IN THE HIGH COURT OF ORISSA, CUTTACK

Jail Criminal Appeal No.58 of 2008

An appeal from judgment and order dated 30.05.2008 passed by the Adhoc Additional Sessions Judge (F.T.C.), Balasore in Sessions Trial Case No.22/153 of 2007.

Jaga @ Jagabandhu Mohalik ..... Appellant

-Versus-

State of Orissa ..... Respondent

For Appellant : Mr. Dillip Ray, Advocate

For Respondent : Mr. Rajesh Tripathy
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR JUSTICE S.K. MISHRA

Date of Hearing and Judgment: 04.01.2024

By the Bench: The appellant Jaga @ Jagabandhu Mohalik faced trial in the Court of learned Adhoc Additional Sessions Judge (F.T.C.), Balasore in S.T. Case No.22/153 of 2007 for offence punishable under section 302 of the Indian Penal Code (hereinafter 'I.P.C.') on

the accusation that in the intervening night of 04/05.05.2005, at village Pakharsaun, he committed murder of his wife Bibi @ Padmabati Mohalik (hereinafter 'deceased').

The trial Court, vide impugned judgment and order dated 30.05.2008, found the appellant guilty of the offence charged and sentenced him to undergo rigorous imprisonment for life.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'the F.I.R.) (Ext.1) lodged by Purna Chandra Das (P.W.1) on 05.05.2005 before the Sadar Police Station, Balasore, is that the marriage between the deceased and the appellant was solemnised 19 years prior to the date of occurrence and they were staying in the village Saunpada with their children for the last 6 to 7 months after constructing a house there. On 05.05.2005, at about 6 a.m., upon getting information about the death of the deceased, the informant (P.W.1) came to Saunpada and found the deceased lying dead and there were bleeding injuries on the head of the deceased, which was caused by a spade, which was lying near the dead body. It has further been stated that the appellant used to assault the deceased repeatedly and on the night of 04/05.5.2005, after killing the deceased, he had absconded.

Ananta Pradhan (P.W.9) scribed the F.I.R. as per the oral report of P.W.1. After its presentation before the Officer-In-Charge in Balasore Sadar Police Station, a case was registered as Balasore Sadar P.S. Case No.105 dated 05.05.2005 under section 302 of the I.P.C. Suryamani Pradhan (P.W.7), the Officer-In-Charge of Sadar Police Station, Balasore, himself took up investigation of the case.

During course of investigation, P.W.7 deputed a constable (P.W.13) to guard the dead body of the deceased, examined the informant, sent requisition for scientific team, visited the spot on 05.05.2005 and prepared spot map (Ext.6). He held inquest over the dead body and prepared inquest report vide Ext.2. He seized the weapon of offence i.e. spade, which was lying at the spot as per seizure list Ext.4. He sent the dead body for post mortem examination, seized blood stained earth and sample earth as per seizure list Ext.3. Though the Investigating Officer searched for the appellant, but his whereabouts could not be ascertained. After the post mortem examination, the wearing apparels of the deceased were produced by the constable before the I.O. (P.W.7), which were seized as per seizure list Ext.7. P.W.7 sent requisition to the Medical Officer (P.W.10), who conducted post mortem examination and sought for her opinion regarding possibility of injuries sustained by the deceased with the spade and received the opinion from the doctor. He also took steps for sending the exhibits for chemical examination to S.F.S.L.,

Rasulgarh through Court and received the report of the chemical examiner vide Ext.10.

On 07.09.2006, P.W.7 handed over the charge of investigation to P.W.8, Sudarsan Das, who also visited the spot, examined the witnesses. On 14.10.2006, the appellant was arrested and forwarded to Court. P.W.5, the son of the appellant and deceased, was produced before the Court and his statement under section 164 Cr.P.C. was recorded. On completion of investigation, charge sheet was submitted on 05.12.2006 against the appellant under section 302 of the I.P.C.

Framing of Charge:

3. After submission of charge sheet and complying with the due committal procedure, the case was committed to the Court of Session, where the trial Court framed charge against the appellant as aforesaid. As the appellant pleaded not guilty and claimed to be tried, sessions trial procedure was resorted to establish the guilt of the appellant.

Prosecution Witnesses and Exhibits:

4. In order to prove its case, the prosecution examined as many as fourteen witnesses.

P.W.1 Purna Chandra Das is the brother of the deceased and the informant in the case. He stated that the deceased was

previously assaulted by the appellant when she objected to the selling of a landed-property by the appellant. He further stated that the appellant threatened the deceased one day prior to her death. He was informed by P.W.5 that the appellant had murdered the deceased and fled away from the spot. Subsequently, he went to the house of the deceased and saw bleeding injury on the parietal region of the deceased.

P.W.2 Dinabandhu Das is the uncle of the deceased who stated to have heard about assault on the deceased by the appellant basing upon sale of a piece of land. He further stated that in the morning hours of the date of occurrence, P.W.5 came to P.W.1 to inform him that the appellant had committed murder of the deceased. He proceeded to the spot and saw bleeding injury on the body of the deceased. He is also a witness to the preparation of inquest report vide Ext.2.

P.W.3 Ram Chandra Nayak stated that during the morning hours of 05.05.2005, P.W.5 came and disclosed that the appellant dealt blows by the blunt side of a spade as a result of which the deceased died. He further stated to have seen the dead body of the deceased lying in front of her hut with bleeding injury on the left side parietal region, near the ear root. He also saw a cloth which was tied around her neck and blood was coming out of her ear and

nostril. He is a witness to the preparation of the inquest report vide Ext.2 and seizure of blood-stained earth and sample earth as per seizure list Ext.3 and seizure of the spade as per seizure list Ext.4.

P.W.4 Lambodar Das stated that though the deceased was living with the husband in her matrimonial villager but after a dispute between the couple, she had come to reside in her paternal village and stayed there by constructing a hut. He also stated that 15 days prior to the occurrence, the appellant also came to reside with the deceased. He further stated that he has seen the deceased a day prior to the date of occurrence and on the next morning, P.W.5 informed him that the appellant had killed the deceased.

P.W.5 Rabindra Mohallik @ Putia, who is the son of both the deceased and the appellant, stated that there was a quarrel between the appellant and the deceased for which the deceased had come to live in Pakharsaun. He along with his three younger sisters also came with her and resided together. He further stated that he came to know about the death of the deceased in the morning when he saw bleeding injury on the ear root of the deceased and she did not respond to his call. However, he stated that he does not know as to how the deceased died as he had slept in the night. Subsequently, he was declared hostile by the prosecution.

P.W.6 Purna Chandra Mohallik stated that subsequent to a quarrel between the appellant and the deceased, the latter came to reside in her paternal village along with four of her children. He further stated that the appellant came to stay with the deceased 15 days prior to the occurrence. He also stated to have seen the deceased and the appellant when they came to his house after having a quarrel on the previous day of occurrence. He is also a witness to the preparation of inquest report vide Ext.2.

P.W.7 Suryamani Pradhan was working as the Officer-in-Charge of Sadar Police Station, Balasore, who registered the case upon receipt of F.I.R. from P.W.1. He is also the initial Investigating Officer of the case.

P.W.8 Sudarsan Das joined as the Officer-In-Charge of Sadar Police Station, Balasore, on 10.09.2006 and took over the charge of investigation of the case from P.W.7. Upon completion of investigation, he submitted the charge sheet against the appellant.

P.W.9 Ananta Pradhan scribed the F.I.R. as per the instruction of the informant (P.W.1).

P.W.10 Dr. Jayanti Parida was working as the Assistant Surgeon at the District Headquarters Hospital, Balasore, who conducted the post-mortem examination on the dead body of the deceased on police requisition. She proved her report vide Ext.11. A

spade was produced before her, upon examining which she opined that the injuries found on the dead body of the deceased can be caused by such spade.

P.W.11 Sanjukta Mohapatra was posted as a constable at Sadar Police Station, Balasore. She is a witness to the seizure of one green colour saree stained with blood, one white colour saya and one red colour blouse stained with blood as per seizure list Ext.7.

P.W.12 Bidyadhar Mohallik is the brother-in-law (husband of the sister of the deceased) of the deceased who stated that on 05.05.2005, he received a telephone call about the death of the deceased. After hearing the news, he came to the spot and saw the deceased lying there sustaining bleeding injury on her left side ear. He also stated that a saree was tied around her neck. He is also a witness to the preparation of inquest report vide Ext.2.

P.W.13 Mangal Singh was working as a constable at the Sadar Police Station, Balasore, who was issued a command certificate to guard the dead body of the deceased which was lying on the field of Pakharsaun School. He also took the dead body of the deceased for post-mortem examination. Further, he brought the wearing apparels of the deceased and other articles from the spot and produced the same before the I.O.

P.W.14 Kailash Chandra Majhi was posted as the Sub-Inspector of Police at the Sadar Police Station, Balasore. He is a witness to the seizure of the wearing apparels of the deceased as per seizure list Ext.7.

The prosecution also proved fourteen documents. Ext.1 is the F.I.R., Ext.2 is the inquest report, Exts.3, 4 and 7 are the seizure lists, Ext.5 is the statement of P.W.5 recorded under section 164 Cr.P.C., Ext.6 is the spot map, Ext. 8 is the injury requisition, Ext.9 is the forwarding letter, Ext.10 is the report of chemical examiner, Ext.11 is the post mortem examination report, Ext.12 is the command certificate, Ext.13 is the dead body challan and Ext.14 is the examination report of biology and serology.

Defence Plea:

5. The defence plea is one of denial. However, neither any witness was examined nor any document was exhibited on behalf of the defence to negate the prosecution case.

Findings of the Trial Court:

6. The trial Court, after assessing oral as well as documentary evidence, came to hold that all the witnesses have stated that they came to know about the incident from P.W.5 and proceeded to the spot forthwith and found the appellant absent in his house. The trial Court further held that from the inquest report

(Ext.2) and from the post mortem report (Ext.11), it is crystal clear that the death of the deceased was homicidal one due to injury on the vital part of brain and the injuries were ante mortem in nature. The trial Court further held that if the documentary evidence coupled with ocular evidence is considered together, it would unerringly point out guilty finger towards the appellant. It was further held that the conduct of the appellant subsequent to the occurrence appears to be suspicious and to escape from the liability, he had left the house and that the appellant has not explained the reason as to why he absconded from the house or why he left the house immediately after the occurrence. The trial Court summed up that the conduct of the accused subsequent to the occurrence and the oral evidence taken together pointed out that it was nobody else but the appellant, who had committed the offence and accordingly, found that the prosecution has proved a case under section 302 of the I.P.C. against the appellant beyond all reasonable doubt.

Contention of the Parties:

7. Mr. Dillip Ray, learned counsel appearing for the appellant contended that there is no direct evidence in the case and the case solely rests upon circumstantial evidence. The circumstances proved by the prosecution are not clinching and do not form a complete chain so as to unerringly point towards the guilt of the appellant. The

last seen theory is not established by way of clinching evidence and relevant questions have not been put in the accused statement so far as the last seen is concerned. Therefore, the same could not have been used against the appellant. The learned counsel further argued that since in a case of circumstantial evidence, motive assumes significance and the prosecution has not proved any motive on the part of the appellant to commit the crime, the appellant is entitled to get the benefit of doubt, more particularly when the star witness on behalf of the prosecution is none else then P.W.5, son of the deceased. The appellant has made a specific statement that in the night of occurrence, he was not present in the house and that the dead body of the deceased was lying on the outer verandah of the house. Learned counsel further argued that the act of absconding itself cannot be a ground to convict an accused for offence punishable under section 302 of the I.P.C. and therefore, the impugned judgment and order of conviction is liable to be set aside.

Mr. Rajesh Tripathy, learned Addl. Standing Counsel, on the other hand, supported the impugned judgment and argued that even though P.W.5 has not supported the prosecution case and was declared hostile by the prosecution, but it would appear that in his statement recorded under section 161 of the Cr.P.C., he has stated about the assault on the deceased by the appellant and more particularly, the presence of the appellant on the date of occurrence.

Learned counsel further argued that the evidence has come on record that since the appellant wanted to dispose of the landed property and it was opposed to by the deceased, there was dissention between the two. She was assaulted for which, she left the house of the accused and came back to stay at her paternal village by constructing a house on a Government land and the same was said to be the motive behind the commission of offence. Learned counsel further argued that a number of witnesses have stated about the presence of the appellant at the spot and that he was staying in the company of the deceased prior to the occurrence. Since the appellant was found absconding after the occurrence, it can be said that the chain of circumstances is complete and the trial Court has not committed any illegality in convicting the appellant under section 302 of the I.P.C.

Adverting to the contention raised by the learned counsel for the parties, it is not disputed that there is no direct evidence in the case and the case is based on circumstantial evidence. The principle for appreciation of a case based on circumstantial evidence is well settled from the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda -Vrs.- State of Maharashtra reported in (1984) 4 Supreme Court Cases 116**. Keeping in view the 'panchasheel principle' laid down by the Hon'ble Court therein, we have to assess the evidence on record to see whether the prosecution has established that the circumstances taken together form a

complete chain which points towards the guilt of the accused and it can be safely concluded that it is the appellant alone, who committed the crime.

Whether the deceased met with a homicidal death?:

8. Before going to assess the ocular evidence, we think it apposite to see how far the prosecution has established that the deceased met with a homicidal death. The investigating officer (P.W.7), after visiting the spot on 05.05.2005, conducted inquest over the dead body and prepared inquest report vide Ext.2. He also sent the dead body for post mortem examination and the doctor (P.W.10) conducted post mortem examination at District Headquarters Hospital, Balasore on 05.05.2005 and she noticed the following injuries on the body of the deceased:

(i) There was presence of rigor mortis in four limbs. Face was swollen with lacerated injury of 4" x 1" x 1" over left side face extending from face of left ear lobe extends upward left lateral angle of left side eye surrounding the above mentioned wound, there was a haematoma of size 3" x 3" bleeding from both nostrils and ear. On dissection, brain was congested and there was a haematoma of 3" x 3" over left temporal lobe of brain. Both lungs, both kidneies, liver and splin were intact but

pale. Stomach was intact and pale containing 200 gm. Of partial digested food particular having no characteristic of smell. Uterus was intact having no symptom of conception.

(ii) All the above features were ante mortem in nature except rigor mortis. Time since death within 36 hours at the time of my examination at 4 P.M. Cause of death was due to haemorrhagic shock due to injury on the vital organ like brain.

(iii) During my post mortem examination spade was shown to me and I opined that the injury was possible by the said supplied spade. This is my report Ext. 11 and Ext.11/1 is my signature on it.

P.W.10 has specifically opined that all the injuries are ante mortem in nature except rigor mortis. Time since death was opined to be within 36 hours of the examination and the cause of death was said to be on account of haemorrhagic shock due to injury to the vital organ like brain. She has further stated that the spade was produced before her and after verifying the same, she gave her opinion that the injury sustained by the deceased was possible by the said spade and the post mortem report has been marked as Ext.11. Nothing has been brought out in the cross-examination so as to discard the evidence of the doctor. The appellant has also not

challenged the finding of the trial Court on the ground that it was a case of homicidal death.

Considering the inquest report, the evidence of the doctor (P.W.10) and the post mortem report (Ext.11), we are of the humble view that the trial Court has rightly come to the conclusion that the deceased met with a homicidal death.

Circumstances relied upon by the Prosecution:

9. The prosecution primarily seeks to establish the following circumstances so as to tighten the grip of guilt against the appellant.

(i) there were previous quarrel in between the appellant and the deceased as the deceased was raising objection to the appellant for making attempt to sell the landed property and thus, the dissention between them is the motive behind commission of the crime;

(ii) the deceased was last seen alive in the company of the appellant;

(iii) the conduct of the appellant in absconding immediately after the occurrence took place is a relevant factor.

Dispute between the appellant and the deceased as motive behind the murder:

10. So far as the circumstance no.(i) i.e. the dispute between the appellant and the deceased is concerned, which is said to be the motive behind the crime as per the prosecution case. P.W.1, the brother of the deceased, has stated that in the year 2005, the deceased raised objection when the appellant tried to sale a landed property and the appellant assaulted the deceased for which the deceased came to their village and there was a meeting in that regard and the deceased stayed in a separate house near the village school. However, in the cross-examination, P.W.1 has stated that the appellant had joint property of one and half acres of land and that he had not seen the document and he could not say the location of the land. He has further stated that the property stood in the name of the father and the paternal uncles of the appellant. He has further stated that as per his knowledge, there was no landed property in the name of the appellant and there was also no property in the name of the deceased. Though he stated that the appellant sold some of his lands, but he could not say as to whom the land was sold and to what extent. The evidence of this witness in the cross-examination makes his statement in the chief-examination doubtful that the appellant tried to sale the landed property. If the property stood recorded in the name of the father and paternal uncles of the appellant and there is

no documentary evidence that they gave any authority to sale such land, it is not believable that the appellant would try to sale the land and that the deceased would raise objection, for which there would be dissention between them. The other witnesses have stated about such dispute in a vague manner. Therefore, we are of the view that there is no clinching evidence on record that the appellant wanted to sale the landed property and that the deceased was raising objection, for which there was dissention between the two.

In a case of circumstantial evidence, motive assumes significance. Absence of motive puts the Court in guard to scrutinize other evidence on record. In the case of **Nandu Singh -Vrs.- State of Madhya Pradesh (Now Chhattisgarh) reported in (2022) Supreme Court Cases OnLine SC 1454**, a three-Judge Bench of the Hon'ble Supreme Court has reiterated the aforesaid stance of law in the following words:

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

In this case, when the prosecution has come forward with a particular motive behind the commission of the crime and we find that the prosecution has been unsuccessful in proving the same, it is incumbent upon us to assess other evidence on record to see how far those are established and whether the chain of circumstances is complete or not.

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

11. The next circumstance is the appellant being last seen in the company of the deceased. The star witness on behalf of the prosecution is no one else than P.W.5, who is the son of the appellant as well as the deceased. He was aged about 12 years when he deposed in the trial Court. Some formal questions were put by the trial Court to assess his competence to depose in a criminal trial and he answered to the same and after verifying the answers, the trial Court came to a finding that the witness was able to give reasonable answers and therefore, he was declared to be a competent and his evidence was recorded. P.W.5 stated that the deceased died in village Pakharsaun and there was a quarrel between his father (appellant) and his mother (deceased), as a result of which the deceased came to village Pakharsaun. He further stated that he himself along with his three younger sisters came with the deceased and stayed together and the deceased died in the night. In the next day morning, he came

to know about the death as she was having bleeding injury on the ear root and she did not respond to his call. He has further stated that he went to call his maternal uncle (P.W.1). He could not say anything about the death of the deceased as he slept in the night. In the cross-examination he has stated that when they came to village Pakharsaun, they first stayed in the house of P.W.1. As there was some discontentment, the deceased left the house of P.W.1 and lived separately and it was an one room house. He has further stated that on the night of occurrence, the deceased slept outside the house, as it was a night of summer season. P.W.5 specifically stated that the appellant had never come to the house where they were staying and that the appellant had not come to the hut of his mother on 04.05.2005. Therefore, this evidence of the star witness, on behalf of prosecution, is completely silent about the presence of the appellant in the hut. Though this witness has been declared hostile and his previous statement recorded under section 164 Cr.P.C. has been confronted to him, but law is well settled that the statement of a witness recorded under Section 164 Cr.P.C. is not a substantive piece of evidence and it may be used for contradiction or corroboration of the witness, who made it. Such a statement can be used to cross-examine the maker thereof.

In view of the settled position of law and the fact that even in the statement recorded under section 164 of the Cr.P.C., P.W.5 has

not whispered anything about the presence of the appellant in the night in question when the deceased was in the hut, we are of the view that from the evidence of P.W.5, it is not established that the appellant was last seen in the company of the deceased. The other witnesses, who have stated about the appellant staying with the deceased, have stated it vaguely. P.W.3 though has stated that he had seen the appellant standing in front of the house of the deceased on each evening and he had seen him from a distance of 20 to 25 links at about 9 p.m. on the night of occurrence, but most peculiarly, no question was put to the appellant regarding his presence in the company of the deceased on the night of occurrence. During his cross-examination, the question nos.4, 15 and 21 were put to the appellant suggesting him that he had stayed with the deceased for last 15 days. But no specific question has been put to him that on the night of occurrence, he was in the company of the deceased.

The examination of the accused is for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Each separate piece of evidence in support of circumstance is to be put to the accused and the accused may or may not avail the opportunity for offering his explanation. In a criminal trial, the purpose of examining the accused under section 313 Cr.P.C. is to meet requirements of the principle of natural justice. The circumstances, which are not put to the accused in his examination

under section 313 of the Cr.P.C., cannot be used against him and must be excluded from consideration. The Hon'ble Highest Court in the case of **Paramjeet Singh -Vrs.- State of Uttarakhand reported in (2010) 10 Supreme Court Cases 439,** emphasized on the mandatory nature of duty cast on the trial Court to put all inculpatory circumstances to the accused under section 313 of the Cr.P.C. It has also succinctly explained the result that may ensue in case the strict procedure is not adhered to. The following observation of the Hon'ble Apex Court can be reproduced for better appreciation of the stand of law on this point.

> "22. Section 313 CrPC is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 CrPC cannot be used against him and have to be

> excluded from consideration. (Vide **Sharad Birdhichand [(1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622]** and **State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC 700 : 1992 SCC (Cri) 705]**.)"

Some of the co-villagers have stated in their evidences that since 15 days prior to the date of occurrence, the appellant was staying in the company of the deceased. But when the specific evidence relating to the presence of appellant in the company of the deceased in the night in question is absent and since the evidence adduced by P.W.3 in that respect has not been put to the appellant and more particularly, in view of the evidence of P.W.5 that the appellant had not come to the hut in question on the date of occurrence and that he was never staying there with them, we are of the view that the prosecution has not succeeded in establishing the last seen theory against the appellant.

Merely the fact of abscondence is not sufficient to convict the appellant:

12. So far as the abscondence of the accused is concerned, it would have been relevant had there been any clinching evidence regarding the presence of the appellant in the hut house in the company of the deceased in the fateful night. Since we have already held that there is no such clinching evidence that the appellant was

in the company of the deceased on the night of occurrence, merely because the appellant was arrested at another place on some other day, it cannot be said that he was absconding. Also, for the sake of argument, even if it is believed that the appellant was absconding, the law is well settled that even absconding itself is not sufficient to draw an inference against the accused that he is the author of the crime, inasmuch as a person may abscond when he comes to know that the police is suspecting his involvement in a crime. Recently, in the case of **Sekaran -Vrs.- State of Tamil Nadu reported in (2023) Supreme Court Cases OnLine SC 1653**, the Hon'ble Supreme Court has held that merely because the accused absconded, it cannot be inferred that he is essentially the author of the crime and it is not unnatural for a man to abscond if he apprehends his arrest in connection with a criminal case. The Hon'ble Court observed as follows:

> "23. Although not brought to our notice in course of arguments, it is revealed from the oral testimony of PW-11 that the appellant could be apprehended 3 (three) years after the incident from Puliyur road junction in (1 km. away from Ambalakalai) in Kerala after vigorous search. However, abscondence by a person against whom an FIR has been lodged and who is under expectation of being apprehended is not very unnatural. Mere absconding by the appellant after alleged commission of crime and remaining

> untraceable for such a long time itself cannot establish his guilt or his 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."

(Emphasis supplied)

As far as evidentiary value of the conduct of the accused in absconding is concerned, the following observations made by the Hon'ble Supreme Court in the case of **Matru -Vrs.- State of U.P. reported in (1971) 2 Supreme Court Cases 75** throw much light as to how much reliance can be placed upon such piece of evidence to record a finding of conviction.

> "19....Now, 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 such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act 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."

Thus, from the aforesaid settled precedents, it is clear that mere fact of abscondence cannot, *ipso facto*, result in an irresistible inference that the person absconding necessarily had the guilty intention to commit the crime alleged. Further, when the accusation is for a grave crime, like the one under section 302 of the IPC, i.e. murder, the solitary conduct of the accused in absconding cannot be given much weightage so as to ignore the fact that there is no other clinching evidence available to implicate him in the ghastly crime. However, when other circumstances clearly show the accused as the culprit, then abscondence on his part might add a negative inference against him and lead to the completion of chain of circumstances. But in the case in hand, when all the alleged incriminating circumstances could not be proved against the appellant beyond reasonable doubt, it would be perilous for the interest of justice to hold him guilty as possibility of his innocence cannot be ruled out.

Conclusion:

13. 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 is absent. There is no clinching evidence regarding the last seen of the appellant in the company of the deceased. In that view of the matter, the impugned judgment and order of conviction of the appellant under Section 302 of the I.P.C. is not sustainable in the eye of law. Accordingly, the same is hereby set aside.

It appears from the case records that the appellant is on bail. The bail bond, if any, executed by the appellant hereby stands cancelled.

Before parting with the judgment, we put on record our appreciation to Mr. Dillip Ray, learned counsel for rendering his assistance in arriving at the above decision. We also appreciate Mr. Rajesh Tripathy, learned Additional Standing Counsel for ably and meticulously presenting the case on behalf of the State.

(S.K. Sahoo, J.)

(S.K. Mishra, J.)

Orissa High Court, Cuttack
The 4th January, 2024/Padma