

IN THE COURT OF THE ADDL. SESSIONS JUDGE-CUM-SPECIAL JUDGE(CBI), COURT NO.IV,BHUBANESWAR.

P R E S E N T : Shri S.K.Mishra, O.S.J.S.,
Addl. Sessions Judge-cum-
Special Judge (CBI), Court No.IV,
Bhubaneswar.

C.T.No.225 of 2015

(Arising out of C.T. Case No.3273 of 2015
corresponding to Chandrasekharpur P.S.Case
No.262 dt.20.7.2015).

S T A T E Prosecution

-Versus-

Sebati Ho, aged about 40 years,
D/o.Krushna Ho, resident of Vill.-Nuto,
PS-Sarat, District-Mayurbhanj.
A/p.-Radhakrushna Lane Basti,
PS-Chandrasekharpur, Bhubaneswar,
District-Khurda.

.... Accused.
(ON JAIL).

For the Prosecution : Sri S.K.Barik, Addl.P.P.

For accused person : Sri A.K.Acharya &
Associates,Advocates.

Date of argument : 17.5.2016

Date of judgment : 21.5.2016

Offence under Section- 302 of IPC.

J U D G M E N T

1. The above accused stood charged for committing the offence punishable u/s. 302 of IPC.

2. Shorn of unnecessary details, the prosecution case is that the accused Sebati Ho is the wife of deceased Akash Hembram. Both were staying at Radhakrushna Lane Basti, Chandrasekharpur. It is the case of the prosecution that, on 20.7.2015 at about 1 PM to 1.30 PM the informant came to know from a minor boy of his basti named Bijay Badra

that there was quarrel between Akash Hembram and the accused Sebati Ho and the accused assaulted Akash Hembram by means of a wooden plank (Kathafalia). Thereafter, the informant and others proceeded to the rented house of Akash Hembram at Radhakrushna Lane Basti, Chandrasekharapur, Bhubaneswar. There they found that Akash was dead and lying on the floor with bleeding injury on his head and the accused has been absconded from the spot. Basing on such information, the informant lodged F.I.R. (Ext.2) in Chandrasekharapur Police Station, on the basis of which the case was registered and investigation was taken up. During course of which the I.O. visited the spot and recorded confessional statement of accused Sebati Ho in presence of witnesses. The IO also seized the wooden plank and the wearing apparels of the accused and the deceased. The accused was arrested and forwarded to the Court. After completion of investigation, charge-sheet u/s. 320 of IPC was submitted against the accused. The learned SDJM, Bhubaneswar committed the accused in the Court of Sessions. Charge for the offence, as above mentioned, was framed against the accused.

3. Defence plea is one of complete denial and false implication.

4. In order to bring home the charges, prosecution examined 18 (eighteen witnesses). Out of whom P.W.10 is the informant who lodged the FIR Ext.2, P.Ws.1 to 7, P.W. 8 (the father of child witness P.W.15) and P.W.9 are the residents of Radhakrushna Basti, Chandrasekharapur, where both the accused Sebati Ho and the deceased Akash Hembram were residing. P.W.11, 12, 13, 14 are the police officials of Chandrasekharapur Police Station. P.W.15 Bijaya Bhadra who is a child witness of aged seven years is

the only eye witness to the occurrence. P.W.16 is the Investigating Officer, p.W.17 is Medical Officer of Capital Hospital, who conducted post mortem examination of the dead body of deceased. P.W.18 is the Headmistress of Chandrasekharpur Housing Board Colony, Primary School where Bijaya Bhadra alias Kailash Bhadra was reading. .

The accused who has examined herself as D.W.1 is the only witness on behalf of the defence.

5. The point for determination is:-

- (i) Whether the death of the deceased Akash Hembram is homicidal in nature?
- (ii) Whether on 20.7.2015 at about 1 PM to 1.30 PM at Radhakrushna Basti, Chandrasekharpur the accused committed murder by intentionally or knowingly causing the death of her husband Akash Hembram by wooden plank?

6. Learned defence counsel has filed the written argument under Sec.314 Cr.P.C., wherein he has contended that in order to prove the guilt of the accused, the prosecution has to prove the followings:

- (a) The evidentiary value of the child witness P.W.15.
- (b) Report of the scientific officer, showing blood stained earth seized, which is alleged to be the blood of the deceased.
- (c) The leading to the discovery of the weapon of offence Under Sec.27 Evidence Act.
- (d) Chemical report of the chemical examiner on the examination of wearing apparel of the accused.

- (e) Report of Inquest and post mortem and lastly the evidence of School Head Mistress where the P.W.15 was studying to show that the boy of about seven years (P.W.15) was absent on particular day ?

7. P.W.16 is the Investigating officer and P.W.17 the Medical Officer who conducted post mortem examination of the dead body of the deceased. P.W.16 the Investigating Officer in her evidence has stated that on 20.7.2015 at about 3.30 p.m. the complainant Sunaram Marandi presented a written report (Ext.2) on the basis of which P.S. Case No.262/2015 was registered and the IIC Sri Pratap had directed her to take up investigation of this case. According to her, during course of investigation, she examined the informant, visited the spot, prepared spot map Ext.6 and conducted inquest over the deadbody of Akash Hembram as per inquest report vide Ext.1/1 and issued requisition for post mortem examination. According to her, on 21.7.2015 she arrested the accused and while in police custody she led her to the place of discovery of weapon of offence in presence of witness Shivaram Das and Chandrajeet pRoutray and gave recovery of a wooden plank from one bush situated on the backside of the pump house of Radhakrushna Basti. Thereafter, she recorded the statement of accused under Sec.27 Evidence Act seized the wooden plank as per seizure list Ext.8. She sent the said wooden plank for chemical examination to S.F.S.L. through court. She made query to the concerned doctor vide Ext.11 and the concerned doctor P.W.17 gave his opinion that the injuries found in the deadbody of the deceased were possible by the said weapon i.e. the wooden plank. According to her the scientific team had gone to the

spot and collected sample earth and blood stained earth from the spot, which were subsequently sent to SFSL for chemical examination and report. She seized the wearing apparels of the accused on production by the constable No.610 and 1467 vide seizure list Ext.4. According to her she received the post mortem report vide Ext.14 in which the doctor has opined that the injury on the head was ante mortem in nature and could have been caused by hard and blunt weapon and the death of the deceased was due to the said injuries and the age of injury was 10 to 12 hours from the time of post mortem examination on 21.7.2015 at about 4 p.m. In her cross-examination she has stated that the written FIR brought by the informant to the P.S. and it was received at 3.30 P.M. of 20.7.2015. According to her, she reached near the deadbody at about 4.05 p.m. on 20.7.2015. In cross-examination, she has also stated that she was not present at the spot itself, when the scientific team reach there at 9 A.M. but she was present at a distance of 50 to 60 metres away from the spot at that time. She has also stated in cross-examination that there is nothing on record to show that she had sent requisition or had orally requested for sending scientific team to the spot.

8. P.W.17 is the Medical Officer in his evidence has stated that on 20.7.2015 at about 3.30 p.m. he got an inquest report and deadbody challan from chandrasekharpur Police Station and he conducted post mortem examination over the deadbody of akash Hembram identified by Constable No.C/1705 Shyam Sundar Marandi and found External injuries i.e. lacerated wound of size 5 x 1 cm x skull deep present over vertex. On dissection, he found the followings:

- (a) Diffuse sub scalp hematoma below the external injury;
- (b) Heart: Intact and both chambers are empty;
- © Lungs: Both the lungs are intact and congested to variable degree.
- (d) Membrane : Intact and congested.
- (e) Brain: Diffuse sub Dural and sub arachnoids hemorrhage involving frontal and occipital areas of both cerebral hemisphere.
- (f) Stomach : Intact and almost empty.

Finally, he opined that all the above mentioned injuries are ante-mortem in nature and could have been caused by hard and blunt trauma. The death of the deceased is due to the above mentioned crania cerebral injuries and its complications thereof. According to him, the time since death at the time of his post mortem examination was within about 12 to 18 hours. After completion of post mortem examination, he submitted the report vide Ext.14.

9. According to him on 31.8.2015 he had received one written query vide Ext.11 from the I.O. and he gave his opinion vide Ext.11/2 with opinion that the injuries found in the body of the deceased can be possible by the seized weapon of offence. The injury found on the head of the deceased could have caused his death.

Thus from the evidence of Investigating Officer P.W.16 and the medical officer P.W.17 as well as the documentary evidence i.e. the inquest report and the post mortem report, it is proved that the death of Akash Hembram was a homicidal one. Now it has to be examined

as to whether the accused has committed the murder of Akash Hembram as alleged by the prosecution.

10. Coming to the reliability of evidence of P.W.10 the informant, who is the President of Radhakrushna Lane Basti has stated in his evidence that he lodged FIR Ext.2. As per F.I.R. he has described the detail facts mentioning that on 20.7.2015 at about 1 p.m. to 1.30 p.m. one boy of his basti namely Bijaya Bhadra (P.W.15) informed them that both the accused Sebati Ho and her husband Akash Hembram (the deceased) were having quarrel with each other and accused assaulted Akash Hembram by means of a wooden plank. In order to know the veracity of the information, he along with other basti people reached near the house of accused and saw Akash Hembram was lying dead on the ground sustaining bleeding injury on his head.

11. During evidence of P.W.10 the informant, he has stated that he does not remember anything about the incident. Although, the prosecution has asked leading questions to this witness U/s.154 of the Evidence Act, but nothing incriminating material has come forward from his mouth regarding the occurrence. During cross-examination, PW-10 has deposed that the FIR vide Ext.2 was scribed by him as per the dictation of the police and that he could not say the manner, circumstance and cause of death of Akash. He has further deposed that Akash and the accused were living happily during their stay in the house of Banshi Saw as tenants.

It is equally settled law that the evidence of such a witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and the portion of the evidence which is consistent with the case of the prosecution or

defence may be accepted if the same is found to be reliable. Admittedly, there is no other eye witness except P.W.15 available in the matter under consideration and the rest of the prosecution case is sought to be established from the circumstantial evidence.

12. Similarly P.W.5 in her evidence has stated that the accused is her neighbor. Her nephew Bijaya Badra who is aged about 7 years came to their house and at that time the informant was present in her house. Bijaya told them that the accused had killed Akash Hembram (deceased) by assaulting him. One Sunaram (P.W.10) who is the President of their Basti called the police over telephone and police came to the spot. Thereafter they found deadbody of Akash was lying in the house of P.W.1. She has further stated that she does not know the relationship of accused and the deceased, although they have stayed in one house about 15 days prior to the occurrence.

13. P.W.1 another witness of the basti has stated that the accused and the deceased Akash Hembram were living at the basti on rent in his house for about 15 days prior to the occurrence. According to him, on the relevant date, he had gone to work as daily labourer and being called by the members of their basti committee and the police, he returned to the spot and came to know that there was quarrel between the accused and the deceased and the accused has killed her husband by means of a wooden plank. During cross-examination, he failed to say the name of the person who called him. He has also stated that he has not been examined by police.

14. Similarly PW-2 in his evidence has stated that one day at about 3 PM to 3.30 PM about 4 to 5 months back, many persons have gathered near the house of PW-1

and Ext.1 is his signature. He has also stated that he does not know anything about this case. During cross-examination, PW-2 has deposed that he has not been examined by police and he could not say how Akash died. He gave his signature vide Ext.1 in their basti and nothing was written on the blank form on which he gave his signature vide Ext.1.

15. PW-3 and 4 in their evidence have stated that after returning from their work they found the police was present near the house of P.W.1 and they also found that Akash was lying on the floor of that house, sustaining bleeding injury on his head and the deadbody was shifted to Capital Hospital by an auto rickshaw. Both the witnesses in their cross-examination have stated that they have not been examined by police and they have no knowledge as to how Akash died.

16. PW-6 who is another witness of the above locality has stated that police shifted Akash by one auto rickshaw from the house of P.W.1 in serious condition to Capital Hospital, Bhubaneswar and the person who had accompanied Akash told that he died on the way to Hospital. In cross-examination, he has stated that he has no knowledge as to how Akash was died.

17. PW-7 has stated that on his return from his work at about 5 PM on the date of occurrence, his daughter Jyostnarani told him at their house that there has been quarrel between father and mother of Tarini and that her father has been shifted to hospital and subsequently, at about 8 PM he came to know that Akash died in the hospital. During cross-examination, PW-7 has deposed that he has not told anything about the occurrence to police and police has asked only his name and address.

18. PW-8 has stated that on the relevant day when he returned from his cycle repairing shop at about 10 PM he found that many persons have gathered near the house of PW-1 where the accused and her husband were staying. He has also stated that he heard from them that the accused, who is the wife of Akash, has assaulted and killed Akash. He has also stated that Bijay Badra(PW-15) is his son. He is also known as Kailash Badra and he has been admitted in the said school by the said name and he is reading in Class-II at Government Primary School, Housing Board Colony, Chandrasekharapur. During cross-examination, PW-8 has deposed that he does not know if the deceased was the husband of the accused, but they were living together in one house. He does not remember if nothing was written on the paper, on which he has signed vide Ext.1/4. He has also deposed that somebody else has given his signature vide Ext.1/4 and that he has not been examined by police in connection with this case. He could not say the names of the persons from whom he heard that the accused who is the wife of Akash, has assaulted and killed him. He has further deposed that his son had not told him anything on 20.7.2015 after his return to his house, but his wife disclosed him that Akash has been murdered and his son PW-15 was present in their house. He has also deposed that police has not examined his son PW-15 in his presence.

19. PW-9 has stated that he does not know anything about the case. During cross-examination, he has deposed that he has not been examined by police in connection with this case.

20. PW-11 ASI of Police, has stated that on 21.7.2015 the accused while in police custody, led them to

Radhakrushna Basti and that they requested two independent witnesses namely, one Sri Dash and one Routrary to accompany them and accordingly, they proceeded to the said basti and at that time the investigating officer Sumati Kumari Mohanty was present with them. The accused while in police custody led them to the discovery of the weapon of offence i.e. the wooden plank (Kathaphalia) which she had kept concealed in one bush of that basti. The I.O. seized the same in presence of two independent witnesses. But in cross-examination, he has stated that he had no prior knowledge regarding the murder in question and only came to know about it being told by the I.O. and he had not gone to the spot of murder and he do not know the names of the two independent witnesses to the said seizure.

21. P.W.12 and P.W.13 who are constables of Chandrasekharapur P.S. in their evidence have stated that on 21.7.2015 in their presence, the I.O. Sumati Mohanty seized one red colour saya, one red colour blouse, one yellow-violet printed saree on production by the accused at Chandrasekharapur Police Station vide seizure list Ext.4.

22. P.W.14 another constable of Chandrasekharapur Police Station has stated that on 20.7.2015 he was directed to guard the deadbody of Akash Hembram at his house in Radhakrushna Lane under Chandrasekharapur P.S. and the scientific team reached there at about 9 A.M. to 10 A.M. and collected sample earth, blood stained earth in two separate packets as per seizure list Ext.5.

23. From the evidence of above witnesses except P.Ws.5 and 10, it is found that they have no knowledge regarding the cause of death of deceased on the date of occurrence. The Prosecution has asked leading question to

the witnesses P.Ws. 2, 5, 9, 10 under Sec. 154 Evidence Act , but nothing incriminating material has come from their mouth regarding the cause of death of the deceased. Although P.Ws.5 and 10 in their evidence have stated that from P.W.15 the child witness namely Bijaya Bhadra, they came to know that accused has assaulted to her husband Akash Hembram by means of a wooden plank and subsequently, he died, but in their cross-examination, they have not supported the above factual aspect, rather, they remained silent regarding the version stated by P.W.15.

24. It is the specific allegation of the prosecution that the accused assaulted the deceased by means of wooden plank (Kathaphalia) and caused his death. To proof of such allegation, the prosecution has examined only eye witness P.W.15 the child witness, who was aged about seven years at the time of occurrence. P.W.15 is a boy of Radhakrushna Basti and son of P.W.8. While taking evidence of P.W.15, this court has asked some relevant questions to P.W.7 in order to assess whether he was capable of understanding the nature of questions and was able to give rational answers. Since, this court however found that he could not understand the nature and sanctity of oath and therefore, no oath was administered to him. During evidence, P.W.15 identified the accused as mother of Tarini. In his evidence he has deposed that the accused attacked the father of Tarini by means of one wooden plank (Kathafphalia) by giving blow on his head, saying "Chaitan Kia Kahila". Thereafter, he had not seen father of Tarini. This Court has found that P.W.15 was capable of understanding the nature of questions put to him and gave rational answers. While this witness has been cross-examined by defence, he has stated that on the relevant

day, he had attended his class in the school and returned back at about 4 P.M. Further, in his evidence he has stated that he cannot say if somebody has tutored him to say that Tarini Maa had attacked father of Tarini by means of a wooden plank.

25. In Section-118 Evidence Act 1872 it clearly mentioned that the child witness can a competent witness and he or she is competent to testify unless by reason of tender years, the court considers that he/she is incapable of understanding the questions put to him/her of giving rational answers.

It is well settled that a child of tender age can be allowed to testify if he/she has intellectual capacity to understand the questions and give rational answers thereto. Evidence of child witness is not required to be rejected per se. But, the court as a rule of prudence considers such evidence with much care and caution to base a conviction.

In a case of **Dattu Ramrao Sakhare V. State of Maharashtra (1997) 5 SCC 341**, it was held as follows :

"A child witness if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Sec.117 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and

his/her demeanour must like any other competent witness and there is no likelihood of being tutored.”

26. Learned defence counsel relied upon a decision reported in 2011 AIR SCW 1956 , Wherein Their Lordships have held that the evidence of a Child witness- can be relied upon, if his deposition inspires confidence and is free of embellishments or improvements. In this regard evidence of P.W.15 may require corroboration but in case his evidence inspires the confidence of the Court and there is no embellishment or improvement therein the Court may rely upon his sole testimony. The evidence of P.W.15 must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that child has been tutored the Court can reject his statement partly or fully. An inference as to whether child has been tutored or not can be drawn from the contents of his deposition.

The Hon’ble Supreme Court in the case Radhey Shyam Vs. State Of Rajasthan decided on 25.2.2014 have held that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy pray to tutoring. This Court further observed that the courts have held that the evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more a rule of practical wisdom than of law.

It has been held by the Hon’ble Supreme Court in the decision reported in **(2004) 1 SCC 64 : 2004 SCC (Cri) 7 in case of Ratansinh Dalsukhbhai Nayak V. State of Gujarat** that “The evidence of a child witness is not required to be rejected per se, but the court as a rule

of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.”

The said decision has been subsequently relied upon by the Hon'ble Supreme Court in the decision reported in **(2006) 13 Supreme Court Cases at page 643 in case of Acharaparambath Pradeepan and Another Vrs. State of Kerala.**

Taking into consideration the said principle of law this court finds after careful scrutiny of the evidence of child witness P.W.15 his statement with regard to the alleged occurrence is very vague, cryptic, discrepant and not at all reliable. Thus, considering the totality of the circumstances of the case, this court is of the firm view that this witness is amenable to tutoring and therefore is not reliable. The month, day, date, time and place of occurrence have not at all been deposed by P.W.215. From the manner of answers given by him to the court while assessing as to whether he was giving rational answer and the evidence given by him in the court, it is seen that the evidence of child witness in this case does not inspire confidence.

27. It is the case of the prosecution that P.Ws.5 and 10 came to know about the assault of the accused on the deceased Akash Hembram by means of a wooden plank. But P.W.10 in his cross-examination has stated that he cannot say the manner, circumstance and cause of death of Akash. Further, P.W.5 in his evidence has stated that he does not know the relationship between the accused and the deceased, although they have strayed in one house. The hearsay evidence of P.Ws.5 and 10 as well as P.W.8 (the father of P.W.15) do not fully corroborated

with the version of P.W.15. Further, P.W.15 the child witness in his cross-examination has stated that on the date of occurrence he had gone to the School and returned from School at 4 P.M. Therefore, from the evidence of P.W.15, it is well proved that he has not sufficient intelligence. P.W.18 the Headmistress in Chandrasekharpur Housing Board Colony, where Kailash Bhadra alias Bijaya Bhadra was reading has proved the attendance register Ext.18 and the relevant entry of the attendance register Ext.18/1. According to her, Kailash Bhadra had not attended the class on 20.7.2015. The father of Bijaya Bhadra P.W.8 and Bijaya Bhadra (P.W.15) have stated that on the date of occurrence i.e. 20.7.2015 Bijaya Bhadra had gone to School and returned from School at 4 p.m. In the cross-examination, P.W.8 has stated that his son P.W.15 had not told him anything on 20.7.2015 after his return to his house. P.W.18 the Headmistress in Chandrasekharpur Housing Board Colony Primary School has proved the attendance register Ext.18 and the relevant entry Ext.18/1 and has stated that on 20.7.2015 Kailash Bhadra (the child witness) had not attended the School. But in her cross-examination, she has stated that the initial or signature of the class teacher is not there in Ext.18 for the relevant date. Therefore, it is very difficult to hold that on the date and time of occurrence Bijaya Bhadra was present at the spot.

On scrutiny of the evidence of P.W.16 the Investigating Officer, she has stated that Ext.17 is the chemical examination report of SFSL. Human blood of Group AB was found on the weapon of offence i.e. a wooden plank. In the cross-examination P.W. 17 the Medical Officer, who made query on the wooden plank has

stated that he has not mentioned the size, shape, length and breadth of the red colour stain found on the weapon of offence. The I.O. in the seizure list Ext.8 has also not mentioned that the wooden plank was stained with human blood.

28. Learned defence counsel has argued with regard to the time of post mortem examination by cross-examining the witness. According to P.W.17 he has conducted the post mortem examination on 20.7.2015. But in cross-examination, he voluntarily stated that he conducted the post mortem on 21.7.2015. P.W. 16 the Investigating Officer has stated that the post mortem was conducted on 21.7.2015 at about 4 p.m. So there is discrepancies regarding the time of post mortem examination conducted by the Medical Officer P.W.17.

29. It is the case of the prosecution that the occurrence took place on 20.7.2015 in between 1 p.m. to 1.30 P.M. and the informant lodged the report at Chandrasekharpur Police Station at about 3.30 p.m. and therefore investigation was carried on. From the inquest report Ext.1/1, the I.O. has clearly mentioned that she conducted inquest over the dead body on 21.7.2015 at about 1.30 p.m. So, from the time of occurrence, lodging of F.I.R., Inquest conducted by the investigating officer and the post mortem conducted by the medical officer, there is discrepancy between the evidence of the informant P.W.10, investigating officer P.W.16 and the doctor who conducted post mortem examination. The evidence of above witnesses do not corroborate with each other regarding time of death, lodging of FIR, Inquest and post mortem examination. There is no plausible evidence from the side of the prosecution that from the time of death on

20.7.2015 at about 1 p.m. to 1.30 p.m. till the time of post mortem examination i.e. on 21.7.2015 at about 3.30 p.m., who was the custodian of the dead body of the deceased.

30. Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

31. At this stage, learned Public Prosecutor drew the attention of this case with regard to leading to discovery of weapon of offence. He draws the attention of the Court towards the evidence of P.w.16 and the statement of the accused Sebati Ho recorded by the I.O. under Sec.27 Evidence act vide Ext.9. It is the evidence of P.W.16 the investigating Officer in para 3 of her examination-in-chief that she arrested the accused on 21.7.2005 at 6 a.m. and while in police custody, she led her, in presence of witnesses Shivaram Das and Chandrajeet Routray to the discovery of the wooden plank from one bush situated on the backside of the pump house of Radhakrushna Basti. Thereafter, she seized the wooden plank as per seizure list Ext.8. Subsequently, she sent the wooden plank for chemical examination to S.F.S.L. through Court. Further she has stated that she sent query to the concerned doctor vide Ext.11 who opined that the injuries found in the body of the deceased were possible by said

wooden plank. P.W.17 the Medical Officer also corroborated the version of P.W.16 by stating that on 31.8.2015 he had received one written query vide Ext.11 and he opined that the injuries found in the body of the deceased can be possible by the seized weapon of offence.

32. Learned defence counsel at this stage argued that from the date of seizure i.e. 21.7.2015 till it was sent to the Medical Officer for query, the above wooden plank was in fact with the investigating officer. Therefore, the submission of the learned P.P. and the learned defence counsel require a close scrutiny.

33. As per the case of prosecution the investigating officer recorded the statement of accused under Sec.27 Evidence Act while she was in police custody and during such custody period, she led the investigating officer and the witnesses Shivraj Das and Chandrajeet Routray. Now coming to the recovery of the weapon of offence namely M.O.I the wooden plank at the instance of the accused, the prosecution has relied upon the evidence of P.W.16 the Investigating Officer. But in this case, the investigating officer have not cited both the above witnesses in the charge sheet in order to prove that they were present at the time of recording statement of the accused Sebati Ho and they were present at the time of recovery of weapon of offence M.O.I. It may be pointed out that the prosecution does not come with any explanation whatsoever for non-examination of those witnesses. M.O.I. is the said wooden plank recovered near a bush on the backside of Panitanki at the instance of accused. The evidence as above, indeed indicates that after bringing out the wooden plank from a nearby bush on the backside of Panitanki, it was not confirmed from the accused Sebati Ho if that was the

weapon of offence used by her. Under that circumstance the criticism of the accused on the aforesaid evidence appears to be correct. It is further evidence of P.W.16 that the accused while in police custody at the P.S. has stated that she has assaulted the deceased by means of wooden plank. Further P.W.16 has stated that during that time, S.I. A.K. Khillar, ASI P.K. Samal and lady constable Pramila Padhi went together from the P.S. to the place of recovery of the weapon of offence. But P.W.12 Pramila Padhi has not stated anything regarding seizure of weapon of offence. The other two police officials S.I. A.K. Khillar and ASI P.K. Samal have not been examined by the prosecution in order to corroborate the evidence of P.W.16 that any such weapon of offence has been seized on own confession of the accused. In the aforesaid reason, this court is not inclined to place any reliance on the evidence of P.W.16 as her evidence is not at all believable to prove that the accused while in custody led P.W.16 and other witnesses to the place of concealment and gave recovery of M.O.I which she had concealed after killing the deceased. There has been non-compliance of the provisions of Section 27 of Evidence Act. The exact verbatim of the words used by the accused while leading to the before giving discovery of weapon of offence of M.O.I. have not been proved in the court. Besides, none of the witnesses have deposed that they find any foreign particle on the injuries.

34. The validity of recovery has been questioned by the learned counsel for the accused and submitted that the confessional statement is not admissible under Sec. 25 and 26 of the Indian Evidence Act. However, Sec.27 of the Indian Evidence Act, provides as follows:

"27-How much of information received from accused may be proved: Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not as it relates distinctly to the fact thereby discovered, may be proved.

Therefore, in the light of aforesaid provisions, the statement of accused so far as it distinctly relates to giving of information regarding the hiding of the wooden plank and recovery of the same could have been taken into account to prove the truth of the allegation made against the accused.

35. In this case none of the prosecution witnesses have supported the seizure of wooden plank from the place where the accused gave recovery of the same. The investigating officer has also not stated in her evidence that after recovery of the wooden plank it was shown to the accused to be confirmed that she had used the said wooden plank at the time of assault. Learned defence counsel argued that it is the evidence of P.W.16 the investigating officer that she took assistance of one Shivaram Das and Chandrajeet Routray to pick up the wooden plank M.O.I. Those two witnesses were not examined by the prosecution and accused was deprived of the opportunity to cross-examine them about the manner of tracing out the M.O.I from the spot. He also argued that in his evidence P.W.16 has not stated that after discovery of M.O.I. from the spot, the same was shown to the accused Sebaty Ho to identify the same as the weapon of offence. He argues that if all such lacunae and lapses in the evidence could be properly assessed then the

circumstances emerging from Exct.8 (seizure list) does not in any way help the prosecution to prove the charge against the accused for the offence punishable under Sec.302 IPC.

It may be pointed out that the prosecution does not come with any explanation whatsoever for non-examination of those witnesses who were present at the time of seizure of M.O.I. Therefore, the evidence as above, indeed indicates that after bringing out the wooden plank from one bush situated on the backside of the pump house of Radhakrushna Basti, it was not confirmed from the accused-Sebati if that was the weapon of offence used by her. The said aspect finds support from the decision of our Hon'ble High Court reported in **(2009) 42 OCR -134 – Deepak Kumar Patro @ Dipu & Others V. State**. Under such circumstances, the criticism of the accused on the aforesaid evidence appears to be correct.

36. Coming to the report of the Scientific Officer, it is found that the Scientific Officer C.B. Nayak, Asst. Director & Asst. Chemical Examiner, Serology Division, in his report has not stated that the wooden plank was stained with human blood. But no where the other witness like P.W.16 and the medical officer P.W.17 have stated that the wooden plank so recovered was stained with blood. Therefore on close scrutiny of the evidence of the scientific officer and the evidence of P.W.16 the I.O. and the medical Officer P.W.17, it is found that there are material discrepancies between the evidence of the above witnesses with regard to seizure of weapon of offence.

37. It is settled principle of law that in a criminal trial, the prosecution has to prove its case beyond all reasonable doubt. But the same standard or rigour is not

applicable to assess the evidence adduced by the defence. Since the defence can prove its case in the standard of preponderance of probability. In this case, the accused was permitted to examine herself as sole defence witness on the basis of the prayer made on her behalf under Sec.315 of the Cr.P.C.

In the light of the evidence led by the accused who is examined as D.W.1, learned defence counsel argued that the accused was not present at the time of incident in her house. On perusal of the evidence of the accused who is examined as D.W.1, she has stated that on 20.7.2015 she had been to Patia to work as daily labourer and left from her house at about 8 a.m. with her minor daughter namely Tarini. While she was working she received telephone call at about 5 p.m. from one unknown person and went to Capital Hospital, Bhubaneswar where she found that her husband was lying on the bed of the said hospital sustaining injuries. The doctor came and told that her husband has died. She has further stated that police threatened her and forcibly took her signature on one paper and then she was sent to jail custody. Therefore, after analyzing the evidence of D.W.1 with the evidence of P.W.16 the medical officer, it is not duly proved by the prosecution beyond reasonable doubt that the statement recorded by the I.O. under Sec.27 Indian Evidence Act towards recovery of wooden plank is voluntary in nature. Therefore, the aforesaid contention raised on behalf of the prosecution that the alleged recovery of wooden plank does not satisfy the mandate of Section 27 of the Indian Evidence Act cannot be sustained.

38. There is no direct evidence against the accused that she has assaulted Akash Hembram by means of a

wooden plank. Since the evidence of child witness has not been corroborated by any other prosecution witnesses, and since the seizure witnesses to the seizure of wooden plank M.O.I have not been examined by the prosecution, it is very difficult on the part of this court to connect the accused in the crime with regard to the assault made by her. As per opinion of the medical officer, the death of the accused can be caused on assault with the seized wooden plank. Therefore the case of the prosecution is totally based on circumstantial evidence.

In a decision reported in **1991 (I) OLR (SC) 465- in case of Jaharlal Das Vrs. State of Orissa**, Their Lordships have held that

“Particulars and nature of evidence required for arriving at the conclusion of guilt of the accused. There is always danger of conjecture and suspicion which cannot take the place legal proof- Various circumstances in the chain of evidence should be complete for arriving at a reasonable conclusion that no one else except the accused has committed the offence- There is long distance between “ may be true” and “must be true” which divides conjectures from sure conclusions.”

The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In order words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

The mind was apt to take a pleasure in adapting circumstances to one another, and even in

straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render the complete."

39. It may be pointed out at this stage that the circumstance that the deceased was last seen in the company of the accused was not mentioned in the inquest report and not deposed by any prosecution witness. Therefore, the circumstance also, namely the deceased was last seen in the company of the accused is not established beyond reasonable doubt.

Thus from the aforesaid analysis of the evidence on record and on a resume of the entire evidence, I find that the prosecution has failed to connect the culpability of the accused to the crime by leading clinching evidence and establishing all the circumstances to unerringly point that it was the accused who committed murder of her husband by means of M.O.I.

40. There are also material discrepancies in the evidence of the witnesses with regard to the exact place of death of accused. As per F.I.R., when the informant after listening the version of Bijaya Bhadra (the child witness) went to the spot, he saw Akash Hembram was lying dead with bleeding injury on his head. But it is the evidence of P.W.3 that while reaching at the spot, he found Akash was lying on the floor of that house and had sustained bleeding injury on his backside head. On the request of the police, he assisted them in shifting Akash from the spot to Capital Hospital, Bhubaneswar by an auto rickshaw , where the

doctor declared him as dead. P.W.4 in his evidence has stated that on his return from the work, he found the deadbody of Akash lying on the ground in front of the house of P.W.1. Similarly P.W.7 in his evidence has stated that at about 8 P.M. he came to know that Akash died in the hospital. In cross-examination the I.O. P.W.16 has stated that the deadbody was found inside the said house. Further she has stated that she concluded that Akash Hembram is dead since there was no breathing and no movement of his body. She has also stated that she was not present at the spot itself, when the scientific team reach there at 9 a.m., but she was present at a distance of about 50 to 60 metres away from the spot at that time. In this case, no witness of Scientific team has been examined to prove the time and place of the death of deceased Akash Hembram. Therefore, from the evidence of the above witnesses, it is noticed that there are material discrepancies from their evidence with regard to the place and time of death of deceased Akash Hembram.

41. Therefore, after analyzing the evidence on record and for the reasons discussed above, this Court finds that the prosecution has failed to implicate the above named accused for commission of the alleged offence punishable under Sections- 302 I.P.C.

42. In the result, the accused is found not guilty of the offences punishable under Sections 302 of IPC. She is acquitted u/s.235(1) of Cr.P.C. and is set at liberty. The bail bonds are cancelled and sureties are discharged.

The seized articles and the M.Os are destroyed after expiry of the appeal period if no appeal is preferred and in case of appeal, subject to the order of the appellate court. Enter this case as mistake of facts.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

The judgment is typed to my dictation and corrected by me and pronounced to-day on this 21st day of May, 2016 given under my hand and seal of this Court.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

List of witnesses examined for the prosecution :

PW-1	Banshi Soy.
PW-2	Bhima Singh.
PW-3	Sushant Dwebedi.
PW-4	Kamal Kishore Hembram.
PW-5	Sita Badra.
PW-6	Kanhu Charan Murmu.
PW-7	Gopal Chandra Hansda.
PW-8	Shyama Badra.
PW-9	Chaitanya Rout.
PW-10	Sunaram Marandi.
PW-11	Pradeep Kumar Samal.
PW-12	Smt. Pramila Padhi.
PW-13	Manjubala Sahoo.
PW-14	Sukadev Sethi.
PW-15	Bijay Bhadra.
PW-16	Sumati Kumari Mohanty.
PW-17	Dr. Laxmikanta Behera.
PW-18	Smt.Rebati Shaw.

List of witnesses examined for the defence :-

DW-1	Sebati Ho.
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List of exhibits marked for the prosecution :-

Ext.1	Signature of PW-1 in inquest report.
Ext.1/1	Inquest Report.
Ext.1/2	Signature of PW-2 in Ext.1/1.
Ext.1/3	Signature of PW-3 in Ext.1/1.
Ext.1/4	Signature of PW-8 in Ext.1/1.
Ext.2	FIR.
Ext.2/1	Signature of PW-10 in Ext.2.
Ext.3	Formal FIR.
Ext.4	Seizure list.
Ext.4/1	Signature of PW-12 in Ext.4.

Ext.4/2	Signature of PW-12 in Ext.4.
Ext.4/3	Signature of PW-13 in Ext.4.
Ext.4/4	Signature of PW-13 in Ext.4.
Ext.5	Seizure list.
Ext.5/1	Signature of PW-14 in Ext.5.
Ext.5/2	Signature of PW-14 in Ext.5.
Ext.2/2	Endorsement with signature of IIC in Ext.2.
Ext.3/1	Signature of IIC in Ext.3.
Ext.6	Spot map.
Ext.6/1	Signature of PW-16 in Ext.6.
Ext.7	Command Certificate.
Ext.7/1	Signature of PW-16 in Ext.7.
Ext.1/5	Signature of PW-16 in Ext.1.
Ext.8	Seizure list.
Exts.8/1 & 8/2	Signatures of PW-16 in Ext.8.
Ext.9	Statement of accused u/s.27 of Evidence Act.
Ext.9/1	Signature of PW-16 in Ext.9.
Ext.10	Copy of forwarding letter to SFSL through Court.
Ext.11	Query to the concerned doctor.
Ext.11/1	Signature of PW-16 in Ext.11.
Ext.11/2	Opinion of doctor.
Exts.5/3 & 5/4	Signatures of PW-16 in Ext.5.
Ext.12	Seizure list.
Exts.12/1 & 12/2	Signatures of PW-16 in Ext.12.
Exts.4/5 & 4/6	Signatures of PW-16 in Ext.4.
Ext.13	Order of Health Officer, BMC (office copy).
13/1	Signature of PW-16 in Ext.13.
Ext.13/2	Endorsement of the Health Officer.
Ext.13/3	Signature of Hari Nayak.
Ext.14	Post mortem report.
Ext.15	Deadbody challan.
Ext.15/1	Signature of PW-16 in Ext.15.
Ext.16	Sketch map.
Ext.16/1	Signature of PW-16 in Ext.16.
Ext.14/1	Signature of PW-17 in Ext.14.
Ext.11/3	Signature of PW-17 in Ext.11.
Ext.17	Chemical Examination Report.
Ext.18	Attendance Register.
Ext.18/1	Relevant entry for Kailash Badra.
Ext.18/2	Signature of PW-18 in Ext.18.

List of exhibits marked for the defence :-

Nil.

List of M.Os. marked for the prosecution :-

M.O.-I	Wooden Plank.
M.O.-II	Red colour petty coat.

- M.O.-III Yellow, violet and black colour printed saree.
M.O.-IV Red colour blouse.
M.O.-V Pink and navy blue colour stripe blood stained
T-Shirt of deceased.
M.O.-VI Light maroon and pink colour stripe Gamuchha.
M.O.-VII Kathamali of deceased.
M.O.-VIII Rest portion of sample earth.
M.O.-IX Rest portion of blood stained earth collected
from the spot.

List of M.Os. marked for the defence :-

Nil.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

