IN THE HIGH COURT OF ORISSA, CUTTACK

CRA No.229 of 2000

An appeal under section 374 of Cr.P.C. from the judgment and order dated 23.08.2000 passed by the Sessions Judge, Khurda at Bhubaneswar in S.T. Case No.161 of 1998.

Prasanta Kumar Sahoo ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellant: - Mr. Sashibhusan Das
Dr. Biplab S.
Mr. S.Padhi, Advocates

For Respondent: - Mr. Partha Sarathi Nayak
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing: 16.09.2025 Date of Judgment: 09.10.2025

S.K. Sahoo, J. The appellant Prasanta Kumar Sahoo faced trial in the Court of learned Sessions Judge, Khurda at Bhubaneswar in S.T. Case No.161 of 1998 for commission of offences punishable

under sections 302/201/34 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that on 13.08.1996 night at village Banchhara under Jatni police station in the district of Khurda, he along with his wife Smt. Santilata Sahu, in furtherance of their common intention, committed murder of Jadu Sahu (hereinafter 'D-1') and Pitei Sahu (hereinafter 'D-2') by intentionally causing their death and also knowing or having reason to believe that the offences had been committed, they caused certain evidence connected with the said offences to disappear by knowingly giving false information to the police on 14.08.1996 with the intention to screen themselves from legal punishment.

The learned trial Court vide impugned judgment and order dated 23.08.2000, found the appellant guilty of the offences charged and sentenced him to undergo imprisonment for life for the offence under section 302 of the I.P.C. and to undergo R.I. for a period of five years for the offence under section 201 of the I.P.C. and both the offences were directed to run concurrently.

Prosecution Case:

2. The prosecution case, shorn of unnecessary details, is that the deceased couple (D-1 and D-2) were issueless and they adopted the appellant, who was the son of the sister of D-2

on 01.02.1993 as their son and executed a registered deed of adoption (Ext.13). The appellant along with his first wife Bijayalaxmi Sahu were residing with the deceased couple in their house at village Banchhara. The appellant deserted his first wife and married to the co-accused Santilata Sahu and brought her to the house of the deceased couple at the teeth of their opposition sowing the seeds of discord. There was also bickering amongst them as the appellant was insisting for recording the properties of the adoptive father (D-1) in his name. The appellant with his wife (co-accused Santilata Sahu) started living in separate mess in the same house where both the deceased couple (D-1 and D-2) were also residing.

It is the further prosecution case that in the intervening night of 13/14.08.1996 on the day of 'Chitalagi Amabasya', the appellant and his second wife Santilata attacked the deceased couple in their bed room killing D-1 instantaneously and critically injuring D-2 who lost her sense.

On 14.08.1996 at about 6.10 a.m., the appellant lodged a written F.I.R. (Ext.14) at Jatni police station stating therein that D-1 and D-2 were a squabbling couple and often used to assault each other and at 8.30 p.m. in the night of occurrence i.e. on 13.08.1996, they had a round of quarrels over

preparation of cakes to celebrate 'Chitalagi Amabasya', in course of which they had sworn to kill each other and in the next morning at about 4.30 a.m., the appellant found D-1 lying dead on the floor of the bed room with bleeding injuries, whereas D-2 was lying unconscious by his side and was bleeding from the head and mouth, whereupon Jatni P.S. Case No.150 dated 14.08.1996 was registered under section 302 of I.P.C. arraying D-2 as accused.

P.W.13, the I.I.C. of Jatni Police Station on registering the written F.I.R. (Ext.14), instructed P.W.14, the S.I. of Police of Jatni Police Station to investigate into the case. During course of investigation, P.W.14 examined the appellant and visited the spot and found the dead body of D-1 was lying on the floor of the bed room with bleeding injuries and also found D-2 was lying in a pool of blood with bleeding injuries in a critical condition. P.W.14 directed constable T. Pradhan to shift D-2 to the Railway Hospital, Jatni as per requisition (Ext.28). He held inquest over the dead body of D-1 and prepared the inquest report (Ext.1) and collected sample earth and blood-stained earth from the floor of the bed room of the house of D-1 where he was lying dead as per seizure list Ext.29. He also seized the broken bangles (M.O.II) from the floor of the bed room where D-

2 was lying unconscious as per seizure list Ext.3. P.W.14 also seized a blood stained Khanati with bamboo handle (M.O.I) lying on the floor of the bed room where the dead body of D-1 and the injured D-2 were lying as per seizure list Ext.2. P.W.14 also made requisition of the Scientific Officer for making scientific collection of the blood at the spot. Thereafter, P.W.14 dispatched the dead body of D-1 to S.D.M.O., Khurda for post-mortem examination. On 15.08.1996, P.W.14 received oral information from the Medical Officer, Jatni P.H.C. that D-2, who was admitted in the hospital, succumbed to the injuries. On receiving such information, P.W.14 reached at Jatni P.H.C., conducted inquest over the dead body of D-2 as per inquest report Ext.32. He sent the dead body of D-2 to the Sub-Divisional Hospital, Khurda for post-mortem examination. He also received the P.M. examination reports of both the deceased as per Exts.4 and 9.

On being transferred, P.W.14 handed over the charge of investigation of the case to P.W.13, I.I.C of Jatni Police Station on 05.11.1996. After taking over the charge of investigation, P.W.13 seized the wearing apparels of the deceased couple and broken bangles produced by the constable after post-mortem examination on 12.11.1996, as per seizure list Ext.7/2. He also examined the witnesses, sent the weapon of offence, i.e.,

Khanati (M.O.I) along with a query to the doctor (P.W.4), who conducted post mortem examination over the dead body of D-1 and received the query report Ext.5/1. He also received the query report of the doctor (P.W.7) as to whether the injuries received by D-2 could be caused by M.O.I as per query report Ext.10/1.

During course of investigation, P.W.13, the I.O. found the complicity of the appellant and his wife Santilata in the crime for which he lodged the F.I.R. (Ext.17) on 05.02.1997, which was registered as Jatni P.S. Case No.25 dated 05.02.1997 u/s 302/201/34 of I.P.C. against the appellant and his wife Santilata Sahu.

During the course of investigation after registration of the new P.S. case, P.W.13 examined the witnesses, seized the xerox copy of the adoption deed (Ext.13) executed by D-1 and D-2 in favour of the appellant as per seizure list Ext.19. He also made a prayer to the learned S.D.J.M., Bhubaneswar for sending the exhibits for chemical examination to the Director, State F.S.L., Rasulgarh, Bhubaneswar and accordingly, the exhibits were sent and the chemical examination report (Ext.16) was received. On 05.02.1997, he visited the spot, i.e. the house of the deceased persons and prepared the spot map (Ext.22). On

the same day, P.W.13 arrested the co-accused Santilata Sahu and forwarded her to the Court on the next day, i.e., 06.02. 1997. On 07.04.1997, P.W.13 seized the Log Book of the Ambulance Van bearing Regd. No.OR-02A-7710 from the driver as per seizure list Ext.23 and kept the same in the zima of the driver as per Zimanama Ext.24. He also seized the bed head ticket of D-2 from P.H.C., Jatni on 26.04.1997 where she was first admitted as per seizure list Ext.8. In spite of his best efforts, since P.W.13, the I.O. could not arrest the appellant, on completion of investigation, he submitted charge sheet on 05.05.1997 under sections 302/201/34 of the I.P.C. against the appellant and co-accused Santilata Sahu showing the former as an absconder.

3. Since the appellant remained as an absconder, the co-accused Santilata Sahu alone faced trial in the Court of learned Sessions Judge, Khurda at Bhubaneswar for the aforesaid charges in S.T. Case No.145 of 1997 and vide judgment and order dated 18.01.1999, she was acquitted of all the charges.

4. Since non-bailable warrant of arrest was issued against the appellant, he surrendered before the learned S.D.J.M., Bhubaneswar on 03.11.1998 and was taken into

judicial custody. The case of the appellant was committed to the Court of Session and registered as S.T. Case No.161 of 1998 in the Court of learned Sessions Judge, Khurda at Bhubaneswar. The learned trial Court framed charges against the appellant as aforesaid. Since the appellant refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

Prosecution Witnesses, Exhibits and Material Objects:

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

P.W.1 Jangeshwar Sahu, who was a neighbour of both the deceased couple and the appellant, stated that on hearing that D-1 was dead and D-2 was in a state of unconsciousness, he had been to their house and saw marks of injuries on both the deceased couple and there was blood clot in the chest of the D-1. He is a witness to the inquest over the dead body of D-1 and signed the inquest report (Ext.1). He also stated that since the deceased couple was issueless, they adopted the appellant, who was the sister's son of D-2 and the appellant along with his second wife, co-accused Santilata Sahu were staying in the house of the deceased couple. He further stated that there was no good feeling amongst the appellant and

his second wife on the one hand and the deceased couple on the other. He further stated that while the first wife of the appellant was there, all of them were staying in one mess, but after the desertion of the first wife, the appellant married for the second time to Santilata and then they were having separate mess. He further stated that the deceased couple were pulling on well, which he knew as a neighbour.

P.W.2 Surendra Nath Subudhi, who was also a neighbour of both the appellant and deceased couple, stated in the same manner like that of P.W.1. He is also a witness to the inquest report (Ext.1).

P.W.3 Naba Kishore Behera is a witness to the inquest report (Ext.1) as well as a witness to the seizure lists Ext.2 and 3.

P.W.4 Dr. Bimal Kumar Rath, who was working as the Gynec Specialist in the Sub-Divisional Hospital, Khurda, conducted post mortem over the dead body of D-1 and submitted his report as per Ext.4 and gave his opinion as per the query made by the I.O. vide Ext.5.

P.W.5 Nepali Das did not support the prosecution case for which he has been declared hostile by the prosecution.

P.W.6 Benudhar Jena, who was working as Pharmacist in Jatni P.H.C, Khurda produced the bed head ticket of D-2 before the I.O. which was seized as per seizure list Ext.8.

P.W.7 Dr. Abhaya Kumar Patra, who was the Pediatric Specialist at District Headquarters Hospital, Khurda, conducted post mortem examination over the dead body D-2 and submitted his report as per Ext.9 and his opinion vide Ext.10/1 pursuant to the query made by the I.O. as per Ext.10.

P.W.8 Sk. Mahammad, who was the Ambulance Driver, stated to have shifted D-2 from Railway Hospital, Jatni with injuries to Jatni hospital at Sandhapur on 14.08.1996.

P.W.9 Kishore Kumar Mohanty is a co-villager of the both the deceased couple and the appellant. He was declared hostile by the prosecution.

P.W.10 Pramod Kumar Sahu, who is the brother in-law of the appellant (brother of his first wife), has stated that the appellant married to his sister Bijayalaxmi Sahu in January 1989 and out of their wedlock, a daughter was born. He further stated that after five to six years of marriage, he came to know that the appellant again married to Santilata during the life time of his first wife. He further stated that the appellant and Santilata lived with the deceased couple in their village house.

P.W.11 Ali Ahamad Saha was the Constable working in Jatni police station, who escorted the dead body of D-1 to the hospital for post-mortem examination. He produced the wearing apparels of D-1 before the I.O. which was seized as per seizure list Ext.7/2.

P.W.12 Pramod Kumar Mohanty was the Jr. Clerk -cum- Record Keeper in the Office of the Sub-Registrar, Jatni who proved the relevant entry dt. 01.02.1993 made in the register of adoption deeds, wherein the adoption deed executed between the deceased couple and the appellant was found mentioned and he produced the same before the Court which was marked as Ext.13.

P.W.13 Prafulla Chandra Barik, who was working as Inspector in-charge of Jatni police station, is the subsequent I.O. who submitted the final charge sheet.

P.W.14 T. Hare Krushna Murty, S.I. of Police, Jatni Police Station, was the initial Investigating Officer of the case.

P.W.15 Dr. Dinakrushna Panda, who was the Surgery Specialist at D.H.H., Khurda, treated D-2 on 14.08.1996 and finding her condition critical, he referred her to S.C.B. Medical College and Hospital, Cuttack and since D-2 was not shifted as referred to, she expired on the next day at about 4.30 a.m. He

also noted some injuries on the person of D-2 and proved the bed ticket as per Ext.26.

The prosecution exhibited thirty four documents. Ext.1 is the inquest report, Exts.2, 3, 8, 19, 23, 29 are the seizure lists, Ext.4 is the post mortem report of D-1, Ext.5/1 is the opinion of the doctor (P.W.4), Ext.6 is the dead body challan, Ext.7/3 is the seizure list of wearing apparels of both the deceased, Ext.9 is the P.M. report of D-2, Ext.10/1 is the opinion of the doctor (P.W.7), Ext.11 is the command certificate, Ext.12 is the acknowledgment of the appellant, Ext.13 is the relevant entry in respect of adoption deed, Ext.14 is the F.I.R. lodged by the appellant, Ext.15 is the formal F.I.R., Ext.16 is the chemical examination report, Ext.17 is the F.I.R. lodged by P.W.13, Ext.18 is the formal F.I.R., Ext.20 is the requisition, Ext.21 is the forwarding letter of S.D.J.M. for sending the M.Os. for chemical examination, Ext.22 is the spot map, Ext.24 is the zimanama, Exts.25 and 26 are the bed head tickets, Ext.27 is the command certificate, Ext.28 is the requisition, Ext.30 is the spot visit report, Ext.31 is the casualty memo regarding death of D-2, Ext.32 is the inquest report of D-2, Ext.33 is the dead body challan and Ext.34 is the command certificate.

The prosecution also proved six material objects. M.O.I is the Khanati with bamboo handle, M.O.II is the broken bangles, M.O.III is the saree, M.O.IV is the broken bangles, M.O.V is the blood stained thread and M.O. VI is the control thread.

Defence Plea:

6. The defence plea of the appellant is one of denial. Though the appellant admitted about his adoption by the deceased couple by virtue of registered adoption deed dt. 01.02.1993 and that he alongwith his second wife Santilata Sahu was residing with the deceased couple in the same house and also about his presence with his second wife on the occurrence night in the spot house and that the body of D-1 and D-2 were lying in their bedroom with bleeding injuries and the blood-stained Khanati (M.O.I) and broken bangles (M.O.II) were also lying in the bedroom of the deceased couple, but he denied his involvement in the commission of murder of the deceased couple. He specifically pleaded that his elder brother who was adopted by the deceased couple prior to his adoption by them, was murdered in the year 1978 whereafter he was adopted. He pleaded that the persons who had committed the murder of his

elder brother might have killed the deceased couple by conspiring.

Defence has neither examined any witness nor exhibited any document.

Findings of the Trial Court:

7. The learned trial Court after assessing the oral as well as documentary evidence on record, came to hold that the following circumstances unerringly point towards the guilt of the appellant in the commission of the murder of the deceased couple:

> **(i)** The deceased couple and the appellant and his second wife Santilata were the four persons present in the house in the fateful night;
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> **(ii)** The earlier plea of the appellant as stated in the F.I.R. (Ext.14) that the deceased couple fought and inflicted fatal injuries on each other, has not been substantiated;
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> **(iii)** The second inconsistent plea of the appellant that the persons, who had murdered his brother (Pravat) have also murdered the deceased couple, has been discarded;
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> **(iv)** There was strained relationship between the deceased couple and the appellant after he (appellant) brought home the second wife Santilata;

(v) The appellant did not show any concern to shift D-2 to the S.C.B. Medical College and Hospital, Cuttack for specialized treatment in spite of the fact that she was referred to S.C.B. M.C.H, Cuttack by the Medical Officers of Railway Hospital, Jatni and Jatni P.H.C. at Sandhapur;

(vi) The false and inconsistent plea taken by the appellant and his absconding after the I.O. (P.W.13) lodged F.I.R. (Ext.17) implicating him in the crime, are relevant under section 8 of the Evidence Act as conduct evidence.

The learned trial Court also came to the conclusion that the appellant had intentionally gave false information to the police in the F.I.R. (Ext.14) that the deceased couple quarreled with each other in the fateful night. It was held that the acquittal of the wife of the appellant namely, Santilata ipso facto does not give a clean chit to the appellant in the face of preponderance evidence, which unerringly point to the guilt of the appellant to the exclusion of guilt of any other person and accordingly, found the appellant guilty under sections 302/201 of the I.P.C.

Contentions of the Parties:

8. Mr. Sashibhusan Das, learned counsel appearing for the appellant emphatically contended that admittedly there is no ocular evidence to support the case of the prosecution with

regard to the homicidal death of the deceased couple. He argued that on hearing from his wife Santilata that both the deceased couple were lying in a pool of blood, he (appellant) found that D-1 was dead and D-2 was unconscious and accordingly, he called the co-villagers and rushed to the police station to lodge the F.I.R. (Ext.14) which was very natural on his part being the adoptive son of the deceased couple. He further argued that even though the appellant did not first take steps to shift D-2 to the hospital to save her life, but preferred to go the police station, such conduct cannot be said to be so unusual on the part of the appellant to hold him guilty for the offences charged. Moreover, the evidence on record indicates that the appellant accompanied the dead bodies of D-1 and D-2 for the post mortem examination.

Learned counsel further argued that since one F.I.R. (Ext.14) was already registered, for the self-same incident, the registration of the second F.I.R. (Ext.17) at the instance of P.W.13 is not legally sustainable. He relied upon the decision of the Hon'ble Supreme Court in the case of **T.T. Anthony -Vrs.- State of Kerala reported in (2001) 6 Supreme Court Cases 181.** He further argued that P.W.13 being the informant in the second F.I.R. (Ext.17) should not have conducted the

investigation and it should have been entrusted to some other competent officer of the police station.

It is further argued that there is no clinching material on record as to what was the basis for suspecting the involvement of the appellant and his wife Santilata in the crime even though the appellant was co-operating with the investigation and his conduct was very natural.

It is further argued that when P.W.13 lodged the second F.I.R. and also arrested co-accused Santilata on 05.02.1997, it was but natural on the part of the appellant to abscond, apprehending his arrest by P.W.13 and mere abscondence by the appellant is not sufficient to hold him guilty.

Learned counsel further submitted that the prosecution has not ruled out the entry of an outsider to the spot house in the night of occurrence and therefore, merely because the appellant and his second wife Santilata (acquitted) were present in the spot house in another room, the appellant cannot be held guilty for the offences charged. According to the learned counsel, since the prosecution has failed to establish a complete chain of circumstances, in view of the five golden principles laid down by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda -Vrs.- State of Maharashtra reported in**

A.I.R. 1984 S.C. 1622, it is a fit case where benefit of doubt should be extended in favour of the appellant.

9. Mr. Partha Sarathi Nayak, learned Addl. Government Advocate, on the other hand, supported the impugned judgment and argued that not only the prosecution has proved the motive on the part of the appellant to commit the crime, but also how on seeing the condition of the deceased couple, the appellant who was residing in the same house along with his second wife as their adoptive son and daughter-in-law, instead of shifting D-2, who was lying senseless in an injured condition to the hospital, preferred to go to the police station to lodge F.I.R. He even did not take D-2 to S.C.B.M.C.H., Cuttack as per doctor's advice perhaps remaining under impression that once D-2 got survived, the truth would come out. He further argued that the plea taken by the appellant in the F.I.R. that there was possibility of fight between the deceased couple inflicting fatal injuries to each other is not at all believable inasmuch as D-1 and D-2 were aged about 75 years and 65 years respectively and there is also evidence on record that both the couple were having a cordial relationship. He argued that since during course of investigation of the case on the F.I.R. lodged by the appellant, the complicity of the appellant and his wife came to the fore, the

I.O. (P.W.13) could have arrayed both of them as accused without lodging a separate F.I.R., but lodging of second F.I.R. cannot be said to be an illegality or incurable defect of such a nature which would create doubt over the conduct of the I.O. or vitiate the entire prosecution case. He further argued that unless any bias or mala fide is attributed against P.W.13, there is no justification in raising finger towards the investigation conducted by him as there was no legal bar on his part to investigate the case. He argued that the evidence of the witnesses, i.e., P.W.1 and P.W.2 so also the evidence of the doctors P.W.4, P.W.7 and P.W.15 coupled with the evidence of the two I.Os. P.W.13 and P.W.14 are clear and unambiguous and there is no missing link in the chain of circumstances and therefore, even in absence of direct evidence, the learned trial Court was justified in convicting the appellant on the basis of circumstantial evidence and thus, the appeal should be dismissed.

Principles for appreciation of case based on circumstantial evidence:

10. Admittedly, there is no direct evidence relating to the commission of murder of the deceased couple and the case is based on circumstantial evidence.

In the case of **Sharad Birdhichand Sarda** (supra), a Bench of three Judges of the Hon'ble Supreme Court, after analyzing various aspects, laid down certain cardinal principles for conviction on the basis of circumstantial evidence. It has been laid down that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

> **(i)** the circumstances from which the conclusion of guilt is to be drawn should be fully established;
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> **(ii)** the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
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> **(iii)** the circumstances should be of a conclusive nature and tendency;
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> **(iv)** they should exclude every possible hypothesis except the one to be proved; and
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> **(v)** 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, according to the Hon'ble Supreme Court, constitute the panchsheel of the proof of a case based on circumstantial evidence.

It is thus clear that even in the absence of direct evidence, if various circumstances relied on by the prosecution relating to the guilt of the accused are fully established beyond all reasonable doubt, the Court is free to award conviction. Further, the chain of events must be complete in order to sustain the conviction on the basis of circumstantial evidence.

In the case of **Kishore Chand -Vrs.- State of Himachal Pradesh reported in (1991) 1 Supreme Court Cases 286**, the Hon'ble Supreme Court held as follows:

> "**4.** The question, therefore, is whether the prosecution proved guilt of the appellant beyond all reasonable doubt. In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The circumstances must

be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can be explained by any of the reasonable hypothesis then the accused must have the benefit of that hypothesis."

In the case of **Gambhir -Vrs.- State of Maharashtra reported in (1982) 2 Supreme Court Cases 351**, the Hon'ble Supreme Court held as follows:

"**9.** It has already been pointed out that there is no direct evidence of eye witness in this case and the case is based only on circumstantial evidence. The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was

committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

In a case based on circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court has to be watchful and ensure that suspicion, howsoever strong, should not be allowed to take the place of proof. A moral opinion howsoever strong or genuine and suspicion, howsoever grave, cannot substitute a legal proof. A very careful, cautious and meticulous appreciation of evidence is necessary when the case is based on circumstantial evidence. The prosecution must elevate its case from the realm of 'may be true' to the plane of 'must be true'.

The core principles which need to be adhered to by the Court, while examining and appreciating circumstantial evidence, have been strenuously discussed by the Hon'ble Supreme Court in the case of **Devi Lal -Vrs.- State of Rajasthan reported in (2019) 19 Supreme Court Cases 447** in the following words:

"**17**……It has been propounded that while scrutinising the circumstantial evidence, a Court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straitjacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused."

In the case of **Jaharlal Das -Vrs.- State of Orissa reported in A.I.R. 1991 S.C. 1388**, it is held as follows:

"The Court has to bear in mind a caution that in cases depending largely upon circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The Court has to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself

that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused".

In case of **Budhuram -Vrs.- State of Chhattisgarh reported in (2012) 11 Supreme Court Cases 588**, it is held as follows:

"**12.** The law relating to proof of a criminal charge by means of circumstantial evidence would hardly require any reiteration, save and except that the incriminating circumstances against the accused, on being proved, must be capable of pointing to only one direction and to no other, namely, that it is the accused and nobody else who had committed the crime. If the proved circumstances are capable of admitting any other conclusion inconsistent with the guilt of the accused, the accused must have the benefit of the same."

Keeping in view the ratio laid down in the aforesaid decisions of Supreme Court, the evidence on record needs to be analysed to see how far the prosecution has proved the circumstances as enumerated by the learned trial Court and whether the circumstances taken together form a complete chain

to come to the irresistible conclusion that the appellant alone and none else is the perpetrator of the crime in question.

Whether both the deceased couple D-1 and D-2 met with homicidal death?:

11. The inquest report (Ext.1), which has been prepared by the I.O. (P.W.14) indicates the nature of injuries sustained by ***D-1***. P.W.4 conducted post-mortem examination over the dead body of ***D-1*** on 14.08.1996 on police requisition and noticed the following external and internal injuries:

External injuries:

> **(i)** Lacerated injury on left forehead of size 1" x 1" x ½" with extravasation of blood into the both eye lids. On dissection, there was extravasation of blood into the tissue spaces without any fracture of underlying bone;
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> **(ii)** Bruise over the right side of the chest of 5" x 3" size. On dissection, there is fracture underlying ribs from 2nd to 9th rib and there is evidence of haemorrhage into the spaces;

Internal injuries:

> On internal examination, the pleural cavity is full of blood with laceration of pleura (underlying injury no.2) and right lungs. Right lung looks pale. Left lung and pleura intact and pale.

Heart:- Ventricles empty and all large vessels intact. All abdominal viscera looked pale and intact except liver which is lacerated on the lateral surface and looks pale. Abdominal cavity is filled with blood, stomach contains near about 300 cc of semi-digested food materials.

Intracranial dissection:- Meninges and brain intact and pale.

P.W.4 further stated that the cause of death was due to haemorrhage out of the above injuries leading to shock and the death was within 24 hours prior to his examination and all the injuries were ante mortem in nature and were caused by hard and blunt weapon. It further appears from the evidence of P.W.4 that on 18.01.1997, the I.O. (P.W.14) made a query regarding possibility of the injury found on ***D-1*** by Khanati (M.O.I), which was produced before him and on examination, P.W.4 opined that the injuries on ***D-1*** could be caused by M.O.I. Nothing has been elicited by the defence in the cross-examination to disbelieve the evidence of the doctor (P.W.4) and that the death of ***D-1*** was homicidal in nature.

Similarly, the inquest report (Ext.32), which has been prepared by the I.O. (P.W.14) indicates the nature of injuries sustained by ***D-2***. P.W.7 conducted post-mortem examination over the dead body of ***D-2*** on 15.08.1996 on police

requisition and noticed the following external and internal injuries:

External injuries:

(i) Black eye right side;

(ii) Abrasion on lateral angle of right eye with haematoma on right temporal region;

(iii) Fracture of right mandible and lower jaw medial five teeth with mandible separated from lateral part, heavily blood stained and clots are present;

(iv) Tongue was lacerated in middle part ½'' x ½'' heavily stained with blood.

Internal injuries:

On dissection, it was found that there was fracture of right side ribs from second to fifth ribs with lacerated injury to right lung lateral aspect and there was heavy collection of blood in thoracic cavity.

P.W.7 opined that all the injuries were ante mortem in nature and sufficient in ordinary course of nature to cause death and death was caused by shock and haemorrhage due to injuries to vital parts of organ like lungs and also due to heavy bleeding. It further appears from the evidence of P.W.7 that on 30.01.1997, the I.O. (P.W.14) made a query regarding

possibility of the injury found on ***D-2*** by Khanati (M.O.I), which was produced before him and on examination, P.W.7 opined that all the injuries on ***D-2*** were unlikely to be caused by M.O.I. He proved his opinion vide Ext.10/1. However, on being declared hostile by the prosecution, P.W.7 stated that the all the injuries on the person of D-2 could be possible by the handle of M.O.I and not by blade portion. Nothing has been elicited by the defence in the cross-examination to disbelieve the evidence of the doctor (P.W.4) and that the death of ***D-2*** was homicidal in nature.

After going through the evidence on record, more particularly, the inquest reports of D-1 and D-2 vide Exts.1 and 32 respectively, the evidence of the two doctors P.W.4 and P.W.7, who conducted post-mortem examination over the dead bodies of D-1 and D-2 respectively and the post mortem report findings vide Exts.4 and 9, we are of the humble view that the learned trial Court has rightly came to the conclusion that the deceased couple D-1 and D-2 met with homicidal death. The homicidal death aspect of the deceased couple has also not been challenged by Mr. Das, learned counsel for the appellant. Thus, the prosecution has successfully established that D-1 and D-2 met with homicidal death.

Motive:

12. According to the prosecution case, the appellant committed the crime in order to grab the properties of the deceased couple D-1 and D-2.

Learned counsel for the appellant argued that the deceased couple had already executed a deed of adoption as per Ext.13 in favour of the appellant to be their son and therefore, even accepting the evidence of P.W.1 that there was strained relationship between the deceased couple on the one hand and the appellant and his second wife on the other, it is difficult to believe that doing away with the lives of the adoptive parents was a short cut path on the part of the appellant to get immediate access to their properties.

The learned trial Court has observed that the prosecution has not spelled out the motive of the appellant in so many words, but relying on the evidence of P.W.1, the Court has observed that there was strained relationship between the appellant and the deceased couple as because the appellant drove out his first wife and brought Santilata as his second wife.

The evidence of three witnesses i.e. P.Ws.1, 2 and 9 are relevant on this issue.

P.W.1 was staying in the neighbourhood of the house of deceased couple and he has stated that the deceased couple were issueless and they adopted the appellant, who was the sister's son of D-2. The adoption deed dated 01.02.1993 vide Ext.13 was proved by P.W.12, the Jr. Clerk -cum- Record Keeper in the Office of the Sub-Registrar, Jatni. The marriage of the appellant with his first wife Bijayalaxmi Sahu was solemnised in the month of January, 1989 as per the evidence of P.W.10, brother of Bijayalaxmi Sahu. Thus the adoption of the appellant was made by the deceased couple four years after the first marriage of the appellant. P.W.10 stated that the second marriage of the appellant with co-accused Santilata was held five to six years after the first marriage during the life time of the first wife. The occurrence in question took place on 13/14.08.1996 night. Therefore, the appellant and his second wife Santilata were staying in the house of the deceased couple after their marriage for about a year prior to the occurrence.

P.W.1 stated that there was cordial relationship between the deceased couple and the relationship between the deceased couple and the appellant became strained as he deserted his first wife and brought home the second wife Santilata (the co-accused). He further stated that there was no

good feeling between the appellant and his wife Santilata on one side and the deceased couple on the other side. He further stated that while the first wife of the appellant was there, all of them were staying in one mess, but after desertion of the first wife and the appellant keeping Santilata as his second wife, they were having separate mess from the deceased couple. Though P.W.1 has stated that he was having visiting terms to the house of the deceased, but his evidence is totally silent that relating to the dispute of properties, there was strained relationship between the appellant and the deceased couple D-1 and D-2. Merely because the deceased couple and the appellant and co-accused Santilata were living in separate mess, it cannot be inferred that there was property dispute between them which was the motive behind the commission of crime much less the appellant committed the crime in order to grab the properties of the deceased couple.

P.W.2 has stated that there was good feeling between the appellant and D-1 and D-2 even after Santilata was brought as second wife. He further stated that D-1 brought Shanti as his daughter in-law and thereafter they all were staying together in one mess.

P.W.9 who was staying in the neighbourhood of the house of deceased couple has stated that there was no ill feeling between the appellant and his wife with the D-1 and D-2.

In view of the evidence as adduced by the aforesaid three witnesses, we are of the view that there is no clinching evidence on record that there was strained relationship between the deceased couple and the appellant, after he (appellant) brought home the second wife Santilata. The learned trial Court should not have ignored the evidence of P.Ws.2 and 9 and came to hold relying only on the evidence of P.W.1 that there was strained relationship between the appellant and the deceased couple.

It is, of course, true that the motive remains locked in the heart of the accused which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited the accused to commit a particular crime. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

In a case of circumstantial evidence, motive has an important role to play. It is an important link in the chain of circumstances. (Ref: **Indrajit Das -Vrs.- State of Tripura : (2023) 18 Supreme Court Cases 506**). In a case based on

circumstantial evidence, motive assumes great significance inasmuch as its existence is an enlightening factor in a process of presumptive reasoning. (Ref: **Sukhram -Vrs.- State of Maharashtra : (2007) 7 Supreme Court Cases 502**). Motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused. (Ref: **Ramchand -Vrs.- State of U.P. : (2023) 16 Supreme Court Cases 510**). In the case of **Shankar -Vrs.- State of Maharashtra reported in (2023) 19 Supreme Court Cases 553**, it is held that just like complete absence of motive, failure to establish motive after attributing one, should also give a different complexion in a case based on circumstantial evidence and it will certainly enfeeble the case of prosecution. In the case of **Subash Aggarwal -Vrs.- The State of NCT of Delhi reported in 2025 INSC 499**, it is held that motive remains

hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted. In the case of **Nandu Singh -Vrs.- State of Madhya Pradesh (Now Chhattisgarh) reported in (2022) 19 Supreme Court Cases 301**, it is held that in a case based on circumstantial 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.

Thus, if motive is proved, that would supply another link in the chain of circumstantial evidence, but absence of motive cannot be a ground to reject the prosecution case, though such an absence of motive is a factor that weighs in favour of the accused. (Ref: **Prem Singh -Vrs.- State (NCT of Delhi)**: **(2023) 3 Supreme Court Cases 372**).

In view of the foregoing discussions, we are of the view that the prosecution has failed to establish any motive on the part of the appellant to commit the crime by adducing clinching evidence and therefore, we have to scrutinize the materials available on record carefully to see as to how far the prosecution has satisfactorily proved the other incriminating circumstances and whether the chain of circumstances is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and it is consistent with the only conclusion of guilt of the appellant. The chain of circumstantial evidence is essentially meant to enable the Court in drawing an inference and thus the task of fixing criminal liability upon a person on the strength of an inference must be approached with abandoned caution.

Conduct of the Appellant after the occurrence:

13. It is the prosecution case as per the F.I.R. (Ext.14) lodged by the appellant that when the appellant saw D-1 was lying dead and D-2 was lying in an unconscious state in their bed room in bleeding condition, he called the persons who were staying in the neighbourhood and they came to his house and suggested him to lodge the F.I.R. and accordingly, he came to the police station and lodged the report.

According to the learned counsel for the State, the appellant's conduct in not taking D-2 to the hospital to save her life is suspicious and he ought to have carried D-2 first to the hospital rather than going to the police station to lodge the report.

We are not at all influenced by the aforesaid submission raised on behalf of the State. We are of the humble view that the conduct of a person, either as a witness or as an accused after the occurrence, may vary from person to person and it is not expected that everybody should react in a particular manner after the occurrence. An approach by a Court in discarding the evidence on the ground of absence of a particular type of reaction of a person, may be a witness or an accused would be wholly unrealistic and unimaginative way. It depends upon the upbringing of the person, his capacity to deal with adverse situation in life, his feelings and emotions. Therefore, it cannot be said that there was any such improbability feature in the conduct of the appellant in going to the police station to lodge the F.I.R. as suggested by the co-villagers instead of carrying D-2 to the hospital.

According to the learned counsel for the State, the appellant even did not accompany D-2 to the hospital who was in

a critical condition with injuries and admitted in the Railway Hospital, Jatni and shifted to Jatni Hospital at Sandhapur. We find from the evidence of P.W.11, the Constable that the appellant accompanied him to the hospital when he carried the dead body of D-1 to D.H.H., Khurda for post-mortem examination and he made over the dead body of D-1 to the appellant after the post mortem examination. P.W.7, the doctor who conducted post-mortem examination over the dead body of D-2 on 15.08.1996 stated that the dead body was identified to him by the constables and the appellant. Therefore, the appellant not only accompanied the dead body of D-1 but also the dead body of D-2 for post-mortem examination and as such his conduct was very natural.

Inconsistent plea taken by the Appellant:

14. The learned trial Court held that the deceased couple and the appellant and his second wife Santilata were the four persons present in the house in the fateful night. The earlier plea of the appellant as stated in the F.I.R. (Ext.14) was that the deceased couple fought and inflicted fatal injuries on each other, which has not been substantiated. The second inconsistent plea of the appellant was that the persons, who had murdered his

brother (Pravat) might have also murdered the deceased couple, which has been discarded by the learned trial Court.

Neither the appellant has disputed that he along with his wife Santilata was staying in the same house where D-1 and D-2 were staying and that they were present in the spot house on the occurrence night nor he has disputed to have lodged the F.I.R. (Ext.14). Even if the plea taken by the appellant relating to the death of the deceased couple was inconsistent, but that itself would not be a factor to prove the guilt of the appellant. The prosecution cannot derive any advantage from the falsity or other infirmities of the defence version, so long as it does not discharge its initial burden of proving its case beyond all reasonable doubt. The prosecution has a bounden duty to lead an impenetrable chain of evidence suggesting the guilt of the accused and it must stand on its own leg without borrowing credence from falsity of defence evidence. A false plea set up by the defence can at best be considered as an additional circumstance against the accused provided that the other evidence on record unfailingly point towards his guilt. In the case of **Shankarlal Gyarasilal Dixit -Vrs.- State of Maharashtra reported in A.I.R. 1981 S.C. 765**, the Hon'ble Supreme Court held that falsity of defence case cannot take the place of proof of

facts which prosecution has to establish in order to succeed. A false plea by the defence can be best considered as an additional circumstance provided other evidence on record unfailingly point to the guilt of the accused. Therefore, if the evidence on record fails to point to the guilt of the accused beyond reasonable doubt, it is of no consequence whether or not the defence version is false.

Absconding of the Appellant:

15. The learned Trial Court has taken the conduct of the appellant in absconding after the I.O. (P.W.13) lodged the F.I.R. (Ext.17) against him as relevant under section 8 of the Evidence Act.

The I.O. (P.W. 13) has stated that in spite of his best efforts, he could not arrest the appellant as he absconded after 05.02.1997.

The appellant was available with the investigating agency right from 14.08.1996 when he lodged the F.I.R. vide Ext.14 and he also co-operated with the investigation. However, when P.W.13 himself lodged the F.I.R. on 05.02.1997 vide Ext.17 and arrested the lady accused Santilata, the appellant absconded perhaps apprehending his arrest by police.

The act of absconding may be a relevant piece of evidence to be considered along with other evidence, but it is as such not a determining link in completing the chain of circumstantial evidence and mere absconding should not form the basis of a conviction as it is a weak link in the chain. Absconding by itself is not conclusive, either of guilt or of a guilty conscience. In the case of **Sekaran -Vrs.- The State of Tamil Nadu reported in (2024) 2 Supreme Court Cases 176,** it has been held that abscondence by a person against whom an F.I.R. has been lodged and who is under expectation of being apprehended is not very unnatural and thus, mere absconding by the appellant after alleged commission of crime and remaining untraceable for a long time itself cannot establish his guilt or guilty conscience. Abscondence, in certain cases, could constitute a relevant piece of evidence but its evidentiary value depends upon the surrounding circumstances. This sole circumstance, therefore does not enure to the benefit of the prosecution.

In the case of **Matru -Vrs.- State of U.P. reported in (1971) 2 Supreme Court Cases 75,** it has been held that mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a

grave crime which is the instinct of the self-preservation. The act of absconding and its value would depend on the circumstances of each case. Normally, the courts are disinclined to attach much importance to the acts of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused.

Therefore, the solitary conduct of the appellant in absconding after the F.I.R. was lodged against him by P.W.13 on 05.02.1997 vide Ext.17 and his wife Santilata being arrested, cannot be given much weightage since there is no other clinching evidence available to implicate him in the ghastly crime.

Appellant and the deceased couple were present in the spot house in the night of occurrence:

16. The prosecution has relied upon the evidence of P.Ws.1 and 2 to prove the presence of the appellant and his wife Santilata in the house where the deceased couple were residing.

P.W.1, who was a close door neighbour of the appellant and the deceased couple, has stated that on 14.08.1996 morning on hearing the death news of D-1, he went to their house and found D-1 was lying dead and his wife D-2

was lying in a state unconsciousness in a pool of blood and there were marks of injuries on both the deceased couple. He further stated that in the house, both the deceased couple and the appellant along with his wife were staying.

P.W.2 who was also a close door neighbour of the appellant and the deceased couple, has stated that on 14th morning at about 4.30 a.m., on hearing the death news of D-1, he had been to their house and found D-1 was lying dead and his wife D-2 was lying unconscious with bleeding injuries. He further stated that on being asked about the reasons of death, the appellant pleaded about his ignorance.

The appellant himself in reply to question nos.7 and 9 in the accused statement as to whether he along with his second wife Santilata were present in the house of the deceased couple in the night of occurrence, has answered in affirmative.

The I.O. (P.W.14) also noticed a blood stained Khanati (M.O.I) and broken bangles (M.O.II) were lying on the floor of the bed room where the dead body of D-1 and injured D-2 were lying, which were seized in presence of P.Ws.2 and 3 under seizure list Ext.2.

Thus, it is clear that the deceased couple along with the appellant and his wife were residing in the spot house on the

night of occurrence. The dead body of D-1 and the body of D-2 in unconscious state with injuries were also found in the early morning in the bed room of the deceased couple. A blood stained Khanati (M.O.I) and broken bangles (M.O.II) were lying on the floor of the bed room.

Section 106 of the Evidence Act cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This Section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden on the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused. Section 106 of the Evidence Act obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is

able to prove some other facts especially within his knowledge, which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. (Ref: **Anees -Vrs.- The State Govt. of NCT : 2024 INSC 368**). In the case of **Rajendra -Vrs- State (NCT of Delhi) reported in (2019) 10 Supreme Court Cases 623**, it is observed that the accused must furnish an explanation that appears to the Court to be probable and satisfactory and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under section 106 of the Evidence Act is not discharged and such failure by itself can provide an additional link in the chain of circumstances proved against him.

At this stage, the rough sketch map (Ext.22) of the house of the deceased couple prepared by the I.O. (P.W.13) is relevant for consideration. It reveals that the house was square in size and faces to the South. There are three rooms in the front

side facing to the South whereas three rooms are situated in the rear row being intervened by a courtyard with a well. The kitchen room is situated in the eastern corner of the courtyard after the inner verandah of the rear row of rooms. There was a verandah to the west having an entrance door to the backyard. The stair case is situated at the corner where the side verandah joins the inner verandah attached to the front row of the rooms. Out of the three front rooms, room no.1 as shown in the map, is the entrance room having the entrance door leading to the outer verandah. Room no.2 is used as a store whereas room no.3 is the bed room of the deceased couple. Of the three rooms situated in the rear row, room nos.11 and 12 are used as store rooms and room no.10 is the store -cum- bed room of the appellant and his second wife Santilata. From the spot map (Ext.22), it appears that the bed room of the deceased couple (room no.3) is accessible from the bed room of the appellant (room no.10) through a side veranda and also through the courtyard situated in the middle of the house.

P.W.9 who is a neighbour of the deceased couple has stated that the house of the deceased couple consisted of six rooms, out of which three were pucca and rest three were having asbestos roof and the deceased couple were residing in the

pucca rooms, whereas the appellant and his second wife Santilata were residing in the asbestos rooms, which though situated at a distance of 10 ft. but were interconnected.

The staircase which was shown as No.7 in the spot map is situated in the side verandah which connects the rooms of the deceased couple with the room of the appellant and his wife Santilata. There is no evidence on record whether the staircase was complete and having a room on the roof (in Odia, it is called 'Sidhi Ghar') which was closed by door and that no intruder can enter into the house through the stair case if such door remained closed.

No evidence is available as to whether on the fateful night, the doors leading to the bed room of the deceased couple had been fully secured. No investigation has been conducted as to whether there was any chance for the intruder to have access inside the spot house of the deceased couple in the night of occurrence and thus, the commission of crime by such intruder entering into the house through the staircase or otherwise cannot be completely ruled out. It was the duty of the prosecution to prove that intruder's entry inside the spot house in the occurrence night was next to impossible. Even though the Scientific Officer along with his team arrived at the spot on

requisition of the I.O. (P.W.14) on 14.08.1996 at 10 a.m. and departed from the spot at 1 p.m. and thus remained there for three hours and collected some exhibits from the spot room and prepared the spot visit report Ext.30, but it does not indicate that there was any foot print of the appellant in the spot room or his finger print was found in Khanati with bamboo handle (M.O.I) or on any object in the room and thus nothing was found in the spot room to show that the appellant had entered inside to commit the crime. No blood-stained wearing apparel of the appellant was seized. All these are very vital aspects which go in favour of the appellant. The conduct of the appellant in remaining present in the spot house, calling the co-villagers on detecting the crime committed, rushing to the police station and lodging the F.I.R., accompanying the dead bodies for post mortem examination, remaining available to the police right from the date of his lodging of F.I.R. on 14.08.1996 till 05.02.1997 when second F.I.R. was lodged by P.W.13 speaks volumes about his innocence. Unfortunately, the learned trial Court has not given any importance to all these important aspects in favour of the appellant without any cogent reasons.

Whether registration of second F.I.R. (Ext.17) was justified?:

17. Learned counsel for the appellant raised objection to the registration of the second F.I.R. (Ext.17) at the instance of P.W.13 since one F.I.R. (Ext.14) was already registered in connection with the self-same incident.

Learned counsel for the State on the other hand argued that when the complicity of the appellant and his wife came to the fore during investigation conducted on the F.I.R. lodged by the appellant, the I.O. (P.W.13) could have arrayed both of them as accused without lodging a second F.I.R., but it cannot be said to be an illegality or incurable defect of such a nature which would create doubt over the conduct of the I.O. or vitiate the entire prosecution case.

The appellant lodged the F.I.R. (Ext.14) on 14.08.1996 in connection with the crime in question, on the basis of which, Jatni P.S. Case No.150 dated 14.08.1996 was registered under section 302 of I.P.C. against D-1. During course of investigation, P.W.13 on the basis of investigation conducted by him as well as the previous I.O. (P.W.14) came to the conclusion that the incident did not happen as reported by the appellant in his F.I.R. (Ext.14), but the appellant himself was the

author of the crime for which he lodged the F.I.R. (Ext.17) on 05.02.1997 whereupon Jatni P.S. Case No.25 dated 05.02.1997 was registered.

In the case of **T.T. Antony** (supra), it is held as follows:-

> ''**18**…….Take a case where an FIR mentions cognizable offence under Section 307 or 326 I.P.C. and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 I.P.C. need be registered which will be irregular; in such a case alternation of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which *H* having killed *W*, his wife, informs the police that she is killed by an unknown persons or knowing that *W* is killed by his mother or sister, *H* owns up the responsibility and during investigation, the truth is detected; it does not require filing of fresh FIR against *H*, the read offender, who can be arraigned in the report under Section 173(2) or 173(8) of Cr.P.C., as the case may be. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of the Cr.P.C. is that an officer in-charge of a police station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected, he has to form opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports: this is the import of sub-section (8) of Section 173 Cr.P.C.

20. From the above discussion, it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C., only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus, there can be no second F.I.R. and consequently, there can be no fresh

> investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in-charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.''

The principal object of first information report is to set the criminal law into motion. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of section 154(1) of the Cr.P.C., the concerned police officer cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. The non-qualification of the word 'information' in section 154(1) unlike in section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to

record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for the registration of a case. The condition which is sine qua non for recording a first information report is that there must be information and such information must disclose a cognizable offence. It is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in-charge of a police station satisfying the requirements of section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed from, that is to say, to register a case on the basis of such information. **(Ref: A.I.R. 1992 S.C. 604 : State of Haryana -Vrs.- Ch. Bhajanlal)**.

In the factual scenario, when the appellant lodged the F.I.R. vide Ext.14 and it disclosed a cognizable offence and since at that stage, there was no scope to enquire into the reasonableness or credibility of the information given by the appellant, the F.I.R. was rightly registered. In view of the principle laid down in the case of **T.T. Antony** (supra), when the I.O. (P.W.13) while investigating the murder case on the basis of

the F.I.R. lodged by the appellant vide Ext.14, found that the appellant himself was the author of the crime, there was no necessity in lodging a second F.I.R. vide Ext.17 arraigning the appellant and his wife Santilata as an accused. Both of them could have been arrayed as accused in the case which was instituted at the instance of the appellant as informant. We are of the humble view that the informant of a case is not excluded from becoming an accused in the same case, if during course of investigation, materials come against him relating to his complicity in the crime. In other words, even an informant can be charge sheeted as accused in the same case, if clinching materials come against him in course of investigation. However, the lodging of second F.I.R. relating to the same occurrence can be said to be an irregularity in the factual scenario and not an illegality which would vitiate the prosecution case. It cannot be said that the appellant was prejudiced merely because P.W.13 lodged the F.I.R. vide Ext.17 arraigning him as an accused while investigating the case initiated at the instance of the appellant.

Whether the investigation conducted by P.W.13 suffers from illegality:

18. Learned counsel for the appellant argued that P.W.13 being the informant in the second F.I.R. (Ext.17) should not

have conducted the investigation and it should have been entrusted to some other competent officer of the police station.

Learned counsel for the State on the other hand argued that unless any bias or mala fide is attributed against P.W.13, there is no justification in raising finger towards the investigation conducted by him as there was no legal bar on his part to investigate the case.

A police officer who has recorded F.I.R. on the basis of information received is competent to take up investigation and submit final form/final report. There is nothing in the provision of Criminal Procedure Code which disqualifies him from taking of investigation of the cognizable offence. There is no principle or binding authority to hold that the moment the competent police officer, on the basis of information received makes out an F.I.R. incorporating his name as the informant, he forfeits his right to investigate. Such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case. **(Ref: A.I.R. 2004 S.C. 2684 : State -Vrs.- V. Jaya Paul).**

In the case of **Mukesh Singh -Vrs.- State (Narcotic Branch of Delhi) reported in (2020) 10 Supreme**

Court Cases 120, it is held that in a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore, on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-to-case basis.

Moreover, any defect or irregularity during investigation, unless deliberate and for some other ulterior motive is immaterial. There is nothing on record that as an investigating officer, P.W.13 intentionally avoided to collect the required evidence and failed to take appropriate steps which he is expected to take.

Conclusion:

19. In view of the foregoing discussion, we are of the view that the circumstances have not been established with clinching evidence and the circumstances taken together do not form a complete chain. The motive behind the commission of the crime has not been proved by the prosecution. The conduct of

the appellant after the occurrence was very natural and cannot lead to any inference of guilt. The inconsistent plea taken by the appellant coupled with his presence in the spot house in another room in the night of occurrence and his absconding after registration of the second F.I.R. cannot be the sole factor to find him guilty of the offences charged.

We are of the view that the assessment of the evidence has not been done in accordance of law by the learned trial Court. In the aforesaid circumstances, no conviction can be based on circumstantial evidence since adduced in the case. The conviction seems to be based more on surmise and conjecture than on any reliable evidences from which an irresistible conclusion about the complicity of the appellant in committing the murder, can at all be drawn. The conclusion arrived at by the learned trial Court in convicting the appellant and the reasonings assigned for arriving at such conclusion is not borne out of the record and it seems that the learned trial Court has proceeded pedantically without making an in-depth analysis of facts and circumstances and the evidences laid in the trial. In our opinion, the legal duty to separate the grain from the chaff has been abandoned by the learned trial Court and therefore, the entire approach is faulty and fallible which deserves to be rectified and

upturned. Law is well settled that the fouler the crime, the higher should be the proof. In the absence of legal proof of a crime, there can be no legal criminality. Moral Conviction regarding the involvement of the appellant in the commission of the crime cannot be a substitute for a legal verdict based upon facts and law.

In view of the facts and circumstances as discussed above, we are not able to agree with the findings of the learned trial Court and we hold that the case against the appellant has not been established by the prosecution beyond all reasonable doubts.

20. In the result, the criminal appeal is allowed and the impugned judgment and the order of conviction and the sentence passed thereunder is hereby set aside and the appellant is acquitted of the charges under sections 302 and 201 of I.P.C. The appellant was released on bail by this Court during pendency of the appeal vide order dt. 23.04.2001 in Misc. No. 159 of 2001. He is hereby discharged from liability of the bail bonds and the surety bonds shall also stand cancelled.

Before parting with the case, we would like to put on record our appreciation to Mr. Sashibhusan Das, learned counsel for the appellant for rendering his valuable help and assistance

towards arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance provided by Mr. Partha Sarathi Nayak, learned Additional Government Advocate.

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

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S.K. Sahoo, J.

Chittaranjan Dash, J. I agree.

.....
Chittaranjan Dash, J.

Orissa High Court, Cuttack
The 9th October 2025/PKSahoo