IN THE HIGH COURT OF ORISSA, CUTTACK

Criminal Appeal No.248 of 1998

An appeal from judgment and order dated 22.09.1998 passed by the Addl. Sessions Judge, Kendrapara in S.T. No.43/455 of 1996.

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1. Chandia @ Chandi Sethy
2. Karunakar Sethy @ Nandu
3. Bulu Sethy
4. Premananda Sethy
5. Suratha Sethy
6. Basanta Sethy ..... Appellants

-Versus-

State of Odisha ..... Respondent

For Appellants: - Miss Adyashakti Priya
Advocate

For Respondent: - Mr. Aurovinda Mohanty
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing: 24.07.2025 Date of Judgment: 11.08.2025

S.K. Sahoo, J. "Neither a borrower nor a lender be. For loan doth oft lose both itself and friend, and borrowing dulls the edge of husbandry".

This famous quote was spoken by the character Polonius, King Claudius' Chief Minister as he gives advice to his son Laertes, while he is leaving for University in Paris in Shakespeare's play *Hamlet*. This advice emphasises the potential negative consequences of both lending and borrowing money, particularly in the context of relationships.

The case in hand depicts a painful and distressing event of double murder committed in front of the relations on the village street just in connection with non-payment of paltry loan amount of Rs.1,000/- (rupees one thousand only).

2. The appellants Chandia @ Chandi Sethy (A-1), Karunakar Sethy @ Nandu (A-2), Bulu Sethy (A-3), Premananda Sethy (A-4), Suratha Sethy (A-5) and Basanta Sethy (A-6) along with Bhramar Sethy, Dhruba Sethy and Kulamani Sethy preferred this criminal appeal, however during pendency of the appeal, Bhramar Sethy, Dhruba Sethy and Kulamani Sethy expired and accordingly, as per order dated 10.09.2024, the criminal appeal was directed to be abated in respect of those

three appellants. Thus, this criminal appeal survives only in respect of appellants, namely, Chandia @ Chandi Sethy (A-1), Karunakar Sethy @ Nandu (A-2), Bulu Sethy (A-3), Premananda Sethy (A-4), Suratha Sethy (A-5) and Basanta Sethy (A-6).

3. In the Court of learned Additional Sessions Judge, Kendrapara (hereafter, 'trial Court') in Sessions Trial No.43/455 of 1996, the appellants, namely, Chandia @ Chandi Sethy (A-1), Karunakar Sethy @ Nandu (A-2), Bulu Sethy (A-3) and Basanta Sethy (A-6) were charged under sections 302/34 of the Indian Penal Code (hereafter, 'I.P.C.') on the accusation that on 19.06.1996 at about 7.30 a.m. at village Indupur under Kendrapara police station, they attacked and assaulted Sankarsan Sethy (hereinafter, 'D-1'), the son of the informant (P.W.7) and Babuli Sethy (hereinafter, 'D-2') by means of crowbar, spear, bhujali etc. who succumbed to the injuries at District Headquarters Hospital, Kendrapara. Similarly, the appellants, namely, Bhramar Sethy (Dead), Dhruba Sethy (Dead), Kulamani Sethy (Dead), Premananda Sethy (A-4) and Suratha Sethy (A-5) were charged under sections 302/149 of the I.P.C. on the accusation that on said date, time and place of occurrence, they caused the death of D-1 and D-2 by means of bhujali, spear, lathi etc.

The learned trial Court vide impugned judgment and order dated 22.09.1998 found the appellants, namely, A-1 Chandia @ Chandi Sethy, A-2 Karunakar Sethy @ Nandu, A-3 Bulu Sethy and A-6 Basanta Sethy guilty under section 302/34 of the I.P.C. and the appellants, namely, Bhramar Sethy (dead), Dhruba Sethy (dead), Kulamani Sethy (dead), A-4 Premananda Sethy and A-5 Suratha Sethy guilty under section 302/149 of the I.P.C. and sentenced each of them to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- (five thousand) each, in default, to undergo R.I. for six months.

Prosecution Case:

4. The prosecution case, as per the first information report (hereinafter 'F.I.R.') (Ext.4) lodged by Brahmananda Sethy (P.W.7), the father of D-1 on 19.06.1996 at Kendrapara police station, in short, is that his youngest son (D-1) was maintaining his livelihood by catching and selling fish. About one and half year prior to the date of occurrence, D-1 had given a hand loan of Rs.1,000/- (rupees one thousand) to A-2 Karunakar Sethy @ Nandu, who was his neighbour. In spite of several approaches to A-2, D-1 could not get back the loan amount. D-1 was taken into custody in connection with a rape case and lodged in Kendrapara Jail. While he was in jail custody, A-2

Karunakar Sethy @ Nandu who had borrowed money from D-1, paid Rs.200/- (rupees two hundred) to D-1 for his expenses. D-1 was released from jail fifteen to twenty days prior to the occurrence and he approached A-2 Karunakar Sethy @ Nandu for repayment of the loan amount. D-2 was the brother-in-law of D-1. Since two to three days prior to the occurrence, D-2 was staying in the house of D-1. Two days prior to the occurrence, both D-1 and D-2 asked A-2 Karunakar Sethy @ Nandu at Tinimuhani, Kendrapara for repayment of the loan amount, for which there were some altercations amongst them.

It is further stated in the F.I.R. that on the date of occurrence i.e. 19.06.1996 at about 7.00 a.m., A-2 Karunakar Sethy @ Nandu came to the house of D-1 and asked him to come to Chandi temple of the village to get refund of the loan amount. Accordingly, D-1 and D-2 came out of the house and proceeded towards Chandi temple. On the village road, A-2 Karunakar Sethy @ Nandu and A-6 Basanta Sethy being armed with tentas, A-3 Bulu Sethi with a crowbar, A-1 Chandia @ Chandi Sethy being armed with bhujali and other appellants being armed with lathis surrounded them and assaulted them. They tied both D-1 and D-2 with rope and brought them in front of their houses and assaulted them by means of bhujalis, lathis,

crowbars and tentas causing multiple injuries on both the deceased who fell down on the ground in senseless condition. The appellants threatened the informant (P.W.7) not to come to the rescue, removed the rope and left the spot with weapons thinking that D-1 and D-2 were dead. P.W.7 then called an auto rickshaw and removed both D-1 and D-2 for treatment to the hospital. D-2 died on the way to the hospital and D-1 was taken to Kendrapara hospital and admitted there for his treatment.

On the oral report of P.W.7, the I.I.C., Kendrapara P.S., namely, Pratap Chandra Samal (P.W.10) registered Kendrapara P.S. Case No.216 dated 19.06.1996 under sections 147/148/302/326/307/149 of the I.P.C. against the appellants and the other three appellants who are now dead and also took up investigation of the case.

During the course of investigation, P.W.10 gave requisition to the S.I. of Police, Sri P.K. Jena (P.W.8) to proceed to District Headquarters Hospital, Kendrapara to hold inquest over the dead body of D-2, issued requisition for medical examination of D-1 and he immediately visited the spot. P.W.10 seized some blood stained earth and sample earth as per seizure lists Ext.8 and Ext.9 and he preserved all the seized materials in a sealed cover and examined the witnesses and he searched the

houses of the appellants and all of them were found absconding. P.W.10 received information at 2.10 p.m. on 19.06.1996 over V.H.F. that the injured D-1, who was admitted and undergoing treatment in District Headquarters Hospital, Kendrapara succumbed to the injuries. Accordingly, he passed instruction to P.W.8 to hold inquest over the dead body of D-1 and to send the body for post mortem examination. P.W.10 returned to the police station and took charge of supplementary C.D. from P.W.8. On 21.06.1996, he arrested the appellant Bhramar Sethy (dead) and A-1 Chandia @ Chandi Sethy of village Indupur and interrogated them separately. He also recovered the plastic rope stained with blood at the instance of A-1 Chandia @ Chandi Sethy and seized the same as per seizure list Ext.10 and he also recovered five bamboo lathis of different sizes and a spear, iron blade which were having stains of blood and seized the same as per seizure list Ext.1/1. On 22.06.1996, he forwarded the appellants to the Court of learned S.D.J.M., Kendrapara and prayed to remand them. On 25.06.1996, he received post mortem report of D-1. The exhibits were dispatched through the Court of learned S.D.J.M., Kendrapara to the Director, S.F.S.L., Rasulgarh as per forwarding report Ext.11 for chemical analysis and on completion of investigation, he submitted charge sheet

against the appellants and the other three appellants who are now dead on 18.09.1996 under sections 147/148/302/149 of the I.P.C.

Framing of Charges:

5. After submission of charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed charges against the appellants as aforesaid and since the appellants refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute them and establish their guilt.

Prosecution Witnesses, Exhibits and Material Objects:

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

P.W.1 Bhagabata Sethi and P.W.6 Kartika Sethy are the two independent witnesses who were examined to depose about the seizure of weapons, but they did not support the prosecution case for which they were declared hostile.

P.W.2 Rasmita Sethi is the wife of D-1 Sankarsan Sethy and sister-in-law of D-2 Babuli Sethy. She is an eye witness to the occurrence and she supported the prosecution case.

P.W.3 Dharanidhar Sethy is a witness to the seizure of wearing apparels of D-2 Babuli Sethy as per seizure list Ext.2 and also a witness to the inquest over the dead body of D-2 at Kendrapara District Headquarters Hospital as per inquest report marked as Ext.3. He stated that D-2 had sustained a severe injury on the right leg (ankle joint) and he noticed fracture on the right hand, left leg over the forehead of D-2.

P.W.4 Arati Sethy and P.W.5 Premalata Sethy are sisters-in-law of D-1 Sankarsan Sethy. They are also the eye witnesses to the occurrence and they supported the prosecution case.

P.W.7 Brahmananda Sethy, the father of D-1 Sankarsan Sethy is the informant in the case and he is also an eye witness to the occurrence. He is a witness to the inquest over the dead body of D-1 as per inquest report marked as Ext.5. He supported the prosecution case.

P.W.8 Pradyumna Kumar Jena was working as the S.I. of Police attached to Kendrapara police station. He stated that as per the direction of P.W.10, he held inquest over the dead body of D-2 Babuli Sethy and prepared the inquest report vide Ext.3. He examined the inquest witnesses and seized the wearing apparels of the deceased as per seizure list Ext.2 and

examined the seizure witnesses. He further stated to have held inquest over the dead body of D-1 Sankarsan Sethy and prepared the inquest report vide Ext.5.

P.W.9 Dr. Manorama Dei was working as Assistant Surgeon at District Headquarters Hospital, Kendrapara, who on police requisition conducted post mortem examination over the dead body of D-1 Sankarsan Sethy and D-2 Babuli Sethy and proved her reports vide Ext.6 and Ext.7 respectively.

P.W.10 Pratap Chandra Samal was working as the I.I.C. of Kendrapara police station and he is the Investigating Officer of the case.

The prosecution exhibited twelve documents. Ext.1/1 is the seizure list of lathis, a spear and iron blade, Ext.2 is the seizure list of wearing apparels of D-2 Babuli Sethy, Ext.3 is the inquest report of D-2 Babuli Sethy, Ext.4 is the written F.I.R., Ext.5 is the inquest report of D-1 Sankarsan Sethy, Ext.6 is the post mortem report of D-1 Sankarsan Sethy, Ext.7 is the post mortem report of D-2 Babuli Sethy, Ext.8 is the seizure list of blood stained earth and sample earth, Ext.9 is the seizure list of blood stained earth, Ext.10 is the seizure list of plastic rope, Ext.11 is the forwarding report of exhibits to the S.F.S.L., Rasulgarh, Bhubaneswar and Ext.12 is the C.E. Report.

The prosecution also proved five material objects. M.O.I to M.O.IV are the bamboo lathis and M.O.V is the nylon rope.

Defence Plea:

7. The defence plea of the appellantswas one of denialand it was pleaded that there was hitch between the two deceased relating to money matters and they fought with each other taking liquor and fell on the ground and sustained injuries and due to previous litigation and enmity between the parties, a false case has been foisted. Defence has neither examined any witness nor exhibited any document.

Findings of the Trial Court:

8. The learned trial Court after assessing the oral as well as documentary evidence available on record, came to hold that in the light of consistent evidence given by P.Ws.2, 4, 5 and 7, it is to be accepted that two deceased were injured on the date, time and place and also in the manner alleged by the prosecution. The evidence of eye witnesses were held to be credible and trustworthy, corroborated by the medical evidence. It was further held that the question of sustaining multiple abrasions on the person of the deceased persons due to dragging does not arise as the witnesses have stated that the deceased

persons never fell down on the ground when they were dragged by the accused persons. Coming to the defence story, it was held that no witness was examined by the defence in support of the defence plea. The doctor who conducted post mortem examination did not find alcohol in the stomach of the deceased persons and as no multiple abrasions were found on the persons of deceased, the story of rolling down on the road by the deceased persons by taking liquor does not arise. From the evidence of the eye witnesses, namely, P.Ws.2, 4, 5 and 7 regarding inconsistencies in the statements, it was held that it is not possible to see minutely and give statements with regard to the incident, particularly when one of the injured i.e. D-2 Babuli Sethy died and the death knell was ringing at the face of D-1 Sankarsan Sethy and the inmates were in panic state and in these circumstances, discrepancies were bound to occur and on that score only, the evidence cannot be brushed aside. The learned trial Court further held that there was no deliberate delay in lodging the F.I.R. and it has been satisfactorily explained by the informant. The learned trial Court further held that when all the appellants were armed with deadly weapons and came and participated in the murderous assault, their action implied that they were the members of unlawful assembly and shared

common object. The learned trial Court further held that in view of nature of injuries found on the dead bodies of D-1 and D-2 and the weapons of assault in the hands of the appellants, there is no difficulty to hold that all the appellants had shared the common intention of killing the deceased persons and with different deadly weapons in their hands, the appellants mercilessly assaulted the deceased persons, killed them and accordingly, held the appellants guilty as aforesaid.

Contentions of the Parties:

9. Miss Adyashakti Priya, learned counsel appearing for the appellants argued that there has been delayed dispatch of the first information report to Court and the prosecution has not come up with any explanation in that respect, which creates doubt about the prosecution case as there was enough time on the part of the investigating agency to manipulate the same.

She argued that the first information report does not indicate the details of the occurrence and therefore, there was every scope on the part of the prosecution to develop its case at a later stage after registration of the F.I.R.

She argued that all the eye witnesses are related to the deceased and independent witnesses though present at the scene of occurrence were not examined. The prosecution had

ample opportunity to examine neighbours or community members, but it has failed to do so. It is further contended that the prosecution has not examined the eye witnesses named in the F.I.R. and no explanation has also been offered to that effect and thus, the prosecution has not come up with clean hand to prove its case.

According to the learned counsel, since none of the related witnesses came forward to the rescue of the deceased persons, their conduct speaks volume with regard their alleged presence at the time of the occurrence as eye witnesses.

She further highlighted the laches on the part of the I.O. (P.W.10) in not taking any steps for recording the dying declaration of D-1 Sankarsan Sethy who was hospitalized in District Headquarters Hospital, Kendrapara, in not preparing the spot map or site plan of the alleged place of occurrence showing the site of the alleged assault, the spot where the deceased were tied and dragged, the location of the eye witnesses, the direction and movement of the parties, bloodstains marks and rope traces.

She further argued that the F.S.L. report (Ext.12) ought to have been proved by summoning the expert who prepared it, but the I.O. marked it as an exhibit and therefore,

the finding recorded therein cannot be used against the appellants.

Learned counsel further argued that there are discrepancies in the ocular testimony vis-à-vis the medical evidence. As per the post mortem report, the doctor (P.W.9) noticed fewer injuries than as alleged by the eye witnesses and there were no injuries from ropes or dragging. No fractures or deep cuts matching bhujali, crowbar or grinding stone blows were found and the doctor admits that the injuries could result from scuffle on road which is the defence plea. She further argued that this mismatch not only discredits the prosecution case but also affirms that the eyewitnesses are exaggerating or reconstructing events.

She further argued that there is no evidence of prior meeting of minds or sharing of common intention by the appellants or forming an unlawful assembly and assaulting the deceased persons in prosecution of the common object. Except A-2 Karunakar Sethy @ Nandu, the other appellants had no animosity with the deceased persons and no evidence is forthcoming as to why they would join A-2 in the assault of the deceased persons. She argued that the prosecution alleges simultaneous assault, but fails to attribute specific and consistent

role of any of the appellants and therefore, it is a fit case for granting benefit of doubt in favour of the appellants.

In support of her contention, learned counsel for the appellants placed reliance in the cases of **Chhote Lal -Vrs.- Rohtash and others reported in (2023) SCC OnLine SC 1675**, **Krishna Govind Patil -Vrs.- State of Maharashtra reported in A.I.R. 1963 S.C. 1413**, **Sunil -Vrs.- State of NCT of Delhi reported in A.I.R. 2023 S.C. 4822**, **Lakshmi Singh and others -Vrs.- State of Bihar reported in (1976) 4 Supreme Court Cases 394**, **Dilawar Singh -Vrs.- State of Delhi reported in (2007) 12 Supreme Court Cases 641**, **Benguli @ Subarna Khuntia and others -Vrs.- State of Orissa reported in 1984 Cuttack Law Reports 364** and **State of Punjab -Vrs.- Sucha Singh and others reported in (2003) 3 Supreme Court Cases 153**.

10. Mr. Aurobinda Mohanty, learned Additional Standing Counsel appearing for the State of Odisha, on the other hand, supported the impugned judgment and submitted that there is hardly any delay in lodging the F.I.R. as the informant (P.W.7) first took steps in shifting the deceased persons to the hospital to save their lives after the accused persons left the spot and in spite of speedy steps being taken, one of the deceased died and

the other remained in critical condition when P.W.7 came to the police station to lodge the F.I.R. He argued that there is no delayed dispatch of the F.I.R. to Court as the F.I.R. was lodged on 19.06.1996 at 11 a.m. and the I.O. remained busy in investigation and on the very next day, he dispatched the F.I.R. to Court and it was also placed before the Magistrate on the same day.

He further argued that the state of mind of the informant at the time of lodging can very well be imagined as his injured son D-1 was in the hospital in a critical condition and another close relative D-2 had lost his life and therefore, it is too much to expect a rustic person like the informant to lodge a detailed F.I.R. in that condition.

He further argued that mere relationship of the eye witnesses with the deceased cannot be ground to disbelieve their testimonies. Similarly, merely because the independent witnesses did not come forward to support the prosecution case and even though the F.I.R. named witnesses were not examined by the prosecution during trial, it does not make the prosecution case vulnerable. He urged that it is quality of evidence and not quantity of evidence which is material.

He argued that when so many accused persons being armed with different weapons were assaulting the deceased persons, the related eye witnesses might not be having courage to come forward to the rescue and thus it cannot be said to be an unusual conduct on their part to create doubt about their presence at the scene of crime.

He further argued that lacunas, if any, on the part of the investigating officer in not taking any steps for recording the dying declaration of D-1 who died within few hours of lodging of F.I.R. or not preparing spot map cannot be a ground to discard the prosecution case.

He further argued that Forensic Science Laboratory (FSL) report has been marked as Ext.12 through the I.O. without objection from defence and no application has been filed by the defence for summoning the expert. Therefore, there is no illegality in relying on it.

He further argued that the evidence of the eye witnesses have not been shaken in spite of gruelling cross-examination and the medical evidence also corroborate the ocular testimony.

He further argued that the manner in which the deceased persons were taken from the house on the false

pretext of repayment of loan amount and the appellants were prepared with the weapons beforehand forming an unlawful assembly and on signal being given by A-2 Karunakar Sethy @ Nandu, the manner they combinedly assaulted the deceased persons, clearly establishes the common intention and committing the crime in prosecution of common object. He argued that since it is a case of simultaneous assault by as many as nine accused persons with different weapons, it is difficult on the part of the eye witnesses to remember and attribute specific and consistent role played by each of the appellants.

He argued that in view of the findings recorded by the learned trial Court, the appellants have rightly been convicted basing on the materials available on record and therefore, no interference is called for with the impugned judgment and order of conviction and as such the appeal should be dismissed. He placed reliance in the case of **Baban Shankar Daphal and others -Vrs.- State of Maharashtra reported in 2025 SCC OnLine 137**.

Whether the prosecution has proved the homicidal death of both the deceased?:

11. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine the

evidence on record as to how far the prosecution has successfully proved that the deceased persons met with homicidal death.

P.W.9 who was working as Asst. Surgeon, District Headquarters Hospital, Kendrapara conducted the post mortem examination over the dead body of D-1 Shankarsan Sethi on 19.06.1996 on police requisition and she noticed the following injuries:

> "1. Lacerated wound of size 1"x ½" up to bone deep present 4 inch above the right ankle joint;
>
> 2. Lacerated wound 2"x ½" x up to bone deep present 1 and ½ inch below the right knee joint. Right tibia and fibula were fractured into multiple fragments at the sight of injury no.2;
>
> 3. Punctured wound ½ inch x ½ inch x 1 inch present over the right thigh;
>
> 4. Both tibia and fibula were fractured at the lower 1/3rd of the left leg;
>
> Two punctured wounds of size ½ inch x ½ inch into bone deep present at the fracture sight;
>
> One punctured wound ½ inch x ½ inch into bone deep and half inch over the left knee joint;
>
> 5. Contusion two and half inch wide present encircling right wrist joint at the fracture site.

On dissection, massive damage of the muscles and other tissues at the fracture site with profuse haemorrhage."

She opined the cause of death of D-1 Shankarsan Sethi was shock due to massive haemorrhage. She proved the post mortem report as Ext.6.

P.W.9 also conducted post mortem examination over the dead body of D-2 Babuli Sethy on the same day in District Headquarters Hospital, Kendrapara on police requisition and she has noticed the following injuries:-

"1. Lacerated wound of size 2 inch x 1 inch x ½ inch present three and half inch below left knee joint;

2. Contusion of 2½ inch wide encircling over lower 1/3rd of the right leg, 3 inches over the right ankle joint;

On dissection, both tibia and fibula were found fractured; muscles and other tissues were damaged;

3. Lacerated wound of 5" x 1" up to bone deep present over the vertex.

Both parietal and frontal bone were fractured into multiple fragments. Intra cranial haemorrhage present. Brain was damaged."

She opined that the cause of death of D-2 Babuli Sethy was shock due to haemorrhage on account of injuries on

vital organ like brain. She proved the post mortem examination report as Ext.7.

In the cross-examination, she has stated that if a person is dragged on the rough surface of the road, multiple abrasions would be possible. If a grinding stone is used to hit on the chest, there might be a fracture or mark of injury will be there. If two persons struggle on the road having chips and stones with pointed edges, the injuries could be caused on both the deceased.

Nothing has been brought out in the cross-examination to demolish the evidence of P.W.9. In fact, learned counsel for the appellants has not challenged the findings arrived at by the doctor (P.W.9) in her post mortem reports (Ext.6 and Ext.7) rather some of her statements made in the cross-examination have been relied upon to challenge the evidence of the eye witnesses.

Therefore, in view of the inquest reports, the evidence of P.W.9, the post mortem report findings, we are of the humble view that the prosecution has successfully proved that the deceased persons met with homicidal death.

Delayed dispatch of F.I.R. to Court:

12. Miss Adyashakti Priya, learned counsel for the appellants contended that there has been delayed dispatch of the first information report to Court and the prosecution has not offered any explanation in that respect and therefore, it creates doubt about the prosecution case as there was enough time on the part of the police to manipulate the same. She placed reliance in the case of **Dilawar Singh** (supra), wherein the Hon'ble Supreme Court has held as follows:-

> "9. In criminal trial, one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.
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> 10. In **Thulia Kali -Vs.- State of T.N. reportedin A.I.R. 1973 S.C. 501**, it was held

that the delay in lodging the first information report quite often results in embellishment as a result of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation."

Mr. Aurobinda Mohanty, learned counsel for the State on the other hand argued that there is neither any delay in lodging the F.I.R. nor any delayed dispatch of F.I.R. to Court.

In the case in hand, the informant (P.W.7) lodged the first information report on 19.06.1996 at 11.00 a.m. Though the occurrence took place on 19.06.1996 at about 7.30 a.m., but as per his evidence, D-1, who was his son and D-2, who was the brother-in-law (Sadu) of D-1 were taken first to Indupur P.H.C. in injured condition where D-2 died and thereafter, the dead body of D-2 so also the injured son of P.W.7 i.e. D-1 were taken to Kendrapara Hospital and while D-1 was undergoing treatment, P.W.7 came to Kendrapara police station and lodged the oral report before P.W.10, the I.I.C. which was registered as F.I.R. and after registration of the case, P.W.10 carried on investigation, seized the incriminating articles, examined the witnesses, searched for the accused persons, who were found

absconding and came to know that the injured D-1, who was admitted in the D.H.H., Kendrapara succumbed to the injury. Accordingly, steps were taken for holding inquest over the dead bodies and sending the dead bodies for post mortem examination. He dispatched the F.I.R., which was lodged on 19.06.1996 at 11.00 a.m. to the Court on the next day i.e. on 20.06.1996 and the F.I.R. was also placed before the learned S.D.J.M., Kendrapara on that day itself.

As per the practice, after the F.I.R. was dispatched from the police station, it first comes to the Office of Court Sub-Inspector (in short, 'C.S.I. Office') where it is entered in the G.R. Case register (i.e. Form No.(R) 2, as per G.R.C.O. (Criminal) Vol.II) and mentioned serially with the date and G.R. Case number is allotted to the said F.I.R. and then the C.S.I. places the F.I.R. before the S.D.J.M. or concerned J.M.F.C., who after perusing the same could put signature and the date on each page of the F.I.R., on the first order sheet of the case record and also in the G.R. Case register.

In the case in hand, the signature of the learned S.D.J.M., Kendrapara appears in the F.I.R. (Ext.4) on each page of the F.I.R. and the date has been put below the signature as 20.06.1996. No question has been put to the I.O. that he

deliberately delayed the dispatch of the F.I.R. to Court to manipulate it.

Therefore, the contention of the learned counsel for the appellants that there has been delayed dispatch of the F.I.R. for which there was scope on the part of the investigating agency to fabricate the same is not acceptable.

Whether the F.I.R. becomes suspicious for not containing the details of occurrence?:

13. The next contention raised by the learned counsel for the appellants is that the first information report does not indicate the details of the occurrence and therefore, there was scope on the part of the prosecution to develop the case after the registration of the case.

It need not be forgotten that the informant (P.W.7), an eye witness to the occurrence came to lodge the F.I.R. after seeing the assault on his son (D-1) and the sadu of his son (D-2) and after D-2 died in the hospital and when his son D-1 was in a critical condition undergoing treatment in Kendrapara District Headquarters Hospital. At that stage, it was not expected of him to remember and narrate all the details of the occurrence in the first information report. The first information report is of two sheets and it states how the deceased persons were assaulted by

the accused persons and with what weapons. F.I.R. is not the encyclopaedia or be all and end all of the prosecution case. It is not a verbatim summary of the prosecution case. If some facts are not mentioned in the F.I.R., whether the same would be fatal or not would depend on the facts and circumstances of the case.

Therefore, the contention of the learned counsel for the appellants on this score is not acceptable.

Eye witnesses are related to deceased and effect of non-examination of independent witnesses:

14. The learned counsel for the appellants contended that all the eye witnesses are related to the deceased persons and therefore, there is likelihood of implicating the appellants falsely. She further argued that the witnesses named in the F.I.R. and independent witnesses present at the scene of occurrence have been withheld by prosecution for which adverse inference should be drawn. She placed reliance in the case of **Chhote Lal** (supra), wherein the Hon'ble Supreme Court has held as follows:-

> "13. It may not be out of context to mention that the appellant/complainant, a sole eye witness, happens to be the most interested witness being the father of the deceased and having long enmity with the group to which the

accused persons belong, therefore, his testimony was to be examined with great caution……"

She further placed reliance in the case of **Benguli** (supra), wherein this Court held as follows:-

"10……The non-examination of the independent and disinterested persons and the examination of interested ones would certainly cast a serious reflection on the fairness of the trial."

The learned State Counsel on the other hand urged that relationship of witnesses with the deceased is not a ground to doubt his testimony rather such witnesses are not likely to spare the real culprit and implicate an innocent falsely. He placed reliance in the case of **Baban Shankar Daphal** (supra), wherein the Hon'ble Supreme Court has held as follows:-

"27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also,

who had reached the place of incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

29. The distinction between "interested" and "related" witnesses has been clarified in ***Dalip Singh*** **v.** ***State of Punjab : (1953) 2 SCC***

36, where this Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

i. ***Md. Rojali Ali -Vs.- The State of Assam Ministry of Home Affairs through Secretary : (2019) 19 SCC 567****;*

ii. ***Ganapathi -Vs.- State of T.N.: (2018) 5 SCC 549****;*

iii. ***Jayabalan -Vs.- Union Territory of Pondicherry. : (2010) 1 SCC 199****;*

30. Though the eyewitnesses who have been examined in the present case were closely related to the deceased, namely his wife, daughter and son, their testimonies are consistent with respect to the accused persons being the assailants who inflicted wounds on the deceased. As is revealed from the sequence of events that transpired, one of the family members was subjected to an assault. It was thus quite natural for the other family members

to rush on the spot to intervene. The presence of the family members on the spot and thus being eyewitness has been well established. In such circumstances, merely because the eyewitnesses are family members, their testimonies cannot be discarded solely on that ground."

It is no doubt true that P.W.2 Rasmita Sethy is the widow of D-1 and D-2 was her brother-in-law, P.W.4 Arati Sethy is the wife of Kapila Sethy, who is the son of informant (P.W.7), P.W.5 is the daughter-in-law of the informant (P.W.7), but the settled position of law as held in the case of **State of U.P. -Vrs.- Kishanpal and others reported in (2008) 16 Supreme Court Cases 73** is that "related" is not equivalent to "interested". The witness may be called "interested" only when he or she has derived some benefit from the result of litigation. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinise their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation

would not conceal actual culprit and make allegations against an innocent person.

Learned counsel for the appellants argued that the evidence of the informant (P.W.7) indicates that about ten to fifteen persons were present at the spot at the time of occurrence and all of them belonged to his Sahi, but only the related witnesses were examined as the eye witnesses to the occurrence. We find that some independent witnesses like P.W.1 and P.W.6 have been examined by the prosecution, but they have not supported the prosecution case for which they were declared hostile by the prosecution. The related witnesses in this case are natural witnesses as the occurrence took place on the village road in the morning hours and close to their houses. Moreover, it is the settled principle of law that it is quality of evidence not quantity of evidence, which is material. Quantity of evidence was never considered to be a test for deciding a criminal trial and the emphasis of the Court is always on the quality of evidence. Thus, when the legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses and in view of section 134 of the Evidence Act, which states that there is no requirement under the law of evidence that any particular

number of witnesses is to be examined to prove/disprove a fact, the contention of the learned counsel for the appellants that independent witnesses present at the scene of occurrence not examined or F.I.R. named witnesses not examined, cannot be a ground to disbelieve the evidence of the related eye witnesses.

Discrepancies in ocular evidence vis-a-vis medical evidence:

15. Learned counsel for the appellants argued that there are discrepancies in the evidence of the eye witnesses and medical evidence contradicts the ocular testimonies of the four eye witnesses. There are also contradictions in the evidence of the eye witnesses with reference to their previous statements made before the I.O. and, therefore, it would be too risky to place reliance on such testimonies. She further argued that as per the post mortem report, the doctor (P.W.9) has noticed fewer injuries than alleged assault by number of accused persons and there were no injuries from ropes or dragging. No fractures or deep cuts matching bhujali, crowbar or grinding stone were found and the doctor admits that the injuries could result from scuffle on road. She further argued that since gross inconsistencies between the number and nature of injuries as alleged by eye witnesses and the actual injuries found by the

medical officer (P.W.9) are noticed, this mismatch not only discredits the prosecution case but also affirms that the eyewitnesses are exaggerating or reconstructing events.

Learned counsel for the State on the other hand argued that there are no major contradictions in the statements of the witnesses nor the medical evidence completely rules out all possibility of the ocular evidence and thus, the ocular evidence can be safely acted upon. He placed reliance in the case of **Baban Shankar Daphal** (supra), the Hon'ble Supreme Court held as follows:-

> "32. It has been consistently laid down by this court that once there is a version of eyewitness and the same inspires confidence of the court, it will be sufficient to prove the guilt of the accused. A profitable reference can be made to the decision of this Court in the case of ***Pruthviraj Jayantibhai Vanol -Vs.- Dinesh Dayabhai Vala: (2022) 18 SCC 683*** wherein it was laid down that:
>
> > *"17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral*

evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved."

(Emphasis supplied)

33. Hence, a conviction can be based upon the version put forth by the eyewitness and the medical evidence must be considered only for the purpose of corroboration of the ocular evidence.

xxx xxx xxx

41. The medical evidence confirmed the presence of a fatal injury to the head caused by a blunt object, which was sufficient to cause death in the ordinary course of nature. The absence of additional head injuries does not negate the possibility of multiple blows being inflicted; rather, it reflects the limitations of forensic science in capturing the full extent of injuries in certain cases. Thus, the medical evidence did not contradict but, in fact, supported the substance of the eyewitness accounts, as has been observed by the High Court as well."

It is a settled legal proposition that the ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. More

so, the ocular testimony of a witness has a greater evidentiary value vis-a-vis medical evidence and when medical evidence makes the ocular testimony improbable, the same becomes a relevant factor in the process of the evaluation of evidence. Where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence, the ocular evidence may be disbelieved.

Keeping in view the settled position of law, let us assess the evidence of the four eye witnesses.

P.W.2 Rasmita Sethy:

P.W.2 Rasmita Sethy has stated that when her deceased husband (D-1) and her brother-in-law (D-2) were going on the road, A-1 Chandia @ Chandi Sethy being armed with bhujali, A-3 Bulu Sethy being armed with a crowbar, A-6 Basanta Sethy being armed with tenta, A-4 Premananda Sethy, A-5 Suratha Sethy along with the appellants Bhramar Sethy, Dhruba Sethy and Kulamani Sethy, who are dead, being armed with sticks and A-2 Karunakar Sethy @ Nandu being armed with tenta surrounded the deceased persons on the public road and brought them to the Danda of appellant Bhramar Sethy (dead) and assaulted the deceased persons by giving fist blows, kicks and slaps. Seeing such incident, P.W.2 cried. All the accused

persons tied the deceased persons with a rope and assaulted them by tenta, crowbar etc. as a result of which the deceased persons sustained bleeding injuries. She stated that the accused persons pulled the deceased persons by means of a rope in which they had been tied. She specifically stated that A-1 Chandia dealt a blow on the head of deceased Babula by means of a bhujali, A-6 Basanta Sethy dealt tenta blow on the leg and hand of D-1 and A-2 Karunakar Sethy @ Nandu dealt tenta blow on the leg and hand of D-1 and A-3 Bulu Sethy assaulted D-1 by means of a SILAPUA on the chest and also assaulted D-1 by means of a crowbar on the leg and hand. She specifically stated that on account of fear of the accused persons, she along with her family members did not go to the spot and that she along with her family members were standing at a distance of 30 cubits away and saw the incident.

So far as motive on the part of the appellants for commission of the crime and preparation is concerned, P.W.2 has stated that A-2 Karunakar Sethy @ Nandu had to give some money to her husband (D-1) and over the money matter, there was quarrel between her husband (D-1) and brother-in-law (D-2) on the one side and A-2 Nandu on the other side which took place at Tinimuhani which she came to know from her deceased

husband. She specifically stated that on the date of occurrence, while they were present in the house, A-2 Nandu Sethy came to her house and called the deceased persons and told them to go to Chandi temple of the village to take money and hearing this, both the deceased proceeded towards the temple and A-2 Nandu proceeded ahead.

In the cross-examination, P.W.2 has stated that she could not say which accused assaulted on which part of the body of the deceased persons by lathi. She further stated that the appellants dragged the deceased persons to a distance of 30 cubits and due to dragging, the upper part of the body of the deceased persons did not come in contact with the road. She further stated that she had no knowledge regarding monetary transaction between A-2 Karunakar Sethy @ Nandu and her deceased husband and she could not give the details of incident which she heard from her deceased husband about the occurrence at Tinimuhani.

The doctor (P.W.9) has stated that if a person is dragged on the rough surface of the road, multiple abrasions would be possible.

The contention of the learned counsel for the appellants is that since there were no such abrasions noticed on

any of the deceased, therefore, the evidence of the eye witness (P.W.2) that both the deceased were dragged on the road after being tied in a rope is contradicted by medical evidence. She placed reliance in the case of **Lakshmi Singh** (supra), wherein the Hon'ble Supreme Court held as follows:-

> "15……Thus in short, so far as the deceased Chulhai Singh is concerned, the ocular evidence is totally inconsistent with the medical evidence with respect to the assault by Chhathu Singh and Ramprasad Sah. If this matter is false, there is no guarantee that the other assault deposed to by the eyewitnesses was also not false.
>
> 16. Similarly so far as deceased Brahmdeo is concerned, the evidence of the witnesses shows that he had received 4 to 5 lathi blows at the hands of his assailants, but the medical evidence of Dr. Jaiswal shows that he had one lacerated wound on the scalp, a swelling and three scratches. In view of the ocular evidence we should have expected many more lathi injuries on the person of the deceased Brahmdeo rather than just one swelling and a few scratches, apart from the lacerated wound. Thus this is also a very important suspicious circumstance which negatives the truth of the prosecution case.
>
> xxx xxx xxx

> 18. Thus, in view of the inherent improbabilities, the serious omissions and infirmities, the interested or inimical nature of the evidence and other circumstances pointed out by us, we are clearly of the opinion that the prosecution has miserably failed to prove the case against the appellants beyond reasonable doubt…."

We are not persuaded by the submission of the learned counsel for the appellants. P.W.2 stated that the appellants dragged the deceased persons to a distance of 30 cubits and due to dragging, the upper part of the body of the deceased persons did not come in contact with the road and therefore, absence of abrasions on the person of the deceased in the factual scenario is not a ground to discard her evidence.

It is elicited in the cross-examination of the doctor (P.W.9) that if two persons struggle on the road having chips and stones with pointed edges, the injuries noticed on both the deceased can be caused. Suggestions have been given to P.W.2 that there was hitch between the two deceased relating to money matters and they fought with each other and fell on the ground and sustained injuries and for that reason, they died, but she has denied the same. Therefore, there are no such

discrepancies to come to a finding that oral evidence of P.W.2 is totally irreconcilable with the medical evidence.

Thus, the evidence of P.W.2 is acceptable and free from doubt.

P.W.4 Arati Sethy:

P.W.4 Arati Sethy has stated that after A-2 Nandu came to their house and called D-1 to go to Chandi temple for settlement of the dispute, both the deceased (D-1 & D-2) left the house and the appellants being armed with different weapons assaulted the deceased persons. She further stated that A-1 Chandia dealt a blow by means of a bhujali on the head of D-2 and A-2 Karunakar and A-6 Basanta Sethy assaulted on the leg of D-1 and A-3 Bulu Sethy assaulted D-1 by means of a crowbar on the legs and hands. She further stated that while A-2 Karunakar, A-6 Basanta and A-3 Bulu Sethy were assaulting D-1 and D-2, other appellants also assaulted on the hands and legs of both the deceased persons. She specifically stated that being afraid of the act of the accused persons, though they saw the entire incident, but she did not interfere being afraid of accused persons.

In the cross-examination, she has stated that A-1 Chandi assaulted on the head of D-2 by means of a bhujali and

A-2 Karunakar and A-6 Basanta were assaulting D-1 by means of tenta and no outsider dare to interfere the incident and they were standing near their house situated near the spot.

Though one contradiction has been proved in the evidence of P.W.4 by confronting her previous statement to her and proving the same through the I.O. that she had not stated about both the deceased being dragged by the accused persons by means of rope, but we are of the view that such contradiction is minor in nature and cannot be a ground to discard her evidence. Similarly, the medical evidence cannot said to be completely negative the ocular testimony of P.W.4.

Learned counsel for the appellants contended that none of the related witnesses came forward to the rescue of the deceased persons and their conduct speaks volume with regard to their alleged presence at the time of the incident. According to the learned counsel for the appellants, the non-interference by the family members to the overt act of the accused persons creates doubt about their presence at the crime scene. Reliance has been placed upon the case of **Sucha Singh** (supra), wherein the Hon'ble Supreme Court held as follows:-

> "10…….Any father, worth the name, would not remain a mute spectator when his son is being

inflicted as many as twenty-four injuries under his very nose."

We are not able to accept the contentions of the learned Counsel for the appellants. The reaction of witnesses on seeing a crime being committed in their presence varies from person to person and no concrete rule can be evolved that every witness must react to a specific occurrence in a particular way. Only because a witness reacted in a different way or weird manner and did not shout at the spot to draw the attention of others and/or come forward to save the person being assaulted, he cannot be declared as an unreliable witness nor can the Court discard his evidence altogether solely basing upon that ground. The Hon'ble Supreme Court has time and again unequivocally held that post-occurrence behaviour of witnesses cannot be predicted and uniformity in their reactions cannot also be expected. In the case of **Rammi -Vrs.- State of M.P. reported in (1999) 8 Supreme Court Cases 649**, the Hon'ble Supreme Court held as follows:

"8. Such a remark on the conduct of a person who witnessed the murderous attack is least justified in the realm of appreciation of evidence. This Court has said time and again that the post-event conduct of a witness varies from

person to person. It cannot be a cast-iron reaction to be followed as a model by everyone witnessing such event. Different persons would react differently on seeing any violence and their behaviour and conduct would, therefore, be different. We have not noticed anything which can be regarded as an abnormal conduct of P.W. 9 Ram Dulare."

In the case of **Rana Partap and Ors. -Vrs.- State of Haryana reported in (1983) 3 Supreme Court Cases 327**, it is held as follows:-

"6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses

on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

When P.W.4 has specifically stated that being afraid of the act of the accused persons, though they saw the entire incident, but she did not interfere and even no outsider dare to interfere the incident and they were standing near their house situated near the spot, therefore, there is no improbability feature in her evidence.

Thus, the evidence of P.W.4 is free from blemish and is implicitly reliable.

P.W.5 Premalata Sethy:

P.W.5 Premalata Sethy, the sister-in-law of D-1 has stated that when A-2 Karunakar Sethy @ Nandu came to the house and called the deceased persons to go to Chandi temple for settlement of a dispute and to take money, both the deceased persons left the house and when they reached near the spot, A-1 Chandi Sethy dealt a blow by means of a bhujali on the head of D-2 as a result of which he fell down on the ground. She further stated that A-6 Basanta Sethy assaulted D-1 by means of a tenta on his leg and hand, A-2 Karunakar also assaulted D-1 by means of a tenta and A-3 Bulu Sethy assaulted the deceased

D-1 by means of a crowbar on his legs and hands in front of the house of appellant Bhramar Sethy (dead) and other appellants were also present in the scene of the crime being armed with tenta, badi (sticks). She stated that the place where the deceased persons were assaulted was situated at a distance of about 30 cubits away from her house and she saw the occurrence standing in front of her house.

In the cross-examination, P.W.5 has stated that A-3 Bulu Sethy had not assaulted on the chest of D-1 by means of a SILAPUA. She stated that no accused dragged any of the deceased persons. She further stated that at the time of occurrence, she had not concealed her presence in any bush. Though suggestion was given to P.W.5 that she was inside the house at the time of occurrence and she had not seen the occurrence, but she has denied the same. She further stated that she could not give description of each and every injury what she saw on the person of deceased persons due to long lapse of time. By confronting the previous statement recorded under section 161 of Cr.P.C. to P.W.5, it has been proved through the I.O. (P.W.10) that she had stated that both the deceased were dragged putting on the ground.

The discrepancy or variance in evidence as pointed out by the learned counsel for the appellants, in our humble view are minor in nature which will not make the prosecution case or the evidence of P.W.5 doubtful.

In the case of **Baban Shankar Daphal** (supra), the Hon'ble Supreme Court held as follows:-

> "35. The Trial Court gave undue weight to minor discrepancies in the eyewitness accounts, such as variations in their descriptions of the sequence of events or the exact number of blows inflicted. It is a well-established principle of law that minor contradictions or inconsistencies in testimony do not necessarily render it unreliable, as long as the core facts remain intact. The role of the court is to discern the truth by considering the evidence in its totality and not by isolating individual inconsistencies to discredit an entire narrative. The Trial Court erred by focusing excessively on trivial discrepancies, thereby losing sight of the broader picture and the compelling evidence against the accused."

The normal course of the human conduct would be that while narrating a particular incident, there may occur minor discrepancies, such discrepancies in law may render credential to

the depositions. There are always normal discrepancies, however, honest and truthful a witness may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to considerable gap between the date of incident and the time of giving evidence in Court, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. The minor variations and contradictions in the evidence of eye witnesses will not tilt the benefit of doubt in favour of the accused persons.When the contradictions in the evidence of the prosecution witnesses proved to be fatal to the prosecution case and those contradictions go to the root of the matter, in such cases the accused persons get benefit of doubt.

Thus we have no hesitation to accept the evidence of P.W.5 Premalata Sethy as truthful.

P.W.7 Brahmananda Sethy:

P.W.7 Brahmananda Sethy, the informant has stated that at the time of occurrence, he was sitting on his veranda and both the deceased were inside the house at that time. At that time, A-2 Nandu @ Karunakar called his son to take money from him and asked him to come to the temple of the village and

accordingly, both the deceased left the house and proceeded towards village chhak. A-2 Nandu @ Karunakar shouted that D-1 had come out of the house and asked others to come to the spot. At that time, A-2 Nandu was armed with a tenta, A-1 Chandi was holding a bhujali, A-3 Bulu Sethy was holding a crowbar, A-6 Basanta Sethy had a tenta and appellant Bhramar (dead) was holding rope and others lathis. The appellants surrounded and tied D-1 and D-2 and assaulted them and took them to near their house by giving pushes. He further stated that in front of the house of A-1 Chandia, A-1 Chandia gave a blow by means of a bhujali on the head of D-2 and he fell down with bleeding injury and A-3 Bulu Sethy gave blows to both of his legs (knees and legs) by means of a crowbar and thereafter, D-1 was taken to a distance of 10 cubits and there A-2 Nandu and A-6 Basanta gave blows by means of tentas to his legs and he fell down and A-3 Bulu gave two blows to his legs and knees and other appellants assaulted D-1 by lathis and A-3 Bulu Sethy gave blows on the chest by means of gridding stone (Silapua) on the chest of D-1.

In the cross-examination, P.W.7 has stated that there was long standing dispute between his family and the family of the accused persons in respect of the pond. He further

stated that D-2 was assaulted in front of the house of A-2 Nandu @ Karunakar Sethy and D-1 was assaulted at a distance of 10 cubits from that place i.e. in front of the house of appellant Bharamar Sethy (dead). He further stated that first the deceased persons tied at the junction and thereafter, they were assaulted. Suggestion has been given to P.W.7 by the learned defence counsel that since both the deceased were fighting with each other on the road, they sustained injuries and died, but he has denied such suggestion.

No contradiction has been proved in his evidence with reference to his previous statement before the I.O.

The doctor (P.W.9), who conducted post mortem examination, as already stated above, noticed number of lacerated wounds on different parts of the body, punctured wounds, contusions and fractures on D-1 and similarly, lacerated wounds, contusions, fractures of tibia and fibula etc. on D-2. In the cross-examination, she has stated that the lacerated injuries on both the deceased were possible by hard and blunt weapon but may not be sharp cutting weapon.

According to the learned counsel for the appellants, though P.W.7 has stated that A-3 Bulu Sethy gave blows on the chest by means of gridding stone (Silapua) on the chest of D-1

and even P.W.2 has also stated that A-3 Bulu Sethy assaulted her deceased husband (D-1) by means of Silapua on his chest, but the evidence of P.W.4 is completely silent in that respect and P.W.5 on the other hand has made a positive statement that A-3 Bulu Sethy had not assaulted on the chest of D-1. She further argued that the doctor (P.W.9) has stated that if a grinding stone was used to hit the deceased on the chest, there might be a fracture or mark of injury on the chest. Admittedly no fracture or mark of injury on the chest of D-1 was noticed by the doctor (P.W.9) and thus evidence of assault by A-3 Bulu Sethy on the chest by means of gridding stone (Silapua) on the chest of D-1 is a doubtful feature.

In view of the medical evidence adduced by P.W.9 and the discrepancies in the evidence of eye witnesses, even if we held that the blows given by A-3 Bulu Sethy on the chest of D-1 by means of gridding stone (Silapua) is not consistent, but there is consistent evidence on record deposed to by all the four eye witnesses that A-3 Bulu Sethy was holding a crowbar and assaulted both the deceased on their legs with such weapon. The doctor (P.W.9) has also noticed corresponding injuries on the legs of both the deceased.

Thus the evidence of P.W.7 Brahmananda Sethy is clear and trustworthy.

After assessing the oral evidence of the four eye witnesses i.e. P.Ws.2, 4, 5 and 7 vis-à-vis the medical evidence adduced by P.W.9, we do not find any serious contradictions between the two which may form the basis for discarding the testimonies of the eye witnesses. Since the medical evidence does not make the ocular testimony improbable or rules out all possibility of the ocular testimony being true, the ocular evidence cannot be disbelieved. There are neither any material exaggerations nor contradictions which create doubt about the substratum of the prosecution case.

Laches on the part of Investigating Officer (P.W.10):

16. Learned counsel for the appellants argued that when P.W.7 lodged the F.I.R., D-1 Sankarsan Sethy was alive and hospitalized, but the investigating agency did not take any steps for recording his dying declaration. The Investigating Officer (P.W.10), who was also the I.I.C. of Kendrapara police station did not prepare a spot map or site plan of the alleged place of occurrence showing the site of the alleged assault, the spot

where the deceased were tied and dragged, the location of the eye witnesses, the direction and movement of the parties, bloodstains marks and rope traces. Therefore, the investigation has not been conducted in a fair manner.

Law is well settled that laches on the part of the Investigating Officer cannot be fatal to the prosecution case where ocular testimony is found credible and cogent. If mere laches on the part of Investigating Officer be a ground for acquitting the accused, then every criminal case will depend upon the will and design of the Investigating Officer. The Investigating agency is expected to be fair and efficient but any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence. Investigation is not the solitary area for judicial scrutiny in a criminal trial. There is legal obligation on the part of the Court to examine the prosecution evidence de hors the lapses carefully to find out whether the said evidence is reliable or not and whether such lapses affected the object of finding out the truth. The Courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record.

Therefore, some laches on the part of the I.O. (P.W.10) cannot be a ground to disbelieve the prosecution case which has been proved through the evidence of eye witnesses and medical evidence.

F.S.L. report (Ext.12) marked through I.O.:

17. According to the learned counsel for the appellants, F.S.L. report (Ext.12) ought to have been proved by summoning the expert who prepared it, but the I.O. (P.W.10) marked it as an exhibit and therefore, the finding recorded therein should not be usedagainst the appellants.

Learned counsel for the State on the other hand argued that Ext.12 has been marked through the I.O. (P.W.10) without objection from defence and no application has been filed by the defence for summoning the expert. Therefore, the learned trial Court has committed no illegality in relying on it.

In the case of **Dhanajaya Reddy -Vs.- State of Karnataka reported in (2001) 4 Supreme Court Cases 9**, the Hon'ble Supreme Court has held as follows:-

> "39.....Learned counsel appearing for the appellants made vain attempt to impress upon us that the serologist's report was not produced at the trial Court, which we do not accept in view of the fact that the said report is shown to

have been admitted in evidence and marked Exhibit P-87. Otherwise also the report of the serologist can be used as evidence without any formal proof under Section 293 of the Cr.P.C."

In the case of **State of Himachal Pradesh -Vs.- Mast Ram reported in (2004) 8 Supreme Court Cases 660**, the Hon'ble Supreme Court has held as follows:-

"6. Secondly, the ground on which the High Court has thrown out the prosecution story is the report of ballistic expert. The report of ballistic expert (Ex.P-X) was signed by one Junior Scientific Officer. According to the High Court, a Junior Scientific Officer (Ballistic) is not the officer enumerated under sub-section (4) of Section 293 of the Code of Criminal Procedure and, therefore, in the absence of his examination, such report cannot be read in evidence. This reason of the High Court, in our view, is also fallacious. Firstly, the Forensic Science Laboratory Report (Ex.P-X) has been submitted under the signatures of a Junior Scientific Officer (Ballistic) of the Central Forensic Science Laboratory, Chandigarh. There is no dispute that the report was submitted under the hand of a Government Scientific Expert. Section 293(1) of the Code of Criminal Procedure enjoins that any document purporting to be a report under the hand of a Government

Scientific Expert under the section, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Code, may be used as evidence in any inquiry, trial or other proceeding under the Code. The High Court has completely overlooked the provision of sub-section (1) of Section 293 and arrived at a fallacious conclusion that a Junior Scientific Officer is not an officer enumerated under sub-section (4) of Section 293. What sub-section (4) of Section 293 envisages is that the Court to accept the documents issued by any of six officers enumerated therein as valid evidence without examining the author of the documents."

Referring to the judgments reported in **A.I.R. 1963 Supreme Court 1531 : Ukha Kolhe -Vs.- The State of Maharashtra**; **A.I.R. 1988 Supreme Court 1011 : Bhupinder Singh -Vs.- State of Punjab**, the Hon'ble Supreme Court observed in the case of **Rajesh Kumar and Another -Vs.- State Government of NCT of Delhi, reported in (2008) 4 Supreme Court Cases 493** that as per provisions contained in sub-sections (1) and (2) of section 293 of Cr.P.C., it is not obligatory that an expert, who furnishes opinion on the

scientific issue of the chemical examination of substance should be of necessity made to depose in proceedings before the Court.

In the case in hand, the C.E. Report (Ext.12) has been marked on admission during the recording of evidence of I.O. (P.W.10). Such a document can also be marked on admission in view of section 293 of Cr.P.C. and used as evidence in the trial. In the case in hand, the defence has not even filed any application to summon the expert to prove the same nor objected to the marking of Ext.12 through I.O.

Therefore, we are not inclined to accept the contentions raised by the learned counsel for the appellants that Ext.12 cannot be used against the appellants. In fact, the learned trial Court has not considered Ext.12 in its judgment, but mainly relying upon the evidence of the eye witnesses and the doctor's evidence, found the appellants guilty. Even if for the sake of argument, Ext.12 is left out of consideration, we are still of the humble view that the prosecution has successfully proved its case through the unimpeachable evidence of the eye witnesses and the medical evidence.

Whether prosecution has proved prior meeting of minds or sharing of unlawful object:

18. Learned counsel for the appellants argued that there is no evidence of prior meeting of minds or sharing of common intention or the appellants being the members of unlawful assembly, committing the crime of double murder in prosecution of the common object. She placed reliance in the case of **Krishna Govind Patil** (supra), wherein the Hon'ble Supreme Court held as follows:-

> "……common intention, as contemplated under section 34 of the Indian Penal Code, cannot be inferred from vague and inconsistent evidence. There must be clear and definite evidence demonstrating a collaborative nature of the offense to establish constructive liability. If the prosecution fails to prove the collective intent of the accused, it would be unsafe to convict them under section 34 I.P.C."

In the case of **Sunil** (supra), the Hon'ble Supreme Court held as follows:-

> "29. What is clear from the decisions noticed above is, that to fasten liability with the aid of Section 34 of the Indian Penal Code what must necessarily be proved is a common intention to commit the crime actually committed and each

> Accused person can be convicted of that crime, only if it is in furtherance of common intention of all. Common intention pre-supposes a prior concert, though pre-concert in the sense of a distinct previous plan is not necessary as common intention to bring about a particular result may develop on the spot. The question whether there was any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the Accused had a common intention to commit an offence with which they could be convicted."

Learned counsel for the State on the other hand argued that there is evidence on record that on the false pretext of repayment of loan dues, D-1 was called from his house by A-2 Karunakar Sethy @ Nandu and when both the deceased came out of the house and proceeded on the village road towards Chandi temple of the village, A-2 passed signal to the other appellants who were prepared beforehand with deadly weapons and they came out and started assaulting the deceased persons causing number of wounds on different parts of body of D-1 and D-2 and therefore, the learned trial Court rightly applied sharing

of common intention and committing the crime in prosecution of common object of the unlawful assembly.

Law is well settled that the existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention, even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. To apply section 34 of I.P.C., apart from the fact that there should be two or more accused, two factors must be established i.e. (i) common intention and (ii) participation of the accused in the commission of an offence. If a common intention is proved, but no overt act is attributed to the individual accused, section 34 of I.P.C. will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case. (Ref: **Surendra Chauhan -Vs.- State of M.P. : (2000) 4 Supreme Court Cases 110**).

When an assembly of five or more persons is designated an 'unlawful assembly' is defined in section 141 of I.P.C. Who can be said to be a member of an unlawful assembly is defined in section 142 of I.P.C. 'Common object' would mean the purpose or design shared by all the members of such assembly. It may be formed at any stage. Whether in a given case, the accused persons shared common object or not, must be ascertained from the acts and conduct of the accused persons. The surrounding circumstances are also relevant and may be taken into consideration in arriving at a conclusion in this behalf. It is in two parts. The first part would be attracted when the offence is committed in furtherance of the common object. The offence, even if is not committed in direct prosecution of the common object of the assembly, Section 149 of I.P.C. may still be attracted. However, if an offence is committed in furtherance of such common object, the same would come within the purview of second part.

Whether the members of the unlawful assembly really had the common object to cause the murder of the deceased has to be decided in the facts and circumstances of each case, nature of weapons used by such members, the manner and sequence of attack made by those members on the

deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case. (Ref: **Lalji and Ors. -Vs.- State of U.P : (1989) 1 Supreme Court Cases 437**; **Ranbir Yadav -Vs.- State of Bihar : (1995) 4 Supreme Court Cases 392**; **Rachamreddi Chenna Reddy and Ors. -Vs.- State of A.P : (1999) 3 Supreme Court Cases 97**).

The evidence of the eye witnesses clearly indicate as to how on the false pretext of repayment of loan dues, D-1 was called from his house by A-2 Karunakar Sethy @ Nandu and when both the deceased (D-1 and D-2) came out of the house and proceeded on the village road towards Chandi temple of the village, A-2 gave indication to the other appellants who came out with deadly weapons and assaulted the deceased persons on different parts of their causing number of wounds which ultimately resulted in their death and therefore, we are inclined to accept the contention raised by the learned State Counsel that the learned trial Court rightly applied sharing of common intention and committing the crime in prosecution of common object of the unlawful assembly.

Conclusion:

19. In view of the foregoing discussions, we find that the evidence of the eye witnesses P.Ws.2, 4, 5 and 7 are clear and consistent and trustworthy and the medical evidence also corroborates such ocular testimonies and thus, we are of the humble view that the learned trial Court has rightly found the appellants guilty.

Accordingly, the conviction of A-1 Chandia @ Chandi Sethy, A-2 Karunakar Sethy @ Nandu, A-3 Bulu Sethy and A-6 Basanta Sethy under section 302/34 of the I.P.C. and A-4 Premananda Sethy and A-5 Suratha Sethy under section 302/149 of the I.P.C. and the sentence passed thereunder stands confirmed. A-1 Chandia @ Chandi Sethy, A-2 Karunakar Sethy @ Nandu, A-3 Bulu Sethy, A-4 Premananda Sethy, A-5 Suratha Sethy and A-6 Basanta Sethy were directed to be released on bail vide order dated 18.03.2010 in Misc. Case No.6 of 2010. Their bail bonds and surety bonds stand cancelled. They shall surrender before the learned trial Court within fifteen days from today to serve out the sentence awarded by the learned trial Court which is confirmed by us, failing which, the learned trial Court shall take appropriate steps for their arrest and send them to judicial custody.

In the result, the Criminal Appeal stands dismissed.

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

Before parting with the case, we would like to put on record our appreciation to Miss Adyashakti Priya, the learned counsel for the appellants for rendering her valuable help and assistance towards arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance provided by Mr. Aurovinda Mohanty, learned Additional Standing Counsel.

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S.K. Sahoo, J.

Chittaranjan Dash, J. I agree.

.....
Chittaranjan Dash, J.

Orissa High Court, Cuttack
The 11th August 2025/Pravakar/RKMishra