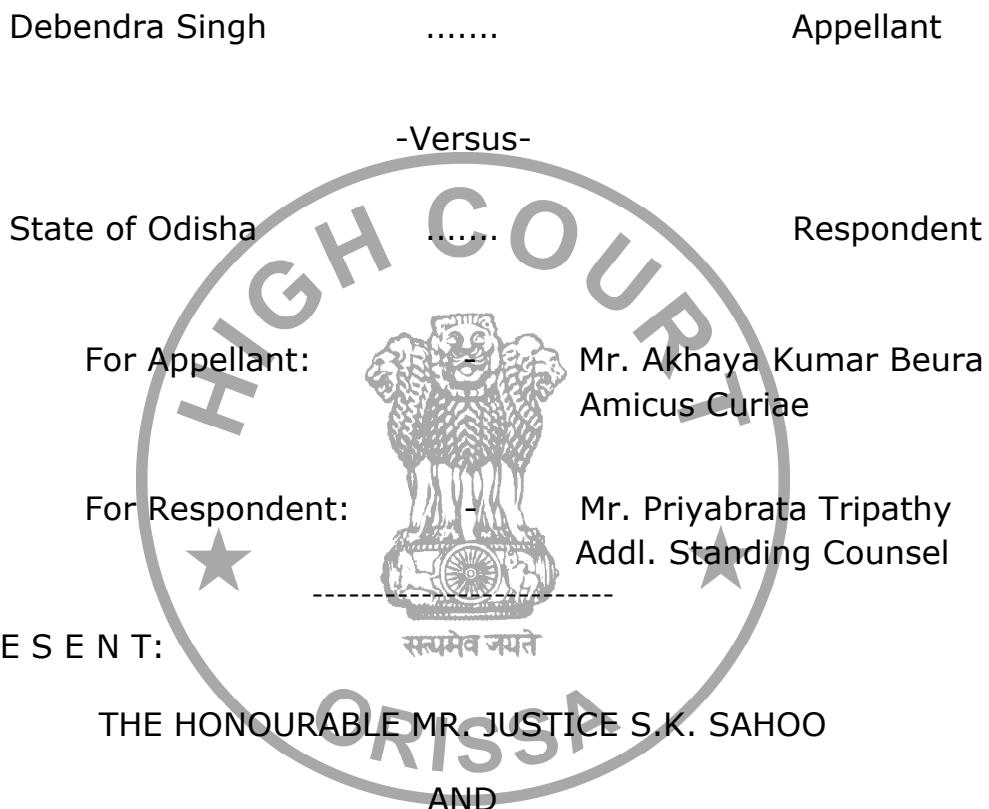


IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.13 of 2005

An appeal under section 374 Cr.P.C. from the judgment and order dated 16.11.2004 passed by the Adhoc Addl. Sessions Judge (F.T.C.), Khurda in S.T. Case No.2/405 of 2004/2003.



S.K. Sahoo, J. The appellant Debendra Singh faced trial in the Court of learned Adhoc Addl. Sessions Judge (F.T.C.), Khurda in S.T. Case No.2/405 of 2004/2003 for commission of offences under section 302 of the Indian Penal Code (hereinafter 'I.P.C.') on the

Date of Hearing: 27.09.2023 Date of Judgment: 17.10.2023

accusation that on 18.02.2003 at about 12 O' clock in the midnight at Ganganagar Division II Office of P.W.D. (R & B), Bhubaneswar, he committed murder of his niece Rajani @ Tuni (hereinafter 'the deceased'). The appellant along with another co-accused Jumar Parida was also charged under section 201 of I.P.C. on the accusation of carrying the dead body of the deceased in a car and disposing of the same by burning her face and throwing it away in a cashew nut orchard of one Kuber Parida (P.W.16) under the jurisdiction of Tangi Police Station.

The learned trial Court vide impugned judgment and order dated 16.11.2004 has been pleased to hold the co-accused Jumar Parida not guilty of the offence charged and accordingly, acquitted him. However, the appellant was found guilty under sections 302/201 of the I.P.C. and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo rigorous imprisonment for six months for the offence under section 302 of the I.P.C. and to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- (rupees one thousand), in default, to undergo R.I. for one month and both the sentences were directed to run concurrently.

Prosecution Case:

The prosecution case, as per the first information report (hereinafter 'F.I.R.') (Ext.1), lodged by Tulu Kumar Sethi (P.W.1), the Grama Rakhi of village Hata Baradi before the Officer in-charge of Tangi police station on 19.02.2003 is that on the same day at about 6.30 a.m., he got information from the villagers that a dead body of a lady was lying near the cashew nut orchard of one Kuber Parida (P.W.16) near village Jayantpur. P.W.1 proceeded to the spot and noticed the dead body and found the age of the lady would be around nineteen to twenty five years, height would be around five feet, dark brown complexion, average body health, round face and wearing a green colour nighty and having marks of injuries on different parts of her body and the face was burnt and covered with ashes.

On receipt of the written report, Bikash Ranjan Beura (P.W.24), the Officer in-charge of Tangi police station registered Tangi P.S. Case No. 22 dated 19.02.2003 under sections 302/201 of I.P.C. P.W.24 took up investigation of the case, proceeded to the spot, held inquest over the dead body of the deceased and prepared the inquest report (Ext.3) and sent the dead body for post mortem examination. The scientific team also

visited the spot to assist the police in investigation. During the course of investigation, the I.O. (P.W.24) came to know that the appellant was working as a D.L.R. night Watchman in the P.W.D. office at Unit-III, Kharvelnagar, Bhubaneswar and was staying within the official campus of Division-II at Ganganagar and the deceased was the niece of appellant who was also staying with him. When P.W.24 came in search of the appellant to that place, he found him absent from his duty from the previous night i.e. from 18.02.2003. During the course of investigation, P.W.24 could ascertain that the appellant was residing in a rented house at Palaspalli and he apprehended the appellant on 08.04.2003 from his rented house. P.W.24 further ascertained that the appellant took the dead body of the deceased in an Ambassador car first to his village, but when his own sister Susama Guru (P.W.21), the mother of the deceased, refused to receive the dead body of the deceased, the appellant returned back and sought the assistance of some villagers to bury the dead body, but having failed to get their assistance, threw the dead body near the cashew nut orchard after burning her face so that her identity could not be disclosed. For the purpose of further investigation, P.W.24 went to Capital Hospital along with the appellant for the purpose of interrogation and learnt from the

night watchman that the driver of a car bearing registration No.DL-1C/F-3496 named Jumar Parida (co-accused) was regularly coming in search of the appellant to take the hire charges and P.W.24 also ascertained that the said car was used to take patient and dead bodies from Capital Hospital campus. The appellant also identified the co-accused Jumar Parida sitting inside the car and on being questioned, the driver disclosed his identity and thereafter his statement was also recorded. The co-accused Jumar Parida was arrested and the car was seized. On the disclosure statement of the appellant, the weapons of offence, some photographs including the nude photographs of the deceased including negatives were seized from the quarters of the appellant. The nude photographs were found to have been taken inside the quarters of the appellant. The identity of the dead body was established to be the niece of the appellant. The appellant was forwarded to Court on 09.04.2003. The charge of investigation was handed over to S.I. of Police D.S. Pratap who sent the viscera for chemical examination and on completion of investigation, charge sheet was submitted on 05.08.2003 against both the appellant and the co-accused Jumar Parida under sections 302/201/34 of I.P.C.

Framing of Charges:

After submission of charge sheet, the case was committed to the Court of Sessions for trial after observing due committal procedure, where the learned trial Court framed the charges against the appellant and the co-accused on 21.01.2004 as aforesaid and since the appellant and the co-accused refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute them and establish their guilt.

Prosecution Witnesses, Documents Exhibited and Material

Objects Proved By Prosecution:

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

P.W.1 ★ Tulu Kumar Sethi was the Grama Rakhi of village Hata Baradi and he is the informant in this case. He stated that on getting information from the villagers, he had been to the spot and found that the dead body of a young girl aged about 20 to 22 years was lying near the cashew nut orchard of one Kuber Parida and accordingly, he lodged the written report (Ext.1) before P.W.24.

P.W.2 Pradyumna Kumar Parida was a teacher who was called by to spot by Tahasildar, Banpur and Addl. Tahasildar,

Tangi. He is a witness to the seizure of the dead body as per seizure list Ext.4.

P.W.3 Hari Behera is a witness to the inquest report over the dead body of the deceased as per Ext.3.

P.W.4 Akura Behera stated that on hearing hullah that a dead body was lying in the cashewnut field, he went there and saw the dead body of a girl wearing a green colour night gown and her face was looking black. He is a witness to the inquest report as per Ext.3.

P.W.5 Akhil Sundara is a co-villager of the appellant as well as the deceased and stated that he received a telephone call from the appellant, who asked him to call his sister (the mother of the deceased) and he went and called the mother of the deceased, who had a talk over telephone with the appellant. He denied having any knowledge regarding the conversation between the appellant and the mother of the deceased.

P.W.6 Trinath Sundara is the cousin brother of the appellant who stated that about one year back while he was coming to the auto garage in search of a second hand auto by walk, he went to the side of the road to attend a call of nature and there he found a new born male baby and he brought that baby to his village. He denied the suggestion made to him that

the deceased had given birth to an illegitimate child and in order to shield her from being defamed, he brought the child with him.

P.W.7 Surya Kumar Mallick was the constable attached to Tangi police station, who escorted the dead body of the deceased to Khurda Hospital for post mortem examination. He is a witness to the seizure of wearing apparels of the deceased as per seizure list Ext.5.

P.W.8 Chittaranjan Srichandan is a co-villager of the appellant who stated that during the night of 18.02.2003, the appellant came at about 11-12 O' clock in the night and asked his uncle's son Basanta for a spade. He also stated that he saw a white car was standing at a distance on the road. He made a query to the appellant as to why he required a spade at such late hours in the night, to which the appellant answered that since his niece aged about 10 to 12 years had committed suicide and his sister had called him from Bhubaneswar and as there is a party faction in the village, he would cremate the dead body. Seeing the conduct of the appellant, he along with his brother denied to render any help to the appellant and asked the appellant to leave the place and thereafter, the appellant left the place.

P.W.9 Chandrasekhar Tarai is a co-villager of the appellant who stated that while he was sleeping in his house

inside the cashew nut garden of Siba Chhotray, at about mid night, the appellant knocked his door and when he opened the door, the appellant asked him to give a spade and some kerosene and when he asked as to why he required those articles, the appellant told him that he had come with a dead body. Hearing this, he shouted at the appellant and threatened to call other villagers for which the appellant left the place.

P.W.10 Basanta Srichandan is a co-villager of the appellant who stated that while he along with P.W.8 was sleeping inside their poultry farm, the appellant came in a white ambassador car and called them at about 10-12 O' clock and asked for a spade and when they asked as to why he required the spade, he told them that his sister called him as his niece had committed suicide and so he had come to cremate the dead body of his niece. Being annoyed with such a reply, he along with P.W.8 asked the appellant to leave.

P.W.11 Niroj Kumar Pattanaik was the Junior Engineer (R & B), Bhubaneswar who stated that on 19.02.2003, P.W.12 told him that one driver of a car was looking for the appellant to pay his dues for taking the dead body of a relation of the appellant to his village. He is a witness to the seizure of some nude photographs as per seizure list Ext.6 as well as

seizure of two blue colour small pipes, one small iron rod and one thin cane stick as per seizure list Ext.7.

P.W.12 Lingaraja Jena was working as watchman in P.W.D. (R & B) and was staying in a quarter inside the campus of the Division Office. He stated that the deceased was staying with the appellant for a year prior to the incident and also identified the photograph of the deceased marked as M.O.IV. He further stated that at about 12 to 1 O' clock in the night on 17.02.2003, the deceased knocked at the door of the office and wanted to stay inside the office during the night. However, he denied allowing her to stay with him in the office as he was alone in the office. He further stated that on the next day, the appellant was seen repeatedly going outside his quarters and coming inside for about 30-40 times and in the evening at about 7.30 to 8.00 p.m. during power cut time, one white Ambassador car came to the quarters of the appellant and after sometime the car left. On the next morning at 9.00 a.m., one man came and enquired about the appellant and when he asked about the reason, the man told him that he had taken the dead body of the niece of the appellant in his car last night and that he had not received the hire charges of Rs.2,000/-.

P.W.13 Sankarsan Sahoo is a witness to the seizure of the car as per seizure list Ext.8/2.

P.W.14 Kishore Chandra Swain who was the watchman of P.W.D. (R & B) Office, stated that one driver enquired about the appellant and on his query, he disclosed about carrying the dead body of the niece of the appellant in his car to the appellant's village and the appellant was required to pay the hire charges.

P.W.15 Baijayanti Singh is the wife of the appellant, who stated that earlier she used to reside in the quarters of the appellant but subsequently, the appellant ill-treated and assaulted her for which she left him and went to reside with her parents. After three months of leaving his company, she got information that the appellant had sustained some burn injuries and she went to see him. Upon reaching his house, she saw a girl had given birth to child in his quarters. On her query, the appellant informed her that the girl was his niece.

P.W.16 Kuber Parida is the owner of the cashew nut orchard, where the dead body of the deceased was lying.

P.W.17 Pankaj Behera is a post-occurrence witness who stated to have seen the face of the dead body lying in the cashew nut orchard of P.W.16. He further stated that the face of

the deceased was looking black and he did not verify whether the dead body had some injuries or not.

P.W.18 Dillip Kumar Pati was the Junior Engineer of the Capital Maintenance Division. He is a witness to the seizure of nude photographs of the deceased as per seizure list Ext.6 and iron rod and P.V.C. pipe as per seizure list Ext.7 from inside the quarters of the appellant in presence of the appellant.

P.W.19 Saroj Kumar Pattnaik was the Junior Engineer, Section-18, Unit-II, Kharvel Nagar and he is a witness to the seizure of attendance register as per seizure list Ext.9 and the entry in respect of the appellant made therein as per seizure list Ext.10.

P.W.20 Dr. Asima Patra was the Assistant Surgeon, District Headquarters Hospital, Khurda, who conducted post mortem examination over the dead body of the deceased on 20.02.2003 and proved her report vide Ext.11.

P.W.21 Sushama Guru is the sister of the appellant and mother of the deceased. She stated that the appellant made extra judicial confession before her and had brought the dead body of the deceased in the night in a white car and she noticed marks of injuries all over the dead body. She further stated that

when she refused to accept the dead body, the appellant went away in the car with the dead body.

P.W.22 Nilakantha Samantray was working as a constable attached to Tangi police station and he is a witness to the seizure of green colour night gown, one crystal necklace and one waist thread of the deceased after those were produced by the constable as per seizure list Ext.5.

P.W.23 Arup Kumar Sahu was the Tahasildar, Tangi and he is a witness to the inquest report as per Ext.3.

P.W.24 Bikash Ranjan Beura was the Officer in-charge of Tangi police station and he is the Investigating Officer of the case.

The prosecution exhibited fifteen documents. Ext.1 is the F.I.R., Ext.2/1, Ext.5, Ext.6, Ext.7, Ext.9, are the seizure lists, Ext.8/2 is the seizure list in respect of the car bearing No.DL-1C/F-3496, Ext.10 is the attendance register, Ext.11 is the post mortem report, Ext.12 is the spot map, Ext.13 is the rough sketch map, Ext.14 is the requisition of Tahasildar, Banpur and Ext.15 is the carbon copy of letter no.74 dated 26.03.2003 of the Junior Engineer, P.W.D. (R&B).

The prosecution proved nine material objects. M.O.I is the night gown, M.O. II is the crystal necklace, M.O.III is the waist thread, M.O.IV to IV/9 are the ten colour photographs, M.O.V & VI are the two plastic blue colour pipes, M.O.VII is the iron rod, M.O. VIII is the cane stick and M.O.IX to IX/3 are the four colour photographs of the deceased.

Defence Plea:

The defence plea of the appellant is one of complete denial.

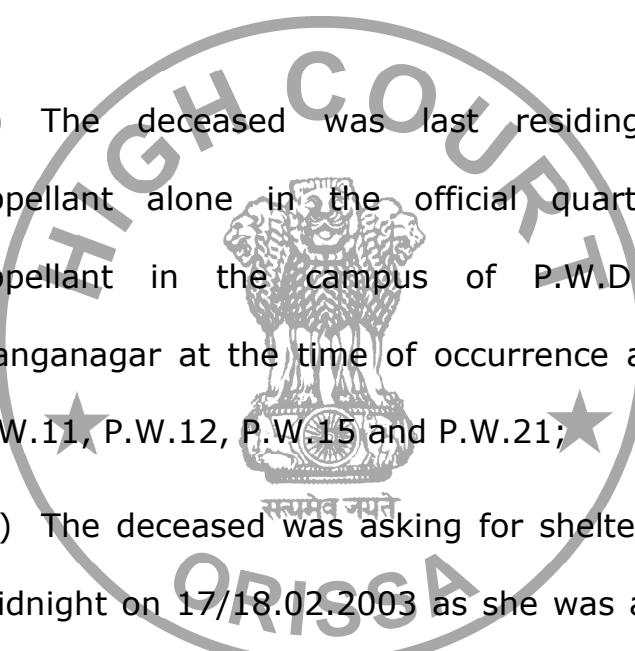
Findings of the Trial Court:

The learned trial Court after assessing the oral as well as documentary evidence on record came to hold that there is no direct evidence forthcoming against the appellant to have committed murder of the deceased and the case rests upon circumstantial evidence. It was held that the deceased had died due to assault on several parts of her body and due to fracture of hyoid bone. The appellant being the maternal uncle of the deceased had taken the nude photographs of the deceased which speaks about his sexual perversity. The learned trial Judge seems to have relied upon the circumstantial evidence on record and held that the chain of circumstances was complete and the prosecution has successfully proved that the appellant had killed

the deceased and burnt her face in order to conceal her identity and accordingly, convicted the appellant of the charges under sections 302/201 of I.P.C.

Circumstances appearing against the appellant:

There is no dispute that there is no direct evidence in the case as to who committed the murder of the deceased, when and how and the entire case rests upon circumstantial evidence. The following circumstances are appearing on record against the appellant:-

- 
- (i) The deceased was last residing with the appellant alone in the official quarters of the appellant in the campus of P.W.D. office at Ganganagar at the time of occurrence as stated by P.W.11, P.W.12, P.W.15 and P.W.21;
 - (ii) The deceased was asking for shelter during the midnight on 17/18.02.2003 as she was assaulted by the appellant as stated by P.W.12;
 - (iii) Extrajudicial confession made by the appellant before his sister (P.W.21);
 - (iv) Appellant brought the dead body of the deceased to the house of his sister (P.W.21) in a car

having marks of injuries all over the body of the deceased;

(v) The appellant was asking for a spade before P.W.8, P.W.9 and P.W.10 in the night to bury the dead body of his niece;

(vi) Dead body of a young girl aged about 20 to 25 years was found in the cashew nut garden of Kuber Parida (P.W.16) with her face burnt which was later identified to be that of the deceased through photographs;

(vii) Driver of the car was searching for the appellant to get his unpaid dues for carrying the dead body as stated by P.W.12 and P.W.14;

(viii) Appellant was absconding and not attending his office as stated by P.W.19 which was also revealed from attendance register (Ext.9) and from other evidence;

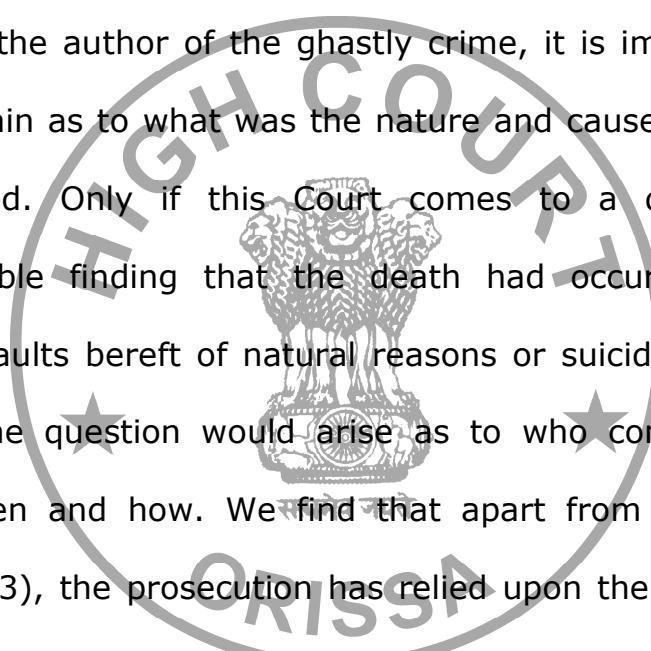
(ix) Leading to discovery of the weapons of offence and nude photographs of the deceased at the instance of the appellant from his quarters;

- (x) Conduct of the appellant relevant under section 8 of the Evidence Act;
- (xi) Post mortem examination report (Ext.11) of the deceased proved by P.W.20 shows that the death was homicidal;

Whether the deceased met with a homicidal death

(Circumstance no.xi):

Before delving into the question as to whether the appellant is the author of the ghastly crime, it is imperative for us to ascertain as to what was the nature and cause of death of the deceased. Only if this Court comes to a definite and incontrovertible finding that the death had occurred due to external assaults bereft of natural reasons or suicidal attempts, then only the question would arise as to who committed the murder, when and how. We find that apart from the inquest report (Ext. 3), the prosecution has relied upon the evidence of Dr. Asima Patra (P.W.20), Assistant Surgeon attached to the Capital Hospital, Bhubaneswar who on 20.02.2003 conducted post-mortem examination of an unidentified dead body, which was later identified to be of the deceased. She noticed the following injuries over the dead body of the deceased:



- i. One lacerated injury of size $4 \times 2 \times 2$ c.m. on anterior aspect of right leg just below the knee joint.
- ii. A bruise of size 5×4 c.m. present on right side of the buttock.
- iii. One parallel bruise of size 5 inches in length present obliquely on the lateral aspect of right thigh.
- iv. Another parallel bruise of size 4 inches in length present on anterior aspect of left thigh.
- v. Another parallel bruise of size 3×2 inches present over left calf.
- vi. Bruise of size 3×2 inches present over mons pubis.
- vii. Three bruises of different sizes and shapes present on the back (near the left scapula, near the mid line on the right side, near the lower portion of the back).
- viii. Abrasion of size $3 \times 2 \times 1$ c.m. present on the right fore arm near wrist on ventral aspect.

P.W.20 opined that all the injuries noticed were ante mortem in nature and might have been caused by hard and blunt object. She also stated that such injuries can also be inflicted by cylindrical objects like stick, iron rod and pipe having half to one inch diameter. She noticed fracture of hyoid bone on dissection. The cause of death was opined to be asphyxia by application of

force on the neck. The P.M. report has been proved as Ext.11. The unidentified dead body was later on identified to be that of the deceased. The medical opinion rendered by P.W.20 rules out any possibility of suicidal death of the deceased and proves beyond all reasonable doubt that the deceased was assaulted by hard and blunt objects and her neck was compressed which resulted in her death. The learned Amicus Curiae has not challenged the homicidal death of the deceased. In view of the inquest report (Ext.3), testimony of the autopsy doctor and the post mortem report (Ext.11) findings, we are of the humble view that the prosecution has successfully established that the deceased met with a homicidal death. Thus, circumstance no.(xi) has been established.

Deceased was last residing with the appellant alone in the official quarters of the appellant (Circumstance no.i):

P.W.11, P.W.12, P.W.15 and P.W.21 are the witnesses who stated about this circumstance.

P.W.11 has stated that the appellant was staying in the outhouse inside the campus of Division Office where he was working as a watchman. The wife of the appellant left him and was staying in her native place. The parents of the appellant, who were also staying in the said outhouse returned to their

village. He further stated that the deceased niece of the appellant came to reside with him three to four months prior to the occurrence and even after the parents of the appellant left, the deceased was continuing to stay with the appellant in the outhouse. In the cross-examination, P.W.11 has stated that the outhouse in which the appellant was staying consisted of two rooms and three doors and the appellant was unauthorizedly staying in the said outhouse for which he was asked to vacate the outhouse. He however stated that he had not visited the outhouse while the deceased girl was staying there and he had heard from the staff that the parents of the appellant, his wife and the deceased girl had come to stay in the outhouse. He further stated that his own house is situated at B.J.B. Nagar, which is about three kms. away from the spot. No doubt, P.W.11 was the Junior Engineer of R & B Division, but he has stated that the appellant was not working under his control at the time of occurrence. He further stated that the Division office was facing to the east whereas the appellant was staying in the extreme west. In view of the nature of evidence given by P.W.11, it appears that he had no personal knowledge that the deceased was staying with the appellant in the outhouse as he himself had never visited the outhouse while the deceased was staying there

and he stated to have not seen any female or relation coming to the house of the appellant and he had heard about the deceased to be staying in the outhouse from the staff. Therefore, the evidence of P.W.11 being hearsay in nature, on this score, is not acceptable.

P.W.12 who was a watchman in P.W.D. (R & B Office) has stated that the appellant was working in the Division office as D.L.R. and he was residing in the quarters inside the campus of the Division office. The appellant was residing with his wife, but after some quarrel, his wife left him and thereafter for about a year, his niece was residing with him in the said quarters. P.W.12 identified the photograph of the niece of the appellant marked as M.O.IV. In the cross-examination, he has stated that he was the watchman in the Division Office since 1986 and the appellant was staying in the quarters prior to his joining. He further stated that inside the campus, there was Division Office as well as Sub-Division office situated side by side and the quarters of the appellant was behind the Sub-Division office. He further stated that the quarters of the appellant was 100 meters away from the Division Office and he specifically stated to have seen the wife of the appellant as she was residing with the appellant for five to six years. He further stated that he had

seen the girl coming and going and therefore, there is nothing to disbelieve in the evidence of P.W.12 that the deceased was residing in the quarters of the appellant.

P.W.15 who is none else than the wife of the appellant has stated that she was staying with the appellant in the quarters inside the campus of the office and since the appellant ill-treated and assaulted her, she left him and came to reside in the house of her parents since 1st February 2001 and she received information about some injuries caused to the appellant for which she made a courtesy visit to the appellant and found one girl had given birth to a male child in the quarters and on her query, the appellant told that the girl was his niece. She further stated that she had never seen that girl prior to that date. She stated that on 4th April 2003 she came to know that the niece of the appellant was murdered and she identified the photographs of the deceased marked as M.Os. IV and IV/1. In the cross-examination, she stated that she stayed with the appellant in the quarters for about seven years and during such period, she had given birth to two sons. Nothing has been elicited in the cross-examination to disbelieve the evidence of P.W.15 that the deceased was residing with the appellant in his quarters when P.W.15 visited the appellant.

P.W.21 is none else than the sister of the appellant and mother of the deceased. She stated that the deceased was staying with the appellant in his Government quarters inside the office four months prior to her death. She further stated that while her ailing father and brother were staying with the appellant in his quarters, the deceased had gone there to cook for all of them, but after her father and younger brother came back to the village, the appellant asked her (P.W.21) to leave the deceased for some more days as she was preparing food for him. Accordingly, P.W.21 allowed the deceased to stay with the appellant. P.W.21 stated to have visited the quarters of the appellant three days prior to the date of occurrence. In the cross-examination, she stated that she had left her daughter in the quarters of the appellant as she was pregnant and while staying there, the deceased delivered a child and she took the deceased with her to one of the relation's house after the child was born and six months thereafter, when the father and younger brother of the appellant came to reside in the quarters of the appellant for their medical treatment for about four months, the appellant came and took the deceased to his quarters to prepare food for all of them. In the cross-examination, she further stated that the appellant told her that

after three to four days, he would drop the deceased in the village after purchasing dress materials for her.

In view of the evidence of P.W.12, P.W.15 and P.W.21, we are of the humble view that the prosecution has established that the deceased was staying alone in the official quarters of the appellant with him at the time of occurrence. Hence, the circumstance no.(i) is proved by the prosecution against the appellant.

Deceased was asking for shelter during the night of occurrence before P.W.12 (Circumstance no.ii):

As has already been observed while discussing about the deceased staying with the appellant in the official quarters of the appellant to be believable, we have placed reliance on the evidence of P.W.12, who has also stated that on 17.02.2003 at about 12 to 1 O'clock in the night, the niece of the appellant came and knocked at the door of the office and called him and when he asked her as to why she had come at such odd hours of night, she told him that the appellant had assaulted her and she wanted to stay inside the office during that night. P.W.12 refused to allow the deceased to stay inside the office as he was alone. He further stated that the deceased repeatedly requested him to open the gate, but he refused and so, she left. In the cross-

examination, he has stated that when the deceased knocked the grill gate at 12 to 1 O'clock in the night and called him, the chowkidar Bhikari Badajena did not come.

P.W.21 has also stated to have seen injuries on the dead body of the deceased while it was lying on the backside seat of the car in which the appellant carried the dead body.

P.W.20, the doctor who conducted post mortem examination has also noticed number of injuries which are stated to have been caused by stick, iron rod and pipe.

Therefore, the prosecution has successfully established that on the night of occurrence, the deceased was assaulted by the appellant for which she sustained injuries and asking for shelter before P.W.12, which was not provided to her. It is also important to note that thereafter no one had seen the deceased alive. Accordingly, circumstance no.(ii) is proved against the appellant.

Extrajudicial confession made by the appellant before his sister (P.W.21) (Circumstance no.iii):

P.W.21, the mother of the deceased stated that the appellant made a phone call and informed her that the deceased was in a serious condition as she was assaulted by some

miscreants ('goondas'). When P.W.21 retorted back that there was absolutely no reason for any miscreant to assault her daughter (deceased), upon facing such verbal retaliation from P.W.21, the appellant nervously confessed that he had killed the deceased. Hearing this, P.W.21 asked the appellant to bring the deceased immediately. In the cross-examination, P.W.21 has stated that the appellant telephoned to the house of Akhila Sundaray (P.W.5) and called her there. She further stated that when she got the information about the death of her daughter, she disclosed it in her house and the neighbours also knew about it. It has been confronted to P.W.21 and proved through the I.O. (P.W.24) that she had not stated in her 161 Cr.P.C. statement that the appellant telephoned her saying that her daughter was serious as she was assaulted by goondas and that when she told him that there was no reason for goondas to assault her daughter or kill her, the appellant told her that he had killed the deceased. Thus, P.W.21 seems to have stated about the extra-judicial confession for the first time in Court during trial.

P.W.5 has stated that he received a telephone call from the appellant who asked him to call P.W.21 and he went and called P.W.21 and she came and after five minutes, the appellant again made telephone call and P.W.21 received the

call. He further stated that he did not know what the appellant told over phone to P.W.21. He was declared hostile by the prosecution. In the cross-examination, P.W.5 has stated that P.W.21 had not talked with him nor had stated anything to him after she received telephone from the appellant and after talking with the appellant over telephone, she immediately went away.

No other witness including the family members of P.W.21 has been examined to corroborate her evidence that the appellant made extra-judicial confession before her over telephone to have committed the murder of the deceased.

In the case of **Pawan Kumar Chourasia -Vrs.-**

State of Bihar reported in 2023 Supreme Court Cases

OnLine SC 259, the Hon'ble Supreme Court held as follows:

"5. As far as extra-judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra-judicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only

with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility."

Even though the evidence has come on record that on the night of occurrence, the appellant had made telephone call to his sister (P.W.21) and talked with her in the house of P.W.5 over phone, but the extra-judicial confession part is not believable, particularly when P.W.21 has stated the same for the first time in Court during trial and not before the Investigating Officer. We are of the view that the prosecution has not established the extra-judicial confession made by the appellant before his sister (P.W.21). Thus, the circumstance no.(iii) is not proved against the appellant.

Appellant brought the dead body of the deceased to the house of his sister (P.W.21) in a car with marks of injuries on the body (Circumstance no.iv):

P.W.21 has stated that after receiving the phone call from the appellant, when she asked him (appellant) to bring his daughter immediately, the appellant came to the village on the same night at about 10 p.m. in a white car with the dead body of her daughter and she noticed marks of injuries all over the body of the deceased which was lying on the backside seat of the car. She further stated that seeing the dead body of her daughter, she scolded the appellant, but the appellant begged apology and told her that he had committed the sin. She further stated that when she refused to accept the dead body of her daughter, the appellant went away with the dead body in that car. In the cross-examination, she has stated that she went near the car but the appellant did not come out of the car. The deceased was wearing chudidar dress and was covered with a shawl. She further stated that she went inside the car, touched the body of her daughter and found her dead and upon touching the body of her daughter, she could find injuries and blood over her neck. Nothing has been brought in the cross-examination to disbelieve this part of evidence adduced by P.W.21. Therefore, the circumstance no.(iv) is proved by the prosecution against the appellant.

The appellant was asking for a spade before P.Ws.8, 9 and 10 in the night to bury the dead body of his niece (circumstance no.v):

P.W.8 has stated that on the night of 18.02.2003, while he was guarding his poultry farm near his house, the appellant came at about 11 to 12 O'clock in the night and asked P.W.10 to provide him with a spade. He further stated to have noticed a white car standing at a distance on the road and when he asked the appellant as to why he required a spade at such dead hour of the night, the appellant told him that since his niece had committed suicide, his sister had called him from Bhubaneswar and as there was party fraction in the village, he would cremate the dead body. Noticing the conduct of the appellant, he and his brother (P.W.10) became afraid and asked him to go away and the appellant went away in that car. In the cross-examination, he has stated that the car which he saw near his poultry farm was about 100 yards away from his farm and when the appellant had come, it was a moon-lit night. He further stated not to have disclosed the incident of night before anyone of his family or to anyone in the village. Nothing further has been elicited in the cross-examination of P.W.8 to disbelieve his evidence.

P.W.10, who is the brother of P.W.8, has also stated to be sleeping inside their poultry farm during the night on 18.02.2003 and at about 11 or 12 mid night, the appellant came in a white ambassador car and called them and asked for a spade and when he asked as to why he required a spade, he told that since his sister called him as his niece had committed suicide, he had come to cremate her dead body. P.W.10 further stated that being annoyed, they asked the appellant to go away and accordingly, the appellant went away in the car. In the cross-examination, he has stated that when the appellant came and called him, his brother (P.W.8) was there in the poultry farm with him and he did not disclose this fact before anyone of his family or anyone in the village. He further stated that when the appellant called him, he got up first and then his brother waked up and they talked with the appellant on the door step of the farm and the car in which the appellant had come was standing at a distance of 100 ft. from their farm and that he did not go near the car. Nothing further has been elicited in the cross-examination to disbelieve the evidence of P.W.10. Therefore, P.W.10 corroborates the version of P.W.8.

P.W.9 has stated that during the mid night while he was sleeping in his house inside the cashew nut garden of Siba

Chhotray, the appellant knocked at his door and called him and when he opened the door, the appellant asked for help and on his query, the appellant asked him to provide him a spade and some kerosene and that the appellant had come in a white car. P.W.9 further stated that when he asked the appellant as to why he required those articles, he said that he had come with a dead body. At this, when P.W.9 shouted at the appellant and threatened to call people, the appellant went away from that spot. In the cross-examination, P.W.9 has stated that the car was standing at a distance of 50 cubits from his house and it was a one room rest cottage where he was residing with his family and that his wife and children though got up, but did not come near the door when he was talking with the appellant. He further stated that from his house, the appellant went towards the village. He further stated that on the next day, when he noticed 20-30 persons near the spot where the dead body was lying, he did not disclose anyone that appellant had come with a dead body on the last night and that he did not disclose this fact out of fear to anyone including the father of the appellant or to anyone in his family. Nothing further has been elicited in the cross-examination to disbelieve the evidence of P.W.10.

In view of the evidence of P.W.8, P.W.9 and P.W.10, the prosecution has proved that in the night preceding the recovery of the dead body from the cashew nut orchard of P.W.16, the appellant had come to their house and was asking for a spade to bury the dead body of his niece and when he was scolded and asked to go away, he left in the car. Thus, the circumstance no.(v) has been proved by the prosecution against the appellant.

Dead body of a young girl aged about 20 to 25 years was found in the cashew nut garden of P.W.16 with her face burnt which was later found to be that of the deceased
(Circumstance no.vi):

Not only P.W.1, the informant but also P.W.2, P.W.3, P.W.4, P.W.10, P.W.17, P.W.23 and the I.O. (P.W.24) have stated about this circumstance that the dead body of a young girl with a burnt face was found from the cashew nut garden of P.W.16. The inquest over the dead body was conducted at the spot in the presence of Tahasildar (P.W.23) and inquest report (Ext.3) was prepared. P.W.24, the I.O. also took photographs of the dead body from different angles, which were marked as M.O.IX series. P.W.24 further stated that he seized the wearing apparels of the deceased along with her waist-thread as per

seizure list Ext.5 and since the identity of the deceased could not be ascertained, the constables buried the dead body near the post mortem house. He further stated that on 27.03.2003, he was in search of clues to ascertain the identity of the deceased but could not. On 07.04.2003, he received information that the deceased happened to be the niece of the appellant and accordingly, he visited the quarters of the appellant and from P.W.12, he could know that the niece of the appellant was staying with him in his quarters and on the night of 17.02.2003, the appellant had assaulted his niece. The quarters of appellant was under lock and key, however, the I.O. got information that the appellant was staying somewhere near Palaspalli. The quarters of the appellant was guarded and the I.O. came to Palaspalli. Subsequently, after the arrest of the appellant, at his instance from his quarters, the coloured photographs of the deceased were seized by the I.O. which were marked as M.O.IV series. The I.O. further stated that P.W.12 identified the photographs to be that of the deceased. P.W.12 has also proved the photograph (M.O.IV) to be that of the deceased during trial. Thus, the circumstance no.(vi) is proved by the prosecution against the appellant.

Driver of the car was searching for the appellant to get his unpaid dues for carrying the dead body (Circumstance no.vii):

P.W.12 has stated that on the next day morning at 9.00 a.m., one man came and enquired about the appellant and when he asked him the reasons thereof, he told him (P.W.12) that he had taken the dead body of the niece of the appellant in his car but he had not received his hire charges of Rs.2,000/-.

He further stated not to have seen the appellant thereafter till Tangi police came with him and called him (P.W.12) to Airfield police station. P.W.12 has stated in the cross-examination that on 19.02.2003, when the driver of the car came and told him that he had taken the dead body of the niece of the appellant, the other watchman Kishore Swain (P.W.14) was present.

Nothing further has been elicited in the cross-examination in this aspect. P.W.11, the Junior Engineer has stated that on 19.02.2003, P.W.12 told him that one driver was looking for the appellant for payment of his dues relating to taking the dead body of a relation to his village.

P.W.14 has stated that one driver came to their office at about 9.00 a.m. and enquired about the appellant and disclosed before them that on the previous night, he had taken

the dead body of the niece of the appellant in his car and that the appellant was to pay hire charges of the car and that driver had come two to three times in search of the appellant. In the cross-examination, P.W.14 has stated that he did not disclose anyone what the driver told him.

In view of the evidence of P.W.12 and P.W.14, the prosecution has proved the circumstance no.(vii) against the appellant.

Appellant was absconding and not attending his office as stated by P.W.19 which was also revealed from attendance register (Ext.9) and from other evidence (Circumstance no.viii):

P.W.11 has stated that even though three months prior to the occurrence, the appellant was sent to Sub-Division office at Unit-3 as he was neglecting to perform his duties but the appellant was still staying in the outhouse of the Division office and from 19.02.2003, he could not see the appellant till 08.04.2003 when Tangi police arrested the appellant.

P.W.12 has stated after 18.02.2003, he had not seen the appellant till 04/05th April when Tangi police came with the appellant and called him to Airfield police station.

P.W.14 has also stated that the appellant was residing in a quarters behind the office and he absconded for about one and half months and thereafter, the police brought him to the Division office.

P.W.19 was the Junior Engineer who stated that the appellant was working in his section and he was the D.L.R. in the office and on 19.04.2003, the police seized the attendance register of the staff as per seizure list Ext.9 from which it revealed that the appellant was absent from duty from 12.02.2003 to 21.04.2003. The attendance register was marked as Ext.10.

P.W.24 has also stated that after he got information that the deceased happened to be the niece of the appellant, he conducted raid at different places and apprehended the appellant from his rented house at Palaspalli.

Thus, from the evidence all these witnesses including P.W.19 and the documentary evidence like the attendance register, it has been proved that the appellant was absconding after the date of occurrence and not attending his office. The act of absconding may be a relevant piece of evidence to be considered along with other evidence. Mere absconding should

not form the basis of a conviction as it is a weak link in the chain of circumstantial evidence and it is as such not a determining link. Absconding by itself is not conclusive either of guilt or of a guilty conscience. However, the appellant has not offered any explanation to such circumstance. Thus, the circumstance no.(viii) is proved by the prosecution against the appellant.

Leading to discovery of the weapons of offence and nude photographs of the deceased at the instance of the appellant from his quarters (Circumstance no. ix):

P.W.24, the I.O. has stated in his evidence that the appellant gave him information about the photographs of the deceased and weapons of offence and led him to his quarters and opening the lock thereof, the appellant went inside and brought out one cane stick (M.O.VIII), one piece of iron rod (M.O.VII) and two pieces of plastic pipes (M.Os. V & VI) which were seized in presence of the witnesses and seizure list (Ext.7) was prepared. The I.O. further stated that after searching the house, he recovered a photo album containing ten photographs and eight negatives of those photographs inside a cover kept concealed behind a calendar pasted to the wall and out of such photographs, four photographs were completely nude photographs of the deceased and those were coloured

photographs and those were marked as M.O.IV series. The negatives were marked as M.O.IV/10 to M.O. IV/17. The I.O. stated that from the photographs, he could ascertain that all the nude photographs were taken inside the quarters of the appellant. The I.O. compared the photographs found inside the quarters and the photographs of the deceased taken at the spot where the dead body was located and found that one green colour night gown which the deceased was wearing along with black crystal necklace and red colour waist-thread were all tallied.

P.W.11, the Junior Engineer has also stated about the seizure of weapons and the photographs at the instance of the appellant as per seizure list Ext.7 in which he had signed.

P.W.18 Junior Engineer has also stated about the seizure of photographs and the weapons from the quarters of the appellant as per seizure list Ext.7 in which he had put his signatures. The weapons which were seized including the photographs have been marked as material objects and the witnesses have proved the same.

Thus, the prosecution has proved the circumstance no.(ix) through the evidence of two official witnesses under whom the appellant was working so also the investigating officer.

Conduct of the appellant relevant under section 8 of the Evidence Act (Circumstance no.x):

It is pertinent to note the provision under section 8 of the Evidence Act states that while fixing culpability for a crime, motive, preparation and previous or subsequent conduct of the accused are relevant factors and must be carefully weighed.

Though conduct of an accused is not a conclusive proof of evidence which can be solely used for recording a conviction, but when there is a chain of circumstances available against an accused then his conduct becomes relevant as it adds a link to the chain of circumstances. If conduct of the accused provides credence to the incriminating circumstances available against him, then it can be considered by Court as an additional knot in the thread of evidence.

Apart from the circumstances already discussed in the previous paragraphs, it appears that P.W.12 noticed the appellant going in and coming out of his quarters for about 30-40 times on 18.02.2003, which was the day following the

midnight when the deceased after being assaulted by the appellant had approached P.W.12 to give her shelter inside the office, and such conduct on the part of the appellant is suggestive of restlessness which taken with other circumstances shows that it was the after effects of commission of the crime. The false statement made by the appellant before his sister (P.W.21) that the miscreants assaulted the deceased and the false statement made before P.Ws.8, 9 and 10 that the deceased committed suicide are also relevant under section 8 of the Evidence Act and these are additional links in the chain of circumstances. It is the settled law that such piece of conduct of the appellant can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material. In this regard, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Anant Chaintaman Lagu -Vrs.- State of Bombay reported in A.I.R. 1960 S.C. 500**, wherein it is held as follows:-

"Circumstantial evidence in this context means a combination of facts creating a network through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt....this conduct of

the accused was so knit together as to make a network of circumstances pointing only to his guilt...his methods was his own undoing; because even the long arm of coincidence could not explain the multitude of circumstances against him, and they destroyed the presumption of innocence with which law clothed him."

Thus, the prosecution has proved the circumstance no.(x) against the appellant.

Whether the chain of circumstances is complete?:

As already discussed, the prosecution has proved that the deceased was the niece of the appellant and she was last residing with the appellant alone in the official quarters of the appellant in the campus of P.W.D. office at Ganganagar at the time of occurrence. It has also been proved that the deceased was asking for shelter during the midnight on 17.02.2003 before P.W.12 as she was assaulted by the appellant which was not provided to her and thereafter no one had seen the deceased alive. The appellant brought the dead body of the deceased to the house of his sister (P.W.21) in a car having marks of injuries all over the body of the deceased. The appellant was asking for a spade before his co-villagers in the

night to bury the dead body of his niece. The dead body of a young girl aged about 20 to 25 years was found in the cashew nut garden of P.W.16 with her face burnt which was later identified to be that of the deceased through photographs and the post mortem examination report (Ext.11) of the deceased proved that her death was homicidal. The driver of the car was searching for the appellant to get his unpaid dues for carrying the dead body. The appellant was absconding and not attending his office after the date of occurrence. The appellant after being taken into custody led the police to discover the weapons of offence and nude photographs of the deceased from his quarters. The seizure of the nude photographs of the deceased which were taken inside the quarters of the appellant were kept in a concealed manner and the same has been rightly held by the learned trial Court to be pointing towards sexual perversity of the appellant towards the deceased even though he was the maternal uncle of the deceased.

A Court of law gets an upper-hand in determining culpability of an accused where direct evidence is available; however, the scarcity of direct evidence does not mandate that an accused person should be given the benefit of doubt compulsorily, rather it requires the Court to be more active to go

for a 'clue-searching expedition'. It is required to gather all the circumstantial evidence available on record and to test the same on the basis of the 'panchsheel' principles laid down by the Hon'ble Supreme Court in its much-cited verdict in the case of **Sharad Birdhichand Sarda -Vrs.- State of Maharashtra reported in (1984) 4 Supreme Court Cases 116**. The panchsheel principles, as propounded by the Highest Court, are as follows:

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 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;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved;
5. There must be a chain of circumstances 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.

It is aptly said, "Man may lie but the circumstances do not". The Court should be alert while evaluating the evidence of a case based on circumstantial evidence as the circumstances can be created/concocted/planted in order to falsely entangle a person on mere suspicion.

From the proved circumstances in the case in hand, we are of the humble view that it makes the chain so complete that it unerringly points towards the guilt of the appellant and it further indicates that it is the appellant and none else who after committing murder of the deceased caused disappearance of the evidence with the intention of escaping from legal punishment. The appellant has failed to discharge the statutory burden imposed upon him under section 106 of the Evidence Act except taking the plea of denial and therefore, the learned trial Court has rightly found the appellant guilty under sections 302 and 201 of the Indian Penal Code. The sentence imposed by the learned trial Court is quite justified in the facts and circumstances of the case.

Before parting with the case, we deem it necessary to mention that uncle is like a father figure. Uncle gives warmth

like mother and strength like father. The bond of faith, love and affection of a niece on her uncle is unique. For her, uncle is a blessing, a saviour who listens to her concerns, guides her, supports her, takes care of her and always encourages her to do the best in life. In childhood days, maternal uncle's house is the most favourite destination. Who can forget the beautiful lines from Hindi song, "Chanda Mama Se Pyara Mera Mama...Meri Ankhon Ka Tara Mera Mama." The appellant lacked the qualities of an uncle, made pious relationship ugly, spoiled the life of the deceased niece, tortured her and ultimately committed her gruesome murder.

In the result, the JCRLA being devoid of merits, stands dismissed. The impugned judgment and order of conviction handed down to the appellant and the sentence passed thereunder are hereby upheld.

It appears that though the appellant was directed to be released on bail by this Court vide order dated 13.05.2014 in Misc. Case No.24 of 2014, but from the report of the Superintendent, District Jail, Puri (WS) dated 03.12.2022, it appears that the appellant was transferred to Special Jail, Bhubaneswar on domestic ground on 16.06.2012 and therefore, it prima facie shows that he has not availed the bail order.

However, in case he has been released on bail in the meantime, he shall surrender before the learned trial Court within two weeks from today to serve out the sentence awarded by the learned trial Court which is confirmed by us, failing which the learned trial Court shall issue non-bailable warrant of arrest for his arrest and send him to judicial custody.

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

Before parting with this judgment, we put on record our appreciation for Mr. Akhaya Kumar Beura, learned Amicus Curiae for his valuable assistance and input in deciding this appeal. He is entitled to his professional fees which is fixed at Rs.7,500/- . We also acknowledge the invaluable contribution made by Mr. Priyabrata Tripathy, learned Addl. Standing Counsel in rendering help in reaching this decision.

.....
S.K. Sahoo, J.

S.S. Mishra, J. I agree.

.....
S.S. Mishra, J.

Orissa High Court,
The 17th October 2023/PKSahoo/Sipun