



IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.46 of 2010

An appeal from the judgment and order dated 29.04.2010 passed by the Sessions Judge, Ganjam-Gajapati, Berhampur in Sessions Trial No.102 of 2008.

Syama Choudhury & Anr	Appellants
-Versus-	
State of Odisha	Respondent

For Appellant:	-	Ms. Sasmita Nanda Advocate
For Respondent:	-	Jateswar Nayak Addl. Govt. Advocate

CRLA No. 442 of 2010

Surya Kanta Behera @ Katiki	Appellant
-Versus-	
State of Odisha	Respondent

For Appellant:	-	Ms. Sasmita Nanda Advocate
For Respondent:	-	Jateswar Nayak Addl. Govt. Advocate



P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing: 06.11.2024 Date of Judgment: 14.11.2024

S.K. SAHOO, J. The appellants Syama Choudhury and Nibedita Panda in JCRLA No.46 of 2010 and the appellant Surya Kanta Behera @ Katiki in CRLA No.442 of 2010 along with Chandra Maharana, Tukuna Maharana @ Hati faced trial in the Court of learned Sessions Judge, Ganjam-Gajapati, Berhampur in Sessions Trial No.102 of 2008 for the offences punishable under section 302 read with section 34 of the Indian Penal Code on the accusation that on the night of 12.12.2007 near Ghatima Thakurani temple at Chikiti-Tamana Ghat road in furtherance of their common intention, they committed murder of one Raghava Chandra Panda (hereinafter 'the deceased'). The appellants Syama Choudhury, Surya Kanta Behera @ Katiki and co-accused persons Chandra Maharana and Tukuna Maharana @ Hati were additionally charged under section 201 read with section 34 of the Indian Penal Code on the accusation that on 12.12.2007 night near Ghatima Thakurani temple at Chikiti-Tamana Ghat road, knowing that the murder of the deceased has been



committed, set fire to the body of the deceased to cause evidence of the said offence to disappear with the intention of screening themselves from the legal punishment in furtherance of their common intention. The appellant Nibedita Panda was additionally charged under section 120-B of the Indian Penal Code on the accusation that on 12.12.2007 night, he entered into criminal conspiracy with appellant Syama Choudhury to commit murder of the deceased.

The learned trial Court vide judgment and order dated 29.04.2010 though acquitted the co-accused persons Chandra Maharana and Tukuna Maharana @ Hati of all the charges, but found the appellants Syama Choudhury and Surya Kanta Behera @ Katiki guilty under sections 302 read with section 34 and 201/511 read with section 34 of I.P.C. and appellant Nibedita Panda under section 120-B of I.P.C. The appellant Shyama Choudhury and Surya Kanta Behera @ Katiki were sentenced to undergo imprisonment for life for commission of offence under section 302 read with section 34 of the I.P.C., however no separate sentence was passed against them for the offence under section 201/511 of the I.P.C. The appellant Nibedita Panda was sentenced to life imprisonment for the offence under section 120-B of I.P.C.



Prosecution Case:

2. The prosecution case, as per the first information report (Ext.22) lodged by Prafulla Kumar Padhi (P.W.21), Inspector-in-Charge (I.I.C.) of Nuagaon police station, in short, is that on getting reliable information that one unknown male burnt dead body was lying on Chikiti-Tamana Ghat road near Ghatima Thakurani temple, he along with his staff left for the spot. Upon reaching at the spot on 13.12.2007 early morning, he found the burnt dead body of a man aged about 25 to 30 years lying by the side of the ghat road near the bush in a naked condition and his wearing apparels were burnt except a little piece of shirt and pant sticking to the body and blood was oozing out from the nose, eye, ear and mouth and there was injury mark also on the left eye brow, the skins were found to be peeled and water bubbles could be seen over the body. It is further stated that the deceased had put on a belt on his waist and had worn a pair of shoes out of which left shoe was found in a half burnt condition and the dead body had become blackish and a few drops of blood could be found near the dead body sticking to the earth.

On suspicion that some unknown culprits after committing the murder elsewhere threw the dead body near the



bush and set fire by pouring petrol or diesel to cause disappearance of evidence, P.W.21 drew up a plain paper first information report (F.I.R.) at the spot and registered a formal F.I.R. upon returning to the police station and accordingly, Nuagaon P.S. Case No.87 dated 13.12.2007 was registered under sections 302/201 of I.P.C. against unknown persons.

P.W.21 himself took up investigation. During the course of investigation, he visited the spot, prepared crime details form vide Ext.23, sent requisition for police tracker dog, scientific team and held inquest over the dead body of the deceased in presence of the witnesses and prepared the inquest report vide Ext.6. To procure the identity of the dead body, he enquired the local gentries and certain leading persons from the locality but they could not identify the same and therefore, he took the photographs of the dead body and the scene of the crime from different angles and collected blood stained earth, sample earth and some soil with burnt grasses and leaves on production by the Scientific Officer, D.F.S.L., Chatrapur and prepared the seizure list vide Ext.16. P.W.21 sent the dead body of the deceased for post mortem examination to the Department of F.M. & T., M.K.C.G. Medical College and Hospital, Berhampur. On 16.01.2008, he got the information from I.I.C., Bada Bazar



police station, Berhampur that the photograph of the dead body has been identified to be that of the deceased and he proceeded to conduct search in the house of the deceased in presence of police officers of Bada Bazar police station and other witnesses and on seeing the police, the appellant Syama Choudhury tried to escape through the back door of the house and he was apprehended. Upon search of the house of the deceased, P.W.21 found incriminating clues in presence of witnesses and recovered one identity card, savings bank passbook and prepared the seizure list vide Ext.5. He took the appellants Syama Choudhury and Nibedita Panda into his custody for interrogation and during such interrogation, the involvement of the appellant Surya Kanta Behera @ Katakai and the co-accused persons Tukuna Moharana @ Hati and Chandra Maharana came to light and he accordingly examined the accused persons and seized the motor cycle, which was used in the commission of the crime. The I.O. recorded the disclosure statement of the appellant Syama Choudhury under section 27 of the Evidence Act vide Ext.25 and upon being led by him, the I.O. went to a culvert near the village Ramadihi and found a 'Muli Thenga' from under the culvert and seized the same as per seizure list Ext.26. Thereafter, P.W.21 forwarded the accused persons to Court on 18.01.2008 and prayed the



learned J.M.F.C., Patrapur to treat accused Tukuna Moharana as an approver. On 14.02.2008, he seized a petition of the appellant Nibedita Panda and a copy of the judgment and prepared the seizure list vide Ext.11 and also seized the service book and other service particulars regarding date of birth and the age of the employee of S.M.I.T. and his period of absence from duty as per seizure list Ext.12. He produced the exhibits seized in the Court of learned J.M.F.C., Patrapur and prayed for dispatching the same to the Regional Forensic Science Laboratory, Berhampur for chemical examination and also received the chemical examination report. On conclusion of investigation, upon getting prima facie material against the accused persons, P.W.21 submitted charge sheet on 14.05.2008 for offences punishable under sections 302/201/120-B/114/34 of I.P.C.

3. After submission of charge sheet, following due procedure, the case was committed to the Court of Session where the learned trial Court framed charges as aforesaid and since the accused persons pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prove their guilt.



Prosecution Witnesses, Exhibits & Material Objects:

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

P.W.1 Subhasree Panda is the minor daughter of the deceased and appellant Nibedita Panda who stated that on 12.12.2007 i.e. on the date of occurrence, the appellants came to their house and talked to her mother and at that time, she along with her two brothers was present in the house. She also stated that after talking to her mother, the appellants left the house and at about 04.30 p.m., her deceased father returned to their house from college and took rest. It is her further statement that while the deceased was taking rest, the appellant Syama Choudhury asked her brother Suraj to procure some kerosene in a bottle and around 5.00 p.m., the appellant Kataki came to their house and called the deceased to go to Chikiti for seeing a girl and her mother also convinced her deceased-father to get ready for going to see the girl. Thereafter, the deceased and the appellant Kataki left their house for Chikiti on the motor cycle of the deceased. Subsequently, in the night at around 10.30 p.m., the appellant Kataki alone returned to their house and on seeing him, when she enquired from him as to the whereabouts of her deceased-father, he informed that the



deceased was at Hanuman temple and he was instructed by the deceased to keep the motor cycle at their house. She further went on to state that the appellant Kataki left their house and since the deceased did not return to their house, the appellant Syama Choudhury started living in the house at night and when she enquired as to the whereabouts of the deceased, the said appellant always assured her that the deceased would return to the house and he was also searching for the deceased. Furthermore, she stated that appellant Syama Choudhury threatened them saying not to move out of the house or else he would kill them. The minor witness also stated that before the occurrence, the appellant Syama Choudhury used to visit their house and the deceased used to take exception to that and for that reason, the relationship between the deceased and the appellant Nibedita Panda got strained.

P.W.2 Rajiba Kumar Panda is the elder brother of the deceased who stated that the deceased had first married to another lady but when she conceived and gave birth to a baby boy at his in-law's house, he did not go to see the newborn rather he brought another woman i.e. appellant Nibedita Panda and kept her as his second wife. He also stated that appellant Syama Choudhury was a candidate in the Municipal Election of



the year 2002 and during that period, he developed intimacy with the appellant Nibedita Panda. As the illicit relationship between the two became deep, the deceased had altercation of words and exchange of blows on multiple occasions. He further stated that once appellant Syama Choudhury met and complained about misbehavior being meted out to him by the deceased but he advised the appellant not to disturb the family of the deceased, however, the appellant threatened to teach a lesson to the deceased if he misbehaves with him any further. He expressed strong suspicion about the involvement of appellant Syama Choudhury and appellant Nibedita Panda in the commission of the murder of the deceased.

P.W.3 Tapan Kumar Padhi stated to have known appellants Syama Choudhury and Nibedita Panda, however he expressed ignorance about the identities of the other accused persons. He stated that the police had shown him some photos and from that, he identified the dead body of the deceased. But he stated to have not known anything more about the case for which he was declared hostile by the prosecution.

P.W.4 Bhagaban Das stated to have known the appellants Nibedita Panda and Syama Choudhury and expressed ignorance about the identities of the other accused persons. He



is a witness to the seizure of one blue film book, one pass book of Andhra Bank and one red colour motor cycle from the house of the deceased as per seizure list Ext.5, but as he expressed ignorance about the further facts of the case, he was declared hostile by the prosecution.

P.W.5 Dharma Sahu is a witness to the preparation of inquest report vide Ext.6 and he is also a witness to the seizure of one spectacle and burnt pieces of a shirt as per seizure list Ext.7.

P.W.6 Sibanarayana Panda is the nephew of the deceased who stated to have received a telephonic call from the police to come to his ancestral house in Old Berhampur Street. He again stated that the police had shown him some photos, but he could not identify the same but his father could identify the dead body shown in the photos to be that of the deceased. As the witness could not state anything more about the case, the prosecution declared him hostile.

P.W.7 Binod Bihari Mishra stated that he knew the deceased from the childhood and he was also aware of the fact that the appellant Syama Choudhury used to visit the house of the deceased. He also stated about the first marriage of the deceased with another lady and subsequently with appellant



Nibedita Panda. He further stated that when appellant Nibedita Panda had once left the house of the deceased, the deceased had explained his plight before him and thus, he had advised the deceased to practise 'pranayama' and 'yoga' and not to have relationship with ladies. The witness also stated that the appellant Nibedita Panda subsequently circulated leaflets throughout Berhampur town assailing the character and conduct of the deceased. He is also a witness to the seizure of one blue film book, one savings account pass book and one motor cycle as per the seizure list Ext.5. However, as he expressed ignorance about any further details of the case, he was declared hostile by the prosecution.

P.W.8 Soubhagini Tripathy is the sister of appellant Nibedita Panda who stated that once the said appellant had come to her house at Nawarangapur as she had some difference of opinion with her deceased-husband and she stayed with her for about seven to eight months thereafter. Subsequently, they all came to Berhampur for an event and at that time, the appellant lived with the deceased. She came to know about the death of the deceased from newspaper 'Samaj' and expressed ignorance about any further details of the case and therefore, the prosecution declared her hostile.



P.W.9 Srikanta Panda is the minor son of the deceased and appellant Nibedita Panda who stated that appellant Syama Choudhury and his mother (appellant Nibedita Panda) once had a discussion in the middle room of their house and at that time, the deceased was absent as he had been to the college. He further stated that around 4 to 5 p.m., the deceased returned to the house and appellant Syama Choudhury asked his brother Suraj to fetch some kerosene. Thereafter, appellant Kataki came to the house and the accused Nibedita asked the deceased to go with the appellant Kataki and accordingly, the deceased proceeded on a motor cycle with appellant Kataki. He further stated appellant Kataki came back to their house on the motor cycle around 10 p.m. alone and when P.W.1 enquired from appellant Kataki about the whereabouts of the deceased, he replied that he would come back but the deceased did not return. The minor witness also stated that since the deceased did not return to the house, the appellant Syama Choudhury used to live in their house and also used to beat them. After one month, the police came to the house and had shown him some photos, from which he could know that his father (deceased) had died.

P.W.10 Suraja Kumar Panda is the son of the deceased and appellant Nibedita Panda who stated that during



the absence of his deceased-father, the appellant Syama Choudhury used to come to their house to talk to his mother. He further stated that on the date of occurrence, appellant Syama Choudhury had come to their house after the deceased left for the college and had some discussions with his mother. He further stated that the said appellant again came to their house around 3 p.m. and asked him to fetch kerosene in a bottle and thereafter the appellant Katakai came to their house and called the deceased to go to see a girl and accordingly, both of them left on a motorcycle, but after that the deceased never returned back to the house. He further stated that in absence of the deceased, appellant Syama Choudhury started living in their house and after a month, when police came and showed him the photos of the deceased, he came to know that he had died.

P.W.11 Prasan Kumar Patnaik is the proprietor of a photo studio namely 'Balakumari' who, on requisition of C.I. of police, took photographs of the scene of occurrence at Tamana Ghati, which are marked as Exts.8, 8/1, 8/2, 8/3 and 8/4.

P.W.12 Dr. Satchidananda Mohanty was the Associate Professor in the Department of Forensic Medicine and Toxicology, M.K.C.G. Medical College, Berhampur, who on police



requisition, held post mortem over the dead body of the deceased and proved his report vide Ext.9.

P.W.13 Bhagaban Gantayat was the President of Sanjaya Memorial Institute of Technology, Berhampur (hereafter 'SMIT') where the deceased used to work as a Lecturer. He stated that though the deceased used to come to the college regularly but once he stopped coming for a long time for which the college had issued notice to him by registered post. He further stated that appellant Nibedita Panda had sent petitions to the Principal of the College alleging that the deceased was not taking care of her and the children. He is a witness to the seizure of one allegation petition of appellant Nibedita Panda and copy of the judgment as per seizure list Ext.11 and seizure of the extract of service book of the deceased and his bio-data as per seizure list Ext.12.

P.W.14 Sudhansu Mohan Padhy was working as the Principal of the Diploma Wing of SMIT who stated that as the deceased did not attend the college from 13.12.2007, a notice was sent to him in his home address by registered post on 04.01.2008 and the said notice returned back undelivered on 16.01.2008. He expressed his ignorance about the occurrence



and stated that the he came to know about the murder of the deceased from newspaper.

P.W.15 Bulu Charan Sabat was working as a peon in SMIT who stated having no knowledge about the occurrence, for which he was declared hostile by the prosecution.

P.W.16 Ladu Kishore Sahoo was working as a Constable attached to Chikiti outpost under Kandha Nuagaon police station. He is a witness to the seizure of blood stained earth, sample earth and some soil from the spot of occurrence as per seizure list Ext.16 and he is also a witness to the seizure of command certificate, burnt sacred thread, burnt pieces of shirt, pant, belt, rubber shoe and sealed packet as per seizure list Ext.17.

P.W.17 Bipin Bihari Mishra was the Councilor and neighbour of the deceased who after learning about the missing of the deceased reported the matter to the I.I.C., Bada Bazar police station on 14.01.2008 in writing vide Ext.18. He further stated that after one and half month of missing, the police had shown him some photographs from which he came to know about the murder of the deceased. He also stated that appellat Nibedita Panda was living along with her children and appellat Syama Choudhury in the house of the deceased.



P.W.18 Krushna Mohan Padhi was working as the Establishment Officer in the Diploma wing of SMIT who is a witness to the seizure of personal file of the deceased along with extract of his service book, a letter regarding holding of a condolence meeting and other documents.

P.W.19 Amanulla Khan was posted as the Scientific Officer, District Forensic Science Laboratory, Chatrapur, Ganjam who, on requisition of police, visited the spot and found the dead body of the deceased in a charred condition facing upwards. He further stated to have found the wearing apparels in burnt condition and he also detected bleeding injuries on the left eye and right ear of the charred body. He collected blood stained earth from the near the dead body so also sample earth from the spot.

P.W.20 Brajabandhu Choudhury is the brother of appellant Syama Choudhury and also a witness to the seizure of his motor cycle as per seizure list Ext.20. He stated to have learnt about the death of the deceased from newspaper.

P.W.21 Prafualla Kumar Padhi was the Inspector-in-Charge of Nuagaon police station and he is the Investigating Officer of this case.



The prosecution proved thirty-three numbers of documents to fortify its case. Exts.1 to 4 and 8 are the photos of the deceased, Exts.5, 7, 11, 12, 16, 17, 20, 26, 30 and 31 are the seizure lists, Exts.6 is the inquest report, Ext.9 is the post mortem report, Ext.10 is the letter of I.I.C., Nuagaon addressed to P.W.12, Exts.13, 14, 15 and 21 are the zimanamas, Ext.18 is the report of P.W.17, Ext.19 is the spot visit report, Ext.22 is the plain paper F.I.R., Ext.22/1 is the formal F.I.R., Ext.23 is the crime details form, Ext.23/1 is the spot map, Ext.24 is the dead body challan, Ext.25 is the disclosure statement made by the appellant Syama Choudhury, Exts.27 & 28 are the chemical examination reports, Ext.29 is the carbon copy of forwarding letter of J.M.F.C., Patrapur, Ext.32 is the forwarding letter regarding sending of the negatives and Ext.33 is the negative of photograph.

The prosecution also produced one material object for proving its case. M.O.I is a wooden lathi.

5. The defence plea is of complete denial to the prosecution case.

6. The learned trial Court after assessing the oral as well as documentary evidence on record, came to hold that the deceased died a homicidal death and the death took place



around 11.30 p.m. on the night of 12/13.12.2007 which was within six and half hours of the departure of the deceased with the appellant Katiki from the house and death of the deceased was homicidal in nature and the medical evidence was consistent to the prosecution case that with the help of M.O.I (wooden lathi), fatal injuries were caused to the deceased. The learned trial Court found that the case is based on circumstantial evidence and it jotted down the circumstances available on record against the appellants and the co-accused persons who were acquitted which are as follows:-

- (1) Though the deceased and accused Nibedita were living together with their children, there was dissension between the two and sometimes it used to be of serious nature;
- (2) Accused Nibedita had intimacy with accused Syama and used to mix with him which was not liked by the deceased;
- (3) On 12.12.2007 forenoon after departure of the deceased to his College, accused Syama and Katiki had come to deceased's house and had some talk with Nibedita. On the same day in the afternoon, accused Syama had sent P.W.10 to fetch kerosene for him and P.W.10 had in fact brought kerosene and handed it over to accused Syama;



- (4) At about 4.30 p.m. the deceased returned from his college and took rest for some time. At that time accused Katiki came and called him giving a proposal that they should go to Chikiti to see a girl. At that time accused Nibedita also induced the deceased to get ready to go with Katiki;
- (5) In the evening, the deceased and Katiki left deceased's home riding on the deceased's motor cycle. Some hours thereafter (according to P.W.1 the time was 10.30 p.m.) Katiki returned with deceased's motor cycle but the deceased did not come. When asked about the whereabouts of the deceased, accused Katiki replied that the deceased went to the Hanuman temple asking him to keep the motor cycle in his house;
- (6) The death of the deceased was found to have occurred around 11.30 p.m. of 12.12.2007;
- (7) From the same night, accused Syama had been staying in the deceased's house and when the children used to ask him about their father, his reply was that he would come back soon. He also used to threaten the children not to go outside their house;
- (8) As stated by the I.O., on 16.01.2008 night when he went to the deceased's house to search it, he found accused Syama Choudhury, accused Nibedita Panda and three children of the deceased



inside that house, which was then kept bolted from inside;

- (9) While in custody, accused Syama Choudhury disclosed that with the help of a 'Muli Thenga', the deceased was assaulted and after commission of the crime the 'Muli Thenga' (M.O. I) was thrown under one culvert near village Ramadihi and subsequently he led the police to that culvert where from one 'Muli Thenga' (M.O.I) was recovered;
- (10) Even though Raghaba Panda was missing, accused Nibedita, the only major person in the family did not report about the deceased's missing nor did she take the help of others for days together to find out where the deceased might be, more so when she herself had asked the deceased to go with Katiki to see a girl.

The learned trial Court held that the circumstantial evidence are there against the appellants Syama Choudhury, Surya Kanta Behera @ Katiki and Nibedita Panda, but there is neither circumstantial nor direct evidence against the co-accused persons, namely, Chandra Maharana and Tukuna Maharana @ Hati. The learned trial Court considered the evidence of P.W.1, the daughter of the deceased regarding the last seen theory against appellant Surya Kanta Behera @ Katiki and found the



evidence believable and the non-explanation offered by the appellant Surya Kanta Behera @ Katiki was held to be providing missing link to the chain of circumstantial evidence. The learned trial Court took into account the conduct of the appellant Nibedita Panda in not reporting about the missing of the deceased to anyone so also her absence of anxiety and the conduct of the appellant Syama Choudhury in giving threat to the children of the deceased not to go outside show their complicity in the commission of the crime. It was further held that the last seen theory along with other circumstances raised a presumption that the appellant Surya Kanta Behera @ Katiki committed the murder of the deceased so also the appellant Syama Choudhury on the basis of whose disclosure statement, the weapon of offence was recovered. Similarly, it was held that the appellant Nibedita had a criminal conspiracy with the appellant Syama Choudhury and Surya Kanta Behera @ Katiki for committing the murder of the deceased. The learned trial Court held that there are material omissions in the evidence of P.W.9 and P.W.10 so also there were chances of tutoring to them, however, they were held to be competent witnesses to know about their parents' private life and therefore, it was held that their evidence cannot be discarded in toto. It was held that



the evidence of the deceased being last seen with the appellant Surya Kanta Behera @ Katiki, is the strongest piece of evidence and there is also evidence to show that some of the co-accused had ill-feeling towards the deceased. Accordingly, the learned trial Court while acquitting the two co-accused persons of all the charges, found the appellants guilty.

7. Ms. Sasmita Nanda, learned counsel appearing for the appellants argued that in absence of any direct evidence, the learned trial Court ought not to have relied upon the circumstantial evidence as produced by the prosecution to convict the appellants as those circumstances are neither clinching nor on being taken together, form a complete chain which pointed towards the guilt of the appellants. She argued that there is no clinching evidence that the dead body which was found by P.W.21 on 13.12.2007 near Ghatima temple on Chikiti-Tamana Ghat road, was that of the deceased. Learned counsel further argued that all the three witnesses on whom the learned trial Court has placed utmost reliance are the children of the deceased and appellant Nibedita Panda and they are highly interested witnesses and possibility of tutoring them to depose against the appellants cannot be ruled out. It was further argued that in view of the time of death of the deceased as per the



evidence of the doctor (P.W.12) who conducted post mortem examination, it does not match with the time of last seen of the appellant Surya Kanta Behera @ Katiki with the deceased. The learned counsel further argued that even if the conduct of the appellants Syama Choudhury and Nibedita Panda can be said to be suspicious, but in view of the settled position of law that suspicion, howsoever strong, cannot take the place of legal proof and particularly when there is absence of evidence of criminal conspiracy between the appellant Nibedita Panda with the other appellants, her conviction under section 120-B of the I.P.C. is not sustainable in the eye of law. The learned trial Court without any evidence whatsoever on record, has presumed that both the appellants Syama Choudhury and Surya Kanta Behera @ Katiki attempted to cause disappearance of evidence and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellants.

Mr. Jateswar Nayak, learned Addl. Government Advocate, on the other hand, supported the impugned judgment and argued that in view of the evidence of the I.O. (P.W.21), it would be clear that after taking photographs of the dead body from different angles, he visited many places and enquired from many persons to establish the identity of the dead body and



finally he could be able to establish the same when he examined the family members of the deceased showing the photographs and therefore, the contention raised by the learned counsel for the appellants that the dead body which was found by P.W.21 on 13.12.2007 near Ghatima temple on Chikiti-Tamana Ghat road, was not that of the deceased, is not acceptable. It is further argued that the children of the deceased and the appellant Nibedita Panda cannot be said to be interested witnesses and they are truthful witnesses and their evidence has rightly been accepted by the learned trial Court since the defence has failed to bring out anything from their mouth that they had been tutored to depose against the appellants. It is further argued that not only the doctor (P.W.12) found that the deceased met with a homicidal death, but there was depressed fracture of the skull and lacerated wound and the probable time of death which has been assessed by the doctor almost matches with the last seen of the appellant Surya Kanta Behera @ Katiki with the deceased and moreover, the weapon of offence was seized at the instance of the appellant Syama Choudhury and it was examined by the doctor, who opined that the ante-mortem injuries detected on the person of the deceased were possible by such weapon and therefore, there is no illegality or infirmity in the



impugned judgment and as such, both the appeals should be dismissed.

8. Adverting to the contentions raised by the learned counsel for the respective parties, so far as the identity of the dead body is concerned, P.W.21, the I.O. has stated that when he proceeded to the spot on 13.12.2007 morning, he found a naked dead body of a person, aged about 25-30 years was lying by the side of Ghat road and the wearing apparels were burnt leaving the remnant of a piece of shirt and pant sticking to the body. He stated that he enquired from the local gentries and leading persons of the locality to get the identity of the dead body, but they could not identify. He further stated that he took the photographs of the dead body and the scene of the crime from different angles and sent messages to all the I.I.Cs. and O.I.Cs. of Berhampur and Ganjam district and made wide publication to establish the identity of the dead body and also requested the Station House Officer, Ichchapur requesting him to make wide publication to establish the identification of the dead body. He further stated that on 14.12.2007, he moved to villages Belapali, Benthapalli, Tamana, Konisi and Golanthara and showed the photos of the corpse to the public, but nobody could be able to identify or establish the identity of the dead person.



He further stated that on 28.12.2007 he visited some other villages and contacted transport godowns and drivers, but failed in his attempt to establish the identity of the dead body. On 27.12.2007 and on 08.01.2008, he made efforts to ascertain the identity of the deceased by contacting the sources, Inspectors and O.I.Cs. of different police stations, but could not get any information. On 16.01.2008, he received information from I.I.C., Badabazar police station, Berhampur that the photograph which was sent by him related to the deceased who was missing since 12.12.2007. He further stated that in the house of the deceased, he examined Subhashree Panda (P.W.1), Saroj Kumar Panda (P.W.10), Srikanta Kumar Panda (P.W.9), Nibedita Panda (appellant) and all of them who were shown the photo of the dead body identified the same to be that of the deceased. Suggestion has been given by the learned counsel that the identity of the deceased had not been established and that the charred body, which was found lying by the side of Tammana Ghat road was not that of the deceased, but the I.O. (P.W.21) has denied such suggestion. We also verified all the photographs which have been marked as exhibits, from which we found that the face portion including the hairs and some of the limbs of the deceased are quite visible even though a major part of the body



had been burnt and therefore, there could not have been any difficulty on the part of the family members of the deceased to identify the dead body. P.W.1 has stated that the police showed them the photos and wearing apparels of her father and she could identify the same to be that of her father. P.W.9 has also stated that police came to their house and showed some photographs, from which they could come to know that their father had died. P.W.10 has also stated that one month after his father was found missing, the police came and showed the photos, from which they could come to know that their father had died. In view of such evidence on record, we are of the humble view that the identity of the dead body has been established by the prosecution successfully and the burnt body of a male person which was lying on Chikiti-Tamana Ghat road near Ghatima temple on 13.12.2007 was that of the deceased.

First Circumstance:

9. The first circumstance jotted down by the learned trial Court in the impugned judgment is that the appellant Nibedita and the deceased were living together with their children and there was dissension between the two and sometimes it used to



be of serious nature. The relevant witnesses on this point are P.Ws. 1, 7, 8 and 13.

P.W.1 is the daughter of the deceased, who was aged about fourteen years and when she deposed in this case on 16.12.2008, the learned trial Court put some questions to her and from the answers given by the witness, the Court was of the view that she appeared to be highly intelligent and she answered some of the questions very intelligently.

Section 118 of the Evidence Act deals with the competence of a person to testify before the Court. If a child witness is able to understand the questions and his duty to speak the truth before the Court and give rational answers thereof, he can be said to be competent to depose the facts of the case. The trial Judge sees the child witness, notices his manner, his apparent possession or lack of intelligence by resorting to any examination which would disclose his capacity and intelligence and accordingly, he has to form his opinion. The child witnesses are amenable to tutoring and they are pliable and liable to be influenced easily, shaped and moulded and therefore, careful scrutiny is necessary by the Court to come to the conclusion that there is an impress of truth in it.



P.W.1 stated that her father (deceased) was working as a Lecturer in S.M.I.T. College and she was having two brothers, namely, Suraj (P.W.9) and Srikant (P.W.10). She further stated that when appellant Syama Choudhury started coming to their house, her father (deceased) took exception to that and since then, the relationship between her father (deceased) and her mother (appellant Nibedita Panda) got strained. Suggestions have been given to P.W.1 in the cross-examination that being tutored by her Mousi (aunt) and Mamu (maternal uncle) and other maternal relations, she was deposing falsehood, to which the witness denied. Further suggestion has been given by the learned defence counsel in the cross-examination that only to grab the properties of her deceased father and to keep her mother behind bar, her Mousi and maternal uncle had set her in making false accusation against the accused persons, to which also she had denied. Nothing further has been elicited in the cross-examination to doubt the veracity of this witness.

P.W.7 has stated that the deceased first married to a lady namely, Ranjana and later on he brought the appellant Nibedita Panda and kept her as his wife and once the appellant Nibedita Panda left the house of the deceased to which the latter



expressed his plight before him. He further stated that the appellant Nibedita Panda circulated leaflets throughout Berhampur town about the character and conduct of the deceased. In the cross-examination, it has been elicited that his brother was contesting election for the post of Councillor in Municipality for the year 2002 against the appellant Syama Choudhury and his brother won the election. Nothing further has been brought out in the cross-examination of P.W.7 to disbelieve his evidence.

P.W.8, who was the sister of the appellant Nibedita Panda, stated that appellant Nibedita married to the deceased and out of their wedlock, a daughter and two sons were born. She further stated that the appellant Nibedita had a difference of opinion with the deceased for which she came and stayed with them for seven to eight months.

P.W.13 has stated that he was the President of the S.M.I.T., Berhampur where the deceased was a Lecturer in Diploma wing. He further stated that the appellant Nibedita had sent petitions to the Principal of the College against the deceased as he was not taking care of her as well as her children.



The evidence of these four witnesses i.e. P.Ws.1, 7, 8 and 13 substantiate the first circumstance that though the deceased and the appellant Nibedita were staying together with their children, but there was dissention between the two and sometimes it used to be serious nature.

Second circumstance:

10. The second circumstance jotted down by the learned trial Court is that the appellant Nibedita had an intimacy with the appellant Syama Choudhury and she used to mix with him, which was not liked by the deceased. P.Ws. 1 and 10 are the relevant witnesses on this point.

P.W.1 has stated that the deceased took exception when the appellant Syama Choudhury started coming to their house and the relationship between the deceased and the appellant Nibedita got strained over such issue.

P.W.10, the son of the appellant Nibedita and the deceased has stated that his father (the deceased) used to go to the college everyday at 8.00 a.m. and during his absence, the appellant Syama Choudhury was coming to his house and was talking with his mother (appellant Nibedita). Suggestion has



been given to P.W.10 that he had been tutored by his Mousi and Mamu as well his sister to which he has denied.

In view of the evidence of P.W.1 and P.W.10, the second circumstance has been clearly established by the prosecution.

Third circumstance:

11. The third circumstance jotted down by the learned trial Court is that on 12.12.2007 forenoon, after departure of the deceased to the college, appellants Syama and Katiki had come to the house of the deceased and had talked with the appellant Nibedita and on the same day, in the afternoon, the appellant Syama had sent P.W.10 to fetch kerosene for him and P.W.10 had in fact brought kerosene and handed it over to appellant Syama. The relevant witnesses are P.Ws.1, 9 and 10.

P.W.1 has stated that on 12.12.2007 after her father left for the college, appellants Syama Choudhury and Katiki came to their house and talked with their mother. She further stated that at that time, she along with her two brothers (P.W.9 and P.W.10) were there in the house and both the appellants talked with her mother for some time in a room and left the house and on the same day, while her deceased father was



taking rest after returning from the college, appellant Syama Choudhury called her brother (P.W.9) and gave him a bottle to procure kerosene. In the cross-examination, she had stated that on 12.12.2007, she had not gone to the school as she had left her studies for one year by then and her two brothers (P.W.9 and P.W.10) had also stopped going to the school and because of the dissention between their mother (appellant Nibedita) and father (deceased), all of them had stopped going to the school.

P.W.9 has also stated like P.W.1 and in the cross-examination, he has stated that he had left studies since last two years and he was not going to attend any tuition.

P.W.10 has stated that the appellant Syama Choudhury came to their house and at that time he was outside the house and the appellant gave him a bottle to fetch kerosene and accordingly, he procured kerosene and handed over the same to the appellant Syama Choudhury whereafter the latter left their house. In the cross-examination, he was suggested that he had been tutored by his Mousi and Mamu as well as his sister and that he had no knowledge about the missing of the deceased, to which he denied.



Nothing has been brought out in the cross-examination of any of these three witnesses relating to their evidence on this circumstance and therefore, the prosecution has established the third circumstance as well.

Fourth circumstance:

12. The fourth circumstance jotted down by the learned trial Court is that the deceased returned from his college at 4.30 p.m. and took rest for some time and appellant Katiki came and called him giving a proposal that they should go to Chikiti to see a girl and appellant Nibedita also induced the deceased to get ready to go with appellant Katiki. The relevant witnesses on this point are P.Ws. 1, 9 and 10.

P.W.1 has stated that after returning from the college, when her father (deceased) was taking rest, appellant Katiki came to their house, called the deceased to go to Chikiti for seeing a girl and her mother (appellant Nibedita) also asked the deceased to get ready as he would be going to see a girl.

P.W.9 has stated that around 4 to 5 p.m., his father (deceased) returned from the college and appellant Katiki arrived in their house and on seeing him, his mother (appellant Nibedita)



called the deceased who was then taking a nap as he was to go with appellant Katiki somewhere.

P.W.10 has stated that the appellant Katiki came to their house in the afternoon and called the deceased to go to see a girl.

Nothing has been brought out in the cross-examination of these three witnesses to disbelieve the evidence given on this circumstance. Thus, the fourth circumstance has also been established by the prosecution successfully.

Fifth circumstance:

13. The fifth circumstance jotted down by the learned trial Court is that in the evening hours on 12.12.2007, the deceased and appellant Katiki left the house of the deceased riding on the motor cycle of the deceased and few hours after, appellant Katiki returned with the motor cycle of the deceased alone, but the deceased did not return. When P.W.1 asked about the whereabouts of her father (deceased), appellant Katiki replied that the deceased had been to the Hanuman temple and asked him to keep the motor cycle in the house.

This circumstance is a vital one which is the last seen theory of the appellant Katiki with the deceased. The relevant



witnesses on this point are P.Ws.1, 9 and 10, the three children of the deceased.

P.W.1 has stated that the deceased and the appellant Katiki left their house in a Hero Honda motor cycle of the deceased for Chikiti to see a girl and at about 10.30 p.m. in the night, the appellant Katiki alone returned to their house and when she enquired as to what happened to her deceased father, appellant Katiki informed her that the deceased was at Hanuman temple and that he had been instructed by the deceased to keep the motor cycle in the house. She further stated that keeping the motor cycle, the appellant Katiki left the house and since then, the deceased did not return to the house. In the cross-examination, P.W.1 has stated that she had seen her father (deceased) leaving from the house in his motor cycle with appellant Katiki and then she had wished her father and at that time, her mother (appellant Nibedita) was inside the house.

P.W.9 has stated almost in the similar line that the deceased and the appellant Katiki proceeded in the motor cycle of the deceased and in the same night at about 10 p.m., the appellant Katiki came with the motor cycle of the deceased and when his sister (P.W.1) enquired as to the whereabouts of her



deceased father, appellant Katiki replied that the deceased had gone to the Hanuman temple and he would return back and since that date, the deceased did not return to the house.

P.W.10 has also stated that in the afternoon, the appellant Katiki came to their house and called his deceased father to see a girl and accordingly, the deceased got dressed and he along with appellant Katiki proceeded to Chikiti site in the motor cycle of the deceased, but since then his father did not return to the house.

The evidence of these three witnesses on this circumstance has remained unassailed. Specific questions on this circumstance has been put to appellant Katiki in his accused statement recorded under section 313 of Cr.P.C., but he has not explained this circumstance and simply stated that it is falsehood.

The last seen theory is a legal principle that is based on the idea that if someone is the last person seen with the deceased before a crime being committed, he is likely to be responsible for the crime unless he provides a satisfactory explanation in view of section 106 of the Evidence Act (section 109 of Bharatiya Sakshya Adhinayam, 2023). Doctrine of last



seen, if proved, shifts the burden of proof onto the accused, placing on him the onus to explain how the incident occurred and what happened to the deceased who was last seen with him. If there is a failure on the part of the accused to furnish any explanation in this regard, or furnishing false explanation, it would give rise to a strong presumption against him and in favour of his guilt and would provide an additional link in the chain of circumstances. Last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen alive together and the discovery of the dead body is quite small and the possibility of any person other than the accused being the author of the crime becomes impossible. The Court may assume that there is a possibility of some other circumstance intervening to cause the offence to be committed, if the accused can demonstrate that there was a fair amount of time between the commission of the wrong and when they were last seen together. Of course, if the accused establishes that the evidence of the person who claimed to have last seen him in the company of the deceased is not credible for any reason, the Court will be unable to rely on the testimony of such witness. Even though there was significant amount of time between an event and the accused and the deceased were last



seen together, in some circumstances, if the prosecution can prove that no one else would have intervened because the accused was sole person in the company of the deceased, the last seen theory can still be established. In the cases of 'last seen together', the prosecution is relieved of the obligation to establish the precise sequence of events as the accused possesses specialized knowledge of the incident and thus, carries the burden of proof under section 106 of the Evidence Act. The last seen together in itself may not be sufficient to hold the person guilty in certain circumstances.

In view of the evidence of P.Ws. 1, 9 and 10 and non-explanation of this circumstance and mere plea of denial by the appellant Katiki, we are of the humble view that the learned trial Court is quite justified in holding that this circumstance has been proved and also utilized it against the appellant Katiki.

Sixth circumstance:

14. The sixth circumstance jotted down by the learned trial Court is that the death of the deceased was found to have occurred around 11.30 p.m of 12.12.2007. In this connection, the evidence of the doctor (P.W.12) who conducted the post mortem examination is very relevant.



P.W.12 has stated that on 14.12.2007 at about 11.30 a.m., he conducted the post mortem examination over the dead body of a male person and found the burnt remnants of maroon colour underwear, blue colour banian, green and white striped shirt, coffee colour pant, remnants of six strands of sacred thread, khadims rubber half shoe on the left side which was partially burnt and melted and remnants of a leather belt on the body surface of the deceased. He also found smell of kerosene was faintly coming from the body surface. There was superficial burn with blackening and charring at places covering almost the entire body surface except lower 1/3rd of right leg. At places blisters were found. The burn area did not show typical ante mortem reaction. On dissection he found:

- (i) Both temporalis found contused so also contusion could also be detected over right fronto temporal and left parieto occipital scalp. A depressed fracture of skull involving an area of 7 cm x 4 cm is found over left temporo occipital area just above the left ear. A fissure fracture was found extending downwards backwards and outwards from the parietal bone 5 cm in front of right parietal eminence going up to right mastoid;
- (ii) Lacerated wound of size 2.5 cm x 0.5 cm x bone deep over right mandible 2 cm away from



symphysis menti with underlying mandible found to be fractured at the level of canine. The maxilla of same side found to be fractured with surrounding extravasation;

- (iii) The base of skull in continuation with injury no.1 is found to be fractured starting from left side extending up to the right side with multiple fractures;
- (iv) Intracerebral haemorrhage on either side of cerebral hemisphere;
- (v) The xiphisternum united with body whereas the membrane sterni not united with the body of the sternum.

He has opined the burn injuries to be post mortem in nature caused due to dry heat with the aid of kerosene like substance. According to him, all the internal injuries were ante mortem and homicidal in nature, caused by the impact of hard and blunt force. The doctor has examined the alleged weapon of offence and given his opinion that the internal injuries detected by him during post mortem could be possible by a weapon like the one sent to him for his opinion. He has opined that the deceased died due to complications as a result of ante mortem injuries. He has further opined that the



probable time of death of the person was around 36 hours preceding the time of post mortem.

On the basis of this opinion, the learned trial Court held that the death was caused around 10.30 p.m. on the night of 12/13.12.2007 and therefore, it is reasonable to presume that within six and half hours of the alleged departure of the deceased with the appellant Katiki, his death had occurred and that the death was homicidal in nature.

P.W.1 has stated that the appellant Katiki returned alone to their house on 12.12.2007 at 10.30 p.m. P.W.10 has stated that the appellant Katiki returned to their house at 11.00 p.m. Therefore, the return time of appellant Katiki matches almost with the probable time of death of the deceased as assessed by the doctor.

Therefore, the prosecution has successfully established the sixth circumstance.

Seventh circumstance:

15. The seventh circumstance jotted down by the learned trial Court is that from the night of 12/13.12.2007, appellant Syama was staying in the house of the deceased and when the children used to ask him about their father, his reply was



that he would come back soon and he used to threaten the children not to go outside of the house. On this circumstance, the relevant witnesses are P.Ws.1, 9 and 10.

P.W.1 has stated that since her father did not return to the house, appellant Syama started leaving in their house in the night and when she asked appellant Syama as to the whereabouts of her father, he was always telling that the deceased would be returning to the house. She further stated that the appellant Syama threatened them not to move out of the house or else they would be killed by him.

P.W.9 has stated that since the day his father did not return to the house, appellant Syama Choudhury lived in their house and when they asked him as to what had happened to their father, he used to tell that their father had gone somewhere.

P.W.10 has stated that since the day his father did not return to the house, the appellant Syama Choudhury started living in their house.

The evidence of these three minor children of the deceased are very clinching and nothing has been brought out in the cross-examination to disbelieve the same. The



contention of the learned counsel for the appellants is that the children should have disclosed before the neighbours and their other relations about the missing of their father and since they had not done the same, their evidence becomes suspicious. We are not inclined to accept such contention as they were children and they were not allowed to go outside after the occurrence and were threatened by the appellant Syama and they were also not going to the school and their mother (appellant Nibedita Panda) was remaining passive, therefore, they had no opportunity to disclose it before anyone.

Thus, this circumstance is also proved by the prosecution successfully.

Eighth circumstance :

16. The eighth circumstance jotted down by the learned trial Court is that on 16.01.2008 night when the I.O. (P.W.21) came to the house of the deceased to search it, he found that the appellants Syama Choudhury and Nibedita and the three children of the deceased were inside the house which was then kept bolted from inside.



Apart from the evidence of the three children that appellant Syama Choudhury was staying in their house from the date their father was found missing and that they were treated very badly and threatened by the said appellant, the evidence of the I.O. (P.W.21) is very relevant. He stated that after coming to know about the identity of the dead body to be that of the deceased, he searched the house of the deceased in presence of the police officers of Badabazar police station and witnesses in between 7.30 to 9.00 p.m. on 16.01.2008 and found that the appellants Syama Choudhury and Nibedita and the three children of the deceased were there in the house and the door was bolted from inside. He further stated that on seeing the police, the appellant Syama Choudhury tried to escape through the backdoor of the house, but he was nabbed.

Nothing has been elicited in the cross-examination of P.W.21. Thus, the eighth circumstance has been clearly established by the prosecution.

Ninth circumstance :

17. The ninth circumstance jotted down by the learned trial Court is that while in custody, appellant Syama



Choudhury disclosed that with the help of a 'Muli Thenga' (M.O. I), the deceased was assaulted and after commission of the crime, M.O.I was thrown under one culvert near village Ramdihi and subsequently, he led the police to that culvert wherefrom M.O. I was recovered.

The I.O. (P.W.21) has stated that the appellant Syama Choudhury disclosed before him and the witnesses that he would lead them to the culvert near village Ramadihi to show as to where he had thrown M.O. I and accordingly, he recorded the disclosure statement under section 27 of the Evidence Act vide Ext.25 in which the appellant put his signatures and then the appellant led to the culvert near village Ramadihi and brought out M.O.I from under the culvert which was seized and the seizure list (Ext.26) was prepared.

P.W.7 is a witness to the said seizure, but he has not supported the prosecution case. The other witness to the seizure list has not been examined by the prosecution. However, law is well settled that even though no independent witnesses support the prosecution case of seizure but the statement of official witnesses relating to the seizure are



found to be cogent, reliable, trustworthy and inspires confidence, such evidence can be acted upon as there is absolute no command of law that the testimony of such witnesses should always be treated with suspicion.

We are of the view that the evidence of the I.O. (P.W.21) that at the instance of appellant Syama Choudhury, M.O.I was recovered is acceptable and thus, the prosecution has established the ninth circumstance successfully.

Tenth circumstance:

18. The tenth circumstance jotted down by the learned trial Court is that though the deceased was missing and appellant Nibedita was the only major person in the family, she did not report about the missing of the deceased, nor did she take the help of others for days together to find out where the deceased might be, more so when she herself had asked the deceased to go with appellant Katiki to see a girl.

We are of the view that the evidence of three children of the deceased and the appellant Nibedita clearly established that the deceased was missing from his house since 12.12.2007 as he did not return home after leaving the house in the evening hours in his motor cycle with appellant



Katiki. Thus, the tenth circumstance has also been established by the prosecution but even if the conduct of appellant Nibedita is very suspicious, it is to be seen whether the prosecution case against her has been established to find her guilty under section 120-B of the Indian Penal Code.

Appellant Nibedita Panda:

19. The learned trial Court found Nibedita Panda guilty under section 120-B of the Indian Penal Code.

Section 120-B of I.P.C. deals with punishment of criminal conspiracy which has been defined under section 120-A of I.P.C. When two or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. The meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is the sine qua non of criminal conspiracy. The offence can be proved largely from the inferences drawn from the acts or illegal omission committed by the conspirators in pursuance of a common design inasmuch as the conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators.



The entire agreement is to be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. The essence of criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Encouragement and support which co-conspirators give to one another rendering enterprises possible, which if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. Conspiracy is never hatched in open and therefore, evaluation of proved circumstances plays a very vital role in establishing the criminal conspiracy.

The charge was framed under section 120-B of I.P.C. only against appellant Nibedita Panda that she entered into criminal conspiracy with appellant Syama Choudhury. There is no discussion in the impugned judgment referring to the evidence on record as to how the learned trial Court found the appellant Nibedita Panda guilty under section 120-B of I.P.C. and with whom she conspired and what are the materials provided by the prosecution to establish the charge. No charge was framed for such offence against appellant Syama Choudhury.



In the case of **Ram Sharan Chaturvedi -Vrs.- State of M.P. reported in (2022) 16 Supreme Court Cases 166**, the Hon'ble Supreme Court reiterated the views expressed in the cases of **State of Kerala -Vrs.- P. Sugathan reported in (2000) 8 Supreme Court Cases 203** and **Ram Narayan Popli -Vrs.- C.B.I. reported in (2003) 3 Supreme Court Cases 641** that for the offence of criminal conspiracy some kind of 'physical manifestation' of agreement is sine qua non and the evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. In the present case, the prosecution has utterly failed to conclusively prove transmission of thoughts between the appellant Nibedita Panda and other accused persons, leave alone putting forward any acceptable and rigid evidence regarding physical manifestation of agreement. Therefore, when the basic ingredient of the offence of criminal conspiracy i.e. agreement between at least two persons, is not proved, no strength remains in the prosecution argument that the appellant Nibedita Panda is liable for criminal conspiracy.

In the case of **Bimbadhar Pradhan -Vrs.- State of Odisha reported in A.I.R. 1956 SC 469**, the appellant and



his four companions were charged with criminal conspiracy under section 120-B of I.P.C. All the four co-accused persons were acquitted, but the appellant alone was convicted as the Court found that the conviction can be supported as the approver was one of the co-conspirators. The Hon'ble Supreme Court held that it is not essential that more than one person should be convicted of the offence of criminal conspiracy. It is enough if the Court is in a position to find that two or more persons were actually concerned in the criminal conspiracy.

In the case of **Maghavendra Pratap Singh -Vrs.- State of Chhattisgarh reported in (2023) 4 SCR 829**, it is held that for the charge of criminal conspiracy under section 120-B of I.P.C., an agreement between the parties to do an unlawful act must exist. To prove the offence of criminal conspiracy, it is imperative to show a meeting of minds between the conspirators for the intended common object and the charge fails when the prosecution shows its inability to prove involvement and meeting of minds of more than one person and thus, a single person cannot be convicted for hatching a criminal conspiracy.



In the case of **Girija Sankar Misra -Vrs.- State of U.P. reported in A.I.R. 1993 SC 2618**, it has been held that an accused alone cannot be convicted for the offence of conspiracy since the conspiracy cannot be by a single individual inasmuch as if the other alleged conspirators have been acquitted, a single remaining accused cannot be convicted under that section.

The evidence of three children of the deceased and appellant Nibedita Panda is totally silent to fulfil the ingredients of offence of criminal conspiracy. Even if their evidence that the appellant Syama Choudhury had come to their house on the date of occurrence and was talking with their mother is accepted and it is further accepted that the said appellant Syama Choudhury was staying with their mother after the missing of the deceased in the house of the deceased and it is further accepted that the appellant Nibedita Panda did not try to ascertain the whereabouts of the deceased whom she had sent with the appellant Katiki on 12.12.2007 even though the deceased did not return home for more than a month and did not try to report the matter before police, but in absence of any other clinching evidence, only basing on these suspicious conducts of the appellant, it



cannot be held to be sufficient to convict her for offence of criminal conspiracy. Accordingly, the appellant Nibedita Panda is acquitted of the charge under section 120-B of I.P.C.

Appellant Syama Choudhury:

20. The appellant Syama Choudhury was found guilty with appellant Surya Kanta Behera @ Katiki under sections 302/34 and 201/511 of I.P.C.

The evidence of the three children of the deceased did not indicate that he had accompanied the deceased in the evening hours on 12.12.2007. Even there is no evidence on record that when appellant Katiki left with the deceased on that day, appellant Syama Choudhury was present in the house of the deceased or he played any role in asking the appellant Katiki to take the deceased with him on the pretext of seeing a girl in village Chikiti. There is no evidence that he had gone to the spot where the dead body was found. There is no evidence that when appellant Katiki returned alone in the night on 12.12.2007 with the motorcycle of the deceased, the appellant Syama Choudhury was there. The conduct of appellant Syama Choudhury in coming to the house of appellant Nibedita in the absence of the deceased and also



staying with her after the deceased was found missing might raise suspicion against his conduct, but law is well settled that suspicion howsoever strong, cannot be a substitute for proof of guilt of an accused beyond reasonable doubt. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind might take the place of proof and therefore, the Court has to be watchful and ensure that such thing should not take place.

In our humble view, whatever materials are there against the appellant Syama Choudhury on record though raised some suspicion against his conduct, but the prosecution has failed to elevate the case against him from the realm of "may be true" to the plane of "must be true" as is indispensably require in law for conviction on a criminal charge. The evidence is also lacking that the appellant Syama Choudhury played any role in causing disappearance of evidence. Even though it is the evidence of P.W.10 that appellant Syama Choudhury gave him a bottle to fetch kerosene in the afternoon and accordingly, he procured the kerosene and handed over the same to him and thereafter, the appellant left the house and even though the doctor's evidence is that the burn injuries sustained by the deceased



were post-mortem in nature which were caused due to dry heat with aid of kerosene like substance, but there is no evidence on record that the kerosene which was procured by appellant Syama Choudhury was used in causing burn injuries to the deceased. The I.O. (P.W.21) has stated that he had not examined any kerosene dealer of Puruna Berhampur street to know if any child of the deceased had gone to purchase kerosene in the afternoon of 12.12.2007. Even if the prosecution has proved that one 'Muli Thenga' (M.O.I) was seized at the instance of the appellant Syama Choudhury from under one culvert near village Ramadihi and the doctor opined that with such wooden stick, the ante-mortem injuries could be possible on the deceased, but all these circumstances taken together, in our humble view do not unerringly point towards the guilt of the appellant and therefore, the prosecution has failed to establish the charges under sections 302/34 and 201/511 of the Indian Penal Code against appellant Syama Choudhury and accordingly, he is acquitted of such charges.



Appellant Surya Kanta Behera @ Katiki:

21. The appellant Surya Kanta Behera @ Katiki was found guilty under section 302/34 of I.P.C. so also under section 201/511 of I.P.C.

The evidence on record clearly established that this appellant had come to the house of the deceased on 12.12.2007 after his departure to the college with appellant Syama Choudhury and had talk with appellant Nibedita Panda. Appellant Katiki also came again to the house of the deceased in the afternoon while the deceased was taking rest after returning from college and called the deceased giving a proposal to go to Chitiki to see a girl and in the evening, he alone accompanied with the deceased in the motorcycle of the deceased and few hours thereafter, he alone returned to the house of the deceased with the motorcycle of the deceased and when he was asked by P.W.1 about the whereabouts of the deceased, he replied that the deceased had gone to Hanuman temple. The probable time of death as assessed by the doctor (P.W.12) who conducted post-mortem examination matches with the time when the deceased was in the company of the appellant Katiki. The appellant has not



offered any explanation as to what happened to the deceased and when he parted with the company of the deceased. The dead body of the deceased was found on the very next date in the early morning in a burnt condition and according to the doctor, there were number of fracture injuries on the body of the deceased. The appellant Katiki had not examined any witness to show that he had gone to see a girl for him with the deceased. The proximity of time when the two were last seen together and the dead body was found coupled with the other circumstantial evidence including the medical evidence and failure to discharge his burden under section 106 of the Evidence Act, in our view, is sufficient to attract the ingredients of both the offences under which he has been found guilty by the learned trial Court.

Accordingly, the conviction of the appellant Surya Kanta Behera @ Katiki under section 302 of I.P.C. so also under section 201/511 of I.P.C. is upheld. The sentence imposed by the learned trial Court for the offence under section 302 of I.P.C. is the minimum punishment prescribed for such offence, which is accordingly upheld.



Conclusion:

22. In the result, JCRLA No.46 of 2010 is allowed. The appellant Nibedita Panda is acquitted of the charge under section 120-B of the Indian Penal Code. She be set at liberty forthwith, if her detention is not otherwise required in any other case. The appellant Syama Choudhury is acquitted of the charges under section 302/34 of I.P.C. and under section 201/511 of I.P.C. He be set at liberty forthwith, if his detention is not otherwise required in any other case.

CRLA No.442 of 2010 is dismissed. The conviction of the appellant Surya Kanta Behera @ Katiki under section 302 of I.P.C. and under section 201/511 of I.P.C. and the sentence passed thereunder stands confirmed. The appellant was directed to be released on bail vide order dated 23.02.2015. His bail bonds and surety bonds stand cancelled. He shall surrender before the learned trial Court within two weeks from today to serve out the sentence awarded by the learned trial Court which is confirmed by us, failing which, the learned trial Court shall take appropriate steps for his arrest and send him to judicial custody.



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

Before parting with the case, we would like to put on record our appreciation to Ms. Sasmita Nanda, Advocate for all the appellants 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. Jateswar Nayak, Addl. Govt. Advocate.

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S.K. Sahoo, J.

Chittaranjan Dash, J. I agree.

.....
Chittaranjan Dash, J.

Orissa High Court, Cuttack.
The 14th day of November, 2024/ PKSahoo/Sipun