

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1228 OF 2008

PURNA CHANDRA KUSAL APPELLANT

VERSUS

STAT EOF ORISSA RESPONDENT

O R D E R

1. This appeal by way of special leave is directed against the judgment of the High Court of Orissa whereby the appellant has been convicted for offence punishable under Sections 302 and 376 of the Indian Penal Code. A sentence of death had been awarded by the Sessions Court and the same has been confirmed by the High Court by way of a reference made under Section 366 of the Code of Criminal Procedure.

2. As per the prosecution story, the appellant Purna Chandra alias Chotu and P.W. 5, Brunda Jaiswal, the mother of the deceased girl, were neighbours and were residing in a basti near the railway line near Bondamunda Railway

Station. At about 5:00p.m. on the 14th November, 2002, P.W. 5 left her home for the local market to sell the coal that she had collected from the railway line leaving behind her son P.W. 10 and her deceased daughter who were both playing with the appellant. P.W. 5 returned home after fifteen or twenty minutes and found that her daughter was missing. She along with P.W. 10 searched for her but could not find her. She, however, received information after a short while that the dead body of her daughter was lying on the railway track. She rushed to that side and found the dead body lying in between two bogies. Information about the dead body was also conveyed to the police and a police party soon reached the spot. The body was also despatched for its post mortem and it was found that the girl had been raped and murdered by asphyxiation. A First Information Report was thereupon drawn up on the basis of the inquiry conducted by the police. During the course of the investigation, the police arrested the appellant and on a statement made by him under Section 27 of the Evidence Act, the clothes of the victim which he had hidden after her rape and murder, were recovered. Similarly on his disclosure, the clothes that he had been wearing too were recovered. The trial court relying on the evidence of P.W. 5 and P.W. 10 and also the fact that the recoveries had been made at the

instance of the appellant convicted and sentenced him as already mentioned above.

3. We have heard the learned counsel for the parties.

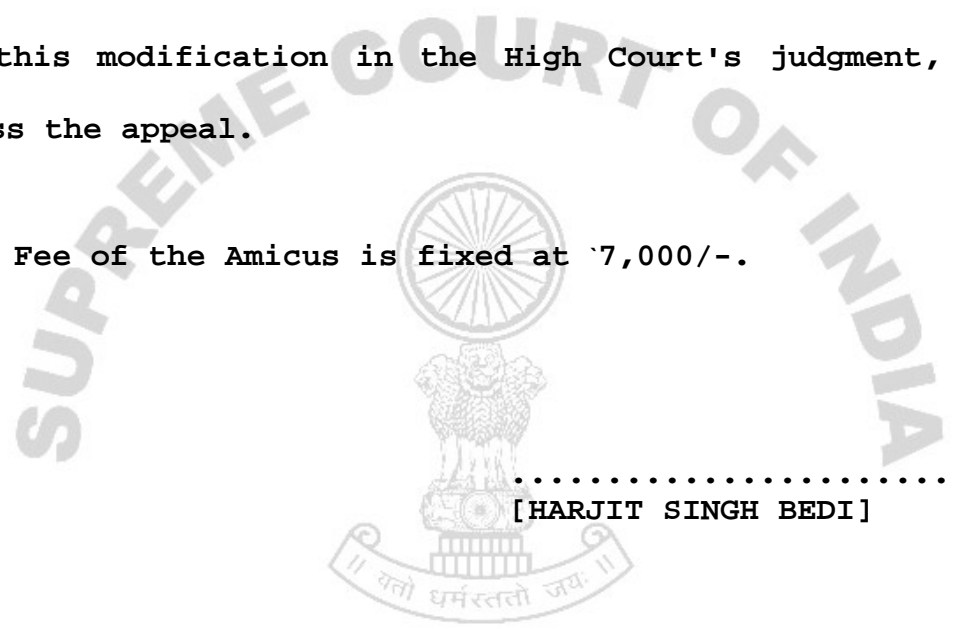
4. We find absolutely no reason to interfere with the conviction of the appellant. In addition to the last seen evidence of P.W. 5 and P.W. 10, we have the evidence of the recoveries made at the instance of the appellant. The clothes that the appellant and the deceased had been wearing had also been taken into possession by the investigating agency and were found to be stained with human blood. We find therefore, that the last seen evidence finds full corroboration from the recoveries.

5. We are, however, of the opinion that the death sentence in the present case was not called for. The appellant was a labourer living in a basti along side the railway line and was, at the time of the incident, about 30 years of age. We also see that the entire evidence is circumstantial in nature. Concededly, there is no inflexible rule that a death sentence cannot be awarded in a case resting on circumstantial evidence but courts are as a matter of prudence, hesitant in awarding this sentence, in such a situation. It is true that the crime

was indeed a heinous one as the victim was only five years of age and the daughter of P.W. 5 who was a neighbour of the appellant. On a cumulative assessment of the facts, we are of the opinion that the death sentence should be commuted into one for life.

6. In this view of the matter, we dismiss the appeal but commute the sentence of death to life imprisonment. With this modification in the High Court's judgment, we dismiss the appeal.

7. Fee of the Amicus is fixed at ₹7,000/-.



.....J
[HARJIT SINGH BEDI]

JUDGMENT.....J
[GYAN SUDHA MISRA]

NEW DELHI
JULY 12, 2011.