

**HIGH COURT OF ORISSA: CUTTACK**

**CRLA No.36 of 2011**

(From the judgment dated 08.07.2010 passed by the learned Adhoc Additional Sessions Judge (Fast Track Court), Balangir at Patnagarh in Sessions Case No.80/33 of 2009)

**Dama Pradhani** ... **Appellant**

Versus

**State of Orissa** ... **Respondent**

**For Appellant** :M/s. B.S. Das, D. Marandi, L.C. Behera  
and S. Sahoo, Advocates

**For Respondent** : Mr. Sk. Zafarulla,  
Additional Standing Counsel

**PRESENT:**

**THE HONOURABLE KUMARI JUSTICE S. PANDA**

**AND**

**HON'BLE SHRI JUSTICE S. K. PANIGRAHI**

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**Date of Hearing – 16.03.2021**      **Date of judgment – 12.04.2021**

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**S. K. Panigrahi, J.**

1.The present appeal has been directed against the judgment of conviction and order of sentence dated 08.07.2010 passed by the learned Adhoc Additional Sessions Judge (Fast Track Court), Balangir at Patnagarh in Sessions Case No.80/33 of 2009, whereby the appellant has been convicted for commission of offences punishable under Sections 302/201 of the I.P.C. and sentenced to undergo imprisonment for life and to pay a

fine of Rs.2,000/-and in default further to undergo R.I. for a period of six months under Section 302 of I.P.C. and to undergo R.I. for two years and to pay a fine of Rs.1,000/-. Upon further default, to undergo R.I. for three months under Section 201 of the I.P.C.

**2.** Shorn of unnecessary details, the substratum of the matter presented before us remain that one Rama Dharua's (informant) niece Ghulikhai @ Nidra Majhi was staying with him after the death of her mother for the last eight years. On 01.12.2008, the family had dinner and retired to bed. Early in the morning, to the utter dismay of the family, they found that their niece was missing. They searched in the village and inquired with their relatives, but failed to trace the whereabouts of their niece. Accordingly, on 02.12.2008 the informant reported the same to the police and an FIR was registered. On the night of 3.12.2008 his son-in-law one Dullabha Majhi who was living with the informant due to the harvesting season, confided him that one Dama Pradhani (appellant) of his village had confessed before him that he had committed the murder of the deceased and concealed the dead body. The informant therefore suspected Dama Pradhani to have murdered the deceased and passed on the information to the Police. Premised

on the above written report of the informant, the I.I.C., Patnagarh P.S. registered the P.S. Case No.239/2008 under Section 302 read with Section 201 of the I.P.C. During the course of investigation, the Investigating Officer proceeded to the village and took the appellant into his custody. While in police custody, the appellant allegedly confessed to have committed the crime by strangulating the deceased and having concealed the dead body in Gadiajore Nala. Upon arrival at the Gadiajore Nala, the body of the deceased was found floating and the same was immediately recovered. Inquest was conducted. The body of the deceased along with a lungi that was found tied around her neck was sent for post mortem examination. The appellant was also sent for medical examination where a sample of his semen was seized. The appellant was then arrested and forwarded to the court. The Investigating Officer also effected seizure of items of clothing of the deceased along with other articles and the lungi. After completion of investigation, charge sheet was submitted against the accused.

**3.** The trial court thereafter framed three issues. Further, to bring home the charges the prosecution examined as many as eighteen witnesses. Succinctly, P.Ws.1, 4, and 5 are the co-villagers and witnesses to the disclosure statement of accused

under Section 27 of the Evidence Act made to the Investigating Officer as well as witnesses to the inquest. P.Ws.2, 3 and 6 are the co-villagers present at the time of recovery of the dead body from the Gadiajore Nala. Thus, P.W.1 to P.W.6 are co-villagers and witnesses to either the disclosure statement of the accused or to the recovery of the deceased's body from the Gadiajore Nala. The said P.Ws.2 and 6 brought out the dead body from inside the water of the Nala on the instruction of the police. P.W.7 is the informant who is the uncle of the deceased. P.W.9 is the son-in-law of the informant and witness to extra judicial confession of the accused. P.W.8 is the Medical Officer who conducted the post mortem examination of the dead body. P.Ws.11 and 12 are two independent witnesses who were declared hostile. P.Ws.10 and 13 are the police officers and witnesses to the seizure of S.D. Entry No.39 of 2008 and M.M.R. No.19/08 of Patnagarh P.S. P.W.14 is the scribe of the report (Ext-3). P.Ws.15 and 16 are the two Constables of Patnagarh P.S. and witnesses to seizure of sample semen of the accused vide seizure list Ext-8. P.W.16 is a witness to seizure list vide Exhibit-9 in respect of the seizure of clothing and articles of deceased as well as of the lungi tied around the neck of the deceased. P.Ws.17 and 18 are the two Investigating Officers charged with the investigation of the case. The

prosecution also proved the documents vide Exts.1 to 19 and the material objects as M.Os. I to XI which includes the seized lungi exhibited as M.O. IX. On the other hand, one Durga Charan Bhoi had been examined as D.W.1 on behalf of the defence.

**4.** Mr. B.S. Das, learned counsel for the appellant submits that there is no eye witness to the occurrence and the case of prosecution is solely based on circumstantial evidence. It is submitted that although the extra-judicial confession has led to the discovery of the dead body, however, the prosecution has failed to adduce cogent and trust-worthy evidence to prove the circumstances beyond reasonable doubt. According to him, P.W.9 before whom it is alleged that the accused made the extra judicial confession is related to the deceased. The place from where the dead body was recovered, is an open place, accessible to all. Hence, the evidence adduced on the above score loses its significance. Lastly, it is submitted by him that prosecution has also failed to prove the motive behind crime. In view of the above, he urged that the accused be entitled to benefit of doubt as the prosecution has failed to prove the case against him beyond all reasonable doubt.

**5.** Per contra, the learned Counsel for the State has submitted that the report of the Medical Officer vide Exhibits 5 and 6 reveals that the deceased suffered homicidal death due to strangulation by means of lungi (M.O.IX). Further, he relied upon the evidence of P.W.9 before whom the accused allegedly confessed. He also submits that the recovery of dead body from the place of concealment along with the M.O.IX in terms of Section 27 of the Evidence Act fully corroborates the case of prosecution leaving no manner of doubt that it is the accused who is the author of the crime. Further, he also relied on the evidence of the I.O. P.W.17 and P.Ws.1, 4 and 5 before whom the accused confessed while in police custody to have committed the murder of the deceased by strangulating her by means of M.O. IX. He states that as far as the evidence on record regarding the love affair between accused and deceased, the same has been lent credibility from the evidence of D.W.1 that the marriage of the accused was arranged with another girl which caused an altercation between the deceased and accused on the fateful night and the accused strangled her by means of a lungi as deposed to by P.Ws.1, 4, and 5. Hence, he submits that the prosecution has sufficiently proved the motive of the accused in committing such a heinous crime. Having made the aforesaid submissions, the learned Counsel for the State

submits that the prosecution has been successful in establishing beyond reasonable doubt that the appellant herein is the author of the crime and that the present appeal ought to be dismissed being devoid of merit.

**6.** Heard learned Counsel for the parties. It can be summarised that the learned Court below, in order to bring home the culpability of the appellant, has relied upon the following circumstances namely (I) Extra judicial concession made by the accused before P.W.9. (II) Recovery of dead body of deceased along with lungi (M.O.IX) by means of which the deceased was strangled, on the information furnished by the accused while in custody; (III) Evidence of P.W.1 that the seized lungi belongs to accused so also the evidence of the I.O. P.W.17 that accused disclosed the lungi belongs to him; (IV) Motive. While doing so, the trial court has proceeded to hold that these circumstances establish a complete chain of circumstances which prove beyond reasonable doubt that the appellant has committed the murder of the deceased.

**7.** Upon perusal of the evidence produced before the trial court, with regard to the first circumstance, i.e., the extra judicial confession indicated hereinabove, the evidence of P.W.9 has been relied upon. It is observed that P.W.9 states that he being

the son-in-law of the informant happened to be present in the house of the informant for the purpose of harvesting paddy since more man power is required during such harvesting season. According to him, the deceased was missing from the house since the morning of 02.12.2008. On 03.12.2008 at the evening time while he was sitting in the verandah, he saw the appellant coming towards him. He chit-chatted with the appellant about household affairs and then asked about the deceased. The appellant then disclosed to him that after committing her murder he had concealed the dead body. P.W.9 also states that the appellant confessed that he had love affair with the deceased. On the same night, after dinner, P.W.9 disclosed the above information before his mother. According to P.W.9 the brother of appellant is a sworn friend of his father-in-law (the informant) and he addressed him as uncle. During cross-examination, this witness has stated that since eight days prior to the incident he was at the house of his father-in-law and he knows the appellant since the date of his marriage as the appellant used to visit the house of his father-in-law. When the appellant had visited P.W.9, the witness was admittedly alone. In a similar light P.W.7, the informant, who is the father-in-law of P.W.9, reveals that on 2.12.2008 he had lodged a missing report at Patnagarh P.S. regarding the missing of



deceased. On the night of 03.12.2008, P.W.9 told him regarding the extra judicial confession made by the appellant before him. His evidence further reveals that on the morning of 04.12.2008 they searched for the dead body of the deceased and could not recover the same. P.W.7 further deposed that the appellant had love affairs with the deceased.

8. Upon examining the position of law regarding extra – judicial confessions, it is relevant to take note of the judgment of the Hon’ble Supreme Court in the case of **Tejinder Singh v. State of Punjab**<sup>1</sup> wherein, the Court has held that extra judicial confessions constitute a weak form of evidence and based on such evidence no conviction can be sustained. In support of this proposition, the Hon’ble Supreme Court has relied upon its earlier judgement in the case of **Pancho v. State of Haryana**<sup>2</sup> which is extracted hereunder:

*“16. The extra-judicial confession made by A-1, Pratham is the main plank of the prosecution case. It is true that an extra-judicial confession can be used against its maker, but as a matter of caution, courts look for corroboration to the same from other evidence on record. In Gopal Sah v. State of Bihar this Court while dealing with an extra-judicial confession held that an extra-judicial confession is on the face of it, a weak evidence and the courts are reluctant, in the absence of a chain of cogent circumstances, to rely on it for the purpose of recording a conviction. We must, therefore, first ascertain whether the*

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<sup>1</sup>(2013) 12 SCC 503

<sup>2</sup>(2011) 10 SCC 165

*extra-judicial confession of A-1, Pratham inspires confidence and then find out whether there are other cogent circumstances on record to support it.”*

**9.**In **Sahadevan v. State of Tamil Nadu**<sup>3</sup>, the Hon’ble Supreme Court when posed with a question pertaining to the reliability of extra judicial confessions, also held as under:

*“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.*

*16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:*

*(i) The extra-judicial confession is weak evidence by itself. It has to be examined by the court with greater care and caution.*

*(ii) It should be made voluntarily and should be truthful.*

*(iii) It should inspire confidence.*

*(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.*

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<sup>3</sup>(2012) 6 SCC 403

*(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*

*(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”*

- 10.** From the above evidence of P.Ws.9 and 7 it is noticed that the appellant was known to P.W.9 since the date of his marriage and on 3.12.2009 evening the accused had come to meet him. Another fact that needs to be borne in mind is that P.W.9 is related to deceased. So, it does not seem plausible that the appellant would have made such an extra judicial confession before him and such doubts upon the reliability of the evidence of P.W.9 cannot be dispensed with. As a corollary, the evidence of P.W.7 who is a hearsay witness would consequentially loose credence. This extra judicial confession does not inspire any confidence and therefore cannot be relied upon. Given the fact that there was no enmity between the appellant and neither P.W.9 nor the appellant had any inimical term with the family member of the informant. So, in such circumstances, the fact that the appellant made an extra judicial confession made before P.W.9 seems improbable and any corroboration thereof would have to be tested on the anvil of “complete chain of circumstances”, which must be examined very cautiously.
- 11.** The next circumstance relied upon by the learned Trial Court is the recovery of the dead body of deceased and M.O. IX (the

Lungi tied round her neck) on the basis of the information furnished by the appellant while in custody.

**12.** On perusal of record, it is found that Ext.2 is the statement of appellant, which was recorded by P.W.17 the I.O. in presence of P.Ws.4 and 5, i.e., co-villagers while the appellant was in his custody. In the said statement the appellant has narrated that he had an affair with the deceased and they had made a plan to elope from their respective houses on the fateful night. He also states that he committed the murder by strangulating the deceased by means of a lungi and carried the dead body to Gadiajore Nala and concealed it there. Ext.1 is the inquest report which was prepared by the I.O. in presence of witnesses P.Ws.1,3, 4, 5 and 6. In the said report it has been mentioned that a green colour check lungi was tied around the neck of the deceased and there was injury/ligature mark encircling the neck. Ext-9 is the seizure list in respect of seizure of the wearing apparels and other articles including the green black check lungi.

**13.** In *Jaffar Hussain Dastagir v. State of Maharashtra*<sup>4</sup>, the Hon'ble Supreme Court held that under Section 25 of the Evidence Act no confession made by an accused to a police

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<sup>4</sup>(1969) 2 SCC 872

officer can be admitted in evidence against him. An exception to this is however provided by Section 26 of the Evidence Act which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 of the Evidence Act is a proviso to Section 26 of the Evidence Act and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the Section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. Section 27 of the Evidence Act provides that no such information which leads to discovery of fact in consequence of information received from a person who is not only an accused of the offence but also while in the custody of the police officer can become a relevant fact which can be proved. It is trite in law that the confessional part of a crime incorporated in a

statement even if recorded in the statement under Section 27 of the Evidence Act, such confessional part has to be discarded due to being barred by the provision in Section 25 of the Evidence Act.

**14.** Therefore, even if it can be accepted that the statement of the appellant led to the discovery of the body of the deceased and hence might be admissible, it is important to note that only that part of the statement which led to the discovery of the body of the deceased can be admitted. Every other information presented in the statement which are inculpatory and confessional including the confession of allegedly committing the offence, the alleged usage of the lungi to commit said offence, the existence of the love affair have to be completely barred and cannot be relied upon under any circumstances. That being the position of law from Exhibits-2, 1 and 9 only the fact leading to discovery of dead body is to be read in evidence.

**15.** It is further seen that doubt is casted upon the usage of the lungi as the means by which the deceased was strangulated upon examination of P.W.8's testimony. P.W.8 is the doctor who conducted the post mortem examination of the dead body of the deceased on 05.12.2008 upon police requisition. He has deposed that the deceased was a young female whose both

pinna were eaten by aquatic animals. The deceased's face was conjected with petechia haemorrhage. A lungi of length 5.7" and width 42" was made into a rope and found tied around the neck. The knot of the lungi was on the back side of the neck. A ligature mark of width 2 C.M. was found below the thyroid cartilage encircling the entire neck horizontally. There was ecchymosis around the mark and the subcutaneous tissue was also with ecchymosis. There was no fracture present on the body. The viscera were preserved. He has opined that the death was due to strangulation by lungi resulting in asphyxia and venus congestion. He has further opined that as the vagina allowed two fingers, the same indicates that the deceased had regular sexual intercourse. He states that the time since death was within 72 to 96 hours prior from the time of post mortem examination. He also deposed that the ligature mark found in the neck was ante-mortem in nature and the strangulation was a homicidal one. However, this witness during the cross-examination has presented an entirely different picture. During his cross-examination P.W.8 has ruled out the death of deceased to be caused due to hanging. Rather he reiterated his opinion that the death of the deceased is due to strangulation. Also he has stated that the lungi which was allegedly found on the neck of dead body at the time of post mortem examination

was sent back to the Police. What is taken note of by us is that he states in his cross-examination that there was no identifying mark affixed to the lungi in question with regard to which he states that he had endorsed on a piece of paper after signing on the lungi. In his cross-examination P.W.8 also states that it is possible that the ligature mark found on the neck could also be inflicted by some other cloth having a length similar to the lungi which was examined. He further reveals that the type of injury in question can be caused by shaping any cloth into a rope, all of which will leave a ligature mark.

**16.** While it is not disputed that the body of the deceased was found with a green check lungi tied around the neck. There exists sufficient doubt as to whether it was this particular lungi that caused the death. Moreover, it becomes even more important to examine whether the lungi can be linked to the appellant, which has been examined threadbare.

**17.** Coming to the next circumstance regarding identification of lungi tied around the neck of the dead body (deceased) is concerned, it is the evidence of P.W.1 wherein he says the lungi tied round the neck of the deceased belonged to the appellant. P.W.17 was the Investigating Officer in the case and states during his cross-examination that at the time of interrogation



the appellant had made a disclosure to having concealed the dead body after strangulating the deceased. Having received such a statement, P.W.17 thereafter proceeded to the place as disclosed by the accused, i.e., Gadiajore Nala. He noticed that there were no marks of violence at the place of occurrence, the threshing floor. Noticeably, the place of occurrence has been said to be a public place which is accessible to all. The dead body was floating at the time of arrival of the Investigating Officer in the Gadiajore Nala. He further deposed that M.O.IX is a green lungi which was found shaped like a rope and tied around the neck of the deceased. He states that the appellant disclosed to him during interrogation that the green lungi belonged to him which has been exhibited as M.O. IX and it was being used by the appellant prior to the date of the incident. P.W.8 reveals in his testimony that when the dead body was recovered a green check lungi was found tied around the neck of the deceased. Apart from the prosecution's version that the accused has admitted that the lungi in question belonged to him, a statement which, as has been established above, cannot be admitted as evidence and thus cannot be relied upon, sufficient evidence has not been led whatsoever to establish or link the lungi with the appellant.

**18.** As regards the motive of the appellant behind the crime, it is the case of the prosecution as disclosed by P.W.7 that the appellant and deceased had a love affair and when marriage of the appellant was arranged with another girl, ire was caused between them, due to which the appellant killed the deceased. P.W.1 deposed attesting to the same. However, upon perusal of the defence witness in this case, D.W.1, who is a co-villager who states that the P.W.1 told him that there was a love affair between the deceased and the appellant which he had informed the police about. However, in his cross-examination he states that there was no such marriage proposal being canvassed. It is also material to note that P.W.1 has stated in his cross examination that he was not aware about the relationship of the appellant with the deceased prior to the incident which is a material discrepancy which has not been gone into by the court below. P.W.4, Chandrama Majhi has also categorically stated in her cross examination that she was not aware about any love affair between the appellant and the deceased.

**19.** The prosecution had relied on the report of chemical examiner marked as Ext-19, wherein it is noted that the seized undergarment of the deceased indicated presence of blood and semen which was deemed to be indicative of a physical

relationship being present between the appellant and the deceased. The prosecution then attempted to spin a story wherein, it was alleged that the deceased was unhappy with the talks of marriage of the appellant with another girl, given their physical relationship, which led to the scuffle and ultimately to her death. However, the trial court has ignored that P.W.17 as the Investigating Officer of the present case also wrote a letter to the forensic laboratory dated 4.12.2008, suggesting therein that the appellant had sexual intercourse with the deceased on the way, at the threshing floor of Buthi Dharua of the village, and thereafter the appellant had tied the lungi on the neck of the deceased strangulating her causing death. Based on that suspicion, the Investigating Officer had sent the underwear of the accused for forensic examination. However, the forensic laboratory through their report dated 2.4.2009 have opined that an examination of the underwear of the accused shows the absence of semen stains on it and therefore the possibility of any intercourse was ruled out.

- 20.** In the instant case there are no eye-witness to the occurrence and prosecution case solely rests on the circumstantial evidence. In the case of ***Sharad Birdhichand Sarda v. State***

**of Maharashtra**<sup>5</sup>, the Hon'ble Supreme Court had laid down indicative parameters to keep in mind while dealing with cases where the prosecution version is based solely on the basis of circumstantial evidence. It has held that the following conditions must be fulfilled before a case against the accused can be said to be fully established. Namely, (a) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established; (b) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (c) the circumstances should be of a conclusive nature and tendency; (d) they should exclude every possible hypothesis except the one to be proved; and (e) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. The Hon'ble Supreme Court has held these five golden principles as the "**panscheel**" of the proof of a case based on circumstantial evidence. Although the court below has relied upon the aforesaid judgement however while

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<sup>5</sup>AIR 1984 SC 1622

dealing with the evidence on record as discussed hereinabove, has ignored and misapplied the aforesaid principles laid down by the Hon'ble Supreme Court.

- 21.** The Hon'ble Apex Court In the case of ***Chenga Reddy and Ors. v. State of A.P.***<sup>6</sup> has dealt with a case where suspicion has been allowed to take the place of reason and has held in no uncertain terms that:

*"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."*

- 22.** In the oft quoted and relied upon landmark decision of ***Hanumant v. State of Madhya Pradesh***<sup>7</sup> the Hon'ble Supreme Court while dealing with circumstantial evidence said that the rules especially applicable to such evidence must be borne in mind. It held that in such cases there is always the danger that conjecture or suspicion may take the place of legal proof. It warned of the dangers of such a practice by recalling

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<sup>6</sup>(1996) 10 SCC 193

<sup>7</sup>1952 SCR 1091

the warning addressed by Baron Alderson, to the jury in **Reg v.**

**Hodge**<sup>8</sup>, where he submitted that :-

*"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 them complete."*

**23.** In **Hanumant Singh's case** (supra) the Hon'ble Supreme Court has held that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and they should be such as to exclude every hypothesis but the one proposed to be proved. In other 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.

**24.** In the case of **Padala Veera Reddy v. State of Andhra Pradesh**<sup>9</sup> the Hon'ble Supreme Court has held that:

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<sup>8</sup>((1838) 2 Lew. 227

*“10. Before advertng to the arguments advanced by the learned Counsel we shall at the threshold point out that in the present case here is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. this Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests :*

*(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*

*(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*

*(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*

*(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”*

**25.** In the case of **Ramreddy Rajesh Khanna Reddy v. State of**

**Andhra Pradesh**<sup>10</sup> the Hon’ble Supreme Court has held that-

*“26. It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.”*

**26.** P.W.9 was the son-in-law of the informant and also related to

the deceased. He has also stated that he knew the appellant

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<sup>9</sup>(1989) Supp 2 SCC 706

<sup>10</sup>(2006) 10 SCC 172

well and for a long time. P.W.9's statement pertaining to the extra judicial confession made by the appellant does not inspire any confidence as it is highly unlikely that the appellant would make such a statement to a relative of the deceased. Furthermore, if such information had a ring of truth to it, or if the P.W.9 had assumed it to be true, then he would have immediately confided in the informant or another member of the family upon receiving the same instead of waiting till post dinner. Furthermore, in the absence of credible and cogent proof of a love relationship between the appellant and the deceased, the intent and motive of the appellant to commit the murder of the deceased is not clear or proven beyond reasonable doubt. Doubt is also cast upon the means of causing death of the deceased when the cross examination of P.W.8 is referred to. The Doctor conducting the post mortem examination of the deceased has not definitively indicated that the death of the deceased was caused by the lungi that was recovered itself, instead he has said that any cloth could have caused the death. The lungi in itself has also not been linked to the appellant. The trial court has also erred by not considering that despite the viscera being preserved according to the evidence of P.W.8, the same was not sent for chemical examination and no reason has been assigned for the same.



- 27.** With the above backdrop and discussion, this Court comes to an irresistible conclusion that the prosecution has not been successful in bringing home the charges against the appellant beyond reasonable doubt and that the Court below has grossly failed to deal with the evidence in proper perspective.
- 28.** In view of the discussion made hereinabove, especially in the absence of eye-witnesses and the weak chain of circumstantial evidence, the order of conviction and sentence impugned herein are liable to be set aside.
- 29.** Accordingly, the Criminal Appeal filed by the appellant is allowed. The judgment of conviction and order of sentence dated 08.07.2010 passed by the learned Adhoc Additional Sessions Judge (Fast Track Court), Balangir at Patnagarh in Sessions Case No.80/33 of 2009 is hereby set aside. The appellant be set at liberty forthwith if his detention is not required in connection with any other case.

The LCR be returned forthwith to the court from which it was received.

**(S.K. Panigrahi, J.)**

**S. Panda, J.** I agree.

**(S. Panda, J.)**