
(2025) 10 OHC CK 1334
In the Orissa High Court
Case No : Criminal Appeal No. 23 Of 2003

Kitu @ Debasis Mishra

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 22-10-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 45, 107, 306, 323, 341, 354, 376, 506
Code Of Criminal Procedure, 1973 — Section 293
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20(b)(ii)

Citation : (2025) 10 OHC CK 1334

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : G.P. Samal, P.K. Panda

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J

1. The instant appeal has been filed by the Appellants challenging the legality and propriety of the Judgment dtd.09.01.2003 so passed by the learned Ad hoc Addl. District & Sessions Judge, FTC Court No. II, Puri in S.T. Case No. 34/102 of 2002-2000. Vide the impugned Judgment the Appellants have been convicted and sentenced to undergo R.I. for 3 years for the offence under Sec. 306 of the Indian Penal Code and to pay fine of Rs. 5,000/-, in default to undergo R.I. for one year.

2. Learned counsel appearing for the Appellants contended that on the death of the deceased on 18.06.1995 and basing on the report submitted on 19.06.1995, Sea Beach, Puri U.D. Case No. 9 of 1995 was registered. Basing on the report submitted in the U.D. Case on 04.07.1995, Sea Beach P.S. Case No. 73 of 1995 corresponding to G.R. Case No. 852 of 1995 was registered for the alleged offence under Sec. 306 & 34 of the I.P.C..

2.1. After completion of the investigation, charge sheet was submitted against

the present Appellants and others for the offence under Sec. 306 & 34 of the I.P.C. Even though charge sheet was filed against 6 nos. of accused persons and all of them faced trial in S.T. Case No. 34/102 of 2002/2000, but while acquitting 3 of the accused persons, the present Appellants were held guilty of the charges for the offence under Sec. 306 of the I.P.C. and convicted to undergo R.I. for 3 years and to pay fine of Rs.5,000/- in default R.I. for one year vide the impugned judgment dtd.09.01.2003. The prosecution story as narrated in the report submitted on 04.07.1995 by the I.O. (P.W. 8) reads as follows:-

"That said Suvendu Kumar Sinha filed an 2.I.E. in the Sea beach police station on 4.7.95 stating therein that during inquiry of sea beach P.S.U-D-Case No. 9/95 it has been revealed that on dt.17.6.95 morning the present appellants had visited the house of the aforesaid deceased Malaya Kumar Mishra and cautioned the mother of deceased Malaya that the deceased was intending to deliver a questionable letter to the sister of present appellant No.1. It was further alleged in the said F.I.R. that on the same evening at about 7 P.M. while the deceased was returning to his house the present appellants insulted him, threatening him not to report before police was further alleged that on dt.18.6.1995 in the morning the present appellants visited the house of the deceased, called the deceased to nearby market complex and assaulted him. The matter was reported to the police. According to the F.I.R. due to such act of the accused appellants Malaya committed suicide on 19.6.1995."

2.2. It is contended that the prosecution in order to prove the allegation of offence under Sec. 306 of the I.P.C. r.w. 34 of the IPC examined 8 nos. of witnesses, which includes P.W. 7 & 8 the I.O. of the case. P.W. 1 was the seizure witness and P.W. 6 was an independent witness. P.Ws. 2 to 4 are the relatives of the deceased being the brother, mother and maternal uncle. Similarly, P.W. 5 is the Doctor who conducted the post mortem of the deceased.

2.3. Learned counsel appearing for the Appellants while assailing the impugned order of conviction and sentence vide the impugned judgment, contended that prosecution in Puri Sea beach P.S. Case No. 73 of 1995 corresponding to G.R. Case No. 852 of 1995 was set into motion with the allegation that because of the repeated assault of the deceased by the present Appellants, since the deceased committed suicide, the Appellants taking into account the evidence laid by the prosecution, were held guilty of the charges for the offence under Sec. 306 of the Indian Penal Code.

2.4. It is contended that for such allegation of assault by the Appellants, Sea beach P.S. Case No. 70 of 1995 corresponding to G.R. Case No. 793 of 1995 was also registered for the offence under Sec. 341/323/354/506 & 34 of the Indian Penal Code basing on the FIR lodged by P.W. 4 on 18.06.1995.

2.5. It is contended that the present Appellants including 4 other accused persons faced the trial in the court of learned JMFC, First Class, Puri in G.R. Case No. 793 of 1995. However, vide judgment dtd.11.03.2008, all the accused

persons which includes the present Appellants were held not guilty of the offence and all the accused persons were acquitted for the offence under Sec. 341/323/354/506 & 34 of the I.P.C.. It is accordingly contended that since allegation of assault which is the basis and the charge that, because of such assault, the deceased committed suicide, the Appellants herein along with other accused persons since were acquitted vide Judgment dtd.11.03.2008, in view of the decision of the Hon'ble Apex Court in the case of Sudhakar & Anr. Vs. State of Maharashtra reported in (2000) 6 SCC 671, order of conviction and sentence of the Appellants for the offence under Sec. 306 of the I.P.C. is not maintainable. Hon'ble Apex Court in Para 13 & 14 of the said Judgment has held as follows:-

"13. In the absence of the charge being proved under Section 376 IPC, the prosecution could not have asked for conviction of the appellants under Section 306 IPC as according to the prosecution it was the commission of the rape on her person which resulted in the suicide of Ms Rakhi, allegedly on the abetment of the appellants. If the cause for committing suicide is not legally proved, the appellants cannot be held responsible for the abetment of the ultimate offence of suicide.

14. We are, therefore, of the opinion that as the prosecution has failed to prove its case against the appellants beyond all reasonable doubt, they are entitled to acquittal. Before parting with the judgment we would, however, observe that in the present case the investigating as well as the prosecution agency has not acted promptly and diligently as was expected under the circumstances. The appeal is, therefore, allowed and the judgment of the High Court is set aside. The appellants be released forthwith unless required in some other case."

2.6. It is also contended that while holding the Appellants guilty of the charges for the offence under Sec. 306 of the I.P.C., learned trial court relied on Ext. 7 i.e. the alleged suicidal note of the deceased and Ext. 2 i.e. the report of the handwriting expert, proving Ext. 7.

2.7. However, it is contended that such suicidal note vide Ext. 7 though was proved by the handwriting expert in his report vide Ext. 2, but the said handwriting expert was never examined by the prosecution. It is accordingly contended that in absence of the examination of the handwriting expert, who proved Ext. 7, the same cannot be utilized against the Appellants.

2.8. In support of the aforesaid submissions, reliance was placed to a decision of the Hon'ble Apex Court in the case of Karandeep Sharma alias Razia alias Raju V. State of Uttarakhand reported in 2025 SCC OnLine SC 773. Hon'ble Apex Court in Para 39 of the

"39. The first flaw in the prosecution case on the aspect of DNA profiling is that the expert who conducted the DNA examination was not examined in evidence and the DNA report was merely exhibited in evidence by the Investigating Officer (PW-14) who undeniably is not connected with the report in any manner. This Court in the case of Rahul v. State of Delhi, Ministry of Home Affairs, while

dealing with the issue concerning evidentiary value of DNA report, has held that DNA profiling reports cannot be admitted in evidence ipso facto by virtue of Section 293 CrPC and it is necessary for the prosecution to prove that the techniques of DNA profiling were reliably applied by the expert. The relevant excerpts from the said judgment are reproduced hereinbelow for the sake of ready reference:-

"36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the DNA profiling dated 18-4-2012 (Ext. P-23/1), giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant-accused. The Court finds substance in the said submissions made by the Amicus Curiae. The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.

38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion."

(emphasis supplied)"

2.9. It is also contended that Ext. 8 i.e. the seizure list of Ext. 7 though was prepared in presence of the seizure witness, but the seizure witness was never examined as a witness by the prosecution. It is accordingly contended that since the seizure witness was never examined by the prosecution, while making the seizure of Ext. 7, the same is fatal to the prosecution case and the alleged suicidal note cannot be taken to have been properly seized and sealed and remained in the safe custody of the I.O., and no tampering was made with the same.

2.10. With regard to the aforesaid submission, reliance was placed to a decision of the Hon'ble Apex Court in the case of Sinic Patricia Vs. State reported in (1994) OCR – 277. Hon'ble Apex Court in Para 6 of the said judgment has held

as follows:-

"6. In view of the aforesaid rival contentions, it is appropriate to first examine the evidence relating to search and seizure of the contraband articles. and Investigating PW 6 (The Town Inspector Officer) had stated that after coming to know about trafficking in narcotic drugs by some foreign tourists staying in Fakira Lodge, he arrived at the lodge, contacted the proprietor from whom he learnt that two French nationals were lodged in room No. 22. by PWs 1 and 2 and two constables went to the said room and found Accordingly he accompanied the appellant present inside the room along with her son. complying with necessary formalities required for search they entered After and made search of the belongings kept in the room. search he recovered charas in three polythene packets kept with other In course of belongings of the appellant. On counting in came to 199 stock (small and big) whose total weight was 1 kg. 900 grams. He further deposed that as the appellant could not explain about her possession of the charas, he seized the same and kept them in three sealed packets. He prepared first a seizure list (Ext-A is the carbon copy of the said list) and because there were some mistakes in Col. 5 of the list, PW 1 is a witness to the claimed to have put his. he prepared a second one which is Ext-1. seizure. In his examination-in-chief he signature in the seizure list Ext-1. He appears to be a stock witness of the police in view of his admission that he was also a witness in another police case and he had prior Inspector. PW 2 is another witness also put his signature in Ext. 1, vide Ext-1/3. This is all the evidence to the seizure. He stated that he relating to seizure.

The next crucial question that has to be considered. is as to how they were dealt with till their production before the Sub-divisional Judicial Magistrate. was made on 28-2-1991 which surfaced on 27-4-1991 to be produced The seizure of contraband articles before the Magistrate. Were the articles in question kept in properly sealed packets and were retained of 58 days ? There is in safe custody during the period absolutely no explanation for this delay in producing the seized articles in the Court. PW 6 stated in that after seizure of the charas he kept them in three sealed packets. statement suggests as it the packets were preserved and he merely put the articles inside the packets. His evidence does not unequivocally show that after the seizure he kept the articles in packets and thereafter sealed them. In order to alley apprehension there was no scope for tampering with the seals, evidence should have been available indicating that the packets were properly sealed and the specimen seal was retained with any reliable person. Strangely no such evidence is available on record, It is true that PW 1 (seizure witness) has deposed that the Town Inspector put the brass seal on the closed packets. When PW 6 himself has not said anything about putting of brass seal on the packets, the vague statement of PW 1 on this score does not inspire any confidence particularly when he (PW

1) is a stock-witness of the police as already noted, PW 2 also does not specifically say that after the contraband articles were kept in packets they were

valued by PW 6.

It is the contention of the learned counsel for the appellant that in absence of evidence as to the safe custody of the seized articles, the appellant cannot be held guilty of the offence of possession of the charas in question. Let me therefore examine the evidence in the light of the submission made. PW 6 is the only witness who speaks about custody of the seized articles. He stated that the articles after seizure were kept in sealed packets in Sea Beach Police Station, Puri and his prayer to send the seized articles for chemical examination having been allowed, they were produced before the Sub-divisional Judicial Magistrate on 27-4-1991, The bare statement of PW 6 that "the seized articles after its seizure were kept in sealed packets in Sea Beach police station Puri" leads in the prosecution to nowhere, and has to be taken with a pinch of salt. He has not stated if he himself kept them in the police station, nor about the timing. He has not also stated if he handed over the packets at the police station to any one to be kept in custody. Fakira Lodge, Puri Ext. 7 is the plain paper FIR drawn by PW 6 at on the basis of which he himself took up investigation. The last sentence of Ext. 7 reads:

"Sent the report to the registration of formal FIR." O. I. C. Sea Beach police station for registration of formal FIR."

At the bottom of Ext.7 there is an endorsement by the Officer-in-charge of Sea Beach police station which is as follows:

"6 p.m. received the report at the P.S. from 2-11 from T. I. Puri, (T) 1 C 389 ?. ?. Misra and registered PS case No. 29/92 under Sec. 20(b)(ii) of the NDPS Act and T. 1. has already taken up investigation of the case at the spot....."

2.11. It is also contended that in order to prove an offence under Sec. 306 of the Indian Penal Code, the prosecution has to prove that there is an abatement on the part of the Appellants in forcing the deceased to commit such suicide. But in the case in hand ingredients of Sec. 107 has not at all been proved. Not only that since the allegation of assault, which is the basis for the deceased committing suicide was not proved and the Appellants were acquitted vide judgment dtd.11.03.2008 in G.R. Case No. 793 of 1995, the order of conviction and sentence passed against the Appellants is not sustainable in the eye of law.

2.12. Making all these submissions and placing reliance on the decisions as cited (supra), learned counsel appearing for the Appellants contended that the order of conviction and sentence requires interference of this Court.

3. Mr. P.K. Panda, learned Addl. Standing Counsel on the other hand made his submission while supporting the impugned order of conviction and sentence. Learned Addl. Standing Counsel contended that since the suicidal note so made by the deceased vide Ext. 7, was duly proved by the handwriting expert in his report under Ext. 2 and as per the medical report, the case is of a suicidal hanging, taking into account such proof of the suicidal note vide Ext. 7, the

Appellants have been duly convicted and sentenced vide impugned judgment dtd.09.01.2003, having abated the suicide.

3.1. It is also contended that since because of the assault committed by the Appellants, the deceased committed suicide which is reflected in his suicidal note vide Ext. 7, the same having been proved by the handwriting expert vide his report under Ext. 2, no other proof is required to hold the Appellants guilty for the offence under Sec. 306 of the I.P.C.. Reliance was placed to the statement of I.O. who was examined as P.W. 8. P.W. 8 in his examination in chief in Para 1 to 3 has deposed as follows:-

"1. On 4.7.1995 I was 5.1. of Police attached to sea-Beach P.S. On that day I submitted report before the O.I.C., regarding suicide of Malay Kumar Mishra. My report was based on the enquiry in Sea-Beach P.S. U.D.Case No.9 dated 19.6.95. During enquiry I could know that the present accused persons abated the commission of suicide of Malay Kumar Mishra. So, I lodged report which was treated as F.I.R. This is the F.I.R.Ext.3 and this is my signature Ext.3/1. This is the formal P.I.R. Ext.4 drawn up by the O.I.C. The case was registered and I was entrusted to investigate the case.

2. During investigation I examined witnesses I sent the visera of the deceased Malay Mishra for chemical examination. I sent the suicidal note of deceased Malay Mishra to handwriting bureau along with admitted handwriting of the deceased for comparison and report.

3. During inquiry of the U.D. Case No.9 of 1995 I conducted inquest on the dead body of Malay Mishra. This is the Inquest Report Ext.5 and this is signature Ext.5/1. I seized one hand written letter of Malay Kumar Mishra and prepared the seizure list Ext.6. This is my signature Ext. 6/1. This is the letter of the deceased which I seized Ext. 7. I also seized diary containing the admitted handwriting of deceased Malay Mishra and prepared the seizure list Ext.B. This is my signature Ext.8/1. I seized the wearing clothes of the deceased and prepared the seizure list Ext.9. This is my signature Ext.9/1. I sent the dead body for post-mortem examination. I prepared the spot map. This is the spot map Ext.10. This is my signature Ext.10/1. I examined witnesses and received post-mortem report. I closed the U.D.Case and submitted F.I.R."

3.2. Reliance was also placed to the evidence of P.W. 5 who happens to be the Doctor who conducted the post mortem of the deceased. It is contended that since various injuries were found on the deceased who conducted the post mortem on 20.06.1995, assault on the deceased being well proved and because of such assault the deceased committed suicide is also proved taking into account the suicidal note of the deceased so exhibited vide Ext. 7. Evidence of P.W. 5 in his examination in chief reads as follows:-

"1. On 20.6.95, I was Asst. Surgeon attached to D.H.H., Puri. On that at 11.30 A.M., on police requisition I have conducted P.M. on the body of Malaya Kumar Mishra @ Pinku (deceased) s/o. Bijoy Kumar Mishra of E.S.W. 78, Srikhetra

Colony, Puri.

2. Injury No. 1 : There was a partial heel injury of the posterior aspect of left fore arm at the level of lower 1/3rd and upper 2/3rd, size 1" x 1/2" obliquely placed with pus formation and without any granulation of tissue. Age within about 36 hours to one week.

3. Injury No. 2 : Partially heel injury on the lateral aspect and middle part of left leg size 1/2" x 1/2" obliquely placed with reddish brown scab on it. Its age within one to three days.

4. Injury No. 3 : Post Mortem abrasion on lower part and anterior aspect of left knee joint, size 1/2" x 1/2".

5. There are two ligature marks adjacent to each other situated over the thyroid cartilage on the neck between larynx and chin extending from left side middle part of neck obliquely down wards up to the right side of neck along the line of mandible, up to the right side angle of the mandible. The mark was absent at the back of neck. The impression of the knot was not well marked.

6. Bruises between the ligature mark was present. The marks were narrow and well defined. The mark was pale, leathery, hard and parchment like with abrasions and ecchymosis on the margins. On dissection the subcutaneous tissues under the ligature mark was dry, white and glistening.

7. Examination of Rope : Its colour was yellow, linen material, twelve feet long approximate thickness of size of a middle finger. There was a knot at one end. Both the thumbs were present. It was cut at one end as per the figure. The rope was returned to the police after its examination.

8. Opinion : i) Mode of death was asphyxia effect of hanging. Injury Nos. I & II and the ligature mark on the neck were ante mortem in nature of visceras was put into a saturated solution of common salt and handed over to the police officer duly sealed and signed for early chemical analysis.

iv) The time of the death at the time of P.M. exam was within eighteen to twenty four hours.

3.3. Making all these submissions learned Addl. Standing Counsel contended that the order of conviction and sentence has been rightly passed and the same needs no interference.

4. Having heard learned counsel appearing for the Parties and considering the materials available on record, this Court finds that basing on the report submitted on 19.06.1995 by the maternal uncle of the deceased (P.W. 4), Puri Sea Beach U.D. P.S. Case No. 9/1995 was registered. Subsequently, basing on the report submitted by the I.O. in the said U.D. case on 04.07.1995, Sea Beach P.S. Case No. 73 of 1995 corresponding to G.R. Case No. 852 of 1995 was registered for the offence under Sec. 306 & 34 of the I.P.C. against the present Appellants and 3 other accused persons. After completion of the investigation

final form was submitted against the present Appellants and 3 other accused persons for the offence under Sec. 306/34 of the I.P.C. and all the accused persons including the present Appellants faced the trial having been charged for the offence under Sec. 306/34 of the I.P.C. in S.T. Case No. 34/102 of 2002/2000 in the file of learned Adhoc Addl. District & Sessions Judge (FTC II), Puri.

4.1. As found, the prosecution in order to prove its case, examined 8 P.Ws. which includes P.W. 5 being the Doctor, P.Ws. 7 & 8 being the I.Os., P.W. 6 as an independent witness and P.W. 4 is the witness to the seizure of the dead body. P.Ws. 2 to 4 are the related witnesses of the deceased being the brother, mother and maternal uncle.

4.2. As found, the report dtd.04.07.1995 was made by the I.O. while conducting the investigation in Puri Sea Beach U.D. Case No. 9 of 1995 with the allegation that because of the repeated assault of the deceased by the present Appellants and the other accused persons, the deceased committed suicide on 18.06.1995. But as found, with regard to such allegation of assault on the deceased basing on the report submitted by the maternal uncle of the deceased on 18.06.1995, Puri Sea Beach P.S. Case No. 70 of 1995 corresponding to G.R. Case No. 793 of 1995 was registered against the present Appellants and 4 other accused persons for the offence under Sec. 341/323/354/506 & 34 of the Indian Penal Code.

4.3. As found the present Appellants including other accused persons when faced the trial, they were acquitted of the offences by the learned JMFC, First Class, Puri vide its judgment dtd.11.03.2008. Since factum of assault which is the basis of committing the suicide by the deceased, having not been proved, it is the view of this Court that allegation of offence under Sec. 306 of the Indian Penal Code could not have been proved against the Appellants in view of the decision of the Hon'ble Apex Court in the case of Sudhakar as cited (supra).

4.4. It is also found that the suicidal note vide Ext. 7 though was proved by the handwriting expert vide its report under Ext. 2, but since the hand writing expert has not been examined by the prosecution, in view of the decision of the Hon'ble Apex Court in the case of Karandeep Sharma as cited (supra), the said report of the handwriting expert could not have been taken into consideration and utilized against the Appellants while proving the suicidal note i.e. Ext. 7.

4.5. It is also found that while making seizure of the suicidal note vide Ext. 7, the seizure witness shown to the seizure, was never examined. Therefore, in absence of examination of the seizure witness to such seizure, in view of the decision of the Hon'ble Apex Court in the case of Sinic Patricia as cited (supra), such suicidal note cannot be held to have been duly seized and sealed and remained in the safe custody of the prosecution. Therefore, such suicidal note cannot be utilized against the Appellants.

4.6. In view of the aforesaid analysis and the fact that the Appellants have been acquitted with regard to the assault in G.R. Case No. 793 of 1995 by the learned JMFC, First Class, Puri vide its judgment dtd.11.03.2008, placing reliance on the

decisions as cited (supra), this Court is of the view that there was no ground to convict and sentence the Appellants for the offence under Sec. 306 of the I.P.C. r/ w Section 34 of the I.P.C.. Therefore, this Court is inclined to quash Judgment dtd.09.01.2003 so passed by the learned Ad hoc Addl. District & Sessions Judge, FTC-II, Puri in S.T. Case No. 34/102 of 2002-2000. While quashing the said judgment, this Court allows the appeal.

Bail bonds furnished by the Appellants stands cancelled.

5. The appeal accordingly stands disposed of.