

IN THE COURT OF THE ADDL.SESIONS JUDGE, BHUBANESWAR

Present:

Shri A.C. Behera, B.A.(Hons), LL.B. Addl.
Sessions Judge, Bhubaneswar.

Crl.Tr. No.15/19/81 of 2013 of 2010

(Arising out of GR case No. 3326/09 corresponding to
Khandagiri P.S. Case No.401/09 committed by the learned
S.D.J.M,Bhubaneswar)

Dated, this the 30th day of April, 2014

The State of Odisha.

.....Complainant.

-vrs-

1.Gajani @ Mantu @ Lokanath Sahoo, aged 25 years

S/o-Jagannath Sahu of village Chhatabar,

P.S.-Chandaka, Dist.-Khurda.

2. Litu @ Sarada Prasanna Sethi,aged 24 years,

S/o-Late Abhaya Kumar Sethi,

Village-Pala Sudha, P.S.-Pattakura,

Dist.-Kendrapada.

.....

Accused Persons.

Counsel for the Prosecution : Sri P.K.Das, Addl.P.P.

Counsel for accd.Lokanath Sahu : Sri A.K.Chand Adv.

Counsel for accd.Sarada Prasanna Sethi : Sri R.N.Samantaray
(SDC)

Date of Argument :24.04.2014

Date of Judgment :30.04.2014

Offence U/s 302/120B/201 r/w.Sec.34 of the I.P.C.

J U D G M E N T

1. This is a case of double murder.
2. Both the accused persons have been charged with the offences U/s.302, 120B, 201 r/w. Sec.34 of the Indian Penal Code 1860 on the allegation of committing murder of Abhaya Kumar Sethi and his wife Susama Sethi being associated with another infurtherance of common intentional of all after making criminal conspiracy for the same and so also for causing disappearance of evidence.
3. Out of the two accused persons, accused Litu @ Sarada Prasanna Sethi is non else but the only son of the deceased Anhaya Kumar Sethi and Susama Sethi.
4. The projected case of the prosecution against the accused persons during trial is that, the deceased Abhaya Kumar Sethi was continuing a fabrication shop at Sampur Market, for which, he (Abhaya Kumar Sethi) was staying on rent in a house at Sampur under Khandagiri Police Station.

In the said rented house of deceased Abhaya Kumar Sethi, he (Abhaya), his wife(Susama), his son(accused Litu @ Sarada), his

daughter(liza @ Bhanupriya) and his nephew(Soumyranjan) were staying. Soumya(nephew of Abhaya) was working in the fabrication shop of Abhaya.

Accused Litu @ Sarada being an unemployed was depending upon the income of his father Abhaya. He (accused Sarada) was quarreling with his parents(Abhaya and Susama) invariably for money and was desiring for a business. He(accused Sarada) was also interested to make love marriage with a girl namely Sujata, to which, his parents(Abhaya and Susama) were not agreed. For the above matters, accused Sarada was not pulling well with his parents and was creating disturbance in the house.

Like other days, on dtd.20.11.2009 morning Abhaya Kumar Sethy and his nephew Soumya had moved to their fabrication shop for their works and at about 2 P.M. Abhaya Kumar Sethi came from his shop to his rented house for lunch, but did not return. At about 4 P.M. accused Sarada came to that shop and disclosed before Soumya that, his father and mother i.e. Abhaya and Susama have gone to Keonjhar, if he(Soumya) requires any money, then, he(Soumya) can ask him(Sarada) for the same. After telling the above things, accused Sarada went away.

Half an hour thereafter, again accused Sarada came to the said shop and told to Soumya that, no body is available in their house and requested to accompany him(Sarada) to their house. Accordingly

Soumya accompanied accused Sarada in a motor cycle, but, when they reached near SUM Hospital chhak, he(accused Sarada) dropped him(Soumya) there and went away some where by telling that, he will return back within 15 minutes. For which, Soumya waited there for him(Sarada), but accused Sarada did not return back. So, Soumya alone went to the rented house of Abhaya and found that, outer gate has been locked from out side and shutter of the entrance room has been half opened. Thereafter, he(Soumya) crossed the boundary wall by jumping and entered inside the room by opening the shutter and found that, none is there in the said house and a foul smell(Amisa) is coming out. After seeing the same, he(Soumya) became frightened and came to outside and made phone calls to the mobile phone of Abhaya, but the reply came that, the same is switched off. So, he(Soumya) made phone to his another uncle Parsuram Sethi (younger brother of Abhaya) and told him over phone about the above matter and after hearing the same, Parsuram advised Soumya to report the matter at the Police Station.

Thereaftr, Soumya went to the Khandagiri Police Station and lodged written F.I.R. vide Ext.15 before IIC Khandagiri Police Station.

5. Basing upon such F.I.R. vide Ext.15, the IIC Khandagiri Police Station i.e. P.R.Satpathy registered Khandagiri P.S.Case No.401/dtd.20.11.2009, U/s.302 of the I.P.C. against accused (Sarada

Prasanna Sethi) and directed S.I. B.N.Sethi of that P.S to take up the investigation of the case and so also directed S.I. Md.Zamsed to guard the spot with the assistance of Constable S.Sahoo.

On being directed by the IIC, the S.I. B.N.Sethi proceeded with the investigation of the case.

6. During investigation, the S.I. B.N.Sethi alongwith IIC P.R.Satpathy and other police staffs proceeded to the spot after making requisition to the Scientific team for spot visit and accordingly the I.O., IIC and other police staffs as well as Scientific team arrived at the spot.

Thereafter, the I.O.(B.N.Sethi) along with Scientific team visited the spot in presence of informant Soumya, Parsuram and others. The spot is the rented house of Abhaya Kumar Sethi, situated on Plot No.788 in Mouza Sampur under Khandagiri Police Station.

7. During spot visit, they found about the lying of the dead bodies of Abhaya Kumar Sethi and his wife Susama Sethi in a bed room with multiple injuries on their bodies. They also found that, there was sprinkling of blood on the wooden frame of the cot and so also on the four walls and ceiling of the drawing room and the floor of that drawing roomed was cleaned by water. The I.O. B.N. Sethi prepared the spot map and its report vide Ext.16 and 16/2 respectively. The Scientific Officer collected physical clues from the

spot those were available there . Then he(I.O.) held inquest over the dead bodies of abhaya Kumar Sethi and Susama Sethi in presence of Soumya and Parsuram and prepared the inquest reports vide Exts.2 and 3 respectively, seized the available wearing ornaments of the deceased Susama i.e. one pair ear ring, one pair bangle and one chain through seizure list and released the same in the zima of Parsuram Sethi by executing a zimanama in his favour vide Ext.4 and then despatched the dead bodies of abhaya and Susama for post mortem examination through dead body challans vide Exts. 12 and 13 respectively with constable S.Sahoo. Thereafter he I.O.(B.N.Sethi) seized the suspected physical clues collected by the District Scientific Officer as well as by himself vide M.Os. IX to XV including the alleged weapon (M.O.IX) separately through seizure lists vide Exts.17 & 18 respectively. He(I.O.B.N.Sethi) also seized one Hero Honda Passion Plus motor cycle of the deceased Abhaya Kumar Sethi bearing No.OR-02-AA-3066, which was left near Basti No.6 of Katha Gola through seizure list vide Ext.19.

After completion of postmortem examination over the dead bodies of Abhaya and Susama by the doctor P.Mohanty(P.W.15), he (I.O.) seized the wearing apparels of the deceased persons i.e. Abhaya and Susama vide M.Os I to VIII on production by the constable S.Sahoo along with his common certificate through seizure list vide Ext.10 and got information about the absconding of the accused Sarada at Pondicherry. For which, he(I.O.B.N.Sethi), IIC

P.R.Satpathy along with other police personnels forming a team proceeded to Pondicheri for apprehension of the accused Sarada. During investigation there at Pondicheri, he(I.O. B.N.Sethi) came to know that, the accused Sarada has sold the gold finger ring of his father to one Ajib Mohammad at Pondicherry through the help of one auto driver namely R.Purusottam for Rs.8,000/- and after receiving the above sold money thereof, he (accused Sarada) has purchased some materials at Pondicheri and has left for Orissa.

Then on dtd.26.11.2009, he(I.O.) seized the gold finger ring of the deceased Abhaya vide M.O.XVI from Ajib Mohammad at Pondicheri through seizure list vide Ext.20 in presence of auto driver R.Purusottam, those identified to accused Sarada as seller thereof from the photograph of Sarada shown by the I.O. He(I.O. B.N.Sethi) also came to know that, the accused Sarada had come in contact with two boys of Orissa namely Subasis Nayak and Debasis Nayak at Chennai and Pondicherry, for which, he (I.O.) tried to examine them at Pondicherry, but came to know that, they (witnesses Subasis Nayak & Debasis Nayak) have left for Orissa, for which they (Police team) left for Bhubaneswar from Chennai and reached at the P.S. on dtd.28.11.2009.

8. But before completion of investigation, the IIC P.R.Satpathy of Khandagiri Police Station took over the charge of the investigation of the case from S.I. B.N.Sethi on dtd.29.11.2009 along

with its connected papers and proceeded with the rest part of the investigation of the case.

During investigation, the I.O.(P.R.Satpathy) apprehended accused Sarada on dtd.02.12.2009 at Rasulgarh Bus Stand, Bhubaneswar at the time of his return by bus from Balasore and seized a trolley bag vide M.O.XVII from him containing shoes, slipper, carry bag, a Dhoti, one polythene carry bag of Khadi Bhawan M.G.Road Pondicherry, one full paint, one Serewani, one Churni, one Chudidar in a jena star carrying bag, a bunch of key, one Airtel SIM, one IDEA SIM, one mobile set, memo of little may fair of Pondicherry dtd.24.11.2009 for Rs.900/-, cash bill NO.175/dtd.24.11.2009 of Khadi Bhawan Pondicheri for Rs.570/-, a cash memo of Bata India dtd.24.11.2009 of Pondicheri for Rs.1600/-, a bus ticket from Chennai to Pondicheri dtd.24.11.2009 Rs.52/-, train ticket for Rs.450/- from Chennai to Howrah dtd.24.11.2009 and a coupon of Odiya Nilayam Pondicherry through seizure lists vide Ext.9, 9/3 to 9/12.

After arrest, while the accused Sarada was under the custody of the I.O.(P.R.Satpathy), he(accused Sarada) voluntarily confessed his guilt before him (I.O.P.R.Satpathy) in presence of witnesses by stating that, he(accused Sarada) being associated with his co-accuseds Gajani @ Mantu @ Lokanath Sahu and Bulu @ Bhagaban Sahu have killed his parents i.e. Abhaya and Susama on

dtd.20.11.2009 in their rented house after making criminal conspiracy for the same and after killing them, they (accused persons) have burnt their blood stained wearing apparels at Chandaka Daspur Road and accordingly, he (I.O) recorded the confessional statement vide Ext.8 of accused Sarada.

Thereafter, he (I.O. P.R. Satapathy) arrested accused Bulu @ Bhagaban Sahu and Gajani @ Mantu @ Lokanath Sahu, those are the Auto drivers and examined them. During the examination of the said accused Lokanath Sahu and Bhagaban Sahu, they disclosed about the occurrence. Thereafter he (I.O.) seized two burnt hollow pipes having folding system, one iron frame, two iron bent wires, a small portion of black colour trolley bag cloth, a small portion of cloth having green-white black check with burnt patches, one steel monogram (suspected to be the monogram of a trolley bag) at Chandaka Daspur road near Malima temple under Chandaka P.S. jurisdiction through seizure list vide Ext.7 basing upon the leading to discovery made by the accused Sarada. Then he (I.O.) examined other witnesses and seized the Auto rickshaws of the accused Bhagaban Sahu and Lokanath Sahu separately through two seizure lists vide Exts. 24 and 25 respectively.

Thereafter he (I.O.) sent the three arrested accused persons i.e. Sarada, Bhagaban and Lokanath to Capital Hospital through requisition for collection their blood sample and nail clippings and

accordingly their blood sample and nail clippings were collected by the doctor and after its collection, the same were sent to the I.O.(P.R.Satapathy), who seized the same on production by S.I. B.N. Sethy and thereafter he (I.O.) forwarded the aforesaid three accused persons i.e. Sarada, Bhagaban and Lokanath to the Court. Then he (I.O.) received the P.M. reports of deceased persons vide Exts. 21 & 22. Then, he made prayer to the learned SDJM, Bhubaneswar for conducting T.I. Parade in respect of seized gold ring vide M.O.XVI of the deceased Abhaya Kumar Sethy and accordingly T.I. Parade of the said M.O. XVI was conducted by the learned JMFC, S.P.Mishra and the T.I. Parade report vide Ext.6 was prepared.

He (I.O.) also made a query from the doctor P.Mohanty by sending the weapon i.e. M.O. IX alongwith the P.M. reports vide Exts. 21 & 22. Seeking opinion from her, as to whether, the injuries found on the body of the deceased persons as per P.M. report vide Exts.21 &22 are possible by the said weapon vide M.O. IX and whether the said injuries can cause death of a person in normal course of life. Thereafter, he (I.O.) received the query report of the doctor vide Ext. 28/2. He also made prayer for recording of the statements some of the material witnesses U/s.164 of the Cr.P.C. and accordingly their statements U/s.164 of the Cr.P.C.were recorded by the learned Magistrate. Then he (I.O.) seized the documents of the seized Hero Honda Motor cycle from the daughter of the deceased i.e. Bhanu Priya Sethy through seizure list vide Ext.26 and then he

(I.O.) released the said motor cycle alongwith its documents in the zima of Bhanu Priya Sethy by executing zimanama vide Ext.1. Thereafter, as per the order of the Court i.e. learned SDJM, Bhubaneswar, he (I.O.) despatched the seized articles vide M.O.I to XV alongwith other articles having 28 numbers of items related to the case to SFSL, Rasulgarh, Bhubaneswar through copy of the forwarding report vide Ext.27 for Chemical Examination and report. Then after completing investigation, he(I.O.P.R.Satapathy) submitted charge sheet against these two accused persons alongwith their co-accused Bhagaban Sahu on dated 17.3.2010 U/s.302/120B/201 r/w. Section 34 of the I.P.C.

9. While the case against all the above three accused persons before the Court of Learned S.D.J.M., Bhubaneswar was at the stage of commitment, the co-accused of these two accused persons i.e. Bhagaban Sahu absconded by jumping his bail. For which, the case against the said accused B.Sahu was split up from these accused persons vide order dated 3.5.2010 passed by the learned SDJM, Bhubaneswar for separate trial and accordingly after split up of the case of the accused Bhagaban Sahu from these accused persons for separate trial, the case against these two accused persons was committed to the Court of Sessions for trial.

Accordingly, after commitment, these two accused persons i.e. Sarada and Lokanath are facing this sessions trial having been

charged with the offences U/s.302/120B/201 r/w. Section 34 of the I.P.C.

10. The plea and stand of these two accused persons are separate and different.

When the accused Lokanath Sahu has taken the plea of complete denial and his false implication to the alleged incident, the accused Litu @ Sarada Prasana Sethy (son of the deceased Abhaya and Susama) has taken the plea of denial alongwith an additional plea i.e. the plea of alibi by stating the same specifically in his statement U/s.313 of the Cr.P.C. that, on the alleged date of incident morning after leaving his sister for college, he had moved Jharsuguda to see scarp business and was absent from the house since morning, but he has been implicated into this case falsely;

11. In order to substantiate the aforesaid charges U/s.302/120B/201 r/w. Section 34 of the I.P.C. against the accused persons, prosecution has examined altogether twenty numbers of witnesses, but the defence has examined none on its behalf.

12. Out of the twenty witnesses of the prosecution P.W.20 is the informant namely Somya Ranjan Sethy, who is the nephew of the deceased Abhaya and Susama. P.Ws. 1 & 2 are the daughter and brother of the said deceased Abhaya and Susama. P.Ws.20 and 2 are the witnesses to the inquest reports vide Ext. 2 & 3. P.Ws. 6 to 11, 17

and 18 are the witnesses to the seizure lists. P.Ws. 3, 4, 5, 12 and 14 are the independent witnesses. P.Ws. 9, 13, 15 and 19 are the official witnesses. Out of them P.W.9 is a constable. P.W.15 is the doctor, who had conducted P.M. examination over the dead bodies of the deceased Abhaya and Susama and had prepared the P.M. reports and query reports vide Exts. 21, 22 and 28/2 respectively. P.W.13 is the first Investigating Officer of the case who is the S.I. of Khandagiri P.S. P.W.19 is the last investigating Officer i.e. IIC of Khandagiri P.S. who has submitted charge sheet against the accused persons after completing investigation.

13. Basing upon the aforesaid story of the prosecution with alleged criminal charges U/s.302/120-B/201 r/w. Sec.34 of the I.P.C. against the accused persons and the plea of the defence, the following points are required to be determined for just decision of the case and the said points are ;

- (i) Whether the nature of death suffered by deceased Abhaya Kumar Sethi and Susama Sethi is homicidal?
- (ii) Whether the accused persons are the authors of the injuries found on the body of deceased Abhaya Kumar Sethi and his wife Susama Sethi as per P.M. reports vide Exts.21 and 22 ?
- (iii) Whether the accused persons have committed murder of Abhaya Kumar Sethi and Susama Sethi infurtherance of common intention of both ?

- (iv) Whether there was criminal conspiracy between the accused Sarada & Lokanath to commit murder of Abhaya and Susama ?
- (v) Whether the accused persons had caused any act for disappearance of evidence after committing murder of Abhaya Kumar Sethi and Susama Sethi in furtherance of common intention of both in order to screen them from legal punishment?

In order to have a better appreciation and so also for just decision of the case, the above five points fixed for determination are required to be discussed and analysed serially and chronologically one after another by taking into account the materials and evidence available in the record.

14. So far the first point i.e. whether the nature of death suffered by deceased Abhya Kumar Sethi and Susama Sethi homicidal is concerned;

It is the definite and specific case of the prosecution that, the death of deceased abhaya Kumar Sethi and his wife Susama Sethi on dtd.20.11.2009 inside their rented house at Sampur under Khandagiri Police Station is neither natural nor accidental or suicidal, but, the same is the outcome of the injuries caused through assault by hard and blunt object, which is homicidal in nature.

The doctor i.e. P.W.15, who has conducted postmortem examination over the dead bodies of deceased Abhaya and his wife Susma Sethi on police requisition has specifically deposed in her

examination in chief by referring the P.M. reports and query report vide Ext.s21,22 and 28/2 that, they both(Abhaya and Susama) had sustained multiple antimortem injuries including on their vital parts of their bodies i.e. on their respective heads and all the injuries were antemortem in nature. The cause of their respective deaths was neurogenic shock due to head injury. The said injuries, which resulted the death of the deceased Abhaya and Susama were caused through repeated blows by hard and blunt object like iron rod vide M.O.IX.

The above evidence of the doctor(P.W.15) made in her examination in chief is clearly and unambiguously going to show that, the death of deceased Abhaya and Susama is the outcome of the injuries caused through repeated blows by hard and blunt object like M.O.IX(Iron rod), which is purely homicidal in nature.

15. During cross-examination to the said doctor(P.W.15) on behalf of the Defence, nothing substantial has been elicited from her mouth to discredit her above evidence made in her examination-in-chief regarding the homicidal nature of death of the deceased Abhaya and Susama and to establish that, their death was otherwise than homicidal. Accordingly the nature of death of the deceased Abhaya and Susama stated above by the doctor(P.W.15) in her examination in chief has remained un-assailed.

That apart, the Defence has not taken any plea disputing the case of the prosecution regarding the homicidal nature of death of deceased Abhaya and Susama. Rather the defence has admitted the same by suggesting P.W.1(daughter of the deceased) during cross examination that, her parents i.e. Abhaya and Susama were killed by some unknown outsiders other than accused persons, to which she(P.W.1) has denied. Accordingly the story of the prosecution regarding homicidal nature of death of the deceased Abhaya and Susama has otherwisely been admitted by the Defence.

Therefore the above unassailed testimonies of the doctor(P.W.15) made in her examination in chief coupled with indirect admission of the defence to the homicidal nature of death of deceased Abahaya and Susama stated on behalf of the prosecution is ultimately bringing a safe conclusion that, the death of deceased Abhaya Kumar Sethi and his wife Susama Sethi is the outcome of the injuries caused through repeated blows by hard and blunt object like M.O.IX (iron rod), which is purely homicidal in nature.

16. So far the second point i.e. whether the accused persons are the authors of the injuries found on the body of the deceased Abhaya Kumar Sethi and his wife Susama Sethi as per P.M. report vide Ext.21 & 22 is concerned ;

Here in this case at hand, there is no direct evidence on behalf of the prosecution for connecting the accused persons with the

injuries found on the body of the deceased Abhaya and Susama. But the entire case of the prosecution against the accused persons is hinging upon circumstantial evidence only.

17. So, in order to connect the accused persons with the injuries of the deceased Abhaya and Susama as per P.M. reports vide Ext.21 & 22, prosecution has relied upon the following circumstances and the said circumstances are:-

- (a) Presence of accused Sarada in the spot house on dtd.20.11.2009 during the period of killing of his parents in that house and there was no scope for any other else than the accused Sarada to know about the cause of death of his parents.
- (b) The cause of injuries of the deceased Abhaya and Susama, which resulted their death is the outcome of repeated blows through hard and blunt weapon like M.O.IX(iron rod).
- (c) M.O.IX (iron rod) is nothing, but the same was used in causing the death of the deceased Abhaya and Susama as a weapon of offence.
- (d) The said M.O.IX was purchased by the accused Sarada prior to the incident.
- (e) Extra judicial confession of the accused Sarada before the witnesses connecting him with the injuries of his parents, which resulted their death.
- (f) Absence of any explanation on behalf of the accused Sarada regarding his non attending the funeral of his deceased parents even he being their only son.

- (g) Absconding of the accused Sarada from Bhubaneswar on the very day some hours after the incident and his presence at Chennai and Pondichery on dtd.24.11.2009.
- (h) Seizure of finger gold ring vide M.O.XVI of the deceased Abhaya(which was worn by him prior to his death) from Ajib Mohammad(P.W.18) at Pondicherry.
- (i) quarreling of the accused Sarada with his parents prior to their death and causing disturbance in the house demanding money from them and compelling them to accord permission for his love marriage.
- (j) Self inculpatory statement of accused Sarada before the witnesses implicating his co-accused Lokanath with him into the incident.

18. Now it will be seen, how far the prosecution has become able to prove the above ten circumstances relied upon against the accused persons through legally admissible evidence and how far the defence has become able to show materials from the record to probabalise his plea to nullify the circumstances relied upon by the prosecution.

19. So far the first circumstance relied upon by the prosecution i.e. presence of accused Sarada in the spot house on dtd.20.11.2009 during the period of killing of his parents in that house and there was no scope for any other else than the accused Sarada to know about the cause of death of his parents Abhaya and Susama is concerned;

It is the undisputed case of the parties that, the death of deceased Abhaya and Susama was occurred in their house on dtd.20.11.2009 being the outcome of injuries through assault. It has

already been held as per the discussions made in forgoing point No.1 that, the said injuries were caused through assault by a hard and blunt object like M.O.IX(iron rod).

But the defence has taken the specific plea i.e. plea of alibi to keep the accused Sarada out from the injuries of his deceased parents, which resulted their death by stating through his statement U/s.313 Cr.P.C that, on the date of incident i.e. on 20.11.2009, since morning, accused Sarada was absent from Bhubaneswar, because he(accused Sarada) had moved to Jharsuguda to see scrap business.

According to the aforesaid plea of the Defence on behalf of the accused Sarada, he(accused) Sarada was at Bhubaneswar on the date of incident only in the morning hour till he leaving her sister Bhanupriya for college and thereafter he left for Jharsuguda. So, he(accused Sarada) was not present at Bhubaneswar since morning on dtd.20.11.2009, for which, the question of causing injuries on his parents by remaining present in the spot house during the alleged time does not arise at all.

20. Plea of Alibi means, the presence of the accused else where, but not at the spot as stated on behalf of the prosecution.

21. The law on the aspect of the plea of Alibi on behalf of any accused like this case at hand is well clarified that, the burden to prove the plea i.e. plea of Alibi lies heavily on the person making it

and the said plea of Alibi has to be established positively by the defence.

The above propositions of law finds support from the ratio of following decisions :-

2012(II) Crimes (S.C.)254 Sandeep (V) State of U.P:-
CRL TRL-Appreciation of Evidence-Evidence Act-
1872-Sec.3 & 106- Burden to prove Alibi lies heavily
on the person making it.

2013(3) Crimes (SC)1 Sheo Shankar Sing(V) State of
U.P. :- CRL TRL-Plea of Alibi has to be positively
established.

In view of the principles of law enunciated in the ratio of the above decisions of Apex Court, heavy burden lies on the accused Sarada to prove the plea of Alibi regarding his absence from the spot house and so also from Bhubaneswar during the period of alleged incident and thereafter on that day by moving Jharsuguda.

But, two kin relatives of the accused Sarada i.e. his cousin brother Soumya Ranjan Sethi(P.W.20) and his uncle Parsuram Sethi(P.W.2) have stated in their respective evidence regarding the presence of the accused Sarada at Bhubaneswar even after the incident on that day.

Because P.W.20 has specifically deposed in his examination in chief by stating that, the spot house was taken on rent by his deceased uncle Abhaya Kumar Sethi, in which he(Abhaya), his wife Susama, his son(accused Sarada), his daughter (liza @ Bhanupriya, P.W.2) and he himself(P.W.20) were staying and he(P.W.20) was working in the fabrication shop of the deceased Abhaya since last two and half years from the date of incident. On the date of incident, while he was present along with deceased Abhaya in his fabrication shop, Abhaya went to the house(spot house) at about 2 P.M. for lunch and did not return. At about 4 P.M., accused Litu(Sarada) came to the shop and told him that his father and mother i.e. Abhaya and Susama have gone to Keonjhar and if he(P.W.20) requires any money, then he may ask him for the same and thereafter he(accused Sarada) went away. Half an hour thereafter, again he(accused Sarada) came and told that, there is nobody in the house and requested to accompany him. Accordingly he(P.W.20) accompanied him(accused Sarada) in a motor cycle, but on the way, he (accused Sarada) dropped him(P.W.20) at SUM Hospital Chhak by assuring to come back within 15 minutes and did not return.

P.W.2 has deposed in his examination-in-chief by stating that, on dtd.20.11.2009 at about 3 to 4 P.M., accused Sarada had met him at his working place near Sum Hospital, but he(accused Sarada) went away on the pretext of going to the police Station.

He(P.W.2) has also deposed in his examination-in-chief that, Soumya(P.W.20) was staying with his elder brother(deceased Abhaya) and was helping him in the Fabrication work.

P.W.1(daughter of deceased Abhaya and Susama) has deposed in her examination in chief that, on dtd.20.11.2009 in the morning she went to her college. Accused Sarada took her up to Fire Station Chhak by a motor cycle and left her there. From that place, she(P.W.1) went to her college by college bus.

According to the aforesaid plea of the accused Sarada, he was present at Bhubaneswar on dtd.20.11.2009 during morning hour only till leaving her sister(P.W.1) for college.

But, the aforesaid evidence made by the P.Ws.1, 20 and 2 in their respective examination-in-chief regarding the joint staying of the deceased Abhaya, Susama, accused Sarada, liza @ Bhanupriya(P.W.1) and P.W.20 in the spot house, absence of P.Ws.1 and 20 from the said house since the morning till 4 P.M. on the date of incident, coming of Abhay Sethi to the spot house from his shop for lunch leaving P.W.20 there at the shop, the non return of Abhaya thereafter to the shop from the spot house and meeting of the accused Sarada with P.W.20 on that day i.e. on 20.11.2009 at the fabrication shop of the deceased and also to P.W.2 at his working place near Sum Hospital within 2 to 4 P.M. and then his moving somewhere has not been discredited in any manner through cross-

examination by the defence. So the above evidence of the P.W.s.1, 2 and 20 is establishing the presence of the accused Sarada on dtd.20.11.2009 at Bhubaneswar upto 4 P.M. including his presence in the spot house during the period of incident. Which is ultimately falsifying the plea of Alibi taken on behalf of the accused Sarada regarding his moving to Jharsuguda during that time by remaining absent from Bhubaneswar. Because there is no material in the record to probalilise such plea of the defence.

On that score, the point of law has been highlighted in the ratio of the following decision:-

2005(II)OLR(S.C.)84 Nasir Sikandar Saikh(v) State of Moharashtra:- Evidence Act,1872-CRLTRL-Burden of proof-Defence plea-Preponderance of probability-There must be some material on record to probalilise the plea of the defence.

For the reasons stated above, the first circumstance relied upon by the prosecution has been duly established against the accused Sarada.

22. So far the second circumstance relied upon by the prosecution i.e. the cause of injuries of the deceased Abhaya and Susama which resulted their death is the outcome of repeated blows through hard and blunt weapon like M.O.IX(iron rod) is concerned ;

It has already been held in the discussions made in the forgoing point No.1 that, the cause of injuries of the deceased Abhaya and Susama as per P.M. report vide Exts.21 and 22 is for no other reason but only due to the repeated blows through hard and blunt object/weapon like M.O.IX(iron rod), which has resulted their death. So, the above second circumstance relied upon by the prosecution is held to be duly established.

23. So far the third circumstance relied upon by the prosecution i.e. M.O.IX(iron rod) is nothing, but the same was used in causing the death of deceased Abhaya and Susama as weapon of offence is concerned:

It is forthcoming from the oral evidence of the P.Ws-11, 13 & 19 that, after post mortem examination of the deceased Abhaya and Susama, their blood stained wearing apparels were seized through seizure list vide Ext.10 i.e. M.O. I to VIII including the wearing saree, saya and bluse of deceased Susama vide M.Os.VI, VII and VIII. On conjoint reading of the contents of the documents vide Exts.17,18, 27 and 29 including chemical and serological examination report vide Ext.29, it is going to show that, the seized Saree, Saya, blouse of the deceased Susama, those were worn by her at the time of incident had contained human blood of B group, which is tallying and matching with the same B group of blood of human origin found on the weapon i.e. iron rod vide M.O.IX and also with

the same B group of blood found in the scrapping from the wall and ceiling of the spot room.

Due to the above B group of human blood found from the wearing apparels of the deceased Susama and the spot of occurrence matching with blood found on the weapon vide M.O.IX(iron rod), it can be held that the said weapon i.e. iron rod vide M.O.IX was used in causing the injuries of deceased Abhaya and Susama, which resulted their death.

The conclusion drawn above for the reasons stated above finds support from the ratio of the following decision:-

2010(4)Crimes(S.C.)325 Ramesh Bhai Mohan, Bhai koli and others (v) State of Gujrat:-CRLTRC-Blood of human found on the weapon-It would be an incriminating circumstance, if blood on the weapon was found to be of human origin.

24. So far the fourth circumstance relied upon by the prosecution i.e. the said M.O.IX iron rod was purchased by accused Sarada prior to the incident is concerned :

P.W.10 has deposed specifically in Para-4 of his examination in chief that, this is the iron rod, which was kept by the accused Sarada in his shop, marked as M.O.IX.

The above evidence of P.W.10 made specifically in his examination in chief stating that, M.O.IX was kept by accused

Sarada in his shop(Saloon) and on the next or two days thereafter, accused Sarada had brought that iron rod from his shop has remained totally unassailed. Because there is no cross examination at all to the said P.W.10 on behalf of the defence disputing the above statement of P.W.10.

The above un-assailed testimonies of P.W.10 is bound to be relied upon by the court in favour of prosecution and against the accused as per the ratio of the following decisions:-

1983 Cr.C.J.(H.P.)1694-Para-26 State of Himachal Pradesh(v)Thakur Dass:- Evidence Act-1872-Sec.137:- Statement of fact made by a witness-Not challenged in cross examination-Fact in question must be held to be not disputed.

2000(II) C.C.R.(S.C.)113 State of Karnataka (v) Manjanna(Para-14):- CRLTRL-Appreciation of evidence-Court can not ignore the unshaken or unassailed evidence of the witnesses.

(2005)30 O.C.R.(S.C.)294 Saikou Jabbi(v) State of Maharashtra:- CRLTRL- Appreciation of evidence-Failure to cross examine to point out falsity of fact-Facts held to be proved.

AIR1992 (Punjab) 252 Evidence Act.1872-Sec.137:- If a party fails to put questions to opponents witnesses so much of this

case as concerns him, presumption is that, the account of the witness has been accepted.

Therefore, the above undisputed evidence of P.W.10 is going to establish that, M.O.IX was purchased by the accused Sarada prior to the incident.

25. So far the fifth circumstance relied upon by the prosecution regarding the extrajudicial confession of the accused Sarada before the witnesses connecting him with the injuries of his parents, which resulted their death is concerned;

Here in this case, altogether eight number of witnesses i.e. P.W.s,2,3,6,7,12,13,14 and 16 have stated in their respective evidence about the confession of guilt by the accused Sarada before them corroborating the respective previous statements of P.Ws.2, 12 and 16 U/s.164 Cr.P.C. before the judicial authority vide Exts.5,14 and 23 regarding the connection of that accused Sarada with the injuries and death of his father and mother i.e. Abhaya and Susama.

Out of the aforesaid eight witnesses, P.W.2 is related to both i.e. accused Sarada as well as deceased Abhaya. Because, P.W.2 is the younger brother of deceased Abhaya and uncle of accused Sarada.

The propositions of law on that score has already been settled that, when a witness is related to both i.e. deceased and accused, his

evidence is not to be thrown out, unless, there is proof that, the witness had caused to falsely implicate the accused.

In this case, there is no material on behalf of the defence either throw cross examination to the witnesses or otherwise to show about the cause and reason of their implication against the accused Sarada connecting him with the injuries and death of his parents. So, the evidence of the aforesaid witnesses including the evidence of P.W.2, who is the kin relative of accused Sarada has become acceptable against him(accused Sarada).

The propositions of law regarding the acceptability of the evidence of above witnesses finds support from the ratio of the following decisions :

(2013) 55 OCR(S.C.)51 Somraj @ Soma(v) State of H.P.:-
CRLTRL-Witnesses are related to both i.e. deceased as also to
accused-their evidence acceptable.

(1995)9OCR Page239 Subodh Behera and two others(v)
State:- CRLTRL- Witnesses related to both deceased and
accused-Their evidence is not to be thrown, unless there is
proof that, the witnesses caused to falsely implicate the
accused.

For the reasons stated above, the fifth circumstance relied upon on behalf of the prosecution is held to be duly proved against the accused Sarada.

26. So far the sixth circumstance relied upon on behalf of the prosecution i.e. the absence of any explanation on behalf of the accused Sarada regarding his non attending the funeral of his deceased parents even he being their only son is concerned ;

There is no explanation at all on behalf of the accused Sarada regarding his non attending the funeral of his parents, though he is their only son.

The above conduct of the accused Sarada regarding his non attending the funeral of his parents is ultimately showing a circumstance to implicate him with the alleged incident.

So, the above circumstance relied upon by the prosecution is also proved against accused Sarada.

27. So far the 7th circumstances relied upon on behalf of the prosecution against the accused Sarada i.e. absconding of the accused Sarada from Bhubaneswar on the very day some hours after the incident and his presence at Chennai and Pondicherry on dated 24.11.2009 is concerned;

As per the discussions made in the foregoing circumstance No.1 relied upon by the prosecution it has already been held that, the

accused Sarada was present at Bhubaneswar on the date of incident i.e. on 20.11.2009 till 4 P.M. and thereafter he had gone somewhere. The oral evidence of P.Ws.11,13,14,16,17,18 and 19 having ample corroboration with each other coupled with the documents vide Exts. 9 to 9/11 are going to show that, after the homicidal nature of death of the parents of accused Sarada on 20.11.2009, he had moved to Pondicheri and had stayed there.

The above conduct of the accused Sarada i.e. his moving to Pondicherry after the homicidal nature of death of his parents is admissible U/s.8 of the Indian Evidence Act, which is ultimately going to show that, he (accused) sarada had absconded there. On that score, the points of law has been highlighted in the following decisions.

(2011)50 OCR -181 Balaram Dandsena (v) State of Orissa:- Evidence Act 1872-Sec.8- Absconding-Accused absconded soon after the occurrence and could be apprehended by police after 17 days after repeated search in another village-Held, this is a strong circumstance against the accused.

The above conduct of the accused Sarada i.e.his absconding since 4 P.M. on dtd.20.11.2009, his moving to Pondicherry, his arrest by the police on repeated search here and there during the time of his return from Balasore on dtd.02.11.2009 i.e. 13 days after the incident is ultimately proving the above circumstance against him(accused

Sarada) showing his absconding for his involvement with the alleged incident.

28. So far the 8th circumstance relied upon by the prosecution i.e. seizure of finger gold ring vide M.O.XVI of the deceased Abhaya (which was worn by him prior to his death) from Ajib Mahammad (P.W.18) at Pondicherry is concerned;

It is forthcoming from the well corroborated testimonies of P.Ws.13,17,18,19,2 and 11 coupled with the documents vide Exts. 20,6 and 1 that M.O.XVI (gold finger ring) belongs to deceased Abhaya Ku. Sethy. The same was worn by him on dated 20.11.2009 prior to his death on that day. But the same was sold by accused Sarada to P.W.18 on dated 24.11.2009 at Pondicherry, which was seized by the I.O. from him (P.W.18) on dated 26.11.2009 and after seizure, the same has released in zima of P.W.1.

The above circumstances are going to show about the taking of the gold finger ring of the deceased Abhaya Sethy by accused Sarada on dated 20.11.2009 after his death in his house and selling the same to P.W.18 at Pondicherry on dated 24.11.2009, which is also bringing the nexus of accused Sarada with the injuires of his deceased parents. So like other circumstances, this circumstance relied upon by the prosecution is also proved against the accused Sarada.

29. So far the 9th circumstance relied upon by the prosecution against the accused persons i.e. invariable quarreling of the accused Sarada with his parents prior to their death and causing disturbance in the house demanding money from them and compelling them (parents) to accord permission for his love marriage is concerned;

Two kin relatives of the accused Sarada i.e. P.Ws. 1 and 20 including his full blood sister i.e. P.W.1 have stated about the strained relationship of the accused Sarada with his deceased parents for the aforesaid reasons. So their evidence i.e. the evidence of P.Ws. 1 and 20 in this regard against the accused Sarada cannot be disbelieved. Because no reason has been shown on behalf of the defence about their above statements against accused Sarada. So the above circumstance i.e. the strained relationship of the accused Sarada with his parents for non-fulfillment of his demands is pointing towards the motive of accused Sarada in committing the crime.

Therefore, the above circumstance relied upon by the prosecution is duly established against the accused Sarada.

30. So far the last and tenth circumstance relied upon by the prosecution i.e. the self inculpatory statement of the accused Sarada before the witnesses implicating his co-accused Lokanath with him into the incident is concerned;

Prosecution has relied upon this circumstance, in order to connect accused Lokanath Sahu with accused Sarada to the alleged incident basing upon the self inculpatory statement of accused Sarada.

In this regard, prosecution has relied upon the evidence of P.Ws. 19, 6 & 7 to connect the accused Lokanath with accused Sarada into the incident basing upon the confessional statement of accused Sarada recorded by P.W.19 vide Ext.8.

The said I.O. (P.W.19) has deposed in his examination in chief at para 6 and 9 that during interrogation to the accused Sarada on dated 2.12.2009, he (accused Sarada) confessed his guilt before him implicating him alongwith his co-accused Lokanath Sahu with the incident of this case and he (P.W.19) recorded the confessional statement of accused Sarada vide Ext.8.

It appears from the Ext.8 that P.Ws. 6 and 7 are the witnesses to the same. But it is strange enough that, neither P.W.6 nor P.W.7 has stated anything in their evidence that, the accused Sarada disclosed before them naming accused Lokanath Sahoo and involving him(Loknath) with him(Sarada) in the alleged incident. So due to non-corroboration by the P.Ws. 6 and 7 to the statement of I.O.(P.W.19) regarding the involvement of accused Lokanath with accused Sarada in the incident, the circumstance relied upon by the

prosecution for connecting accused Lokanath has been failed to be established against the said accused Lokanth Sahu only.

31. Due to the proving of the above circumstances by the prosecution against the accused Sarada Prasana Sethy, it is going to establish the following factors i.e.

- i. accused Sarada was present in the spot house at the time of killing his parents.
- ii. the iron rod vide M.O.IX was used as a weapon of offence in causing the injuries of his deceased parents.
- iii. the weapon was purchased by the accused Sarada prior to the death of his parents.
- iv. the accused Sarada had absconded since 4 P.M. on dated 20.11.2009.
- v. the finger ring of deceased Abhaya (which was worn by him before he was killed) vide M.O.XVI was sold by the accused Sarada on dated 24.11.2009 at Pondicherry.
- vi. the accused Sarada had made extra judicial confession voluntarily before the witnesses including his own uncle(P.W.2) connecting him with the injuries and death of his parents.
- vii. The relationship of the accused sarada was strained with his deceased parents prior to their death for non-fulfillment his demands.

32. In spite of proving of the above circumstances against the accused Sarada by the prosecution, no explanation has been furnished by the said accused Sarada Prasanna Sethi either in his

statement U/s.313 or otherwise to discharge the burden which was layed on him U/s.106 of the Indian Evidence Act, 1872 as to how and under what circumstances the injuries were caused on his parents, which resulted their death. Because the said matter regarding the cause of injuries on his parents, resulted their death was within the special knowledge of accused Sarada only.

In addition to the failure of the accused Sarada to discharge his above burden, which was layed upon him U/s.106 of the Indian Evidence Act, the plea of Alibi taken by him (Sarada) in his statement U/s.313 Cr.P.C. has been found to be false.

The falsity of defence plea i.e. plea of Alibi taken by the accused Sarada and his failure to explain the proved circumstances against him is ultimately connecting the accused Sarada with the injuries found on the body of deceased Abhaya Kumar Sethi and Susama Sethi as per P.M. reports vide Exts. 21 & 22.

The above findings regarding connection of accused Sarada firmly with the injuries of his parents finds support from the ratio of the following decisions:-

2012(4)Crimes (SC) III Dr.Sunil Clifford Daniel (Vrs) State of Punjab.

CRL-TRL-False answer of the accused U/s.313 Cr.P.C.

When attention of the accused is drawn to such circumstances that inculcate him in relation

to the commission of the crime and he fails to offer an appropriate explanation or give a false answer with respect to the same, the said act may be counted as proving a missing link for completing the chain of circumstances.

2013 (4) Crimes (SC) page 326 Dharmendra Singh @ Vijaya Singh Vrs. State:-

(2012) 12 SCC 260 Volaknanda Benin vrs. State of A.P.:-

CRL TRL-Cr.P.C.-Sec.313-Accused can not opt to remain silent in his explanation U/s.313 Cr.P.C.-He is duty bound to give adequate and reasonable explanation as regards events that had taken place- In absence of any reasonable explanation on the part of the accused, cannot give rise to any other explanation, except that, it is the accused alone, who has committed the crime.

(2013) 56 O.C.R.(S.C.)966 & 2013(4) Crimes (S.C.) 131Sushil Sharma(Vrs.) State of N.C.T. Of Delhi:-

CRL TRL- Effect of false defence plea of Alibi- The evidence on record clearly establishes that, the appellant has not been able to prove the defence of Alibi- Adverse inference needs to be drawn from this fact- False defence plea of Alibi indeed forms a vital link in the chain of circumstances.

(2006) 12 SCC-254 State of Rajasthan V. Kashiram:-

Evidence Act, 1872 Sec.106 - If the accused fails to offer an explanation on the basis of facts within his special knowledge,

he fails to discharge the burden cast upon him by section 106 of the Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharging of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him.

(2012) 52 O.C.R. (SC) 466 -Munna Kumar Upadhyaya (V)
State of A.P. through P.P.:-

Cr.P.C. Sec.313- If accused gave incorrect or false answers during the course of statement U/s.313 Cr.P.C., the court can draw an adverse inference against him.

2012(II) Crimes (S.C.)302 Rajesh Bhatnagar Vrs. State of Uttarakhand:-

CRL TRL-False plea by accused- would lead to adverse inference.

2011(4)Crimes (SC) 259 -Prithipal Singh Vrs. State of Punjab and another.

Evidence Act 1872. Sec.3 & 11- Where plea of Alibi taken by the accused is found false, it points towards the guilt of the accused.

33. When this case against the accused persons rests upon circumstantial evidence and the circumstances relied upon by the prosecution as stated above have been cogently and firmly

established against accused Sarada Prasanna Sethi only and the said circumstances are unerringly bringing the connection of accused Sarada with the injuries of his parents as per P.M. reports vide Exts. 21 and 22 and the cumulative account of the circumstances are forming a complete chain, from which, there is no escape from the conclusion within all human probabilities that, the injuries the person of Abhaya Kumar Sethi and Susama Sethi as per P.M. reports vide Exts. 21 & 22 have been caused by accused Sarada Prasanna Sethi by giving repeated blows through iron rod (M.O.IX) and no other else. So it is held that, out of two accused persons, accused Sarada Prasanna Sethi is the author of the injuries found on the body of his parents as per P.M. report vide Exts. 21 and 22.

So far the 3rd point i.e. whether the accused persons have committed murder of abhaya Kumar Sethi and Susama Sethi in furtherance of common intention of both is concerned;

When as per the discussions made above in the forgoing point nos. 1 and 2, it has already been held that, the homicidal nature of death suffered by the deceased Abhaya Kumar Sethi and Susama Sethi is the out come of injuries caused by the accused Sarada Prasanna Sethi through assault by weapon vide M.O.IX and the inculpatory statement made by the accused Sarada Prasanna Sethi against the accused Lokanath to connect him with the injuries of his deceased parents has been failed to be established against accused

Lokanath, then at this juncture, it can be held that, out of the two accused persons, accused Sarada only has caused the above homicidal nature of death of his father and mother. That apart, it also can further be held that, the above homicidal nature of death made by accused Sarada Prasanna Sethi in causing the death of his father and mother (Abhaya and Susama) is clearly culpable homicide.

34. Now it will be seen, whether the above culpable homicide made by the accused Sarada Prasanna Sethi in causing the death of his father and mother is murder or the same is culpable homicide not amounting to murder.

In the scheme of the penal code, culpable homicide is genus and murder is specie. All murders are culpable homicide but not vice versa. The culpable homicide becomes murder, when the case falls within any of the clauses out of four of Sec.300 of the I.P.C. But, the culpable homicide becomes not amounting to murder, when the case falls within any of the exceptions out of five of that section 300 of the I.P.C.

Therefore, it is to be seen, from the above factual scenario of this case at hand, whether the above culpable homicide, made by the accused Sarada in causing the death of his parents Abhaya Ku. Sethi and Susama Sethi is murder by coming within the four clauses of section 300 of I.P.C. Punishable U/s.302 of the I.P.C. or the same is

not amounting to murder by coming within any of the exceptions of that section 300 of I.P.C.

When it is established from the circumstances stated above that, the accused Sarada Prasanna Sethi being the only son of the deceased Abhaya and Susama has killed them by assaulting through the weapon i.e. iron rod vide M.O.IX in his house after arranging the said weapon prior to its commission only for killing them, then, the above circumstances in causing the instantaneous death of Abhaya and Susama at the spot by accused Sarada through repeated blows is going to establish that, he (accused) Sarada had assaulted his parents at the spot for no other reason, but, he had the only intention of causing their death.

Therefore, the above culpable homicides made by the accused Sarada Prasanna Sethi in causing the death of his father and mother Abhaya Kumar Sethi and Susama Sethi is purely murder defined U/s.300 of the I.P.C. punishable U/s.302 of the I.P.C. But, the same is not coming within the purview of any of the exceptions out of five of the said section 300 of the I.P.C. for bringing the same within the category of culpable homicide not amounting to murder.

35. So far the fourth point i.e. whether there was criminal conspiracy between the accused Sarada and Lokanath to commit murder of Abhaya and Susama is concerned ;

This point relates to the offence U/s.120B of the I.P.C. Section 120 B of the I.P.C. provides punishment of criminal conspiracy. The offence i.e. criminal conspiracy has been defined in Section 120A of the I.P.C.

There are two essentials of section 120A of the I.P.C. for constituting the same. First essential thereof is, there should be an agreement between the accused persons, who are alleged to conspire.

Second essential thereof is that, the said agreement between the accused persons either for doing an illegal act or for doing by illegal means an act which may not itself be illegal.

It has been alleged on behalf of the prosecution that, there was criminal conspiracy by the accused persons in committing the murder of Abhaya and Susama.

It is the well settled propositions of law that, offence i.e. criminal conspiracy defined in Sec.120-A is a substantive offence. A mere agreement to commit an offence makes it punishable even if an offence does not take place pursuant to such illegal agreement. Meeting of minds of two or more persons (conspirators) is sine qua non of criminal conspiracy. However, it may not be possible to prove agreement between them by direct evidence. Nevertheless, existence of conspiracy and its objective can be inferred from the

surrounding circumstances and conduct of the accused persons. But incriminating circumstances, must form a chain of events, from which, conclusions about involvement of the accused persons can be drawn.

Here, in this case, as per the discussions made in the forgoing point No.3, it has already been held that, out of the two accused persons, accused Sarada only is the murderer of his parent.

36. The basis of implication on behalf of prosecution to accused Lokanath with accused Sarada in this case through section 120A of the I.P.C. is through extrajudicial self inculpatory confessional statement of the accused Sarada as per the evidence of P.W.19, 6 and 7. But as per the discussions made above earlier, the said circumstance alleged by the prosecution has been failed to be established against the accused Lokanath Sahoo.

It is very fundamental in law that, the evidence for making out an offence U/s.120B of the I.P.C. is to be proved by the prosecution through compliance of the requirements of Section 10 of the Evidence Act 1872.

As the only incriminating circumstance alleged by the prosecution as stated above has been failed to be proved against the accused Lokanath Sahu, then at this juncture, there is no other alternative, but to hold that, the offence U/s.120A of the I.P.C. i.e.

the offence criminal conspiracy has been failed to be established against the accused persons. So the offence U/s.120B of the I.P.C. is not duly proved by the prosecution against the accused persons.

37. So far the 5th and last point i.e. whether the accused persons had caused any act for disappearance of evidence after committing murder of Abhaya Kumar Sethi and Susama Sethi in furtherance of common intention of both in order to screen them from legal punishment is concerned;

This point relates to the offence U/s.201/34 of the I.P.C.

As per the discussions made above earlier, it has already been held that, out of the two accused persons, accused Sarada only has committed the murder of his parent inside their rented house by assaulting through an iron rod vide M.O.-IX by causing injuries through repeated blows.

It is forthcoming from the unassailed testimonies of the P.Ws. 20 & 13 coupled with the document vide Ext.16 and 16/2 that, the drawing room of the spot house was cleaned by water, but some blood was sprinkled on the four walls and ceiling of that room and the weapon i.e. M.O.IX was concealed in bath room. It has already been proved that, the sprinkled blood on the ceiling was the blood of deceased Susama. So, by placing reliance on the above evidence of the P.Ws. 20 & 13 coupled with the documents, vide Exts. 16 and

16/2 having ample corroboration with each other, only a conclusion can be drawn that, no other person, but the accused Sarada had cleaned the drawing room of their house after committing the murder of his parents through the weapon i.e. M.O.IX (iron rod) and no other person, but he (accused persons) had concealed the weapon inside the bath room for no other reason but for causing disappearance of evidence with his deliberate intention to screen him from legal punishment.

38. On analysis of the facts and circumstances of the case as per the discussions and observations made above, an irresistible conclusion is hereby drawn by me that, prosecution has failed to establish all the charges U/s.302/120B/201 r/w. Section 34 of the I.P.C. against the accused Lokanath Sahoo and so also has failed to establish the charge U/s.120B of the I.P.C. against the accused Sarada Prasanna Sethi only. For which the accused Lokanath Sahoo is acquitted as per Section 235(1) of the Cr.P.C. from the said charges U/s. 302/120B/201 r/w.Section 34 of the I.P.C. on the ground of benefit of doubt and the accused Sarada Prasanna Sethi is acquitted from the charge U/s.120B of the I.P.C. So, the accused Lokanath Sahoo is directed to be set at liberty forthwith.

But, whereas, prosecution has become able to establish the charges U/s.302 and 201 of the I.P.C. against the accused Sarada Prasanna Sethi beyond all reasonable doubt. For which, I found him

i.e. accused Sarada Prasanna Sethi guilty with the charges U/s.302 & 201 of the I.P.C. and accordingly, he (accused Sarada Prasanna Sethi) is convicted thereunder i.e. U/s.302 & 201 of the I.P.C. as per Section 235(2) of the Cr.P.C.

Pronounced the judgment in open Court to day on this the 30th day of April, 2014 under my seal and signature.

Dictated & corrected by me

Addl. Sessions Judge, BBSR

Addl. Sessions Judge, BBSR

HEARING ON THE QUESTION OF SENTENCE

Heard the convict Sarada Prasanna Sethi, the learned counsel appearing on his behalf and the learned Additional P.P. for the State on the question of sentence.

The convict and his learned counsel submitted to take lenient view in favour of the convict in awarding sentence by stating that, he (convict) is a young boy at the peak of his youth and there is every chance of his reformation in future and the convict has already repented his misdeeds in the meanwhile.

But on the contrary, the learned Addl.P.P. for the state submitted to award highest punishment against the convict as provided under law for the offence U/s.302 & 201 of the I.P.C. by

contending that the above murder to the parent of the convict is a pre-planned and cold blooded murder by him(convict) and he (convict) had taken steps for causing disappearance of evidence.

By taking into account, the facts and circumstances of the case under which, the offences have been committed by the convict i.e. for his strained relationship with his deceased parent due to non-fulfillment of his demand by them, the age of the convict and without getting any material that, the convict is beyond reformation, I am of the view that, the case does not fall within the category of rarest of the rare cases warranting Capital punishment to the convict for the offence U/s.302 of the I.P.C.

So, in order to meet the ends of justice, the convict (Sarada Prasanna Sethi) is sentenced to undergo imprisonment for life with payment of fine of Rs.20,000/-(Twenty Thousand) only in default to undergo R.I. for six months for the offence U/s.302 of the I.P.C. and to undergo R.I. for three years with payment of fine of Rs.10,000/-(Ten Thousand) only in default to undergo R.I. for three months for the offence U/s. 201 of the I.P.C. with a direction for running of the sentences concurrently as the same were committed in a same transaction subject to set off as per law.

In the event of realisation of fine from the convict, the same shall be paid to the sister of the convict i.e. P.W.1 (Bhanu Priya Sethi) as nominal compensation.

No order as to disposal of the seized articles including M.Os is passed due to the pending of the split up record against the absconded accused Bhagaban Sahu.

Pronounced the judgment in open Court to day on this the 30th day of April, 2014 under my seal and signature.

Dictated & corrected by me

Adl. Sessions Judge, BBSR

Adl. Sessions Judge, BBSR

List of witnesses examined for the prosecution:

P.W.1	Bhanu Priya Sethi
P.W.2.	Parsuram Sethi.
P.W.3.	Sheikh Riazuddin
P.W.4.	Sibaram Barrik
P.W.5.	Raja Ram
P.W.6.	Susanta Kumar Sahu
P.W.7.	Santosh Kumar Behera.
P.W.8.	Sarat Kumar Nayak
P.W.9.	Ramakanta Sahu
P.W.10.	Santosh Kumar Dakua
P.W.11.	Shridhar Sahu
P.W.12.	Sujata Mahanta.
P.W.13.	Bichitrananda Sethi
P.W.14.	Subasis Nayak
P.W.15.	Dr. Puspita Mohanty

P.W.16.	Kalandi Charana Sahu
P.W.17.	R.Purusottam.
P.W.18.	Ajib Mahammad
P.W.19.	Priyaranjan Satapathy
P.W.20.	Soumyaranjan Sethi

List of witnesses examined for the defence:

Nil

List of documents marked on behalf of prosecution:

Ext.1.	Zimanama
Ext.1/1.	Signature of P.W.1.
Ext.2.	Inquest report.
Ext.3.	Inquest report.
Ext.2/1.	Signature of P.W.2.
Ext.3/1.	Signature of P.W.2.
Ext.4.	Zimanama
Ext.4/1.	Signature of P.W.2.
Ext.5.	Statement U/s.164 Cr.P.C.
Ext.5/1.	Signature of P.W.2.
Ext.5/2, 5/3 & 5/4	Signatures of P.W.2
Ext.6.	T.I.Parade report
Ext.6/1.	Signature of P.W.2.
Ext.2/2.	Signature of P.W.6.
Ext.3/2.	Signature of P.W.6.
Ext.7.	Seizure list.
Ext.7/1.	Signature of P.W.6.

Ext.7/2.	Signature of P.W.7.
Ext.8.	Statement of accused recorded by police.
Ext.8/1.	Signature of P.W.6.
Ext.8/2.	Signature of P.W.7.
Ext.9	Seizure list.
Ext.9/1	Signature of P.W.6.
Ext.9/2.	Signature of P.W.7.
Ext.10.	Seizure list.
Ext.10/1.	Signature of P.W.8.
Ext.10/2.	Signature of P.W.9.
Ext.11.	Seizure list.
Ext.11/1.	Signature of P.W.9.
Ext.10/3.	Command Certificate of Sridhara Sahu
Ext.12.	Dead body challan
Ext.12/1.	Signature of P.W.11.
Ext.13.	Dead body challan of Susama Sethi
Ext.13/1.	Signature of P.W.1.
Ext.10/4.	Signature of P.W.1.
Ext.14.	Statement of P.W.12 recorded by JMFC
Ext.14/1.	Signature of P.W.12.
Ext.14/2.	Signature of P.W.12.
Ext.15.	F.I.R.
Ext.15/1.	Signature of P.W.13
Ext.16.	Spot map.
Ext.16/1.	Signature of P.W.13.
Ext.16/2.	Report attached to sketch map
Ext.16/3.	Signature of P.W.13.

Ext.2/3.	Signature of P.W.13.
Ext.3/3.	Signature of P.W.13.
Ext.12/2.	Signature of P.W.13.
Ext.13/2.	Signature of P.W.13.
Ext.17.	Seizure list.
Ext.17/1.	Signature of P.W.13.
Ext.18.	Seizure list
Ext.18/1.	Signature of P.W.13.
Ext.19.	Seizure list.
Ext.19/1.	Signature of P.W.13.
Ext.10/4.	Signature of P.W.13.
Ext.20.	Seizure list.
Ext.20/1.	Signature of P.W.13.
Ext.21.	P.M.report of Abhaya Ku.Sethi
Ext.21/1.	Signature of P.W.15.
Ext.22.	P.M.report of Susama Sethi.
Ext.22/1.	Signature of P.W.15.
Ext.23.	Statement of P.W.16 before Magistrate.
Ext.23/1 to 23/5.	Signatures of P.W.16.
Ext.20/2.	Signature of P.W.17.
Ext.15/2.	Signature of the informant
Ext.15/3.	Formal FIR
Ext.9/3.	Signature of P.W.19.
Ext.9/4.	Signature of accused Litu @ Sarada Sethi
Ext.9/5.	Receipt of little mayfair
Ext.9/6.	Receipt of Khadi Bhawan monthly Rs.579/-
Ext.9/7.	Receipt of Bata India

Ext.9/8.	Bus Ticket
Ext.9/9.	Bus ticket.
Ext.9/10.	Train ticket.
Ext.9/11.	Train ticket.
Ext.9/12.	Coupan of Oriya Nilayam
Ext.7/3.	Signature of P.W.19.
Ext.24.	Seizure list.
Ext.25.	Seizure list.
Ext.24/1.	Signature of P.W.19.
Ext.25/1.	Signature of P.W.19.
Ext.8/3.	Signature of P.W.19.
Ext.8/4.	Signature of accused Sarada Sethi
Ext.11/2.	Signature of P.W.19.
Ext.26.	Seizure list.
Ext.26/1.	Signature of P.W.19.
Ext.27.	Forwarding report by SDJM to SFSL for examination
Ext.27/1.	Signature of P.W.19.
Ext.28.	Query made by I.O.
Ext.28/1.	Signature of P.W.19.
Ext.28/2.	Opinion of Dr. Puspita Mohanty
Ext.2/4.	Signature of P.W.20.
Ext.2/5.	Endorsement against column No.9.
Ext.3/4.	Signature of P.W.20.
Ext.3/5.	Signature of P.W.20.
Ext.6/2.	Signature of P.W.20.
Ext.29.	C.E. Report.

List of documents marked on behalf of defence:

Nil

List of M.Os. on behalf of prosecution:

M.O.I	Pant
M.O.II	Shirt
M.O.III	GanjeeA
M.O.IV	Chadi
M.O.V.	Belt
M.O.VI	Saree
M.O.VII	Saya
M.O.VIII	Blouse
M.O. IX	Iron rod
M.O.X.	Bed sheet
M.O.XI	Mat
M.O.XII	Mat
M.O.XIII	Pillow(blood stained)
M.O.XIV	Pillow(blood stained)
M.O.XV	Check Lungi(blood stained)
M.O.XVI	Gold ring having pink red stone
M.O.XVII	Caraven carry bag.

List of M.O. on behalf of defence:

Nil

Addl. Sessions Judge,

Bhubaneswar.

