

**IN THE HIGH COURT OF ORISSA, CUTTACK**

**Jail Criminal Appeal No.53 of 2005**

An appeal from judgment and order dated 26.02.2005 passed by the 2<sup>nd</sup> Adhoc Additional Sessions Judge, Sundargarh in Sessions Trial Case No.255/29 of 1998-04.

Maxi @ Maximus Soreng .....

Appellant

-Versus-

State of Odisha .....

Respondent

For Appellant

Mr. Akshaya Kumar Sahoo  
Advocate

For Respondent

Mr. Priyabrata 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: 09.01.2024

**By the Bench:** The appellant Maxi @ Maximus Soreng faced trial in the Court of learned 2<sup>nd</sup> Adhoc Additional Sessions Judge, Sundargarh in Sessions Trial Case No.255/29 of 1998-04 for commission of offences under sections 302, 315 and 201 of the

Indian Penal Code (hereinafter 'I.P.C.')

on the accusation that on the night of 11.02.1998 at about 9 p.m., in the village Tildega (Dumerguda), he committed murder of Kumudini Dung Dung (hereinafter 'the deceased') and her newly born female child and threw the dead bodies of the deceased and her child into a well before the birth of the child with the intention of preventing that child from being born alive and after knowing certain offences have been committed, he caused disappearance of the evidence by tying the dead body of the deceased with stone and threw the same inside a well situated near Dumerguda with the intention of screening himself from legal punishment.

The learned trial Court, vide impugned judgment and order dated 26.02.2005, found the appellant guilty of the offences charged and sentenced him to undergo imprisonment for life under section 302 of the I.P.C., rigorous imprisonment for seven years and to pay fine of Rs.5,000/-, in default to undergo rigorous imprisonment for a further period of six months under section 201 of the I.P.C. and rigorous imprisonment for a period of seven years under section 315 of the I.P.C. and the substantive sentences of imprisonment were directed to run concurrently.

**Prosecution Case:**

2. The prosecution case, as per the first information report (F.I.R.) lodged by Silsila Dungdung (P.W.3), the mother of the deceased before the Officer in-Charge of Kinjirkela police station on 24.02.1998, is that the appellant was working as a field servant in the house of her co-villager, namely, Jakrias Dungdung and was staying in the house of the latter. During his stay there, the appellant developed illicit relationship with the deceased secretly for which the deceased became pregnant. When her pregnancy was for seven to eight months, her family members came to know about it, for which a caste meeting was held on 08.02.1998. In that meeting, a decision was taken that both the appellant and the deceased should reside together as husband and wife and a faisalanama was executed in that respect. After the decision was taken, both the appellant and the deceased stayed together in the house of the informant (P.W.3) for two to three days. On 11.02.1998, at about 11 a.m., the appellant along with the deceased boarded a bus from Talasara gate to proceed towards Kinjirkela. While leaving her house, the deceased carried some money, sarees, sayas, rice and other articles with her. P.W.3 went to see them off to Talasara gate. It is further stated in the F.I.R. that in the morning hours of

24.02.1998, P.W.3 along with her daughter-in-law went to Kinjirkela, Girjapada, to ascertain the wellbeing of the deceased. While she was in front of the house of one Robert Toppo of Girijapada, she was informed that the dead bodies of a woman and a new born baby were floating inside a well, which is situated in the land of one Uddhab Dandsena of village Dumerguda. On suspicion, the informant proceeded towards the well and the dead body of the woman was brought out of the well with the assistance of people of the locality. The informant identified that woman to be that of the deceased. She further found that stones were tied around the neck and buttock of the deceased and the face and the dead body of a child was found floating, which was also taken out of the well. The informant suspected that after bringing the deceased from her village on 11.02.1998, the appellant killed the deceased so also her child, tied the stones and threw the dead body of the deceased inside the well.

P.W.3 lodged the oral report before P.W.14 Purna Chandra Moharana, the O.I.C. of Kinjirkela Police Station, which was reduced to writing and the same was taken as the F.I.R. Accordingly, Kinjirkela P.S. Case No.08 dated 24.02.1998 was registered under sections 302 and 201 of the I.P.C. against the

appellant. P.W.14 himself took up investigation of the case. He examined the informant (P.W.3) and one Muni Soren, who had accompanied the informant to the police station. P.W.14 received information at 2.30 p.m. and visited the spot at around 3.30 p.m., which was the cultivable land of one Uddhab Dandsena of the village Dildega Dumerguda. P.W.14 found the dead bodies of the deceased so also a new born baby floating in the well and big stones were tied to the body of the deceased and at a distance from the well, broken bangles were also found. Accordingly, P.W.14 prepared the spot map (Ext.15), seized the broken bangles as per seizure list Ext.6 and guarded the spot with the assistance of the constable. The dead bodies were brought out of the well during the night of 24.02.1998. At about 6.30 a.m. on 25.02.1998, P.W.14 held inquest over the dead body and prepared inquest reports Ext.3 and Ext.4. He also seized granite stone boulders, which were tied to the body of the deceased as per seizure list Ext.7. He examined some more witnesses and sent the dead bodies for post mortem examination to District Headquarters Hospital, Sundargarh. Though search was made to arrest the appellant, but he could not be traced out as he had absconded. The wearing apparels of the deceased were produced before P.W.14 by the constable, who had escorted the dead

body, which was seized as per seizure list Ext.8. Sample water from the well was collected and was sent for chemical examination to F.M.T. Department, Medical College, Burla.

Getting reliable information that the appellant was staying in Mumbai, the I.O. (P.W.14) proceeded to Mumbai on 05.08.1998. The appellant was arrested on 08.08.1998 and forwarded to the Court at Mumbai and a transit warrant was obtained to bring the appellant from Mumbai. In course of investigation at Mumbai, the I.O. came to know that the appellant was working in a hotel by giving his name as Mukesh for about two months. After the appellant was brought to Kinjirkela police station, while in police custody, on 12.08.1998, the appellant confessed his guilt and further stated that he had thrown a bag containing the saree, sweater, saya and blouse of the deceased together with stone into the well. Accordingly, his statement under section 27 of the Evidence Act was recorded vide Ext.20 and the appellant led the police party and other witnesses to the well from where the wearing apparels were recovered and a seizure list vide Ext.5 was prepared. On 21.08.1998, P.W.14 handed over the charge of investigation to his successor Loknath Gidhi (P.W.13), who received the chemical analysis report (Ext.13). On completion of investigation, P.W.13

submitted charge sheet against the appellant on 08.10.1998 under sections 302 and 201 of the I.P.C.

**Framing of Charges:**

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

**Prosecution Witnesses, Exhibits & Material Objects:**

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

P.W.1 Junas Toppo stated that about fifteen days prior to the occurrence, he came to know that the appellant had promised to marry the deceased and that he had impregnated her. He further stated that a village meeting was convened a month before the incident occurred wherein it was decided that the marriage between the appellant and the deceased should be solemnized as the appellant had agreed to marry the deceased. He also stated that the appellant admitted to be the father of the child which the deceased was carrying in her womb. He is a

signatory to the document prepared in the panchayat meeting vide Ext.1. He further stated that he saw the dead body of the deceased and her newly born daughter after they were taken out of the well situated by the side of Talsara-Kinjirkela road and the appellant was not present near the well.

P.W.2 Marianus Dung Dung stated that due to the physical relationship between the appellant and the deceased, the deceased became pregnant. He further stated that when the appellant did not agree to marry the deceased after she became pregnant, a village meeting was convened to resolve the issue. He also stated that the appellant admitted to be the father of the foetus which the deceased was carrying. He further stated that seven days after the meeting, he came to know that the deceased has died.

P.W.3 Silsila Dung Dung is the mother of the deceased and the informant in this case. She stated that due to physical relationship between the appellant with the deceased, the deceased became pregnant. When the appellant did not agree to marry the deceased, a village panch was convened and as per its decision, the appellant agreed to marry the deceased. After a few days, she stated that both the appellant and the deceased proceeded to the former's village. About two weeks'



thereafter, she went to the village of the appellant to ascertain the wellbeing of the deceased where she was informed that a dead body is lying and she should see if it belongs to the deceased. On being so informed, she proceeded to the spot and could identify the dead body of the deceased.

P.W.4 Ramanus Dung Dung is the brother of the deceased lady who stated that the deceased had an illicit relationship with the appellant. He came to know about the same when the deceased became pregnant. He further stated that a panch meeting was convened in the village to discuss about the relationship between the appellant and the deceased wherein it was decided that the appellant should accept the deceased as his wife. He also stated that the appellant admitted in the meeting to have made the deceased pregnant. After the meeting, both the appellant and the deceased resided in the paternal home of the deceased and after a few days, they went to the village of the appellant. He also stated that a few days thereafter his mother went to the village of the appellant in search of the deceased where she learnt about her death. He is a witness to the preparation of inquest reports vide Exts.3 and 4.

P.W.5 Jadumani Khadia stated that the appellant, while in police custody, confessed to have killed the deceased.

He also stated that the appellant revealed that he had thrown the dead body as well as the wearing apparels of the deceased in the well. It was his further evidence that the appellant led the police to the well from where the wearing apparels of the deceased were recovered. He further stated that 4-5 months before the recovery of the wearing apparels, the police had recovered the dead bodies of the deceased and held inquest over the same and prepared the inquest report vide Ext.3 in which he is a signatory. He also stated about the seizure of some bangles and stones by the police as per seizure list Exts.6 and 7.

P.W.6 Hilarus Kiro stated that there was love affair between the deceased and the appellant and out of such relationship, the deceased became pregnant for six months. He further stated that a panch meeting was convened in the village to discuss about such relationship between the appellant and the deceased. Though the appellant was initially reluctant to marry the deceased, but as per the decision of the panch, he agreed to accept the deceased as his wife. After about 10-12 days, he was called by the police to Kinjirkela, from where the dead bodies of the deceased and her small baby were recovered.

P.W.7 Marshal Kiro stated that the appellant and the deceased had illicit relationship for which the appellant had

promised the deceased to marry. However, when the appellant did not stick to his promise, a meeting was held in the village and as per the decision of the village panch, the appellant agreed to accept the deceased as his wife. He is a witness to the preparation of the inquest reports vide Exts.3 and 4.

P.W.8 Bhagirathi Naik was working as the V.H.F. operator at Kinjirkela Police Station. He is a witness to the seizure of one chadar, one printed saree, a blouse and some bangles as per seizure list Ext.8.

P.W.9 Prafulla Tirkey is a co-villager of the appellant who stated that 1-2 days prior to the recovery of the dead bodies from the well, he had met the appellant at the Sundargarh Bus Stand. He further stated that upon his return to Kinjirkela, he heard about the incident.

P.W.10 Balukesar Turi was a constable attached to Kinjirkela Police Station. He is a witness to the seizure of one saree, saya and blouse as per the seizure list Ext.8.

P.W.11 Dr. Suresh Chandra Mohapatra was posted as the Professor and Head of the Department at F.M.T., V.S.S. Medical College, Burla. He, on police requisition, conducted post-mortem examination on the dead bodies of the two deceased persons and proved the post-mortem reports vide Exts.9 and 10.

P.W.12 Sampad Rakhma Mundhe was working as P.S.I., D.C.B., C.I.D., Unit-5, Chemur, Mumbai, who traced the appellant at a hotel in Mumbai, who was working there bearing a fake name. He interrogated the appellant who confessed to have killed the deceased. He informed the Superintendent of Police, Sundargarh, regarding arrest of the appellant.

P.W.13 Loknath Githi was the Officer in-Charge of Kinjirkela Police Station, who took over the charge of investigation from P.W.14 on 21.08.1998. He despatched the seized exhibits to R.F.S.L., Sambalpur, through the S.D.J.M., Sundargarh, for chemical examination and received the chemical examination report vide Ext.13. Upon completion of investigation, he submitted charge sheet against the appellant.

P.W.14 Purna Chandra Moharana was the Officer in-Charge of Kinjirkela Police Station when the incident took place and was the initial Investigating Officer of the case. Subsequently, he handed over the charge of investigation to his successor (P.W.13).

The prosecution exhibited 20 documents. Ext.1 is the panch faisala document, Exts.2, 5, 6, 7, 8 and 16 are the seizure lists, Exts.3 and 4 are the inquest reports, Ext.9 is the post mortem report of the deceased, Ext.10 is the post mortem report

of new born child, Ext.11 is the certified copy of the station diary, Ext.12 is the office copy of forwarding letter, Ext.13 is the chemical examination report, Ext.14 is the FIR, Ext.15 is the spot map, Ext.17 is the voucher, Ext.18 is the extract copy of the station diary, Ext.19 is the photo identity card and Ext.20 is the statement of appellant.

The prosecution proved eight material objects. M.Os. I to III are sarees, M.Os. IV and V are the blouses, M.O.VI is the chappal, M.O.VII is the sweater and M.O.VIII is the white plastic bag.

**Defence Plea:**

5. The defence plea of the appellant is one of denial. Though he stated that he was working in a hotel and in a liquor shop in Mumbai, but denied to have bore a fake name He also negated the suggestion that any article was recovered at his instance.

**Findings of the Trial Court:**

6. The trial Court summed up the circumstances appearing on record against the appellant as follows:

- (i) The accused had illicit love affair with the deceased Kumudini and the deceased had become pregnant through him;

(ii) The accused had admitted his relationship with the deceased and agreed to keep her as his wife and a written document was prepared to that effect;

(iii) The accused stayed in the house of the deceased for a few days and thereafter the deceased left her house with the accused together with her belongings;

(iv) The dead body of deceased Kumudini and the dead body of the baby born to her were found lying in a well, which were identified by the mother of the deceased Kumudini;

(v) The accused was missing from the village and a couple of days before the recovery of the dead bodies from the well, he was seen at Sundargarh bus stand wrapped with a Chadar and holding an air bag;

(vi) The accused was arrested from Mumbai where he was working for sometime with a fake name;

(vii) The accused, while in custody of police, gave recovery of the wearing apparels of the deceased, which she had brought with her while leaving her house;

(viii) The doctor, who had conducted P.M. examination, opined that there were ante mortem injuries on the chest and neck of deceased Kumudini which suggested pressure

over the chest and side of neck which might have led to asphyxia and death and that the death of the female child might have occurred with the death of her mother and the baby might have been expelled out of the uterus due to decomposition.

After analysing the oral as well as the documentary evidences on record, the trial Court came to hold that the prosecution, by adducing clear and cogent evidence, has conclusively proved that the appellant had illicit relationship with the deceased and the deceased became pregnant through the appellant. A meeting was convened in the village of the deceased, where the appellant agreed to accept the deceased as his wife and then they stayed in the house of the deceased together for three days. Thereafter, both the appellant and the deceased left together by a bus and that the prosecution has established the facts consistently. The trial Court further held that the deceased and the appellant were last seen together on 11.02.1998 and the dead body of the deceased was recovered from a well. The post mortem report (Ext.9) indicated that it was conducted on 27.02.1998 and time since death was about 12 to 14 days of post mortem examination. Therefore, these circumstances gave rise to a presumption that the death had

occurred some times after the departure of the deceased with the appellant.

The trial Court further held that by adducing clear and cogent evidence, the prosecution has proved that soon after the occurrence, the appellant absconded from his ordinary place of residence and stayed in Mumbai with a fake identity. The said conduct of appellant is indicative of the fact that he had a guilty mind and had absconded with obvious intention of screening himself from legal punishment. It was further held by the trial Court that seizure of wearing apparels of the deceased, which were recovered at the instance of the appellant, further strengthened the case of the prosecution. The trial Court held that the appellant committed the murder of the deceased, who was at her advanced stage of pregnancy, with the sole intention to get rid of her and had thrown the dead body into the well after tying stones, with a view to cause disappearance of evidence relating to murder and to screen himself from legal punishment, he fled away to Mumbai. It was further held that the prosecution has succeeded in proving its case beyond all reasonable doubt. Accordingly, the appellant was held guilty for commission of offences under sections 302 and 201 of the I.P.C.



**Contention of the Parties:**

7. Mr. Akshaya Kumar Sahoo, learned counsel appearing for the appellant argued that there is no direct evidence in the case. The case is based on circumstantial evidence. The circumstances are not established by clinching evidence. They do not form a complete chain so as to come to an irresistible finding that it is the appellant and the appellant alone who committed the crime. It is argued that the F.I.R. is an ante-dated one and there is no evidence that after the departure from the village of the deceased, she stayed in the company of the appellant. Therefore, the last seen theory advanced by the prosecution is not acceptable. It is further argued that the wearing apparels stated to be of the deceased, which were seized at the instance of the appellant from a well, accessible to all, were not identified either by the mother (P.W.3) or by the brother (P.W.4) of the deceased. Therefore, there is no material that wearing apparels of the deceased lady were recovered from the well at the instance of the appellant. The learned counsel argued that in view of the missing links in the chain of circumstances, it would not be safe to convict the appellant for the offences charged. Therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Priyabrata Tripathy, learned Addl. Standing Counsel, on the other hand, supported the impugned judgment and argued that not only the trial Court has chalked out the circumstances appearing against the appellant in the impugned judgment, but has also discussed the evidence on record with respect to each of the circumstances and found that the circumstances have been clearly established by the prosecution and that they do form a complete chain, which points towards the guilt of the appellant and therefore, the appeal should be dismissed.

**Whether the deceased lady met with a homicidal death and her female child:**

8. The doctor (P.W.11) conducted the post-mortem examination over the dead body of the deceased lady and he noted as follows:

- (i) There was formation of maggots in the body and they were coming out of the natural holes of the body and other small holes. All the viscera in the thorax and abdomen were eaten by maggots;
- (ii) The brain matter was liquefied and was completely drained out;

(iii) The urinary bladder and uterus were also eaten away by the maggots;

(iv) Three teeth were dislodged from the upper jaw and two from the lower jaw due to decomposition;

(v) There were three injuries present on the front the chest on upper part, dark red in colour of sizes 6" x 6" with hematoma. There was another similar injury on the right arm of the size 4" x 4".

He has given the opinion that the injury on the chest and neck were ante mortem in nature and suggested pressure over the chest and the side of the neck which might have led to asphyxia and death. He preserved the viscera and bone marrow for diatom test and opined that time since death was about twelve to fourteen days of the post mortem examination. He proved the P.M. report of the deceased lady as Ext.9. Similarly, he has stated to have conducted post mortem examination on the dead body of the newly born female child and found the dead body in a highly decomposed state due to advanced stage of decomposition for which he could not give any definite opinion about cause of death of female child. However, he opined that on account of decomposition after the death of her mother (deceased lady), the female child might have been expelled out

of the uterus. The post mortem report of the new born baby has been marked as Ext.10. In view of the post mortem report finding, the manner in which the dead body of the deceased was found inside the well from which it was recovered, the learned counsel for the appellant did not dispute that the deceased lady met with a homicidal death or the finding of the doctor in the P.M. report that on account of decomposition after the death of the deceased lady, the baby in the uterus might have been expelled out of it which had eight to nine months of intrauterine life.

**Whether there was an illicit relationship between the appellant and the deceased for which the deceased became pregnant and a meeting was convened over such issue?:**

9. Against the backdrop of the above factual matrix, we deem it proper to first assess the tenability of the decision of the trial Court regarding circumstance nos.(i) and (ii). It has been stated by a number of witnesses, who were not only the family members of the deceased like P.W.3 and P.W.4, who are the mother and the brother of the deceased respectively but also her co-villagers that due to illicit relation between the appellant and the deceased, the deceased became pregnant and that a

meeting was convened in the village when pregnancy of the deceased was revealed. In that meeting, the appellant admitted to be the father of the child which was being carried by the deceased in her womb. At the first instance, a fine of Rs.10,000/- was imposed on the appellant and the said amount was directed to be given to the deceased. However, when the appellant expressed his inability to pay such amount, it was decided that the appellant should marry with the deceased to which the appellant agreed and faisala document (Ext.1) was prepared by the panch in that respect which was seized by the I.O. under seizure list Ext.2. Nothing has been brought out in the cross-examination by the defence to discard this evidence. Therefore, the trial Court was justified in holding that the circumstance nos.(i) and (ii) have been proved against the appellant.

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

10. So far as circumstance no.(iii) framed by the trial Court is concerned, it is alleged that the appellant stayed in the house of the deceased for a few days after the panch faisala was made. Thereafter, the deceased left her house with the appellant with her belongings. We find that there are some discrepancies

in the evidence relating to the appellant and the deceased staying together for a few days in the house of the deceased after the decision was taken in the meeting. No doubt, in the F.I.R., it has been stated by P.W.3 that after the faisala was made in the village meeting, the appellant and the deceased stayed together in her house for about two to three days. But P.W.3, in her evidence, has stated that after the meeting, the deceased stayed with her and the appellant went to the house of Jakirias, in whose house he was working as a field servant. She specifically stated in the cross-examination that after the meeting, both the deceased and the appellant did not start living together. P.W.4, the brother of the deceased, has also stated that after meeting, the deceased resided in her paternal house and however the appellant resided in the house of Jakirias. Thus there is no clinching evidence that the appellant and the deceased stayed together for a few days in the house of the deceased after the decision was taken in the meeting.

So far as the circumstance that the deceased left her house with the appellant carrying her belongings, the evidence of P.W.3 and P.W.4 are very much relevant. P.W.3 has stated that after three days of the meeting, both the appellant and the deceased proceeded to the village of the appellant i.e. Kinjirkela

(Girjapada). On that day, she accompanied them till Talasara gate where they boarded a bus. P.W.3 has further stated that the distance between her house and Talasara would be ½ Kos and she went to see them off alone. She further stated that on being requested by the deceased, she had accompanied her to Talasara gate and that they boarded a bus and that she told about the departure of the deceased with the appellant to her sons. P.W.4 has also stated that three days after the meeting, both the appellant and the deceased left their village and P.W.3 accompanied them to see them off. After returning from bus stand, P.W.3 revealed before him that she saw them off. Therefore, so far as the circumstance no.(iii) is concerned, though the evidence relating to the appellant staying with the deceased in her house is not established by the prosecution, but the prosecution has successfully established that the appellant and the deceased left together and they boarded a bus at Talasara gate.

The most vital circumstance, that is missing in this case, is that after the departure from the village of the deceased, both the appellant and the deceased stayed together in village Kinjrikela i.e. the village of the appellant. Nobody had seen the appellant and the deceased staying together under one roof after

they left the village of the deceased on 11.02.1998. No villager of village Kinjrikela or any person from the neighbourhood of the house of the appellant in village Kinjrikela was examined to substantiate such aspect. P.W.3, the mother of the deceased, has stated that to her knowledge, till the death of the deceased, both of them had not started living together. She further stated that the distance between village Kinjirkela and her village is long and the bus takes sixteen rupees fair for the journey. The dead body of the deceased was recovered on 24.02.1998 and there was a gap of thirteen days in between. Neither the mother (P.W.3) nor the brother (P.W.4) of the deceased have stated that after the deceased left the village by boarding a bus with the appellant at Talasara gate, she made any communication with them and told them that she was residing with the appellant under one roof in village Kinjrikela.

No doubt the doctor (P.W.11) conducted post mortem examination on 27.02.1998 and opined that the time since death was about twelve to fourteen days of the P.M. examination. The approximate time of death as indicated in the post mortem report cannot be applied as something of mathematical precision. Time since death is an important objective of post-mortem examination which connects an



accused to that particular moment of time to prove his guilt or innocence and plays a vital issue in investigation of medico legal cases. The various gross external changes in a dead body after death like loss of corneal reflex and changes in eye, cooling of the body, post mortem hypostasis, rigor mortis, decomposition and other putrefactive changes are generally considered to opine about the time passed since death. The Investigating Agencies and the Judiciary should be made aware of the fallacy that the exact time of death cannot be fixed by any method, but only an approximate range of death can be given, that too will have considerable biological variations in individual cases. In the case of **The State -Vrs.- Arup Pradhan reported in 1985 Criminal Law Journal 161**, it is held that it would not be possible for a doctor to say with mathematical precision as to when actually the death had taken place prior to the autopsy. Hon'ble Supreme Court in the case of **Pattipati Venkaiah -Vrs.- State of A.P. reported in (1985) 4 Supreme Court Cases 80** held that medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerised or mathematical fashion so as to be accurate to the last second.

The doctor (P.W.11) in this case has not stated on what basis, he determined the time of death. It is all the more

necessary and expedient that the doctor should indicate the reasonings for arriving at time of death in the post-mortem report. The Hon'ble Supreme Court in the case of **Madan Gopal Kakkad -Vrs.- Naval Dubey and another reported in (1992) 3 Supreme Court Cases 204**, has held as under:

"34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court."

In absence of any other evidence, the post mortem report finding regarding time of death of the deceased cannot be a conclusive factor to hold that the death took place twelve to fourteen days of the post mortem examination as stated by the doctor (P.W.11) and therefore, in our humble view, the

prosecution has not succeeded in establishing that the deceased was killed immediately after the deceased was last seen alive in the company of the appellant by P.W.3 while boarding the bus at Talasara gate.

In the cases of **Mohd. Azad -Vrs.- State of West Bengal reported in (2008) 15 Supreme Court Cases 449, State through C.B.I. -Vrs.- Mahender Singh Dahiya reported in (2011) 3 Supreme Court Cases 109** and **Sk. Yusuf -Vrs.- State of West Bengal reported in J.T. (2011) 6 SC 640**, the Hon'ble Supreme Court has consistently held that the 'last seen theory' comes into play where time, when the accused and the deceased were last seen alive and the deceased was found, is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. In this case, since there is no evidence that the deceased and the appellant lived together after they boarded a bus at Talasara gate on 11.02.1998 and since the possibility of the deceased coming in contact with other persons prior to her death after she boarded the bus with the appellant at Talasara gate cannot be ruled out, we are of the humble view that a vital link in the chain of circumstances is missing, which has been overlooked by the trial Court.

**Whether the dead bodies were found inside a well and F.I.R. containing such aspect was ante-dated:**

11. Coming to the circumstance no. (iv), we find that the F.I.R. is stated to have been lodged at 02.30 p.m. on 24.02.1998, wherein it is mentioned that while the informant (P.W.3) went to the village of the appellant to verify the well-being of the deceased in the morning hours of 24.02.1998, she received information that dead bodies of a woman and a new born child were floating in a well and on suspicion, she went to that place. With the help of the owner of the land so also other persons, the dead bodies were brought out of the well and the P.W.3 could identify the dead body of the woman to be that of the deceased. Therefore, from the F.I.R., it is apparent that by the time the F.I.R. was lodged, the dead bodies were already brought out of the well. Most peculiarly, the I.O. (P.W.14) has stated that after the registration of the F.I.R., he proceeded to the spot for investigation and found that the well was full of water and the dead bodies were found floating in the well. He further stated that he took steps for guarding the spot. On the next day i.e. 25.02.1998, at 6.30 p.m., he held inquest over the dead bodies, which were brought out of the well during the previous night. Therefore, the evidence of the I.O. runs

completely contrary to the narration made in the F.I.R. regarding the recovery of the dead bodies from inside the well. The I.O. has stated dead bodies were brought out of the well in the night of 24.02.1998 which makes it clear that if the F.I.R. (Ext.14) was lodged in fact on 24.02.1998, at 2.30 p.m., then the dead bodies were not recovered by that time as per the statement of the I.O. If the statement of the I.O. is accepted that the dead bodies were brought out of the well in the night on 24.02.1998 and since the F.I.R. contained averments regarding recovery of the dead bodies from out of the well, it shows that it was lodged after such recovery which might be on 25.02.1998 and therefore, the F.I.R. is an ante-dated one. As the dead bodies were found inside a well and recovered from it in the night on 24.02.1998, we are of the view that the F.I.R. which contains such aspect is an antedated one.

**Recovery of wearing apparels of the deceased at the instance of the appellant:**

12. The circumstance no.(vii), which has been discussed by the trial Court, is that the wearing apparels of the deceased were recovered at the instance of the appellant from the well. The dead bodies were recovered on 24.02.1998. The appellant was arrested on 08.08.1998. As per the statement of the

appellant, some wearing apparels were seized from inside a well on 12.08.1998. Neither the wearing apparels were shown to the mother (P.W.3) or to the brother (P.W.4) of the deceased to identify the same. No other person has identified that the wearing apparels were that of the deceased. Therefore, even though the circumstance that some wearing apparels were seized from the well at the instance of the appellant is taken to be proved, but the prosecution has failed to establish that those were of the deceased.

**Conclusion:**

13. It is borne out of the records that the deceased lady and her new born baby were made to meet with extremely painful deaths which shock the conscience of this Court, but it is still not clear as to who is responsible for such an abominable and ghastly crime. Though this Court has a bounden duty to render justice to those two innocent departed souls, but at the same time, the hands of justice are tied with the threads of strict procedures and proof that are needed to be followed while recording a conviction against a person. As long as someone's innocence is not completely ruled out by way of established facts and evidence, this Court has no option but to be loath to put him behind the bars.

In view of the foregoing discussions, we are of the view that the prosecution has successfully established that the appellant had illicit relationship with the deceased and the deceased became pregnant on account of such relationship. A written document was executed in a meeting in which the appellant agreed to accept the deceased as his wife. But there is no evidence on record that after such decision was taken, the appellant and the deceased stayed together in the house of the deceased for a few days. The evidence no doubt established that the appellant and the deceased left together in a bus and the dead bodies of the deceased and a baby were recovered from a well after thirteen days of such departure. It is also established that the appellant was arrested from Mumbai and at the instance of the appellant, some wearing apparels were seized from a well and that the deceased lady met with a homicidal death. However, since there is a significant time gap between last seen of the appellant and the deceased together at the bus stand by P.W.3 and the recovery of the dead body of the deceased and as there is no material at all that after such departure, they were staying together under one roof or they were last seen together shortly prior to the death of the deceased and the wearing apparels which were recovered from the well of the deceased

belonged to the deceased, we are of the humble view that the vital links in the chain of circumstances are found missing.

Therefore, having due regard to the 'panchsheel principles' laid down by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda -Vrs.- State of Maharashtra reported in (1984) 4 Supreme Court Cases 116**, we are of the considered view that the circumstances, which have been established by the prosecution, do not form complete chain so as to unerringly point towards the guilt of the appellant. Since the possibility of the murder being committed by any third person cannot completely be ruled out, it would be very risky to accept the prosecution evidence to hold the appellant guilty of the offences charged. It is also well settled that suspicion, however grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.

Accordingly, the impugned judgment and order of conviction of the appellant is hereby set aside. The appellant is acquitted of the charges under sections 302, 315 and 201 of the I.P.C. The appellant, who is on bail by order of the Court, is hereby discharged from liability of the bail bonds and the surety bonds shall also stand cancelled.



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

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**(S.K. Sahoo, J.)**

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**(S.K. Mishra, J.)**

Orissa High Court, Cuttack  
Dated The 9<sup>th</sup> January, 2024/Padma

