.O. (P.W.12) and the recovery witness, i.e. P.W.4 have stated that the discovery of tangia was made at the instance of the appellant but most peculiarly, the evidence of the I.O. (P.W.12) is silent as to what he had done with the axe after its seizure except stating that it was sent to the doctor for examination. The I.O. has not stated that it was kept in a sealed condition. In the cross-examination, though he has stated that weapon of offence was in police malkhana before it was sent for chemical examination but no malkhana register has been proved in this case to corroborate the evidence of the I.O. If the weapon is not kept in safe custody before its dispatch for chemical examination, the tampering with

the same cannot be ruled out. Even though, the weapon was seized on 16.12.2004 but it was examined by the doctor (P.W.8) on 29.03.2005 and the forwarding letter of chemical examination indicates that the same was sent only on 06.04.2005. The chemical examination report indicates that though the axe was found to have contained human blood but so far as the grouping is concerned, no opinion was given and in the remarks column, it has been mentioned to be inconclusive. Similarly, so far as the wearing apparels of the appellant are concerned, though it is mentioned that from the dhoti, ganji and gamucha, human blood stains were found but no opinion was given about the grouping and the delay in dispatch of the exhibits for chemical examination has not been explained by the prosecution. When the seized blood stained dhoti, banian and gamucha were shown to P.W.12 during the cross examination, he admitted that no blood stain was visible on such apparels.

Absence of motive to commit murder:

12. In this case, there is absence of any motive behind the commission of the crime. In a case of circumstantial evidence, motive assumes pertinent significance and absence of motive would put a guard on the Court to scrutinize the available circumstances on record carefully and minutely to see whether

the prosecution has successfully established its case beyond all reasonable doubt or not. In the case of **Nandu Singh -Vrs.- State of Madhya Pradesh (Now Chhattisgarh) reported in (2022) Supreme Court Cases OnLine SC 1454**, a three-Judge Bench of the Hon'ble Supreme Court has reiterated the aforesaid stance of law in the following words:

> "12. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."

Needless to say that there is no evidence to show that the appellant had a strained relationship with the deceased and in absence thereof, there is hardly any circumstance which makes this Court believe that the appellant was keen to take away the life of the deceased. Hence, the absence of motive strengthens the benefit of doubt in favour of the appellant.

Conclusion:

13. After detailed examination of the evidence appearing on record, since the circumstance of 'last seen' has not been satisfactorily proved by the prosecution and since the evidence is

lacking regarding the safe custody of the seized weapon before its production in Court for sending it to chemical examination, it cannot be said that the prosecution has proved the chain of circumstances to be a complete one and there is an irresistible conclusion that it is the appellant and appellant alone, who has committed the crime.

Therefore, we are of the view that the impugned judgment and order of conviction passed by the learned trial Court is not sustainable in the eye of law. Accordingly, the conviction of the appellant under section 302 of the I.P.C. is hereby set aside.

It appears that the appellant is in judicial custody. He be set at liberty forthwith if his detention is not required in any other case. The Jail Criminal Appeal is allowed.

The trial Court records with a copy of this judgment be sent down to the concerned Court forthwith for information.

Before parting with the case, we would like to put on record our appreciation to Ms. Manaswini Rout, the learned Advocate for rendering her valuable help and assistance towards arriving at the decision above mentioned. The learned Amicus Curiae shall be entitled to her professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only). This

Court also appreciates the valuable help and assistance provided by Mr. Priyabrata Tripathy, learned Additional Standing Counsel.

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S.K. Sahoo, J.

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S.K. Mishra, J.

Orissa High Court, Cuttack
The 2nd January, 2024/Prasant

HIGH COURT
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