

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.38 of 2016

(Arising out of C.T. Case No.4128 of 2015
corresponding to Mancheswar P.S.Case No.314
dt.8.9.2015).

S T A T E Prosecution

-Versus-

1. Akshya Kumar Bhoi, aged about 25 years,
S/o.Arun Bhoi, resident of Vill.-Bhotpada,
PS-Mancheswa, District-Khurda.

2. Chandan Samal, aged about 23 years,
S/o.Braja Samal, resident of Vill.-Bhotpada,
PS-Mancheswar, District-Khurda.

.... Accused persons.
(ON JAIL).

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

For accused persons : Sri C.R.Dash &
Associates,Advocates.

Date of argument : 4.7.2016

Date of judgment : 8.7.2016

Offences under Sections- 341/34, 294/34, 323/34, 506/34
& 306/34 of the IPC.

J U D G M E N T

1. The above accused persons stood charged for committing the offence punishable under Sections- 341/34, 294/34, 323/34, 506/34 and 306/34 IPC.

2. Briefly stated the prosecution case is that on 8.9.2015 at about 10 AM both the accused persons came to the house of the informant and took Narayan Behera son of the informant to somewhere by one Glamour motor

cycle. At about 2 PM the informant searched for Narayan, but he could not be traced out. Then the informant came to his other house situated near their school and found that his son was lying in unconscious state. He also found grievous injury on the front side of the head with profuse bleeding. As the informant shouted loudly, some of his co-villagers came and found that Narayan has died. It is also alleged that the informant came to know that both the accused persons, in a drunken state, have murdered his son Narayan and threw his dead body in the house of the informant situated near their school. Basing on the report of the informant, a case u/s. 302/34 IPC was registered and investigation was taken up. During investigation, the informant, the witnesses and the accused were examined. The IO visited the spot, seized the wearing apparels of the deceased and conducted inquest over the dead body of the deceased Narayan Behera in presence of the witnesses. The accused persons were arrested and forwarded to the Court. After completion of investigation, charge-sheet under Sections- 341/34, 294/34, 323/34, 506/34 and 306/34 IPC of IPC was submitted against both the accused persons. The learned SDJM, Bhubaneswar committed the case to the Court of Sessions. Charge for the offences, as above mentioned, was framed against the accused persons.

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

4. In order to establish the charge against the accused persons, prosecution has examined as many as 22 witnesses, out of whom PW-8 is the informant and PW-9 is his wife. PWs-1 and 2 (two Police Constables), 20 (one ASI of Police) and 17 are the seizure witnesses. PWs-3 to

7, P.Ws. 10 to 15, P.Ws.18, 19 and 21 are independent witnesses. PW-16 is the doctor, who conducted post mortem examination over the dead body of Narayan Behera. PW-22 is the Investigating Officer. No witness has been examined on behalf of the defence. No documentary evidence has also been adduced on behalf of the defence.

5. The points for determination are:-

(i) Whether on 8.9.2015 at about 10 AM in the house of the complainant situated near a school at village – Bhotapada both the accused persons, in furtherance of their common intention, wrongfully restrained the son of the informant namely Narayan Behera as alleged ?

(ii) Whether on the above date, time and place both the accused persons, in furtherance of their common intention, uttered obscene language near a public place causing annoyance to others as alleged?

(iii) Whether on the above date, time and place both the accused persons, in furtherance of their common intention, voluntarily caused hurt to Narayan Behera as alleged ?

(iv) Whether on the above date, time and place both the accused persons, in furtherance of their common intention, committed criminal intimidation by threatening Narayan Behera with intent to cause alarm to him as alleged ?

(v) Whether on the above date, time and place Narayan Behera committed suicide and if both the accused persons in furtherance of their common intention, abetted the commission of the said suicide by assaulting and insulting him as alleged ?

6. In a case of suicide, a person committing suicide must commit it himself, irrespective of the means employed by him in achieving his object of killing himself. An offence under Sec.306 I.P.C. would stand only if there is an abetment for the commission of the crime. The parameters of "abetment" have been stated in Sec.107.

Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing or engages with one or more other persons of persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy or the person should have intentionally aided any act of illegal omission. The explanation to section 107 says that any willful misrepresentation or willful concealment of a material fact which he is bound to disclose, may also come within the contours of 'abetment'. The abetment of suicide involves mental process of instigating or intentionally aiding a person in doing of a thing. The commission of suicide requires commission of direct or active act by the accused, which led deceased to commit suicide seeing no other option and such act must be intended to push victim into such a position that he commits suicide.

It is the case of the prosecution that both the accused persons on 8.9.2015 called the son of the informant Narayan Behera (deceased) and at about 10 a.m. on the said day both the accused persons took Narayan Behera in a motor cycle. At about 2 p.m. when the informant searched for his son for taking meal, they were not able to find him. Thereafter, he reached near his house situated near School and saw that his son was lying unconscious. He found that his son Narayan Behera has sustained bleeding injuries on his head. Being called by the informant, near by people rushed there and found that Narayan was lying dead. Later on, the informant came to know that both the accused persons took Narayan and after administering liquor, assaulted him, threw him near the village school and fled away.

7. It is the evidence of PW-8 the informant and P.W.9 the wife of the informant and mother of the deceased that at about 10.30 AM to 11 AM in their presence both the accused persons took their son Narayan by one Hero Honda motor cycle. They have also stated that they searched for Narayan so that he can have his lunch, but could not find. Then both of them entered inside his bedroom which is situated near their UP School and called Narayan, but Narayan did not respond. They found that he was not in conscious state and had sustained bleeding injury on his forehead. Then they also found that he was dead. Thereafter, they intimated the police and (PW-8) lodged written FIR vide Ext.4 at Mancheswar PS. The dead body of Narayan was taken to Capital Hospital, Bhubaneswar for post mortem and the Hero Honda motor cycle bearing registration No.2247 which was owned by Narayan, was released in zima of P.W.8 as per zimanama vide Ext.5.

During cross-examination, PW-8 has deposed that the accused persons are the friends of Narayan and there was never any dispute or quarrel amongst them. He has also deposed that the FIR (Ext.4) has not been scribed by him, but it has been scribed by his nephew Dilia Naik, on his dictation. Initially, he had presented one report scribed by him before police at the PS, but police asked him to give one properly written FIR and thereafter Ext.4 (FIR) was scribed. PW-8 could not say if the persons who had accompanied him to the PS, were examined by police at the PS on that day. He has further deposed that before going to his said house on that day to call his son Narayan to have his lunch, he (PW-8) has not ascertained from anybody that Narayan was present in the said house and

by the time he went inside the house, he saw that Narayan was sleeping on the mat (Masina). He had sustained bleeding injury on his forehead and blood was coming out from the said injury and the entire verandah (Pinda), his wearing apparels and the mat were sustained with blood. He could not say about the contents of the papers on which he gave his signatures on the date of death of Narayan. Police also took signatures of some young men on those papers. Police had not prepared any document at the hospital, but prepared documents at the police station. PW-8 has also deposed that he and none of his co-villagers had witnessed the assault on his son Narayan, except push, pull and tussle between him and the accused persons. During cross-examination, PW-9 has deposed that Narayan and both the accused persons jointly go to Railway Siding, Mancheswar for work by the motor cycle of Narayan. There was no enmity between them. On the date of occurrence, Narayan had not gone to attend his work at Railway Siding. She has also deposed that Narayan has never taken liquor and he had no enmity with anybody. The deadbody of Narayan was lying on the floor in the room in question. She has further deposed that she has not seen anybody assaulting or killing her son Narayan and none of her family members have witnessed the same. She has also deposed that she was not examined by police and she is disclosing about the above facts for the first time in the Court.

8. P.W.1 is the constable attached to Mancheswar Police station has stated that on 9.9.2015 on production by Santosh Kumar Mallick, the IO of this case Sri Susanta Kumar Das seized one green and black colour lungi, nail clipping and hair of the deceased, one blue colour half

pant, one yellow colour T-shirt and one white colour banion in his presence as per seizure list vide Ext.1. During cross-examination, PW-1 has deposed that he does not remember if there was any mark of stain on the above seized clothes. Similarly, P.W.2 is a witness of seizure of one black colour full shirt, one blue colour half pant being seized by the I.O. as per seizure list Ext.2. During cross-examination, PW-2 has deposed that he does not remember the date on which he signed on the seizure list and he signed on the same, being asked by the IO Susant Kumar Das. He could not say the size and brand names of the seized clothes.

9. In his evidence PW-3 who is a vital witness of the case, has stated that both the accused persons have committed murder of Narayan, about 4 to 5 months back one day at about 1.30 PM and he saw both the accused persons brought the dead body of Narayan by one motor cycle and took it to his own house situated near Bhotpada UP School, by breaking the green fence existing on the backside of the said house. They hanged his dead body with the ceiling by help of his lungi. Police came to the spot and conducted inquest over his dead body vide inquest report Ext.3. He saw that there was an injury on his head, bleeding injuries on both of his legs and left side abdomen. Although he has described the manner of death of the deceased, but in his cross-examination, he has not supported the case of prosecution. He has stated that he has not gone through and does not know the contents of Ext.3 and he gave his signature on Ext.3 being asked by the police. He has stated that for the first time, he has told about the incident in the Court.

10. PW-4 has stated that about 4 to 5 months back one day at about 10 AM to 11 AM he found both the accused persons brought his cousin Narayan Behera by one motor cycle and took him to the house of Maku Behera near Govt. Bhotpada Primary School and after they left that place, he (PW-4) along with his parents and some of his co-villagers went there and found the dead body of Narayan Behera hanging from the ceiling of the roof of that house by the help of his lungi and his feet were touching the ground. He brought down the said body with the hope that he may be still alive, but he found that he was already dead and the deceased had sustained one injury on the left side of the back of the head and he guessed that both the accused persons have committed his murder. During cross-examination, PW-4 has deposed that by the time he reached the house in question, he saw the dead body of Narayan Behera @ Nalua was hanging from the ceiling. He could not say the reason for which Nalua died and if he committed suicide. PW-4 has also deposed that the accused persons were friends of Narayan and there was no ill-feeling between them. P.W.4 has not supported the case of prosecution in any manner, rather he has stated that he has not been examined by police in connection with this case and for the first time, he deposed about the incident in the Court. Therefore, the evidence of P.W.4 does not inspire confidence.

11. PW-5 is a witness to the post mortem examination on the dead body of Narayan Behera which was conducted at Capital Hospital, Bhubaneswar on 9.9.2015. He is also a witness to the inquest over the dead body conducted at Capital Hospital. According to him he found one injury on the right side of the forehead and 4

to 5 injuries on the left leg of the deceased. During cross-examination, PW-5 has deposed that he does not know the contents of Ext.3. He signed on it, being asked by the police. PWs-6 and 7 are the witnesses of inquest over the dead body of Narayan Behera conducted by the I.O. at Capital Hospital, Bhubaneswar. According to them, they found one injury on his forehead and some injuries on his right leg. During cross-examination, they have deposed that they do not know the contents of Ext.3. Being called by the informant, they went to Capital Hospital, Bhubaneswar.

12. PW-10 has stated that on 8.9.2015 at about 1.30 PM he had gone to the house of Narayan to call him and when they went to railway siding, Mancheswar and entered into the room in question, he (P.W.10) found that the dead body of Narayan was hanging from one ceiling by help of one lungi and his legs were touching one plastic chair and blood was flowing from one injury on his forehead and also from his mouth. PW-10 has also stated that Narayan and both the accused persons are close friends and they used to take liquor and used to sleep in the said house. On 8.9.2015 he had seen Narayan going with the accused persons by his Hero Honda motor cycle at about 11 AM to 11.30 AM in front of the house of Bikal Behera. During cross-examination, PW-10 has stated that none was present in the house in question or near that house. Rather, he has stated that usually Narayan sleeps in that house in a drunken state. From the above evidence of P.W.10 it is forthcoming that the deceased Narayan was taking liquor most of the time.

13. PW-11 in his evidence has stated that on 8.9.2015 at about 11 AM to 11.30 AM both the accused

persons and Narayan Behera went by a red colour Glamour motor cycle from their village-Bhotpada towards VSS Nagar. He has also stated that at about 1.30 PM there was shouting from the house of Narayan Behera situated on the backside of Bhotpada School and he went to the said house and found that the dead body of Narayan was lying on the floor of the room of that house and also saw blood was coming out from his head and Narayan had sustained injury on his head. He also saw blood mark on the side of the said house. During cross-examination, PW-11 has deposed that he is the nephew of the informant in agnatic relation. He has not been examined by police in connection with this case. For the first time he disclosed about the facts of the incident in the Court and he has not disclosed about the same to anybody else.

14. PW-12 has stated that he along with the informant went to Capital Hospital on 8.9.2015 to see the post mortem over the dead body of Narayan Behera and he found that Narayan had sustained one injury on his head.

PW-13 has stated that about one and half years back Narayan @ Nalu Behera was murdered. He went to the house of the informant situated near the Primary School of Bhotpada and found the dead body of Narayan was lying on the floor inside the house and the police had been to the spot and took his signature. The dead body of Narayan Behera was shifted by the police to Capital Hospital, Bhubaneswar for post mortem. He does not know how Narayan died. During cross-examination, PW-13 has deposed that he could not say if Narayan Behera committed suicide by hanging. The police had not asked him anything about the incident, except asking him to give

his signature. For the first time, he has disclosed about the incident in the Court.

15. PW-14 is the scribe of the F.I.R. has stated that he heard that there was exchange of hot words between Narayan and the accused persons and the father of Narayan came and told him (PW-14) that both the accused persons assaulted Narayan, forcibly took him and after committing his murder, they have hung his dead body in the house of Maku Behera. He scribed the FIR (Ext.4) as per dictation of Maku Behera and he (PW-14) read over its contents to him.

During cross-examination, PW-14 has deposed that he has not personally heard exchange of hot words between the accused persons and Narayan, but he had heard about it from his co-villagers- Ranjit Nayak, Bachan Nayak, Dhusasan Behera, Pramila Nayak, Sulochana Nayak and Mohani Nayak. Further, he has not been examined by the police in connection with this case. He has not disclosed about the facts to anybody and for the first time he has deposed about it before the Court. He has not given his endorsement on the FIR Ext.4 to show that he has scribed it as per dictation of the informant and to show that it was read over and explained by him to the informant.

PW-15 has stated that he heard from his daughter that Narayan has committed suicide and then he went to the house of Maku Behera and found the dead body of Narayan was lying on the floor and he gave one signature, being asked by the police. During cross-examination, PW-15 has deposed that Maku Behera is his agnatic relation.

16. PW-16 is the Medical Officer who conducted post mortem on the dead body of Narayan Behera,

S/o.Maku Behera, Village-Bhotpada, PS-Mancheswar being identified by Constable No.C/1778 S.Mallick at 12.15 PM on 9.9.2015 vide post mortem examination report Ext.6. According to him, he has found the following external injuries: -

(i). Lacerated wound of size 3 x 1 CM x scalp deep present over mid forehead.

(ii) Pressure abrasion commencing from a point on left side of neck behind the mastoid process, then passes forward and downward 2 CM below the angle of mandible, then passes front of neck above and in front of thyroid cartilage, then passes to right side of neck and moves backward and upward 2 CM below the angle of mandible and finally merged with posterior hair line, maximum length of ligature mark is 32 CM maximum breadth 3 CM.

(iii) Ligature materials- an old used cotton lungi of green colour with tears at places.

On dissection- the skin below the ligature mark is patchmentised with extravassation of blood to the surrendering muscles. Heart is intact and right chamber contained fluid blood. Stomach intact and contained 100 miligram of semi-digested food material with a characteristic fruity odour of alcohol. There is sub-scalpel hematoma of size 5 x 5 cm below the injury no.1. Skull is intact. Brain is intact, congested and edematous. Both the lungs are intact and congested to variable degree. Rest of the organs are congested and intact.

PW-16 has also stated that all the above injuries were ante-mortem in nature. Injury No.(i) could have been caused by hard and blunt trauma whereas Injury No.(ii) is consistent with ligature mark, could have been caused by soft and broad ligature material. All the

lacerated wounds present on the forehead, were not sufficient to cause death of the person, so the death of deceased was due to combined effect of venous congestion and asphyxia as a result of constriction of neck. Time since death at the time of his post mortem examination was within about 6 to 12 hours. PW-16 had received one query dated 22.11.2015 vide Ext.7 from the IO and gave his further opinion and reply vide Ext.7/1. He has opined that the ligature mark found around the neck of the deceased could have been possible by the ligature material produced by the IO. He had further opined that the signs and symptoms found on the body of the deceased, were suicidal in nature, but homicide cannot be ruled out. During cross-examination, PW-16 has deposed that the person has not died prior to 12.15 AM of 9.9.2015. Injury No.(i) can be possible by fall on a rough surface while riding motor cycle and Injury No.(ii) can be possible by hanging by the ligature material produced before him (PW-16). Tensile strength of the ligature material produced before him, was sufficient to bear the weight of the deceased for hanging.

17. PW-17 is a witness to the seizure of one Hero Honda Glamour motor cycle bearing registration No.OD-02N-2247 which stood in the name of deceased Narayan Behera and according him, in his presence police has seized the same as per seizure list vide Ext.8. During cross-examination, PW-17 has deposed that he does not know from whom the said motor cycle was seized and the circumstances in which the said motor cycle was seized. According to him, none else had signed on the seizure list, when he signed on it. PW-19 has not supported the case of prosecution. According to him he does not know the cause of death of deceased. PW-20 is a witness to the seizure of

one black colour full shirt and one black colour half pant with white stripe on production by the accused Chandan Samal.

18. PW-21 is a vital witness from the side of prosecution. In his evidence he has stated that Narayan Behera has committed suicide on 8.9.2015. Deceased Narayan being in a drunken state, was abusing the passersby and being objected by the accused persons, Narayan abused them. He (PW-21) also objected the said action of Narayan. Then he went to the house by his Hero Honda motor cycle and both the accused persons went away by 150 CC pulser motor cycle. He (PW-21) came to know from Maku Behera the father of deceased Narayan that Narayan has committed suicide. During cross-examination, PW-21 has deposed that Narayan was passing comments to some females who were going by the road near the temple of Lord Shiva at Mancheswar and the said action of Narayan was objected by the accused persons. For that reason, Narayan scolded the accused persons saying that he will do as per his own wish. There was no mark of injury in the body of Narayan while he left the place near the temple of Lord Shiva and at that time Narayan was heavily under the influence of liquor and he was not able to work properly. He left the spot by his motor cycle driving in a most rash and negligent manner. PW-21 has also stated that the accused persons neither assaulted Narayan nor picked up any quarrel with him at the said place and they have no enmity or ill-feeling with Narayan Behera. P.W.21 has not supported the case of prosecution. The evidence of P.W.21 is no way helpful to the case of prosecution, rather, he has stated that he

cautioned the deceased most of the time for his ill-activities.

19. PW-22 the IO has stated that on 8.9.2015 the complainant Maku Behera, S/o.Chaitanya Behera of Bhotpada has lodged written report (Ext.4). Ext.4/2 is the formal FIR drawn up by IIC Sri Himanshu Bhusan Swain. He (PW-22) examined the complainant and other witnesses, issued command certificate (Ext.9) in favour of Constable Santosh Kumar Mallick to guard the dead body at the hospital and visited the spot along with the complainant. Ext.10 is the spot map. PW-22 has further stated that he searched the FIR named accused and on 9.9.2015 he apprehended both the FIR named accused and brought to PS and examined and arrested them. He conducted inquest over the dead body of Narayan Behera, S/o.Maku Behera vide inquest report Ext.3 and sent the dead body for post mortem examination. On 9.9.2015 he (PW-22) seized one empty liquor bottle written as "Mc dwells No.1", one blue colour jean pant of accused Akshaya Bhoi at the spot vide M.O.-I as per seizure list vide Ext.11. He also seized one black colour full shirt and one black colour half pant with white stripe of accused Chandan Samal vide M.Os.-II and III at the PS as per seizure list Ext.2. He forwarded both the accused persons to Court. He also seized the command certificate (Ext.9), one green colour lungi vide M.O.-IV, one blue colour half pant and one torn yellow colour T-shirt on production by Constable Santosh Kumar Mallick at the PS as per seizure list vide Ext.1. PW-22 has also stated that the concerned constables collected the nail clippings of the deceased and the same were produced before him (PW-22) by Constable Santosh Kumar Mallick at the Ps and he (PW-22) seized the same at

the PS as per seizure list Ext.1. On 16.9.2015 he seized one Hero Honda motor cycle bearing registration NO.OD-02N-2247 on production by the complainant at his house in presence of the witnesses as per seizure list Ext.8 and after verification of the RC book of the said vehicle, he (PW-22) released the said motor cycle in zima of the informant as per zimanama vide Ext.5. He examined the scribe of the FIR and sent viscera of the dead body to SFSL, Bhubaneswar and received the viscera report vide Ext.12 from SFSL, Bhubaneswar. He sent query to Dr.L.K.Behera vide Ext.7 and Dr. Behera gave written answer to the said query vide Ext.7/1. He (PW-22) had sent material objects to SFSL, Bhubaneswar for examination through the concerned Court vide Ext.13 the office copy of forwarding letter Memo No.8/SDJM, Bhubaneswar for sending the material objects to SFSL, Bhubaneswar. On 9.9.2015 he had sent the dead body to Capital Hospital, Bhubaneswar by issuing dead body challan vide Ext.14 through Constable Santosh Kumar Mallick. After completion of investigation, he submitted charge-sheet against both the accused persons.

20. During cross-examination, PW-22 has deposed that the FIR was registered at 10 PM of 8.9.2015 by the then IIC of Mancheswar PS Sri H.B.Swain and he (PW-22) reached the spot at 10.45 PM and by that time the dead body was already shifted to Capital Hospital, Bhubaneswar. He did not find any sign of violence at the spot or any blood stain or blood mark at the spot. There were bamboo fences on all sides of the said house. He had not directed any police staff to guard the spot. He did not find any household things or any mat (Masina) in that room. He had not requested or sent any requisition for deputing any

scientific team to the spot for taking finger prints and for taking necessary steps. He has examined the informant in this case initially soon after registration of the case at the PS and subsequently at the time of conducting inquest over the dead body on 9.9.2015. The dead body challan vide Ext.14 was prepared by him (PW-22) on 9.9.2015 at about 11.30 AM and the post mortem examination was conducted at 12.15 PM. Column Nos.8 and 9 of Ext.14 have been filled up by the concerned doctor. PW-22 has also deposed that he had not marked any blood stain on the motor cycle in question did not find any blood stain on the wearing apparels of the accused persons and the deceased, including the lungi of the deceased. He has not ascertained if there was any previous enmity or ill-feeling between the accused persons and the deceased. It was ascertained during his investigation that Narayan Behera had passed some comments against one female at Railway Siding, Mancheswar and being protested by the accused persons, there was exchange of hot words between them and there was quarrel amongst them and Narayan left that spot and during the said quarrel, Narayan sustained injury on his head. On 22.12.2015 at about 10 AM he had gone to VSS Nagar to ascertain regarding name, identity and address of said female, against whom the deceased had passed comment, but could not trace her. Thereafter he (PW-22) has not taken any steps in that regard. He had taken steps on 16.9.2015 to trace out the said female and also engaged spy on that day for that purpose, but in spite of sincere efforts taken by him, he (PW-22) could not trace out the said female.

21. To prove that the death is due to homicide or suicide, most important evidence is the medical evidence.

P.W.16 the medical officer who conducted post mortem examination has opined that all the injuries on the body of the deceased were ante-mortem in nature and injury No.1 could have been caused by hard and blunt trauma whereas injury No.2 is consistent with ligature mark could have been caused by soft and broad ligature material. The medical officer has further opined that all the lacerated wounds present on the forehead is not sufficient to cause death of the person, so the death of deceased was due to combined effect of venous congestion and asphyxia as a result of constriction of neck. To prove the cause of death of deceased, it is forthcoming from the evidence of P.W.3, 4 and P.W.10 while they reached near the spot they found the dead body of Narayan Behera hanging from the ceiling of the roof of that house by the help of his lungi. Further, P.W.8 the father of deceased and his wife (P.W.9) and P.W.11 have stated that while they reached near the spot, they found the deadbody of the deceased was lying on the floor of the room of that house. They saw injuries on the head of the deceased. So, if the evidence of P.Ws.3, 4 and 10 is believed for the sake of argument, then it is seen that the death of the deceased is suicidal in nature. Further P.W.3 has stated that Police came to the spot within about half an hour to forty five minutes and brought down the dead body of Narayan Behera. P.W.22 the I.O. has not stated regarding the place where he conducted inquest over the dead body. Rather, in his cross-examination he has stated that while he reached at the spot at about 10.45 P.M. and by that time the dead body was already shifted to Capital Hospital, Bhubaneswar. He did not find any sign of violence at the spot and he also did not find any blood or blood mark at the spot. So, from the

evidence of P.Ws.3,4 and 10 coupled with the evidence of P.W.16 the medical officer who conducted post mortem examination of the deceased, it is clear that the death of the deceased was suicidal in nature.

22. Coming to the evidence of P.W.3 Dusan Behera, it is seen that, he saw both the accused persons brought the dead body of Narayan Behera by one motor cycle and then lifted his deadbody and took it to his own house situated near Bhotapada U.P.School, by breaking the green fence, existing on the backside of the said house and they hanged his dead body with the ceiling by help of his lungi. According to him, police came to the spot within about half an hour to forty five minutes and brought down the dead body of Narayan Behera. But the investigating officer, in his evidence has stated that while they reached at the spot, the dead body of the deceased was already shifted to Capital Hospital. P.W.22 the I.O. in his cross-examination in para-29 has stated that he has not recorded the statement of P.W.3 Dhusasan Behera Under Sec.161 Cr. P.C., but he has recorded his statement in the case diary. He has also stated that P.W.3 has not stated before him that both the accused persons have committed his murder, about four to five months back one day at about 1.30 p.m. and that P.W.3 saw both the accused persons brought the deadbody of Narayan Behera by one motor cycle and then lifted his deadbody and took it to his own house situated near Bhotapada U.P. School, by breaking the green fence, existing on the backside of the said house and that they hanged his deadbody with the ceiling fan by help of his lungi. Further, P.W.22 the I.O. in para-30 of his cross-examination has stated that P.W.3 has not stated before him that police came to the spot within about half

an hour to forty five minutes and brought down the deadbody of Narayan Behera and that Narayan Behera was wearing blue colour T-shirt and one half pant and that P.W.3 saw that there was an injury on his head and he also found bleeding injuries on both his legs, left hand and on the left side of his abdomen. The said aspect has been duly confronted to the Investigating Officer and the concerned witness. Thus in the facts and circumstances of this case, it is seen that the said omissions in the statement of P.W.3 are material omissions and amounts to contradiction of his statement given in the court. In this circumstance, no reliance can be safely placed on the version of P.W.3. Therefore, the evidence of P.W.3 is doubtful that he has seen the accused persons at the spot of occurrence.

23. Regarding injury on the body of the deceased, it is the evidence of P.W.3 that he saw there was one injury on his head and he also found bleeding injuries on both his legs, left hand and on the left side of his abdomen. P.W.4 has stated that he saw injury on the left side of the back of the head of deceased. P.W.5 has stated that he found that there was an injury on the right side of the forehead of the deceased and 4 to 5 injuries on his left leg. P.W.6 and 7 have stated that they found one injury on the forehead and some injuries on the right leg of deceased at the time of inquest. P.W.9 the mother of the deceased has stated that the deceased had sustained bleeding injuries on his head and face. Similarly P.W.8 the informant has stated that he found bleeding injury on the forehead of the deceased. P.W.12 also found one injury on the head of the deceased. From the evidence of above witnesses, it is found that there is discrepancy from their evidence

regarding site of injuries on the body of the deceased. P.W.16 in his evidence has stated that he found lacerated wound of size 3 x 1 CM x scalp deep present over mid-forehead. Further he found Pressure abrasion commencing from a point on left side neck. But in the cross-examination, this witness has stated that all the lacerated wounds present on the forehead, it is not sufficient to cause death of the person. So, from the evidence of above witnesses coupled with the evidence of P.W.16 the medical Officer, it is found that the deceased has sustained only two injuries on his body. Further, in cross-examination, P.W.16 has stated that the injury No.1 can be possible by fall on a rough surface while riding motor cycle and injury No.2 can be possible by hanging by the ligature material produced before him.

24. Another important aspect in his case is the motive of the accused persons to commit the crime. P.W.8 the informant has stated in his cross-examination that the accused persons are the friends of his deceased son Narayan and there was never any dispute or quarrel amongst them. Similarly P.W.9 the mother of the deceased has stated that the deceased had no enmity with anybody. During cross-examination, P.W.21 has stated that deceased Narayan was passing comments to some females who were going by the road at that time near the temple of Lord Shiva at Mancheswar and the said action of Narayan was objected by the accused persons, and for that reason, deceased Narayan scolded the accused persons. Similarly, P.W.22 the investigating officer in his cross-examination has stated that he has not ascertained if there was any previous enmity or ill-feeling between the accused persons and the deceased. Rather, he has stated that

during his investigation, he ascertained that the deceased had passed some comments against one female Railway siding at Mancheswar and being protested by the accused persons, there was exchange of hot words between them and there was quarrel amongst them and he voluntarily stated that during said quarrel Narayan Behera sustained injury on his head. So, from the evidence of P.W.22, it is seen that he has not properly investigated into the case regarding any prior enmity of the accused persons with the deceased. He has failed to examine the female to whom the deceased Narayan passed some comments. In his answer on the question put by the Court, he has stated that on 22.12.2015 at about 10 a.m. he had gone to V.S.S. Nagar to ascertain about the same and could not trace her. Further, from the voluntary statement of the investigating officer, it is also forthcoming that due to quarrel, Narayan Behera sustained injury on his head. Therefore, the motive of the accused persons to commit the alleged offence is not proved by any of the witnesses examined on behalf of the prosecution.

25. Learned defence counsel submitted that the ingredients of offence under Section 306 of the Code have not been made out in the facts and circumstances of this case.

'Abetment' has been defined under Section 107 of the Code. This Court deems it appropriate to reproduce Section 107, which reads as under:

" 107. Abetment of a thing- a person abets the doing of a thing, who-

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an

act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; of

Thirdly – Intentionally aides, by any act or illegal omission, the doing of that thing.”

In the instant case, this Court finds that there is no evidence and material available on record wherefrom an inference of the accused persons having abetted commission of suicide by Narayan Behera can be drawn.

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused persons to instigate or aid in committing suicide. In the instant case, on close scrutiny of the evidence of witnesses, it is noticed that, none of the witnesses have stated that the accused persons have instigated tNarayan Behera to commit suicide by hanging. There is also no eye witnesses to the occurrence as alleged. Rather, most of the prosecution witnesses have stated that the accused is a habitual drunkard and misbehaved the passers by on the road. The involvement of the accused persons for the alleged offence is not proved by any of the witnesses. Both the parents of the deceased i.e. P.W.8 and 9 have remained silent as they have not stated anything against the accused persons. The last seen theory is not applicable in this case as because there was every chance of interference of other persons in between the time the deceased was last seen with the accused persons and the recovery of the deadbody. There is much more possibility of availability and interference of the other persons for committing the crime. There is no motive of the accused persons for commission of the alleged offences.

26. On perusal of the post mortem examination report, the Medical Officer (P.W.16) has stated that he had conducted the post mortem on the dead body of the deceased on 9 .9.2015 at about 12.15 P.M. The M.O. has further opined that the time since death at the time of his post mortem examination is within about 6-12 house. If the evidence of Medical Officer is believed for a moment, the time of death of the deceased Narayan Behera is doubtful as explained by P.W.8 and the Investigating Officer P.W.22.

27. From the evidence of all the witnesses examined from the side of the prosecution, it is found that there is no evidence against the accused persons that they have wrongfully restrained the deceased Narayan. None of the witnesses have stated that the accused persons uttered obscene words to anybody causing annoyance. There is also no eye witness to the occurrence to show that the above named two accused persons have assaulted the deceased Narayan Behera causing hurt to him. It is also not the evidence of prosecution witnesses that the accused persons threatened Narayan Behera, causing annoyance to him.

28. The prosecution witnesses like P.W.4 and P.W. 8 have stated that both the accused persons brought Narayan Behera by one motor cycle from his house and they took him near Govt. Bhotapada Primary School. It is seen from the cross-examination of P.W.22 the Investigating Officer in Paragraphs 29,30,33, 34 and 37 that P.W.3 has not stated before the I.O. that both the accused persons have committed his murder, about four to five months back one day at about 1.30 PM and that he saw both the accused persons brought the deadbody of

Narayan Behera by one motor cycle and then lifted his deadbody and took it to his own house situated near Bhotapada U.P. Schoo, by breaking the green fence, existing on the backside of the said house and that they hanged his deadbody with the ceiling fan by help of his lungi. P.W.3 has also not stated before the I.O. that police came to the spot within about ghalf an hour to forty five minutes and brought down the deadbody of Narayan Behera and that Narayan Behera was wearing blut colour T-shirt and one half pant and that he saw that there was an injury on his head and he also found bleeding injuries on both his legs, left hand and on the left side of his abdomen. Similarly P.W.4 has not stated before the Investigating Officer that about 4 to 5 months back one day at about 10 AM to 11 AM after he returned from work as labourer, he found both the accused persons brought his cousin Narayan Behera by one motor cycle and that then they took him to the house of Maku Behera near Govt. Bhotapada Primary School and that after they left that place, he along with the parents of Narayana Behera and some of his co-villagers went there and there they found the deadbody of Narayan Behera hanging from the ceiling of the roof of that house by the help of his lungi and that his feet were touching the ground. Further, he has not stated before the I.O. that thereafter, he brought down the said body of Narayan Behera with the hope that he may be still alive, but he found that he was already dead and that he sustained one injury on the left side of the back of the head and that he did not find anything else and that he guess that both the accused persons have committed his murder. It is also seen that P.W.8 has not stated before the I.O. in his presence as well as in presence of his wife

and other persons, accused Chandu Samal and Akhaya Bhoi took his son Narayan by one Hero Honda motor cycle and that at that time, himself and his wife were sitting on a chandini situated near their house and that it was about 10.30 AM to 11 AM. Further, he has not stated before the I.O. that they could not find their son Narayan, although they searched for him in order to ask him to take his lunch and that himself and his wife entered inside his bedroom and called him and that the said house is situated near the U.P. School of their village, but their son Narayan did not respond and that he was sleeping in that bed room and that he found that he was not in conscious state and had sustained bleeding injury on his forehead and that they found that he was dead. The above aspect has been duly confronted to the Investigating Officer and the concerned witnesses. Thus in the facts and circumstances of this case, it is seen that the said omissions in the statement of P.Ws.3,4 and 8 are material omissions and amounts to contradiction of their statement given in the court. In this circumstance, no reliance can be safely placed on their version regarding involvement of the accused persons in taking the deceased with them on the relevant date. It is the evidence of P.W.8 and 9 that when they reached at the spot, they found their son was lying dead. But at the same time, P.W.4 who is the uncle of Narayan has stated that when they reached at the spot, they found the deadbody of Narayan Behera hanging from the ceiling of the roof of the house by the help of Lungi. There is no evidence against the accused persons that they committed murder of the deceased Narayan Behera as none of the witnesses have seen the occurrence. Though, some of the witnesses have stated that the accused persons after assaulting Narayan

hanged his body on the ceiling of the roof of that house by the help of his lungi, but none of the witnesses have seen the above occurrence.

There is no direct evidence against the accused that they have assaulted Narayan by any means. As per opinion of the medical officer, the death of the deceased was due to combined effect of venous congestion and asphyxia as a result of constriction of neck. Further, the Medical Officer has opined that the signs and symptoms found on the body of the deceased were suicidal in nature, but homicide cannot be ruled out. 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."

29. It may be pointed out at this stage that the circumstance that the deceased was last seen in the company of the accused persons when they took him from his house has not been established beyond reasonable doubt. Thus from the aforesaid analysis of the evidence on record this Court finds that the prosecution has failed to connect the culpability of the accused persons to the crime by leading clinching evidence and establishing all the circumstances to unerringly point that it was the accused persons who abetted the suicide of Narayan Behera.

30. There are also material discrepancies in the evidence of the witnesses with regard to the exact place of death of accused. P.W.8 has stated that he lodged written FIR vide Ext.4 at Mancheswar Police Station. He has also stated that the Hero Honda Motor cycle in question which was owned by his son Narayan and had registration No.2247 was seized by the police and released the same in his zima. But the evidence of P.W.8 is found discrepant from the evidence of P.W.14 who has stated that he heard there was exchange of hot words between Narayan and the accused persons. The father of Narayan P.W.8 also came and told him that both the accused persons assaulted Narayan, forcibly took him and after committing his

murder, have hung his dead body in the house of Maku Behera, the father of Narayan. But to prove the above statement of P.W.14, P.W.8 is remained silent about the act committed by the accused persons. In cross-examination, P.W.14 has stated that he had not heard the exchange of hot words between the deceased Narayan and the accused persons. P.W.14 in his evidence has stated that he scribed the FIR as per the dictation of)P.W.8 the father of Narayan Behera. But no where, P.W.8 has stated that as per his dictation, the FIR has been scribed by P.W.14. P.W.10 in his evidence has stated that Narayan and both the accused persons are close friends and they used to take liquor and used to sleep in the house, where, the occurrence took place. The above evidence of P.W. 10 finds support from the evidence of P.W.21 who has stated that the deceased Narayan Behera being in a drunken state, was abusing the passersby and being objected by the accused persons, Narayan Behera abused them. 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 Narayan Behera.

31. Further, from the report of the Chemical examiner of SFSL, Rasulgarh, Bhubaneswar (Ext.12), it is found that that the chemical examiner has examined the scalp hair and one green-black lungi of the deceased and found the same were stained with human blood. But the Investigating Officer P.W.22 in his cross-examination has stated that he did not find any blood stain on the motor cycle and he did not find any blood stain on the wearing apparels of the accused persons and the deceased including the lungi of the deceased seized by him. So,

from the evidence of P.W.22 the Investigating Officer and from the report of the chemical examiner, it is difficult to hold that the lungis of the deceased Narayan was stained with any human blood.

32. Therefore, after analyzing the evidence on record and for the reasons discussed above, this Court finds that the prosecution has failed to prove its case against the accused persons for commission of the alleged offence punishable under Sections- 306 I.P.C.

33. In the result, the accused persons are found not guilty of the offences punishable under Sections 341/34, 294/34, 323/34, 506/34 and 306/34 of the I.P.C. They are acquitted u/s.235(1) of Cr.P.C. and are set at liberty. The bail bonds are cancelled and sureties are discharged.

The seized articles and the M.Os be destroyed after two months of the 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 8th day of July, 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	Bikram Keshari Panda.
PW-2	Susanta Kumar Jena.
PW-3	Dusasan Behera.
PW-4	Hemanta Kumar Behera.
PW-5	Bata Krushna Behera.
PW-6	Jalandhar Nayak.
PW-7	Amulya Behera.
PW-8	Maku Behera.
PW-9	Smt.Sita Behera.
PW-10	Pradipta Kumar Behera.
PW-11	Rashmi Ranjan Behera.
PW-12	Nabina Behera.
PW-13	Bhaskar Nayak.
PW-14	Dillip Kumar Nayak.
PW-15	Tukuna Behera.
PW-16	Dr.Laxmikanta Behera.
PW-17	Biswajit Samal.
PW-18	Debaraj Panigrahi.
PW-19	Prabodh Kumar Nayak.
PW-20	Nityananda Pati.
PW-21	Bhimsen Bhoi.
PW-22	Susanta Kumar Das.

List of witnesses examined for the defence :-
Nil.List of exhibits marked for the prosecution :-

Ext.1	Seizure list.
Ext.1/1	Signature of PW-1 in Ext.1.
Ext.2	Seizure list.
Ext.2/1	Signature of PW-2 in Ext.2.
Ext.3	Inquest report.
Ext.3/1	Signature of PW-3 in Ext.3.
Ext.3/2	Signature of PW-5 in Ext.3.
Ext.3/3	Signature of PW-6 in Ext.3.
Ext.3/4	Signature of PW-7 in Ext.3.
Ext.4	Written FIR.
Ext.4/1	Signature of PW-8 in Ext.4.
Ext.5	Zimanama.
Ext.5/1	Signature of PW-8 in Ext.5.
Ext.3/5	Signature of PW-12 in Ext.3.
Ext.6	Post Mortem Examination Report.
Ext.6/1	Signature of PW-16.
Ext.7	Query dated 22.11.15 from IO.
Ext.7/1	Further opinion and reply.
Ext.7/2	Signature of PW-16 in Ext.7/1.

Ext.8	Seizure list.
Ext.8/1	Signature of PW-17.
Ext.2/2	Signature of PW-20 in Ext.2.
Ext.4/2	Formal FIR.
Ext.4/3	Endorsement with signature of IIC of Sri Swain in Ext.4.
Ext.9	Command Certificate.
Ext.9/1	Signature of IIC Sri Swain in Ext.9.
Ext.10	Spot Map (two sheets).
Ext.10/1	Signature of PW-22 in Ext.10.
Ext.3/6	Signature of PW-22 in Ext.3.
Ext.11	Seizure list.
Ext.11/1	Signature of PW-22 in Ext.11.
Ext.2/3	Signature of PW-22 in Ext.2.
Ext.1/2	Signature of PW-22 in Ext.1.
Ext.8/2	Signature of PW-22 in Ext.8.
Ext.5/2	Signature of PW-22 in Ext.5.
Ext.12	Viscera Report.
Ext.7/3	Signature of PW-22 in Ext.7.
Ext.13	Office copy of forwarding letter vide Memo No. 8/SDJM, Bhubaneswar.
Ext.14	Deadbody Challan.
Ext.14/1	Signature of PW-22 in Ext.14.

List of exhibits marked for the defence :-
Nil.

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

M.O.-I	One blue colour jean pant of accused Akshaya Bhoi.
M.O.-II	One black colour full shirt of accused Chandan Samal.
M.O.-III	One black colour half pant with white stripe of accused Chandan Samal.
M.O.-IV	One green colour lungi.

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

Nil.

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

