

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

**JCRLA No.56 of 2008**

An appeal from judgment and order dated 14.10.2004 passed by the Additional Sessions Judge, Fast Track Court-2, Cuttack in Sessions Trial No.126 of 2004.

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Pata @ Pratap Puri ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellant: Mr. Samvit Mohanty  
(Amicus Curiae)

For Respondent: Mr. Sonak Mishra  
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**

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Date of Hearing and Judgment: 19.01.2024

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**By the Bench:** The appellant Pata @ Pratap Puri faced trial in the Court of learned Additional Sessions Judge, Fast Track Court-2, Cuttack in Sessions Trial No.126 of 2004 for commission of offences under section 302 of the Indian Penal Code (hereinafter 'I.P.C.') and

section 27 of the Arms Act on the accusation that on 09.06.2003 at village Tilada under Salipur police station, Cuttack, he committed murder of Pabitra Kumar Das, (hereinafter 'the deceased') by means of a sword and that on the same day he was in illegal possession of a sword without any authority.

The trial Court vide impugned judgment and order dated 14.10.2004 while acquitting the appellant of the charge under section 27 of the Arms Act, found him guilty under section 302 of the I.P.C. and sentenced to undergo rigorous imprisonment for life.

**Prosecution Case:**

2. The prosecution case, in short, is that on 09.06.2003 morning, Trinath Mishra, the officer in-charge of Salipur police station (P.W.14) on getting telephonic information regarding the brutal murder of the deceased, proceeded to the spot along with other police staff. A written report was handed over to him (P.W.14) by Puspalata Das (P.W.1), the widow of the deceased wherein it is stated that on 08.06.2003 night at about 11 a.m., she along with her two children went to sleep in their room, but the deceased went to sleep alone on the roof top of their house with the key of the entrance door of the house. On 09.06.2003 morning, when she (P.W.1) went to the top of the roof to bring the key kept by the deceased, she found the deceased was lying dead in a pool of blood with two deep cut injuries on the left side of his neck and the pillow

and bed were drenched with blood. On hearing the cries of P.W.1, her mother in-law and other neighbours reached at the spot, broke open the entrance door. In the written report, P.W.1 suspected the appellant to have committed the crime as the latter had threatened the deceased to kill in connection with theft of motor pump. P.W.1 also suspected co-villager Kuni @ Sumant Routra, S/o- Natabar Routra to be involved in the crime as he was threatening the deceased to kill on account of family dispute.

P.W.14 treated the said report as F.I.R. and registered Salipur P.S. Case No. 140 dated 09.06.2003 under section 302 of I.P.C. against the appellant and Kuni @ Sumant Routra.

3. P.W.14 himself took up investigation and during course of investigation, he examined the informant (P.W.1) and other witnesses, visited the spot, prepared the spot map (Ext.11), held inquest over the dead body as per the inquest report (Ext.3), seized the sample blood of the deceased, blood stains collected from the stair case and railing of the stair case, hair pieces collected from the belly and hand of the deceased, hair stuck to the right palm of the deceased as per seizure list Ext.2 and sent the dead body for post mortem examination. He also seized the wearing apparels of the deceased, seized the biological samples of the deceased as per seizure list Ext.6. He arrested the appellant on 22.06.2003 and the appellant while in police custody, confessed to have committed the

crime by means of sword and concealed the same near the Jamujori bridge whereafter basing on his statement (Ext.8) and leading to discovery, the sword (M.O.I) was seized as per seizure list Ext.4. P.W.14 seized the wearing apparels of the appellant as per seizure list Ext.7, sent the appellant to S.C.B. Medical College and Hospital, Cuttack for medical examination, seized the biological samples of the appellant as per seizure list marked as Ext.5, forwarded the appellant to the Court of learned J.M.F.C., Salipur and also made a prayer to the learned J.M.F.C. for sending the exhibits to S.F.S.L., Rasulgarh for chemical examination as per the forwarding report Ext.18. P.W.14 sent the weapon of offence to the doctor (P.W.12), who conducted post-mortem examination over the dead body of the deceased for opinion regarding the possibility of injury by such weapon and the latter submitted the report as per Ext.10. On completion of investigation, P.W.14 submitted the charge sheet on 18.10.2003 under section 302 of I.P.C. and section 27 of the Arms Act against the appellant.

**Framing of Charges:**

4. After submission of charge sheet, the case was committed to the Court of Session for trial after observing due committal procedure, where the learned trial Court framed the charges against the appellant on 28.08.2004 as aforesaid and since the appellant refuted the charges, pleaded not guilty and claimed to

be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

**Prosecution Witnesses, Documents Exhibited and Material**

**Objects Proved By Prosecution:**

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

P.W.1 Puspala Das, who is the widow of the deceased, lodged the F.I.R. (Ext.1) wherein she stated that she suspected the appellant to have committed murder of her husband as the latter had threatened her husband with dire consequences since the deceased asked the appellant regarding theft of his motor pump.

P.W.2 Bhramarbar Das is a close neighbour of the deceased. He stated that on hearing the shout of P.W.1 that somebody had killed the deceased, he along with others went to the roof of the house and found the deceased lying dead. He further stated that he also suspected the appellant to have committed the crime as because there was hot exchange of words between the appellant and the deceased regarding theft of the motor pump of the deceased. He further stated that when it was decided to report the matter to the police, the father of the appellant returned the motor, which was thereafter handed over to the deceased.

P.W.3 Narasingha Dash, who is the father of the deceased, stated in the same line as that of P.W.2.

P.W.4 Nandakumar Das, who is the brother of the deceased, has stated that on receiving the telephone call regarding the death of the deceased, he immediately came to the spot and heard that the appellant had killed the deceased. He is a witness to the inquest report as per Ext.3.

P.W.5 Raghunath Das, who is the cousin brother of the deceased has stated that on the request of P.W.1, he scribed the F.I.R. (Ext.1).

P.W.6 Rabinarayan Sethi and P.W.8 Pravat Kumar Naik have been declared hostile by the prosecution.

P.W.7 Bhagan Das, who is a blacksmith by profession, has stated that the appellant had paid him Rs.200/- towards making charges of the sword and he identified the same as M.O.I.

P.W.9 Sudhir Kumar Nayak has stated that in his presence, while in the police custody, the appellant admitted his guilt and on the basis of his statement and on being led, one sword (M.O.I) stained with blood was recovered from the bush near a bridge as per seizure list Ext.4/1.

P.W.10 Basanta Kumar Jena, who was working as a constable in Salipur police station is a witness to the seizure of

biological samples of the appellant as per seizure list Ext.5. He is also a witness to the seizure of wearing apparels as well as blood sample of the deceased as per seizure list Ext.6.

P.W.11 Saroj Barik is a witness to the seizure of the wearing apparels of the appellant as per seizure list Ext.7. He also proved the wearing apparels of the appellant vide M.O.II and M.O.III.

P.W.12 Dr. Manoj Kumar Jena, was the Asst. Professor, F.M.T. Department of S.C.B. Medical College and Hospital, Cuttack, who conducted post mortem examination over the dead body of the deceased. He proved his report Ext.9. He also proved the query report made by the I.O. as per Ext.10.

P.W.13 Ramesh Ch. Sahoo, who was working as constable in Salipur police station is a witness to the seizure of biological samples of the deceased as per Ext.5.

P.W.14 Trinath Mishra, who was the officer in-charge of Salipur police station, is the investigating officer of the case.

The prosecution exhibited eighteen documents. Ext.1 is the F.I.R., Exts.2, 4/1, 5, 6, and 7 are the seizure lists, Ext.3 is the inquest report, Ext.8 is the confessional statement of the appellant, Ext.9 is the report of P.W.12, Ext.10 is the report regarding examination of weapon by P.W.12, Ext.11 is the spot map, Ext.12 is

the spot visit report, Ext.13 is the dead body chalan, Ext.14 is the command certificate, Ext.15 is the blood group of the appellant, Ext.16 is the prayer of P.W.14 for sending the exhibits for chemical examination, Ext.17 is the forwarding report of J.M.F.C., Salipur to S.F.S.L., Rasulgarh and Ext.18 is the chemical examination report.

The prosecution proved three material objects. M.O.I is the sword, M.O.II is the pant and M.O.III is the shirt of the appellant.

**Defence Plea:**

6. The defence plea of the appellant was one of complete denial. It was further pleaded that Kuni @ Sumanta Routra was in visiting terms to the house of the deceased and he was looking after the truck of the deceased and during course of his visit, he developed intimacy with the wife of the deceased and thus the deceased prohibited the entry of Kuni to his house for which Kuni bore grudge and thus possibility of Kuni committing the crime cannot be ruled out.

**Findings of the trial Court:**

7. The learned trial Court after assessing the oral as well as documentary evidence on record came to hold that there is nothing to discredit the evidence of P.W.9 and P.W.14 regarding the disclosure statement (Ext.8) and seizure of weapon of offence

(M.O.I) vide seizure list (Ext.4/1). The chemical examination report (Ext.18) revealed that the strands of hairs marked as Ext.D in the seizure list which were struck to the right palm of the deceased tallied with the sample hair of the appellant marked as Ext.N seized by police as per seizure list Ext.6. The learned trial Court did not accept the contentions of the defence that Kuni @ Sumanta Routra might have killed the deceased and did not place reliance on the evidence of P.W.7, the blacksmith and while acquitting the appellant of the charge under section 27 of the Arms Act, held that the prosecution has established the case of murder against the appellant.

**Circumstances appearing against the appellant:**

8. After going through the evidence on record, we find that there is no direct evidence in this case as to who committed the murder of the deceased and how. The case rests upon circumstantial evidence. Keeping in view the five golden principles laid down by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda -**

**Vrs.- State of Maharashtra reported in A.I.R. 1984 S.C. 1622**  
which their Lordships termed as "panchsheel" in the proof of a case based on circumstantial evidence, we have to see as to how far the circumstances from which the conclusion of guilt is to be drawn have been fully established by the prosecution and how far the facts established are consistent only with the hypothesis of the guilt of the

appellant and not explainable on any other hypothesis. We have also to see whether the circumstances are of a conclusive nature and tendency and the chain of evidence is so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and to come to an irresistible conclusion that the act must have been done by the appellant. Since in cases depending largely upon circumstantial evidence, there is always a danger that the conjecture or suspicion taking the place of legal proof, we have to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. It is said that the mind is apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely is it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.

The following circumstances are appearing on record against the appellant:-

- (i)** The appellant had prior enmity with the deceased in connection with theft of motor pump;
- (ii)** On the basis of the statement of the appellant, one sword was recovered and the F.S.L. report indicated that faint blood stain was found on the sword;

(iii) Hair stuck on the right palm of the deceased was chemically examined and it was found to be tallied with that of the hair of the appellant.

**Contentions of the parties:**

9. Mr. Samvit Mohanty, learned Amicus Curiae contended that the prosecution has failed to establish any specific motive on the part of the appellant to commit the crime which assumes pertinent significance in a case based on circumstantial evidence. The hair stuck on the right palm of the deceased was not kept in sealed condition after its seizure before it was sent for chemical examination at a belated stage and therefore, no reliance can be placed on the findings of C.E. Report. The appellant has been acquitted of the charge under section 27 of the Arms Act and the evidence of P.W.7, the blacksmith has been disbelieved and therefore, basing on the recovery of the sword at the instance of the appellant which was stained with blood but the origin of blood could not be detected during chemical examination, it is difficult to hold that the circumstances established against the appellants unerringly point towards the guilt of the appellant and therefore, benefit of doubt should be extended in favour of the appellant.

Mr. Sonak Mishra, learned Addl. Standing Counsel on the other hand supported the impugned judgment and argued that the circumstances established against the appellant are very clinching

and form a complete chain and therefore, the learned trial court is justified in convicting the appellant.

**Assessment of evidence on record on each of the circumstances:**

**First Circumstance:**

10. So far as the first circumstance is concerned, in the F.I.R., P.W.1 has mentioned that in connection with theft of a motor pump, the appellant had given threat to the deceased to kill and it is further mentioned that one of the co-villagers namely, Kuni @ Sumanta Routra had also threatened to kill the deceased on account of family dispute. In her evidence, the informant (P.W.1) however has stated that she suspected the appellant to have committed the murder as the appellant had committed theft of their motor pump and when the deceased asked him about the commission of theft, such threat was given the appellant. She further stated that she also suspected Kuni @ Natabar Routra as he was looking after their truck and there was dispute between Kuni and the deceased. In the cross-examination, P.W.1 has further stated that no report was lodged before the police relating to commission of theft of motor pump by the appellant and recovery of the same and that she had not shown any document to the police that they had a motor.

P.W.2, the uncle of the deceased has stated that prior to two months of the occurrence, there was commission of theft of

murder of the deceased and for that reason, there was exchange of words between the appellant and the deceased. When it was decided that the matter would be reported to the police, the father of the appellant told to search the motor and accordingly, he returned the motor through him, which was handed to the deceased. In the cross-examination, P.W.2 has stated that no report was given to the police regarding commission of theft of motor pump and no panchayat was also convened in connection with the theft of the motor pump of the deceased. He could not say the maker of the motor and when the motor was purchased. He further stated that he had not heard about the appellant and the deceased exchanging words in connection with the theft of motor.

P.W.3 Narasingha Dash, who is father of the deceased, has stated that one month prior to the occurrence, there was commission of theft of their motor. When he asked the appellant about such theft, the appellant abused him in filthy language and the deceased reached there and protested the action of the appellant and then the deceased also told to report the matter to the police station, but the father of the appellant told not to report saying that he would search for the motor. He further stated that in the night following the occurrence of confrontation centering to the commission of theft of motor, the father of the appellant told the ward member either to return the motor or to pay Rs.2,000/-

towards the cost of the motor and on the next day, the brother and father of the appellant returned the motor through the ward member and for such reason, the appellant had threatened to kill the deceased. In the cross-examination, P.W.3 has stated that he had got document to show the possession of the motor but the same was not given to the police and he could not say the maker of the motor and when it was purchased by the deceased. P.W.3 also could not say the details of the purchase of the motor.

Thus, the evidence of all these three witnesses i.e. P.Ws.1, 2 and 3 who have stated about the motive behind the commission of crime or threat given by the appellant to the deceased in connection with the theft of the motor pump, in our view are very shaky in nature. First of all, no documentary evidence relating to the purchase of a motor pump by the family of the deceased was produced. P.W.3, the father of the deceased has stated that they had got documents to show the possession of the motor, but they had not given the papers to police. P.W.3 has further stated that the deceased had purchased the motor, but he could not say the maker of the motor and the detail of the purchase of the motor. Admittedly, no report was given before the police in connection with the theft of motor pump and there is also no evidence on record that the appellant committed the theft of the motor and he was only suspected to have committed the crime.

Moreover, if according to P.W.2, the theft of motor took place two months prior to the occurrence and the motor was returned to the deceased on the next day of theft, then there would not be any kind of grievance of the appellant on the deceased. There is no material from which source the brother and father of the appellant brought the motor and handed over to the deceased and there is also nothing on record that it was against the willingness of the appellant.

In a case based on circumstantial evidence, motive assumes pertinent significance and if motive is proved, that would supply additional link in the chain of circumstantial evidence and absence of motive is a factor that weighs in favour of the accused. The motive is a thing which is primarily known to the accused and it is not always possible for the prosecution to explain what actually promoted the accused to commit the particular crime. If the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. The evidence relating to the motive, which has been adduced by the prosecution is very shaky in nature inasmuch as the involvement of one Kuni @ Sumanta Routra was also suspected which has been disbelieved by the learned trial Court. Therefore, we are not inclined to accept that the appellant had any motive to commit the crime. Thus, the first circumstance fails.

### **Second Circumstance:**

The next circumstance which was relied upon by the prosecution is that one sword was recovered at the instance of the appellant. Even if the I.O.'s evidence and the evidence of other witness are accepted in that respect, but there is no material before us that the particular sword was used in committing the murder of the deceased. The sword was sent for chemical examination and the chemical examination report vide Ext.18 indicates that though blood stain was found in it, but the origin of the blood could not be detected and the grouping was not done because it was inconclusive in nature. Therefore, this circumstance no way helps the prosecution in arriving at the guilt of the appellant.

### **Third Circumstance:**

The third circumstance is that the hair stuck in the right palm of the deceased was chemically examined and it was found to be tallied with that of the hair of the appellant. It is the prosecution case the scientific officer visited the spot, which was the roof top of the deceased and from the belly and hand of the deceased some hair pieces were collected so also from the right palm of the deceased. The scientific officer handed over the same to the I.O. (P.W.14), which was seized as per seizure list Ext.2. In this aspect, the scientific officer has not been examined in Court. Though the I.O. (P.W.14) so also P.W.2 have stated about the seizure of the hair

from the right hand palm of the deceased, but there is no evidence that after its seizure, it was kept in sealed condition. None of the witnesses has stated in that respect and even the seizure list also does not indicate about the sealing of the hairs seized.

Mr. Sonak Mishra, learned Additional Standing Counsel argued that when the hairs were produced in separate covers in Court for sending it to S.F.S.L., Rasulgarh for C.E. examination, those are found to be sealed and therefore, it is to be presumed that after its collection by the scientific officer and seizure by the I.O., it was kept in sealed condition. We are not inclined to accept such submission since the date of seizure of the hair was on 09.06.2003 and it was produced in Court and forwarded for chemical examination on 18.10.2003, as deposed to by the I.O. There is no material before us that in whose custody and in what condition such seized hairs were kept. In absence of such evidence, the tampering with the same cannot be ruled out as the hairs of the appellant were also collected on 23.06.2003 at the S.C.B. Medical College and Hospital, Cuttack.

In the present case, the chemical examination report marked as Ext.18 indicates that the hair marked vide Ext.D (which was collected from the belly and right palm of the deceased by Scientific Officer) tallied with the hair marked vide Ext.N (sample hair of the appellant collected by the Medical Officer, F.M.T., S.C.B.

Medical College & Hospital, Cuttack during medical examination), but did not tally with the hair marked vide Ext.M (pubic hair of the appellant) with respect to their morphological and microscopic features.

In Modi's "A text book of Medical Jurisprudence and Toxicology", 27<sup>th</sup> Edition, Chapter 10 (Personal Identity), it is mentioned that microscopic hair comparison has been demonstrated to be a valid and reliable scientific methodology, but at the same time, "microscopic hair comparisons alone cannot lead to personal identification and it is crucial that this limitation be conveyed both in the written report and testimony."

In the case of **Himangshu Pahari -Vrs.- The State**  
**reported in 1986 Criminal Journal 622**, a Division Bench of Calcutta High Court held as follows:-

".....Though the learned trial Judge accepted the report of the Senior Scientific Officer, on scrutiny of his evidence, we consider it unsafe to act upon the report. It has been elicited in his cross-examination that he did not measure the diameters of the shafts of the hairs or their length, did not take impression of the cuticles of the hairs, did not note the shapes, appearance and the colours of the hairs or the directions of the pointing out of the hairs. The science of comparison of hairs has not yet, reached perfection like the science of comparison of finger

prints. Where, therefore, all the tests were not meticulously carried out, it would be unsafe to rely upon the report."

In the case of **Komal -Vrs.- State of U.P. reported in I(2006) Current Criminal Reports 334 (All.)**, a Division Bench of Allahabad High Court held that the hair analysis report is not conclusive in nature. It is not clear whether hair after seizure was kept in proper custody in a sealed condition or not and thus the circumstance is not conclusive in nature.

In the case of **Vijay Kumar @ Bhusan -Vrs.- State reported in 2007 (94) Delhi Reported Journal 243**, a Division Bench of Delhi High Court held as follows:-

"37. On a consideration of all these decisions, it appears to us that even though the science of hair identification may be quite an advanced science and it may be possible to determine the source, it would not be safe to solely rely upon the similarity of hair to convict an accused person - there must be some other connecting evidence to link the accused person with the crime, although the analysis of hair would be an important piece of evidence. For this reason, we cannot definitely say that the four strands of hair in the right fist of the deceased, which are apparently similar to the hair of the appellant, are the hair of the appellant. Even the expert witness could not say that."

In the case of **Ashok Singh -Vrs.- State reported in  
MANU/DE/3150/2012**, a Division Bench of Delhi High Court held  
as follows:-

"21. Sampling and analysis of hair samples suffer from many limitations; most notably, standard procedures have not been published for collecting, washing and analysing hair samples. Many questions regarding appropriate sampling and analytical procedures remain unanswered. CFSL report (Ex.PW-14/J) does not elaborate how the expert came to the conclusion that there was 'similarity' between the questioned hair strands and the specimen hair of the accused. The characteristics like scale-count (number of scales per cm), shaft diameter and its variation from root to tip, medullary index (the ratio of the medulla diameter and the shaft diameter), pigment and shape of the cross-section have not been dealt in the report. It is not certain if the hair strands examined by the expert were full hair with root and tip intact and were representative of the body part/parts concerned. It is also uncertain if adequate number of hair were obtained as questioned hair.

21. It has been commented in the text book of Medical Jurisprudence and Toxicology, 24<sup>th</sup> Edition 2011 by Modi that:

...Extensive work is yet necessary for universal acceptance of these approaches to

the examination of even small pieces of hair. Till then, it can only be said that by laboratory examination, dissimilarity of hair can be more reliably shown than their similarity. The age and sex of the hair cannot be opined with high degree of reliability in all cases. Any opinion given should therefore be worded with due caution indicating the limitations of examination carried out."

In view of the ratio of the decisions as discussed above and since there is no evidence of sealing the hairs after it was collected by the Scientific Officer and handed over to the I.O. (P.W.14) and there is no other connecting evidence on record to link the appellant with the crime and the law requires that circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and fouler the crime, higher the proof and the suspicion howsoever strong, cannot take place of proof, in our humble view, it would be hazardous to convict the appellant solely basing upon the chemical examination report (Ext.18).

Another suspicious feature which appears from the evidence of P.W.1 is that the main gate of the house in question was locked in the night of occurrence and the key was available with the deceased, who was sleeping on the roof top and the staircase was inside the house and in the F.I.R., it is mentioned that the villagers

broke open the lock of the gate in the morning after the dead body was detected by P.W.1. Thus, if any outsider had committed the murder, in order to access the roof top, he must have climbed through some other path and certainly not have used the staircase of the house and obviously, after committing the crime, he would try to escape through the path which he had taken to climb or some other path, but not enter the house through the staircase as the entrance door was locked and there was every possibility of his being noticed by the family members of the deceased. In such a situation, when the blood stains were found in the staircase so also in the railing of the staircase, it makes the case more suspicious.

11. In view of the foregoing discussions, we are of the view that the conviction of the appellant under section 302 of the I.P.C. cannot be sustained in the eye of law. Accordingly, the impugned judgment and order of conviction is set aside, In the result, the JCRLA is allowed. The appellant is acquitted of the charge under section 302 of the I.P.C.

The appellant is on bail by order of this Court. He is hereby discharged from liability of the bail bonds and the surety bonds shall also stand cancelled.

Before parting with this judgment, we put on record our appreciation to Mr. Samvit Mohanty, learned Amicus Curiae for rendering his assistance in arriving at the above decision. He shall

be entitled to his professional fee which is fixed as Rs.7,500/- . We also appreciate Mr. Sonak Mishra, 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,  
Dated 19<sup>th</sup> January 2024/Padma

