



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No. 53 of 2006

(Arising out of the Judgment and Order of acquittal dated 7th of January, 2005 passed by Smt. M. Pattnaik, Adhoc Addl. Sessions Judge, F.T.C. No-I, Bhubaneswar in S.T. No. 30/292 of 2003, for the offence under sections 364, 376(2)(f), 302 and 34 of the Indian Penal Code, 1860)

State of Odisha

....

Appellant

Mr. S. B. Mohanty, AGA

-versus-

....

Respondent

Ms. A. Mishra,
Advocate for Res No.1

Mr. P. Jena,
Advocate for Res No.2

CORAM:

THE HON'BLE MR. JUSTICE B. P. ROUTRAY

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 26.03.2025

Chittaranjan Dash, J.

1. The Petitioner, the State of Odisha, has filed this application seeking leave to appeal challenging the judgment and order of acquittal dated 07.01.2005, passed by the learned Adhoc Additional Sessions Judge, F.T.C. No-I, Bhubaneswar, in S.T. No. 30/292 of 2003 arising out of Lingaraj P.S. Case No. 76/2003, wherein, the learned trial Court acquitted both the accused persons

AFR



(Respondents) of offences under sections 364, 376(2)(f), 302 and 34 of the Indian Penal Code, 1860.

2. The prosecution case, in brief, is that on the night of 01.05.2003, a Yajna was being performed at the newly constructed Siva Temple for its *pratistha*, situated near the river embankment in the village of Gangeswarpur Sasan. During the night, children from the village, including the deceased, were playing there. As the night progressed, the other children returned home, but the deceased did not. A thorough search was conducted throughout the night by the villagers, but the deceased could not be found. Early the next morning, P.W.3, the brother of the Informant, discovered the deceased lying in a dried pond amidst Amari bushes near the Siva Temple. The deceased had visible injuries on her cheek, neck, private parts, and other areas. P.W.3 carried the deceased back to their house, where other villagers gathered. Subsequently, P.W.3, along with others, proceeded to Lingaraj Police Station to lodge the FIR. On receipt of the written complain, P.W.22, the I.O., registered the F.I.R. vide Lingaraj P.S. Case No. 76/2003 for offences under sections 364, 376(2)(f), 302 and 34 of the Indian Penal Code, 1860, prompting the commencement of investigation.

3. In the course of the investigation, P.W.22, the IIC of Lingaraj and the Investigating Officer (I.O.) of this case, examined the complainant, visited the crime scene, and requisitioned the services of a scientific officer and a police dog. He conducted an inquest over the deceased-victim's body in the presence of witnesses, marked as Ext.1, and sent the body to the Chief Medical Officer, Capital Hospital, for a post-mortem examination. The police dog was used in the investigation by being given a scent,



which led from the crime scene to the complainant's house where the body was kept, touching the cabin of Respondent No.1 along the way. The I.O. seized bloodstained and sample leaves from a creeper and an Amari plant. After the post-mortem, he also seized the deceased's clothing. Confidential inquiries in the village revealed that Respondent No.1 had previously committed rape on three other minor girls on different occasions and was allegedly involved in an illicit relationship with another woman in the village. Respondent No.2 was frequently seen with Respondent No.1, as they often indulged in intoxication together. On the night of the incident, both Respondents were seen consuming bhaang near Pratap Das's cabin and heading towards the riverbank road. The post-mortem report was received on 20.05.2003. On the same day, the I.O. received information that both accused had been spotted near Samantarapur. He conducted searches and raids at probable locations, ultimately arresting both Respondents in the village of Gangeswarpur. The I.O. seized their clothing and sent them for medical examination. On 21.05.2003, the I.O. received the post-mortem and query reports from the Medical Officer (P.W.13). The material objects were sent for further medical examination, and the corresponding report was marked as Ext.13. Upon completing the investigation and finding a prima facie case against the accused persons, a charge sheet was filed against Respondent Nos. 1 and 2 on 16.09.2003, to face trial.

4. The case of the defence is one of complete denial and false accusations.

5. To bring home the charge, the prosecution examined 22 witnesses in all. The defence, on the other hand, examined none.



6. The learned trial Court having believed the evidence of the prosecution witnesses, found the prosecution to have proved its case beyond all reasonable doubt and held the Appellant guilty and convicted him awarding sentence as described above.

7. Mr. S. B. Mohanty, learned Additional Government Advocate, submitted that the circumstances surrounding the incident, when viewed collectively, point conclusively to the guilt of the Respondents. The prosecution relies on the last-seen theory, asserting that Respondent No.1 was the last person seen with the deceased on the night of the *pratistha* ceremony, as testified by P.W.2. He further argues that the police dog tracked a scent trail from the location where the deceased's body was found to Respondent No.1's shop and a nearby tubewell, strengthening the inference of his involvement. Another circumstance highlighted by the learned counsel is Respondent No.1's suspicious behaviour during the search, such as avoiding questions about the deceased and opening his shop the next morning while appearing distracted and giving wrong items to customers, allegedly acting like someone burdened with guilt. Mr. Mohanty further emphasises that Respondent No.1's past conduct, specifically the allegations of sexual misconduct against P.W.8 and other minors, portrays a pattern of predatory behaviour. As for Respondent No.2, Mr. Mohanty argues that his close association with Respondent No.1 on the night of the incident, along with his alleged gestures prompting Respondent No.1 to close the shop and leave after the body was discovered, indicate a degree of complicity. He finally concludes that these circumstances, taken together, form a chain of evidence sufficient to establish guilt beyond a reasonable doubt.



8. Ms. A. Mishra, learned counsel for the Respondent, on the other hand, argues that the prosecution has failed to establish their guilt beyond reasonable doubt, as the case rests entirely on weak circumstantial evidence. She contends that the last-seen theory is unreliable, relying on the testimony of P.W.2, who later turned hostile and admitted that due to darkness, he could not clearly see anything. She further highlights that the police dog evidence is equally inconclusive, as no proper protocols were shown to have been followed, and no forensic evidence was recovered to corroborate the dog's actions. Ms. Mishra asserts that their alleged suspicious behaviour during the search, such as, Respondent No.1 opening his shop the next morning and appearing distracted does not amount to proof of guilt. As for the allegations of past misconduct involving P.W.8, Ms. Mishra argues that such unreported incidents cannot be relied upon to establish a pattern of behaviour, nor do they have any direct bearing on the present case. Ms. Mishra also asserts that Respondent No.2's presence with Respondent No.1, without any independent evidence implicating him, does not prove criminal involvement. She finally concludes that the prosecution has failed to present a coherent chain of circumstances leading unerringly to their guilt and that the benefit of doubt must be extended to them.

9. Having regard to the arguments advanced by the learned counsel for the respective parties, it is incumbent to deal with the testimonies of the relevant witnesses for better appreciation of the case.

P.W.1 is a co-villager and an inquest witness. He stated that he heard about the incident and the background of Respondent



No.1. He further mentioned that whenever the police dog was brought to the scene, it consistently went under Respondent No.1's cabin. The police dog was taken to the pond, from where it led the police team to the spot where the deceased's body was kept, i.e., the Informant's house. The dog then guided the team to Respondent No.1's shop and the nearby tubewell.

P.W.2 is a minor, and during his examination, he underwent a *voir dire* test to assess his understanding of the questions posed. It was determined that he understood the implications of the questions and provided rational answers. Since he did not comprehend the meaning of an oath, no oath was administered. He stated that on the night of the incident, during the *pratistha* ceremony, he was playing with other children, including the deceased, around 9 p.m. In his cross-examination, he clarified that they were playing in front of the school near the river embankment, as the temple had lights and a microphone arrangement. He saw the deceased standing on the embankment, facing towards Tikarpada village, when Respondent No.1 called her and took her in that direction. P.W.2 called out to the deceased, but she did not respond. He admitted that due to the darkness, he could not see much and eventually went home. Later, the deceased's father came searching for her. P.W.2 turned hostile during his testimony.

P.W.3 is the deceased's uncle. He stated that during the *pratistha* ceremony, his daughter was also playing with the other children. Around 8:30 p.m., while heading to the temple, his daughter ran to him, frightened, and said someone was scaring them by pretending to be a ghost. He did not take it seriously at the time and told her to go home. As he moved around the temple, the



children left and went inside the village to the old Gopinath temple. Around 9:30 p.m., the deceased's mother came to the temple but could not find the deceased. The villagers started searching for her, except for the Respondents. P.W.3 further stated that Respondent No.2 was his agnate and lived nearby, while Respondent No.1 lived farther away. He recalled an incident when P.W.5 went near the dried pond to search for the deceased. Respondent No.1 asked P.W.5 if he was collecting mangoes from a nearby tree, which annoyed him. The next morning, when P.W.3 revisited the new Shiva temple, he noticed the Amari bushes near the dried pond were disturbed. Upon inspection, he found the deceased lying about 4 to 5 feet away. He asked her why she was sleeping there but quickly realised she was dead. He carried her body on his shoulders to P.W.4's house and observed injuries on her cheeks, neck, and private parts. The villagers soon gathered, and P.W.3, along with P.W.5, went to Lingaraj Police Station to lodge the FIR. P.W.3 also stated that Respondent No.1 had previously raped three other minor girls, including P.W.8. No criminal case was initiated as Respondent No.1 begged for forgiveness from the villagers and was let off. P.W.3 suspected Respondent No.1 as the perpetrator in this incident because he avoided participating in the search for the deceased. Moreover, while the village mourned, Respondent No.1 opened his shop and appeared distracted, giving wrong products to customers. He further testified that when the police dog arrived, it first went to the spot where the body was found, then led the team to the deceased's house, and finally ran toward Respondent No.1's shop, circling it and heading to the nearby tubewell. In his cross-examination, P.W.3 mentioned that Respondent No.1 opened his shop at 7 a.m. and closed around 10 a.m., during which the police



dog circled his shop. He also noted some stains on the deceased's clothing and body.

P.W.4 is the father of the deceased and the Informant. He states that during the *pratistha* ceremony, the children from his joint family were playing near the temple including the deceased. He was chatting with the neighbours in front of his house, when his wife came to him saying that all the children returned to their houses by 10 p.m. except the deceased. This is when everyone started to look for his daughter. At about 10:45 p.m., his wife saw both the Respondents taking bath, so she asked Respondent no.1 if he had seen the deceased, to which he did not say anything and went away keeping his face down. She then asked Respondent no.2 to have seen the deceased, to which he just nodded. P.W.4 along with the villagers went in search for the deceased but could not trace her. P.W.5 even took P.W.4's auto rickshaw to search for her but could not find her. The next morning, P.W.4 was nearby his house when he saw his brother P.W.3 carrying the deceased on his shoulder. He noticed finger marks on the left side of the neck of the dead body. There was also bite marks on both of her cheeks. Her wearing pants were also opened. We suspected both the Respondents to be the perpetrators because of their conduct. Respondent No.1 has called the deceased into his cabin multiple times before. The wife of P.W.3 had forbidden the deceased to not go to Respondent No.1's shop as he had raped P.W.8, which P.W.3 did not know about. After lodging the FIR, P.W.3 went to the river embankment near the new Shiva temple and he noticed Respondent No.1 sitting there and Respondent No.2 gave him some sought of indications and they both left. He further mentioned that when he, along with P.W.5 and P.W.17, was looking for the deceased, on the night of deceased's



disappearance, Respondent No.1 asked if they were collecting mangoes. In his cross-examination, he states that Respondent No.1 was sitting in his shop when Respondent No.2 indicated something to him before they left keeping their face down.

P.W.5 is a co-villager. During the Pratistha ceremony, the children of the village including the deceased were playing near the temple. He forbade the children from entering inside the temple as it was newly constructed. He did not see the deceased after that. After a while, the deceased father, P.W.4 told him that he cannot find his daughter and hence everyone started looking for her. While he was searching near the river embankment, some people were sitting there including Respondent No.1, who asked him sarcastically "tu kan amba khojuchu." He got annoyed and left. The next morning, P.W.3 found his niece dead inside the Amari bush near the banyan tree.

P.W.6 is the co-villager. He also corroborated the fact that the police dog went to the spot where the dead body was found and then to the Informant's house. From there, it went to Respondent No.1's shop and then to the nearby tube well. In his sworn testimony, he states that his daughter who is 8 years old was forcibly taken by Respondent No.1 to a half-constructed temple of our village by tempting her with chocolates and then raped her. The daughter returned back weeping and disclosed the incident before her mother and grandmother who were in the house. P.W.6 went to the father of the Respondent No.1 when got the information but he did not take any action. After 7 days, P.W.6 stopped Respondent No.1 at Samantarapur crossing and forcibly made him sit in the ambassador car, which he was driving and took him to DAV school



where he was working as a driver. When confronted, Respondent No.1 admitted to the fact and begged apology by falling on P.W.6's feet. P.W.6 excused him and warned him that if he would repeat such action god will not forgive. P.W.6 also states that Respondent No.1 admitted to have raped two other minor girls before. The incident about P.W.6's daughter was admittedly known to the villagers.

P.W.8 is the minor daughter of P.W.6. She underwent voir dire test. She understood the implication of the questions put to her and answered rationally. The deceased was her classmate. She explains that three years ago, Respondent No.1 called her and took her to a half-constructed room of the temple. He then spread a napkin on the floor of that room, made her lie there, opened her pants and raped her. She wore her pants and went home crying and told everything to her mother and grandmother. Her grandmother upon noticing traces of semen on the pants of P.W.8, took her to the house of Respondent no.1, and complained to his father. Respondent no.1 admitted to the act and begged apology, to which, the grandmother warned him that if he ever did it again, she will complain to the police. P.W.8 further states that the deceased told her that the Respondent no.1 would do the same to her what he did to P.W.8. P.W.8 never told the deceased about the incident. In her cross-examination, P.W.8 says that the villagers knew about her incident and denied to the question if she was deposing falsely by instigated by her father as Respondent no.1 had committed rape on her.

P.W.9 is the mother of the deceased. On the night of Pratistha ceremony, at about 6.15 P.M, the deceased had returned



home from Tikarapada. She changed her dress, went to the temple, returned back home at 8.45 P.M. Thereafter, the deceased took her dinner at about 9.15 P.M with her mother, and went to the temple again. Around 9.40 P.M, when the deceased did not return, P.W.9 went looking for her near the temple. After searching for her a while, she informed others and everyone started looking for the deceased. Around 10.45 P.M, P.W.9 noticed both the Respondents returning after taking bath while sitting in her house dandapindha. She asked Respondent no.1 if he had seen the deceased, to which he did not say anything and went away keeping his face down. She then asked Respondent no.2 to have seen the deceased, to which he just nodded. She suspected both the respondents to be involved because Respondent no.1 used to give the articles more in quantity to her daughter whenever they visited his shop and often called the deceased inside his shop.

P.W.9 often forbade the deceased to go to the Respondent No.1's shop and she did not inform this to her husband because he would get mad. P.W.9 suspected the Respondent No.1 as he had committed rape on P.W.8.

10. Since it is not disputed that the nature of death is homicidal, we do not find it relevant to discuss on this issue to make the judgment bulky.

11. Coming to the culpability of the Accused-Respondents, the case of the prosecution is based on circumstantial evidence, and it is trite law that in a case of circumstantial evidence, before reaching a conclusion, the Court is required to examine the evidence on the touchstone of the decision reported in the matter of *Sharad Birdhi Chand Sarda vs. State of Maharashtra* reported in AIR 1984 SC 1622 –



“3:3. Before a case against an accused vesting on circumstantial evidence can be said to be fully established the following conditions must be fulfilled as laid down in Hanumant’s v. State of M.P. [1953] SCR 1091.

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a corpus delicti.

Hanumant v. The State of Madhya Pradesh [1952] SCR 1091; Tufail (Alias) Simmi v. State of Uttar Pradesh [1969] 3 SCC 198; Ramgopal v. State of Maharashtra AIR 1972 SC 656; and Shivaji Sahabrao Babode & Anr. v. State of Maharashtra [1973] 2 SCC 793 referred to.

3:4. The cardinal principle of criminal jurisprudence is that a case can be said to be proved only when there is certain and explicit evidence and no pure moral conviction.”

12. One of the circumstances appearing in the prosecution case is with regard to the last-seen theory. While appreciating the prosecution case, in this regard, reference may be made to the



decision of the Hon'ble Apex Court in the matter of *Satpal vs. State of Haryana* reported in (2018) 6SCC 610, para 6, as under: –

“Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have been taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstance, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine”

13. In the instant case, the Respondents were allegedly the last persons seen with the deceased before her death. However, upon careful scrutiny, the evidence fails to meet the standards required for invoking this doctrine. In *Satpal vs. State of Haryana (Supra)*, the Hon'ble Supreme Court observed that the last-seen theory is a weak form of evidence and cannot be the sole basis for conviction unless supported by other circumstances. In the present case, the prosecution primarily relied on the testimony of P.W.2, a minor



witness, to establish the last-seen theory. P.W.2 initially stated that during the *pratistha* ceremony, at around 9:00 p.m., he saw Respondent No.1 calling the deceased towards Tikarpada village while she was standing on the river embankment. However, during cross-examination, P.W.2 admitted that due to the darkness, he could not see much and eventually went home. Importantly, P.W.2 later turned hostile, thereby weakening the prosecution's case.

Moreover, there is no credible evidence to suggest that the Respondents were in the company of the deceased in close proximity to the time of her death. The deceased was reported missing around 10:00 p.m., and her body was discovered the following morning. The time gap between the alleged last sighting and the discovery of the body is substantial, leaving ample room for the involvement of other persons. The absence of any direct evidence placing the Respondents with the deceased immediately before her death breaks the chain of circumstances necessary for applying the last-seen theory. Additionally, the prosecution failed to recover any incriminating material from the Respondents or establish any other conclusive circumstances linking them to the crime. As per **Satpal** (*Supra*), the evidence presented does not form a continuous chain leading to the inescapable conclusion that the Respondents were responsible for the death of the deceased.

14. Secondly, the prosecution highlighted Respondent No.1's supposed suspicious behaviour during the search for the deceased as a significant circumstance to support the last-seen theory. From the testimonies of P.W.4, P.W.5, and P.W.9, it appears that Respondent No.1 did not actively participate in the search for the deceased. P.W.4 stated that when his wife questioned Respondent



No.1 about the whereabouts of the deceased, Respondent No.1 remained silent and walked away with his head down. Similarly, P.W.9 recounted a similar interaction, where Respondent No.1 avoided eye contact and did not respond when asked about the deceased's whereabouts. The prosecution argued that this silence indicated guilt. P.W.5 testified that during the search, he encountered Respondent No.1 near the river embankment, at about 11:30 p.m., who sarcastically asked, "*Tu kan amba khojuchu?*" ("Are you searching for mangoes?"). The prosecution interpreted this remark as an attempt to divert attention. However, in the absence of further evidence, such a comment could be construed as a careless or inappropriate remark, rather than proof of involvement in a heinous crime.

Moreover, the prosecution failed to demonstrate that Respondent No.1 deliberately avoided participating in the search. The evidence merely suggests that he was present in the village while the search was ongoing. No witness testified that Respondent No.1 actively obstructed the search or exhibited behaviour that directly linked him to the crime. Mere non-participation in the search for a missing person does not automatically lead to the inference of guilt unless it is coupled with other incriminating circumstances forming a complete chain of evidence. In the present case, there is no concrete evidence linking Respondent No.1's conduct during the search to the crime. His behaviour, while arguably indifferent or inappropriate, cannot be deemed sufficient to establish guilt beyond reasonable doubt.

15. Another key circumstance relied upon by the prosecution is the alleged past conduct of Respondent No.1, specifically the



accusation that he previously raped P.W.8, which was purportedly resolved within the village without any formal complaint. The prosecution contended that this past act establishes a pattern of behaviour, thereby implicating him in the present crime. However, upon closer examination, the evidence fails to establish any direct nexus between the alleged past conduct and the present incident. The cornerstone of this argument rests on the testimony of P.W.8, who stated that three years prior, Respondent No.1 lured her into a half-constructed temple, spread a napkin on the floor, removed her pants, and raped her. P.W.8 claimed that upon returning home, she informed her mother and grandmother, who confronted Respondent No.1's father. Allegedly, Respondent No.1 admitted his guilt, begged for forgiveness, and was let off with a warning by the villagers. However, no formal complaint or police report was filed, and there is no corroborative evidence to substantiate this claim.

Furthermore, the notion that a serious crime such as rape could be resolved informally within the village, without any formal action, seriously questions its credibility. It is unlikely that such a grave offense would be quietly settled, especially considering the gravity of the allegation. Additionally, no independent witnesses from the village confirmed that such an incident occurred. Even P.W.6, P.W.3, and other witnesses who claimed to have "heard" about Respondent No.1's antecedents provided no further details, nor did they witness any act that could establish a pattern of misconduct of Respondent No.1. Mere rumours or village gossip cannot form the basis for conviction without concrete evidence.

Moreover, the prosecution failed to draw any cogent link between the alleged incident involving P.W.8 and the present case.



No evidence was presented to demonstrate a recurring pattern of behaviour. Even if it is assumed that the incident with P.W.8 occurred, it does not automatically implicate Respondent No.1 in the present case without substantive proof of his involvement. Past conduct or bad character cannot be used as substantive evidence of guilt in a separate crime unless it is part of a larger chain of circumstances that leads to the inescapable conclusion of the accused's guilt. Additionally, the defence rightly pointed out that no other instances of misconduct by Respondent No.1 were directly reported. The allegations remained unsubstantiated, with no pattern of behaviour conclusively established.

16. Another circumstance highlighted by the prosecution is the conduct of Respondent No.1 on the morning the deceased's body was discovered. The prosecution claimed that while the entire village was mourning, Respondent No.1 opened his shop and behaved in a distracted manner, giving customers the wrong items. It was further alleged that upon receiving some gestures from Respondent No.2, Respondent No.1 abruptly closed his shop and left, implying guilt. However, upon closer scrutiny, this conduct does not establish any incriminating inference. The mere act of opening one's shop during a time of communal mourning cannot, by itself, be deemed evidence of guilt. Furthermore, the allegation that Respondent No.1 appeared distracted and provided wrong items to customers is speculative at best. Human reactions to distressing events vary widely, and any unusual behaviour could just as easily be attributed to anxiety, confusion, or even curiosity about the unfolding events in the village, rather than consciousness of guilt.



Additionally, the prosecution itself has admittedly placed that Respondent No.1 was in habit of taking *ganja* (cannabis). This raises the plausible explanation that his alleged distracted state and erratic behaviour could have been a result of intoxication rather than any criminal involvement. In the absence of any direct evidence linking Respondent No.1 to the crime, his conduct at the shop does not satisfy the threshold required to form part of a conclusive chain of circumstances. Moreover, the alleged gesture by Respondent No.2, prompting Respondent No.1 to close the shop and leave, lacks any corroboration or clear implication. The prosecution failed to explain the nature of the gesture, nor did it establish how this interaction could be linked to the crime. Without any substantive evidence, interpreting these actions as an indication of guilt is speculative and unwarranted. The prosecution's attempt to construe Respondent No.1's conduct as indicative of guilt fails to meet this standard. The possibility that his behaviour resulted from his known habit of consuming *ganja*, rather than any involvement in the crime, is a reasonable alternative hypothesis that cannot be ruled out.

17. The prosecution relied heavily on the police dog's trail leading to Respondent No.1's shop and the nearby tubewell. The Hon'ble Apex Court has time and again relied on the decision in the matter of *Abdul Rajak Murtaja Dafedar vs. State of Maharashtra* reported in **1970 AIR 283**, as held under –

“There are three objections which are usually advanced against the reception of such evidence. First, since it is manifest that the dog cannot go into the box and give his evidence on oath, and consequently submit himself to cross-examination, the dogs human companion must go into the box and report the dogs evidence, and this



is clearly hearsay. Secondly, there is a feeling that in criminal cases the life and liberty of a human being should not be dependent on canine inferences. And, thirdly, it is suggested that even if such evidence is strictly admissible under the rules of evidence it should be excluded because it is Rely to have a dramatic impact on the jury out of proportion to its value. In *R. v. Montgomery*, a police constable observed men stealing wire by the side of a railway line. They ran away when he approached them. Shortly afterwards the police got them on a nearby road. About an hour and half later the police tracker dog -was taken to the base of the telegraph pole and when he had made a few preliminary sniffs he set off and tracked continuously until he stopped in evident perplexity at the spot where the accused had been put into the police car. At the trial it appeared that other evidence against the accused that they had been stealing the wire was inconclusive and that the evidence of the behaviour of the tracker dog was crucial to sustain the conviction. In these circumstances the Court of Criminal Appeal ruled that the evidence of the constable who handled the dog on its tracking and reported the dog's reactions was properly admitted. The Court did not regard its evidence as, a species of hearsay but instead the dog was described as "a tracking instrument" and the handler (1) Para 378, Am. Juris. 2nd edn. Vol. 29, p. 429. (2) 1866 N.T. 160."

18. In the instant case, while assessing the police dog evidence, it is observed that the investigation lacked critical elements. The prosecution did not present evidence of the dog's training, skill, or past performance to establish its reliability. No forensic evidence, such as fingerprints, bloodstains, or incriminating materials, was recovered from the locations identified by the dog. The prosecution failed to demonstrate that the conditions under which the dog conducted the tracking were controlled or that there were no other



scent trails that could have confused the animal. Applying the principles laid down in **Abdul Razak Murtaza Dafedar** (*Supra*), since the dog cannot testify in court, its handler must provide evidence regarding the dog's behaviour. This introduces a layer of hearsay, as the handler is merely interpreting the dog's reactions rather than providing direct evidence. The dog is a mere "tracking instrument" rather than a witness, with the handler reporting the dog's behaviour. The police dog evidence, in the instant case, is unreliable in the absence of corroboration. It cannot form the basis for implicating Respondent No.1, as the investigation did not meet the necessary safeguards to ensure the reliability of the dog's actions.

19. The chemical examination report vide Ext.13 also fails to provide any conclusive evidence linking the Respondents to the crime. Despite the police seizing various items, including the deceased's clothing and the apparel of the Respondents, the prosecution could not produce any forensic findings to corroborate its allegations. There is no evidence of the presence of blood, semen, or any other incriminating material on the Respondents' clothing or at the locations identified during the investigation. Furthermore, the prosecution failed to establish that any samples collected from the crime scene matched those of the Respondents. The absence of concrete forensic evidence significantly weakens the prosecution's case, as it leaves a crucial gap in the chain of circumstances required to establish guilt beyond a reasonable doubt. The inconclusive chemical examination, coupled with the lack of other corroborative evidence, renders the prosecution's case speculative at best.



20. To sum up, the circumstances presented are neither cogent individually nor do they form an unbroken chain pointing solely to the guilt of Respondent No.1. There is no direct evidence linking him to the crime, nor has the prosecution successfully established a motive. The *last-seen theory* is shaky, relying on the inconsistent testimony of P.W.2, who later turned hostile. The police dog evidence, in the absence of proper procedural safeguards and corroboration, cannot be relied upon to prove guilt. Furthermore, Respondent No.1's alleged suspicious behaviour during the search and his past misconduct regarding P.W.8, while raising questions about his character, do not directly connect him to the present offense. The chemical examination report is inconclusive, providing no forensic support to the prosecution's narrative.

21. As for Respondent No.2, his culpability is even less convincing. He has neither been specifically named nor seriously implicated in the crime. The only allegation against him is that he was seen in the company of Respondent No.1 on the night of the incident and allegedly made some gestures to him after the deceased's body was discovered. Mere association with the principal accused is insufficient to establish guilt. No independent evidence links Respondent No.2 to the crime, nor has the prosecution demonstrated any active role played by him. The circumstances surrounding both Respondents fail to satisfy the rigorous standards required for conviction in cases based on circumstantial evidence, making their acquittal inevitable.

22. In view of the above, and considering the prosecution has failed to establish a cogent and unbroken chain of circumstances linking the Respondents to the crime, under Sections 364, 376(2)(f), 302, and 34 of the IPC beyond reasonable doubt. As such, the



judgment of the learned Adhoc Addl. Sessions Judge, F.T.C. No-I, dated 07.01.2005, acquitting the Respondents does not warrant interference and is liable to be upheld. Accordingly, the Criminal Leave Petition is dismissed on merit upon question of admission.

(Chittaranjan Dash)
Judge

B. P. Routray, I Agree

(B.P. Routray)
Judge

A.K.Pradhan/Bijay

Signature Not Verified

Digitally Signed
Signed by: BIJAY KETAN SAHOO
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 27-Mar-2025 16:17:09