

**(2025) 07 OHC CK 1272**

**In the Orissa High Court**

**Case No :** DSREF No.04 Of 2024 Criminal Appeal No.1166 Of 2024

Prakash Behera @ Babuli

APPELLANT

Vs

State Of Odisha Vs

RESPONDENT

**Date of Decision :** 21-07-2025

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 161, 293, 366  
Indian Penal Code, 1860 — Section 34, 201, 302, 363, 364, 394, 449  
Arms Act, 1959 — Section 2(b), 5, 25, 27, 39

**Citation :** (2025) 07 OHC CK 1272

**Hon'ble Judges :** S.K. Sahoo, J; S.S. Mishra, J

**Bench :** Division Bench

**Advocate :** Debashis Tripathy, Ramesh Ch. Maharana, Ajay Kumar Maharana,  
Pradip Kumar Panda, Satya Ranjan Mulia, Debashis Tripathy

**Final Decision :** Allowed

## Judgement

S.K. Sahoo, J

1. DSREF No.04 of 2024 is the reference under section 366 of the Code of Criminal Procedure, 1973 submitted to this Court by the learned Additional Sessions Judge, Athmallik (hereinafter 'the trial Court') in C.T.(S) No.16 of 2018 for confirmation of death sentence imposed on Prakash Behera @ Babuli and Nandakishore Sethi @ Ranja (hereinafter 'the appellants') vide judgment and order dated 27.09.2024. CRLA No.1166 of 2024 has been filed by appellants, namely, Prakash Behera and Nandakishore Sethi challenging the self-same judgment and order of conviction passed by the learned trial Court.

The appellants faced trial for commission of offences punishable under sections 449/302/363/364/394/201/34 of the Indian Penal Code (hereinafter 'the I.P.C.') read with sections 25 & 27 of the Arms Act on the accusation that on 09/10.10.2017 night, in village Gambharimaliha under Kishorenagar police station in Angul district, they committed house trespass by entering into the building of Biranchi Naik (hereinafter 'the deceased') used as a human dwelling

in order to commit offence punishable with death i.e. robbery and murder and that they kidnapped the said deceased from the house without his consent so also Naba @ Ekalabya Naik (hereinafter 'the deceased') from lawful guardianship of his parents without their consent and that they kidnapped/abducted both the deceased in order that they might be murdered and that they committed robbery of the property i.e. cash of deceased Biranchi Naik and that as such, they caused hurt and committed murder of the three deceased persons, namely, Biranchi Naik, his wife Tarani Naik and their minor son Naba @ Ekalabya Naik and that knowing that the murder of the deceased persons had been committed, caused certain evidence of the said offence to disappear i.e. dumped the dead body of deceased Biranchi Naik under Gambharimunda Bridge near village Pokanda, dumped the dead body of minor deceased Naba @ Ekalabya Naik at Bankadhar Sahi Jungle, threw and buried the 'Katuri' and wearing apparels in the said jungle, as well as near Bidisingh Project Nala, with the intention of screening themselves from legal punishment and that they were in possession of an arm i.e. 'Katuri' in contravention of the provision under section 5 of the Arms Act, 1959 and they also used that arm to commit the crime in furtherance of their common intention.

The learned trial Court vide impugned judgment and order dated 27.09.2024, though acquitted the appellants of the charges under sections 363/394/34 of the I.P.C. so also under sections 25 and 27 of the Arms Act, but found them guilty under sections 302/364/201/34 of I.P.C. and awarded death sentence with direction that they shall be hanged by neck till they are found dead and to pay a fine of Rs.1,00,000/- (rupees one lakh), in default, to undergo R.I. for one year for the offence under section 302 of the I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/- (rupees fifty thousand), in default, to undergo R.I. for six months for the offence under section 364 of the I.P.C. and sentenced to undergo imprisonment for seven years and to pay a fine of Rs.25,000/- (rupees twenty five thousand), in default, to undergo R.I. for two months for the offence under section 201 of the I.P.C. with a further direction that all the sentences are to run concurrently. However, no finding has been given by the learned trial Court relating to the offence under section 449/34 of the I.P.C.

Since the DSREF and CRLA arise out of the same judgment, with the consent of learned counsel for both the parties, those were heard analogously and are disposed of by this common judgment.

Prosecution Case as per F.I.R.:

2. The prosecution case, as per the first information report (hereinafter F.I.R.) (Ext.14) lodged by P.W.9 Susant Nayak, in short, is that the deceased Biranchi Naik was his elder brother, deceased Tarani Naik was his sister-in-law (bhauja), being the wife of deceased Biranchi Naik and the deceased Ekalabya Naik was his nephew, being the son of deceased Biranchi Naik and Tarani Naik. On 09.10.2017 night at about 8.00 p.m., the three deceased persons were present in their

house. On 10.10.2017 (Tuesday) morning at about 8.00 a.m., P.W.9 found the deceased Tarani Naik was lying dead in her house premises having cut injury on her throat, however P.W.9 could not trace out his deceased brother and nephew.

One Harekrushna Nayak scribed the F.I.R. as per the version of P.W.9 and on such written report presented before Premananda Lenka (P.W.41), Inspector in-charge of Kishorenagar police station, a case under section 302 of the I.P.C. was registered against unknown person vide Kishorenagar P.S. Case No.91 dated 10.10.2017 and P.W.41 himself took up the investigation of the case.

3. During the course of investigation, P.W.41 examined the informant (P.W.9), engaged one constable to guard the dead body of deceased Tarani Naik at village Gambharimaliha and then he informed the fact to the S.D.P.O. and also the Superintendent of Police over telephone for deputation of scientific team to the spot. P.W.41 along with his staff visited the first spot at 12.00 noon and examined some witnesses. At about 12.40 p.m., the Scientific Officer (P.W.40) arrived at the spot along with police dog. The I.O. (P.W.41) along with the informant (P.W.9) took the Scientific Officer (P.W.40) to the Harada field, which was located in front of the house of deceased Tarani Naik where the dead body of the deceased was lying in a pool of blood with throat cut injury and P.W.9 identified the dead body to be that of the deceased. P.W.41, the I.O. then took P.W.40 to the house of deceased Tarani Naik where he found a pool of blood beneath the window at outer side. P.W.41 prepared the 1st spot map vide Ext.45 and at 1.35 p.m., seized seven household articles in broken condition in presence of the witnesses vide seizure list Ext.46 and examined the seizure witnesses and recorded their statements. P.W.41 conducted inquest over the dead body of the deceased Tarani Naik in presence of the witnesses and prepared the inquest report Ext.15 and examined the inquest witnesses. At spot no.1,

P.W.41 came to know that the dead body of Biranchi Naik was lying under the Pokanda bridge and the dead body of Naba @ Ekalabya Naik was lying at Birumund Sahi Gothamundia jungle and accordingly, he reported the fact to his official superior over phone. P.W.41 left four seized articles out of seven of the 1st spot in the zima of P.W.9 by executing zimanama (Ext.16). He dispatched the dead body of Tarani Naik through Constable to the S.D.M.O., Athmallik with a prayer for post mortem examination along with the dead body challan (Ext.47).

P.W.41, the I.O. then left towards Pokanda bridge (2nd spot) along with his staff, relatives of the deceased and the informant and before arrival at the 2nd spot, he deputed P.W.26, a constable to guard the dead body of Biranchi Naik at the spot and also deputed P.W.33, another constable to guard the dead body of Naba @ Ekalabya Naik at Birimunda Sahi Gothamundia jungle. On arrival at the 2nd spot, P.W.9 identified the dead body of Biranchi Naik, which was lying under the bridge with throat cut injury and there P.W.41 held inquest over the dead body of Biranchi Naik and prepared the inquest report vide Ext.12 and examined the inquest witnesses.

P.W.41, the I.O. then proceeded to the 3rd spot, where he found the dead body of Naba @ Ekalabya Naik at Birimunda Sahi, Gothamundia jungle with cut injuries on his throat lying near the base of Patamasu tree, which was identified by P.W.9. Inquest was held over the dead body of the deceased Naba @ Ekalabya Naik and inquest report vide Ext.13 was prepared and inquest witnesses were examined. After instructing P.W.33, the constable attached to Kishorenagar police station to guard the dead body, P.W.41 left the 3rd spot and proceeded to the 2nd spot with the Scientific Officer. At the 2nd spot, he found a pool of blood at a distance of 2ft. east from the dead body of Biranchi Naik and two blood stained plastic rope were made joint with knot. At Pokanda bridge, P.W.41 found a big patch of blood mark and inside the blood patch, a metallic locket was lying and a dragging mark was extending from the blood patch towards the edge of the bridge towards north. P.W.41 found dragging mark over the grass and near to the blood patch over the bridge, water pouch with remnants of food along with 180 ml. Mc Dwell No.1 reserve whisky (empty) and use and throw tumblers were there with alcohol smell. P.W.41 also found one piece of blood-stained glove with red stripe lying on the pitch road and thereafter, prepared the spot map along with crime detail form in two sheets vide Ext.48. P.W.41 dispatched the dead body of the deceased Biranchi Naik along with dead body challan vide Ext.49. After dispatching the dead body of the deceased Biranchi,

P.W.41 proceeded to the 3rd spot along with the Scientific Officer, which was located at a distance of 12 kms. from Thakurgarh P.S. and about 2 km away from the 2nd spot and prepared the 3rd spot map vide Ext.50 and dispatched the dead body of Naba @ Ekalabya Naik to S.D.M.O., Athmallik through P.W.33, the constable along with the inquest report, dead body challan vide Ext.51. At the 3rd spot, on 10.10.1997 on production by the Scientific Officer (P.W.40), the I.O. seized sample earth and blood-stained earth as per seizure list Ext.29 so also some other articles as per seizure list Ext.30 in presence of witnesses. P.W.41 seized blood stained earth collected near the dead body of deceased Naba @ Ekalabya Naik on being produced by P.W.40 in presence of witnesses as per seizure list Ext.31. P.W.41 also seized two Mc Dowell's No.1 empty whisky bottles on being produced by P.W.40 as per seizure list marked as Ext.32 in presence of witnesses. P.W.41 also received the spot visit report (Ext.43) prepared by P.W.40 and also re-examined the informant (P.W.9) at the 3rd spot.

P.W.41, seized the wearing apparels of the deceased Tarani Naik on production by constable in presence of witnesses as per seizure lists vide Ext.9, Ext.33, Ext.34, Ext.35 and Ext.38, the wearing apparels of the deceased Biranchi Naik on production by constable in presence of the witnesses as per seizure lists vide Ext.10, Ext.36 and Ext.37, the wearing apparels of the deceased Naba @ Ekalabya Naik on production by constable in presence of witnesses as per seizure lists vide Exts.11, 39, 40 & 41.

P.W.41 apprehended the appellant Nandakishore Sethi from his village Gambharimaliha and then proceeded towards the house of appellant Prakash

Behera at village Kalapatanali taking the aid of local police and on being identified by the appellant Nandakishore Sethi, the police apprehended the appellant Prakash Behera and searched for the incriminating articles and found nothing from his house. Thereafter, P.W.41 took both the appellants to the 3rd spot for identification and after reaching at the 3rd spot, both the appellants identified the spot where the deceased Naba @ Ekalabya Naik was lying dead. P.W.41 recorded the disclosure statement of the appellant Prakash Behera @ Babuli in presence of the witnesses and basing on such disclosure statement, P.W.41 seized the blood stained Katuri (M.O.6) and one gamuchha (M.O.7) inside the Birimunda-Gothamundia jungle as per seizure list Ext.19 and also seized his wearing apparels i.e. shirt (M.O.1) and jean pant (M.O.2) stained with blood digging the earth near the Brahamanpada project under a bamboo bush as per seizure list Ext.21. After making seizure of the recovered articles, P.W.41 kept the same in his personal custody with proper packing and seal and examined the seizure witnesses. Thereafter, on the disclosure statement being made by the appellant Nandakishore Sethi and on being led by him, P.W.41 proceeded to the 3rd place of recovery where in presence of the witnesses, the appellant gave recovery of one black colour full pant (M.O.23) stained with blood, which was seized as per seizure list Ext.1/2. P.W.41 seized one white colour half shirt (M.O.24) with red-blue-back thin strips of appellant Nandakishore Sethi and on red colour HERO HF Delux motor cycle bearing regd. No.OD-19-K-2022 from the house of the said appellant in presence of witnesses and prepared the seizure list vide Ext.4. Then P.W.41 came back to the police station along with both the appellants and the seized articles and kept it in his custody. He arrested both the appellants and sent them to Kishorenagar C.H.C. for collection of their nail clippings and medical examination. After examination of the appellants, their nail clippings were seized on being produced by the constable as per seizure list Ext.22. The appellants were forwarded to the Court of learned S.D.J.M., Athmalik through escort party. On 02.11.2017, he received the post mortem examination report of the three deceased persons.

After examination of 'Katuri' (M.O.6), the doctors (P.W.5, P.W.6 and P.W.12) submitted the query reports (Ext.6, Ext.8 and Ext.56/2) to P.W.41. On 25.11.2017, P.W.41 handed over the charge of investigation to his successor Prativa Majhi along with all the relevant documents and mal items. On 14.12.2017, Prativa Majhi forwarded the mal items to S.F.S.L., Rasulgarh, Bhubaneswar through S.D.J.M., Athmalik for chemical examination. During her investigation, the second I.O. examined the scribe of the F.I.R. and recorded his statement. She also made a prayer to the District Magistrate, Angul for grant of sanction under section 39 of the Arms Act for prosecution of the appellants under the Arms Act and received the sanction order vide Ext.58. The chemical examination report which includes DNA examination and biology and serology examination was directly received by the Court.

On completion of investigation, Prativa Majhi submitted charge sheet on 30.01.2018 under sections 302/449/363/364/394/201/34 of the I.P.C. and

sections 25/27 of the Arms Act against both the appellants.

#### Framing of Charge:

4. After submission of charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed the charges against the appellants as aforesaid and since the appellants refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute them and establish their guilt.

#### Prosecution Witnesses, Exhibits & Material Objects:

5. During the course of trial, in order to prove its case, the prosecution examined as many as 41 witnesses.

P.W.1 Jitendra Kumar Pradhan and P.W.2 Prasanta Kumar Pradhan have not supported the prosecution case as seizure witnesses, rather they stated that nothing was seized by police in their presence and as such they were declared hostile.

P.W.3 Babula Naik is a witness to the arrest of the appellants by the police as per two numbers of separate arrest memos vide Exts.2 and 3. He stated that the deceased Biranchi was his paternal brother and around one year back, Biranchi, his wife and son died but he did not know as to how they died.

P.W.4 Krushna Chandra Naik is a witness to the seizure of a motorcycle, one Katuri, pant and shirt of the appellant Nandakishore Sethi at police station as per seizure list Ext.4. He stated that he heard from his wife that Biranchi committed murder of his wife and one Abani Naik (P.W.18) requested him to talk with Biranchi and thereafter, he tried to talk with Biranchi by means of his mobile phone but Biranchi did not respond. He further stated that thereafter, he came to know that the dead body of Biranchi was lying near village Pokanda and he proceeded to the house of Biranchi and saw that the dead body of the wife of Biranchi lying on Harada pada with cut injuries on her throat so also other parts of her body and thereafter, he heard that the dead body of the son of Biranchi was lying near village Pokanda. He further stated that he suspected that the appellant Nandakishore Sethi committed murder of Biranchi, his wife and son due to previous political rivalry.

P.W.5 Dr. Prajna Paramita Pradhan was working as Assistant Surgeon attached to S.D.H., Athmallik, who conducted post mortem examination over the dead body of deceased Naba @ Ekalabya Naik on police requisition on 11.10.2017 and proved her report as per Ext.5. He also examined the weapon of offence produced by I.O. and submitted the query report vide Ext.6.

P.W.6 Dr. Anil Kumar Dey was working as O & G Specialist attached to S.D.H., Athmallik, who conducted post mortem examination over the dead body of deceased Biranchi Naik on police requisition on 11.10.2017 and proved his report as per Ext.7. He also examined the weapon of offence produced by I.O. and

submitted the query report vide Ext.8.

P.W.7 Bibhuti Bhusan Pradhan was working as a constable attached to Kishorenagar police station on the date of occurrence. He is a witness to the seizure of the wearing apparels of the deceased persons, namely, Tarani Naik, Biranchi Naik and Ekalabya Naik as per seizure lists Exts.9, 10 and 11 respectively.

P.W.8 Agasti Nayak is a witness to the inquest over the dead body of deceased Biranchi Naik and Naba @ Ekalabya Naik as per inquest reports marked as Ext.12 and Ext.13 respectively.

P.W.9 Susant Nayak is the younger brother of the deceased Biranchi Naik and informant. He is the informant in the case. He narrated the facts as the incident unfolded on the date of occurrence and supported the prosecution case. He is also a witness to the inquest over the dead body of the deceased Biranchi Naik, Naba @ Ekalabya Naik and Tarani Naik as per inquest reports marked as Ext.12, Ext.13 and Ext.15. He took zima of one iron almirah, two zinc boxes, one iron Alana, one plastic suitcase and the wearing ornaments of the deceased Tarani Naik and Ekalabya Naik from the I.O. as per zimanama marked as Ext.16 and Ext.17 respectively.

P.W.10 Dilip Sethy is a co-villager of the informant. He is a witness to the inquest over the dead body of the deceased Tarani Naik as per inquest report marked as Ext.15. He is also a witness to the seizure of one motorcycle and one half shirt as per seizure list marked as Ext.4.

P.W.11 Bipin Bihari Nayak is a witness before whom the appellant Prakash Behera made his confession which is marked as Ext.18. He is also a witness to the seizure of one Katuri and one blood stained gamucha as per seizure list Ext.19.

P.W.12 Dr. Debasis Bhanja was working as Medicine Specialist attached to S.D.H., Athmalik, who conducted autopsy over the dead body of the deceased Tarani Naik and prepared his report vide Ext.20. He also examined the weapon of offence produced by I.O. and submitted the query report vide Ext.56/2.

P.W.13 Chanda Nayak is a witness to the preparation of the inquest report conducted over the dead body of the deceased Tarani Naik. She stated to have known the appellant Nandakishore Sethi.

P.W.14 Atmaram Patra is a witness to the preparation of the inquest report vide Ext.15 conducted over the dead body of the deceased Tarani Naik and stated to have known both the appellants.

P.W.15 Israil Sahoo is the co-villager of both the appellants. He stated about the confession of the appellants regarding commission of crime. He is also a witness to the seizure of a blue colour jean pant with its sticker and a cement colour full shirt with blood stain as per seizure list marked as Ext.21.

P.W.16 Sanjeeb Kumar Sahoo is the co-villager of both the appellants. He stated

that on the date of incident, while he was standing at Pokanda Chhak, he saw movement of police jeep towards Birimunda-Gothamunda Jungle and he followed the police jeep. He further stated that prior to his arrival, police jeep had already reached at the spot and the appellants were moving ahead of the police towards the cultivable land of one Bairagi Nayak. He further stated that appellant Prakash Behera gave recovery of one blood stained Katuri and one blood stained gamucha from a bush and gave it to the police.

P.W.17 Shanti Nayak was a member of Maa Maheswar SSG group. She stated that deceased Biranchi Naik took hand loan from them along with other six persons to purchase one Pick up van and the three deceased persons were murdered by appellant Ranja Sethy to take away the cash which the deceased Biranchi Naik had received to purchase a Pick up van.

P.W.18 Abani Nayak did not support the prosecution case, for which she was declared hostile by the prosecution.

P.W.19 Kumari Nayak stated that after arrival of the police, she moved to the spot and found the dead body of deceased Tarani Naik lying in front of the house with cutting of throat. She further stated that after arrival of police, both the appellants confessed their guilt that they had killed all the three deceased persons.

P.W.20 Sasmita Nayak stated in similar manner like P.W.19 to have moved to the spot and found the dead body of deceased Tarani Naik lying in front of the house with cutting of throat.

P.W.21 Santosh Majhi is a witness to the inquest report (Ext.15) conducted over the dead body of the deceased Tarani Naik.

P.W.22 Suramani Nayak is a witness to the inquest reports conducted over the dead body of the deceased Tarani Naik, Naba @ Ekalabaya Naik and Biranchi Naik as per Exts.15, 13 and 12 respectively.

P.W.23 Gobardhan Dehury and P.W.25 Amruti Pradhan were the constables attached to Kishorenagar police station and also witnesses to the seizure of two glass bottles in which nail clippings of both the appellants were kept as per seizure list Ext.22.

P.W.24 Maharga Nayak is a witness to the inquest reports conducted over the dead bodies of deceased Biranchi Naik and Naba @ Ekalabaya Naik as per inquest reports marked as Exts.12 and 13 respectively.

P.W.26 Rashmikiranjan Bagh was the constable attached to Kishorenagar police station, who stated that the I.I.C. issued one command certificate to guard the dead bodies of the deceased Biranchi Naik and his son as per Ext.23. He further stated that after completion of post mortem of deceased Biranchi Naik, he handed over the wearing apparels of the deceased Biranchi Naik to P.W.41, who seized the same as per seizure list vide Ext.10. He also received the nail clippings

of both the appellants from Kishorenagar hospital and handed over the same to P.W.41, which was seized as per seizure list Ext.22.

P.W.27 Abhimanyu Nayak is a co-villager of the deceased. He has not supported the prosecution case for which he declared hostile by the prosecution.

P.W.28 Soumitri Nayak is the wife of the informant and sister-in-law of the deceased Biranchi. She stated that the incident took place on 09.10.2017 night and on 10.10.2017 morning after hearing about the incident from two boys of his village about the death of deceased Tarani Naik (bada jaa) and that her dead body was lying inside a harada kiari, she moved to the spot and found blood stains near the side window and her sister-in-law was lying dead there. She further stated that after entering into the house, she saw that the godrej almirah, boxes were broken and in open condition and the deceased Biranchi and Ekalabya were not present in the house and she also heard that the deceased Biranchi and Ekalabya were killed somewhere inside the Thakurgarh locality. She further stated that prior to the incident, the deceased Biranchi had withdrawn cash of Rs.1.75 lakh from Maa Maheswari SHG group of village Gambharimalia to purchase a Pickup van for his business and the appellant Nandakishore Sethi was asking the deceased Biranchi whether he had withdrawn money from Maa Maheswari SHG group. She further stated that appellant Nandakishore Sethi might have killed all the three deceased for money.

P.W.29 Madan Mohan Nayak is a co-villager of the deceased Biranchi. He stated that on 10.10.2017 morning at about 9.00 a.m., while he was at Sanjamura, he got information regarding murder of Tarani Naik and after coming to his village, he came to the spot and found the dead body of Tarani Naik was lying in the harada taila of one Gandhara Sethi and when he entered into the house of deceased Biranchi, he found blood on the floor near the window and also found damage of almirah, Alana, boxes and then he got information that the dead body of deceased Biranchi was lying under the bridge of village Pokonda and the dead body of deceased Ekalabya was lying at the side of Birimunda jungle of Birimunda sahi. He further stated that appellant Nandakishore Sethi told to him that he would see if his mother got defeated in the panchayat election. He further stated that the deceased Biranchi had taken loan of Rs.1,75,000/- from SHG group of village Gambharimalia to purchase of pick up van in order to increase his business and since there was monetary transaction, he suspected both the appellants for commission of murder of deceased.

P.W.30 Kumar Nayak is an independent witness stated to have known only the appellant Prakash Behera. He stated that the incident took place on 10.10.2017 and the murder was detected under Pokanda bridge and another at Birimunda Gothamundia jungle and that Biranchi Naik, his son along with his wife were murdered by both the appellants and the dead body of deceased Biranchi Naik was lying under the Pokanda bridge and his throat was cut and the son of deceased Biranchi Naik was lying dead at Birimunda Gothamundia jungle and his throat was also cut. He further stated to be a witness to the appellant Prakash

Behera giving recovery of one blood stained Katuri (M.O.6) and one gamuchha (M.O.7) which were kept in hiding under a bamboo bush.

P.W.31 Achyuttananda Nayak stated to have got information on 10.10.2017 that a dead body was lying under the Pokanda bridge with throat cut injury and at Birimunda Gothamundia jungle under Katamasu tree, a boy aged about seven years was lying dead with throat cut injury and he also received information on 12.10.2017 that both the appellants had committed the murder.

P.W.32 Sanjaya Nayak stated that he along with Bairagi and Santan Nayak had been to grazing cattle and while they allowed their cattle to drink water at Birimunda, they found a child aged about five years had been killed by cutting his throat and was lying dead and was wearing one half pant and half shirt. He further stated that seeing the furious situation, he called P.W.31.

P.W.33 Saroj Kumar Nayak was the constable attached to Kishorenagar police station, who stated that P.W.41 issued a command certificate to guard the dead body of deceased Naba @ Ekalabya which was lying at Birimunda jungle vide Ext.24. He further stated that after issuance of command certificate, he proceeded to the spot and guarded the dead body of the deceased Naba @ Ekalabya at Birimunda forest and he took the dead body of the deceased to S.D.H., Athmallik for post mortem examination. He further stated that after the post mortem examination, the dead body of the deceased Naba @ Ekalabya was handed over to his paternal uncle and he took the wearing apparels of the deceased Naba @ Ekalabya along with Bala and suta and handed over the same to P.W.41, who seized the same as per seizure list vide Ext.11.

P.W.34 Samarendra Kumar Sethi was the Branch Manager, S.B.I., Dimirimunda Kishorenagar Branch, who stated that he had provided the bank account details of the deceased Biranchi Naik to the I.O. (P.W.41) with seal and signature of Branch Manager vide Ext.26 and on 09.10.2017, the deceased Biranchi Naik had deposited a cash of Rs.1,00,000/- in his account and the total balance of the said account was Rs.1,20,520/-.

P.W.35 Girish Chandra Nayak is a witness to the confessional statement of the appellants vide Ext.18. He is also a witness to the seizure of offensive weapon and the blood stained cloth as per seizure list vide Ext.19.

P.W.36 Subarna Pradhan was residing in the house of deceased Biranchi Naik and she stated to have noticed the dead body of Tarini Naik lying inside harada kiari with throat cut injury on 10.10.2017 morning. She stated that on 07.10.2017, the appellant Nandakishore Sethi came to the house of deceased Biranchi Naik and enquired from the deceased about the loan amount that he received from Arnapurna Group to which the deceased replied to have kept it with one of the members of Arnapurna Group. She further stated that on 09.10.2007, the appellant Nandakishore Sethi came to the house of deceased Biranchi Naik and asked deceased Tarini Naik about the deceased Biranchi purchasing motor cycle after receipt of money, but deceased Tarini Naik pleaded her ignorance about the

same. She further stated about the political enmity between the appellant Nandakishore Sethi and deceased Biranchi Naik.

P.W.37 Girish Kumar Sahoo, who was the grocery shop owner at Thakurgarh, stated that both the appellants along with deceased Biranchi had come to the counter of foreign liquor shop which was near his grocery shop and purchased liquor and then they came to his shop to purchase water pouch, three use and throw glasses and mixture and consumed liquor and stayed at his shop for about 10 to 12 minutes. He further stated that the appellants were asking the deceased to go Kalapatana to see a melody as the melody was not good at Thakurgarh and then all the three persons moved in a red colour motor cycle. He further stated that on the next day, he had seen a video in his shop that deceased Biranchi had been murdered and after two days of the incident, he found the image of the two appellants, which he had seen in the viral video.

P.W.38 Parto Oram was the A.S.I. of Police attached to Kishorenagar police station, who is a witness to the seizure of seizure lists Ext.9, Ext.10, Ext.11, Ext.29, Ext.30, Ext.31 and Ext.32.

P.W.39 Bhabini Nayak is a hearsay witness, who heard about the murder of three deceased.

P.W.40 Prasanta Kumar Pradhan was the Scientific Officer attached to DFSL, Dhenkanal and he was the in-charge of Angul district at the time of incident and on the direction of the S.D.P.O., Athmallik, he proceeded to the three different spots and prepared the spot visit report vide Ext.43 and handed over the same to the I.O. (P.W.41). He also produced the collected materials from three spots before P.W.41, who seized the same as per seizure lists vide Exts.29, 30, 31 and 32.

P.W.41 Premananda Lenka was posted as the Inspector-in-Charge of Kishorenagar police station and he is the Investigating Officer of the case, who investigated the case after registering the F.I.R. on 10.10.2017 and handed over the charge of investigation to his successor Prativa Majhi on 25.11.2017, who in turn submitted charge sheet.

The prosecution has proved 62 numbers of exhibits. Ext.1/2 is the seizure list of black colour full pant, Exts.2 & 3 are the arrest memos of both the appellants, Ext.4 is the seizure list of a motorcycle, one Katari, pant and shirt of the appellant Ranja @ Nandakishore, Ext.5 is the post-mortem report of the deceased Naba @ Ekalabya Naik, Ext.6 is the query report of P.W.5, Ext.7 is the post-mortem report of the deceased Biranchi Naik, Ext.8 is the query report of P.W.6, Ext.9 is the seizure list of wearing apparels of the deceased Tarani Naik, Ext.10 is the seizure list of wearing apparels of the deceased Biranchi Naik, Ext.11 is the seizure list of wearing apparels of the deceased Naba @ Ekalabya Naik, Exts.12, 13 and 15 are the inquest reports of the deceased Biranchi Naik, Naba @ Ekalabya Naik and Tarani Naik respectively, Ext.14 is the F.I.R., Exts.16 & 17 are the zimanama, Ext.18 is the confessional statement of the appellant

Prakash Behera, Ext.19 is the seizure list of chopper and one blood stained towel, Ext.20 is the post-mortem report of the deceased Tarani Naik, Ext.21 is the seizure list of a blue colour jean pant and a cement colour full shift with blood stain, Ext.22 is the seizure list of nail clipping of the appellants, Exts.23, 24 and 42 are the command certificates, Exts.25, 49 and 51 are the dead body challans, Ext.26 is the account details of deceased Biranchi, Exts.27 and 28 are the paper slips, Exts.29, 30, 31 and 32 are the seizure lists, Exts.33, 34, 35, 36, 37, 38, 39, 40 and 41 are the sticker on sealed packets, Exts.43 is the spot visit report, Exts.45, 48 and 50 are the spot maps, Ext.46 is the seizure list of seven numbers of house hold articles in broken condition, Ext.47 is the dead body challan of Tarani Naik, Ext.52 is the sticker on M.O.2, Ext.53 is the paper slip on M.O.1, Ext.54 is the paper slip on M.O.23, Ext.55 is the paper on M.O.24, Ext.56/2 is the query report of P.W.12, Ext.57 is the forwarding report of mal item, Ext.58 is the sanction order, Ext.59 is the S.F.S.L. report, Ext.60 is the portion of 161 statement of P.W.1, Ext.61 is the portion of 161 statement of P.W.2 and Ext.62 is the portion of 161 statement of P.W.18.

The prosecution also proved 24 material objects. M.O.1 is the blood stain shirt, M.O.2 is the jean pant, M.O.3 is the jean pant of deceased Biranchi Naik, M.O.4 is the chadi of deceased Biranchi Naik, M.O.5 is the ganji of deceased Biranchi Naik, M.O.6 is the Katuri, M.O.7 is the gamucha, M.O.8 is the half pant of deceased, M.O.9 is the half shirt of deceased, M.O.10 is the red colour suta, M.O.11 is the blood stained saree of deceased Tarani Naik, M.O.12 is the blood stained saya of deceased Tarani Naik, M.O.13 is the blood stained blouse of deceased Tarani Naik, M.O.14 is the gloves, M.O.15 is the paper envelope containing signature of S.O., D.F.S.L., M.O.16 is the blood stained locket, M.O.17 is the plastic rope, M.O.18 is the plastic rope, M.O.19 is the paper envelope containing signature of P.W.40, M.O.20 is the paper envelope containing signature of P.W.40 (blood stained earth), M.O.21 is the paper envelope containing signature of P.W.40, M.O.22 is the sample earth, M.O.23 is the black colour pant of appellant Nandakishor Sethi and M.O.24 is the shirt of appellant Nandakishor Sethi.

#### Defence Plea:

6. The defence plea of the appellant Prakash Behera is that he has been falsely implicated by the Thakurgarh police after taking his signatures on some blank papers and the defence plea of the appellant Nandakishore Sethi is that he has been falsely implicated in this case without his involvement.

The appellant Nandakishore Sethi examined himself as D.W.1 and stated that he had never given recovery of any incriminating material to the police during the investigation and that the I.O. had never recorded his statement rather he had taken his signatures on blank papers.

#### Findings of the Trial Court:

7. The learned trial Court on the basis of the inquest reports Ext.12, 13 and 15,

the evidence of the three doctors, i.e. P.W.5, P.W.6 & P.W.12, who conducted postmortem examination over the three dead bodies and postmortem reports findings vide Ext.5, Ext.7 & Ext.20 came to hold that the three deceased died homicidal death. Taking into account the last seen of the deceased in the company of the appellants, leading to discovery of the weapon and other incriminating articles at the instance of the appellants and the D.N.A. report findings coupled with the evidence of Scientific Officer, came to hold that there are following circumstances on record against the appellants:

- (i) Motive of appellants to grab huge loan amount from deceased Biranchi Naik;
- (ii) Preparation to call deceased Biranchi Naik for melody;
- (iii) Purchase of liquor, water pouch and mixture for the commission of murder;
- (iv) No explanation by the appellants for last seen with the deceased Biranchi Naik on 09.10.2017 (Monday at 9 p.m. to 9.30 p.m.);
- (v) Taking deceased Biranchi Naik to Kalapatnali to see melody as the melody of Thakurgarh is not good;
- (vi) Dead body of deceased Biranchi Naik found near the Pokanda bridge which comes on the way from grocery shop to kalapatnali;
- (vii) Blood stains found on the katuri (M.O.6) is of human origin of deceased Naba @ Ekalabya Naik;
- (viii) Blood stains found on cut piece of shirt of deceased Naba @ Ekalabya Naik matched with blood stains found in the napkin of appellant Prakash Behera;
- (ix) Blood stains found in cut piece of banian of deceased Biranchi Naik matched with blood stains found in cut piece of full pant of appellant Naba Kishore Sethi.

The learned trial Court discussed the evidence available on record with respect to the offence of house trespass and commission of robbery and came to hold that the prosecution has failed to establish the fact of house trespass and commission of robbery by the appellants in the house of the deceased Biranchi Naik. With respect to the charge of kidnapping and abduction, the learned trial Court held that so far as deceased Biranchi Naik is concerned, the fact of abduction could not be proved. However, so far as kidnapping of the deceased Naba @ Ekalabya Naik is concerned, from the circumstantial evidence, the prosecution has proved that he was kidnapped from the lawful custody of his parents and subsequently his murder was committed inside the jungle.

With regard to the charge under section 201 of I.P.C., the learned trial Court relying on the confessional statement of the appellants recorded under section 27 of the Evidence Act that after commission of crime, they took steps to hide the incriminating weapon i.e. 'katuri' and their blood stained clothes in order to destroy the prosecution evidence and also considering the circumstantial evidence, came to hold that the appellants had taken steps for disappearance of

prosecution evidence in order to protect themselves from the criminal liabilities.

With regard to the charges under sections 25 and 27 of the Arms Act, the learned trial Court came to the conclusion that since the weapon of offence i.e. katuri (M.O.6) is neither coming under the definition of firearm and ammunition as defined under section 2(b) of the Arms act, no license is necessary for keeping a katuri and thereby, held that the prosecution failed to prove its case under sections 25 and 27 of the Arms Act.

Accordingly, the learned trial Court while holding the appellants not guilty under section 363/394/34 of I.P.C. and sections 25 & 27 of the Arms Act, found them guilty under section 302/364/201/34 of I.P.C.

On the question of sentence, the learned trial Court has held that since it is a case of triple murder which comes under the purview of rarest of rare case, death sentence is the only punishment, which would justify the magnitude of the offence committed by the appellants and accordingly awarded the sentences as aforesaid.

Submission of Parties:

8. Mr. Satya Ranjan Mulia, learned counsel appearing for the condemned prisoners/appellants in DSREF No.04 of 2024 and CRLA No.1166 of 2024 being assisted by Mr. Ramesh Chandra Maharana, Advocate and learned Amicus Curiae Mr. Pradip Kumar Panda contended that the case is based on circumstantial evidence and the main circumstances are the last seen of the deceased Biranchi Naik in the company of the two appellants in the night of occurrence as deposed to by P.W.37, D.N.A. test findings and leading to discovery of the weapon and other incriminating articles at the instance of the appellants. He argued that the evidence of P.W.37 relating to the last seen should not be accepted as it is contrary to his previous statement made before the I.O. There was no prior acquaintance of P.W.37 either with the deceased Biranchi Naik or appellant no.2 Nandakishore Sethi and therefore, when no test identification parade has been conducted with respect to the appellant no.2, the first time identification of appellant no.2 in Court by P.W.37 after a long gap of almost six years is very difficult to be accepted. He further argued that the articles which were seized at the instance of the appellants were lying in open spaces, which were accessible to all and moreover, there is lack of evidence about its safe custody after those were seized till the same were produced after two months in Court and sent to the Forensic Science Laboratory through Court. It was further argued that the DNA test report was prepared by one Suchismita Behera, S.O. and A.C.E., but she has not been examined to prove the report and it was marked through the Investigating Officer (P.W.41) and therefore, the DNA test report findings should be taken out of consideration. It is further argued that the motive behind the commission of crime has also not been proved by the prosecution inasmuch as so far as the commission of robbery of cash of the deceased Biranchi Naik being one of the motives has been disbelieved by the learned trial Court and there is

no clinching evidence relating to the second motive i.e. political hostility between the parties and since in a case of circumstantial evidence, the motive assumes pertinent significance, it cannot be said that the chain of circumstances is so complete that it unerringly points towards the guilt of the appellants. It is further argued that the investigation has been conducted in a perfunctory manner and there are omissions and lapses on the part of the investigating agency and therefore, it is a fit case where benefit of doubt should be given in favour of the appellants. He further argued that in respect of the deceased Tarini Naik and Naba @ Ekalabya Naik, except the DNA test report findings which relates to genetic profile generated from cut piece from the shirt of deceased Naba @ Ekalabya Naik matching with genetic profile generated from napkin of appellant Prakash Behera, there is no other evidence and therefore, the learned trial Court erred in holding the appellants guilty for commission of murder of the three deceased persons and awarding death sentence to them that too without following the due procedure as laid down by the Hon'ble Supreme Court in calling for the reports from the different authorities and giving opportunity to the appellants to produce the mitigating circumstances before awarding the death sentence. He placed reliance in the cases of Nandu Singh -Vrs.- State of Madhya Pradesh (Now Chhattisgarh) reported in (2022) 19 Supreme Court Cases 301, Shankar -Vrs.- State of Maharashtra reported in (2023) 19 Supreme Court Cases 553, Subash Aggarwal -Vrs.- State of NCT of Delhi reported in 2025 SCC OnLine SC 808, Karandeep Sharma alias Razia alias Raju -Vrs.- State of Uttarakhand reported in 2025 SCC OnLine 773, Rahul -Vrs.- State of Delhi and another reported in (2023) 1 Supreme Court Cases 83, Allarakha Habib Memon and others -Vrs.- State of Gujarat reported in (2024) 9 Supreme Court Cases 546 and Sinic Patricia -Vrs.- State of Orissa reported in (1994) 7 Orissa Criminal Reports 277.

9. Mr. Debashis Tripathy, learned Addl. Government Advocate, on the other hand, supported the impugned judgment and argued that the last seen evidence as adduced by P.W.37 has not been shaken in the cross-examination and no explanation has been given by the appellants in their accused statements as to how the deceased Biranchi died a homicidal death when he was last seen alive in their company. He further argued that in view of the political hostility, the motive part has also been proved satisfactorily. The learned counsel further argued that the DNA test report has been marked on admission and it has been proved through the I.O. (P.W.41) and specific questions relating to the findings of the DNA test report have been put to the appellants in their accused statements but they have not satisfactorily explained the same and as such the learned trial Court is quite justified in relying upon the same. It was further argued that on the basis of the disclosure statement made by the appellants, the incriminating articles including the weapon were seized and it was kept in safe custody by the I.O., which has not challenged by the defence and therefore, the learned trial Court has rightly relied upon the leading to discovery evidence. He further argued that deficiencies in investigation on the part of the investigating officer

cannot be a ground for total rejection of the prosecution case. He vehemently argued that if the circumstances are taken together, it clearly establish the charges under which the appellants were found guilty and since it is a case of triple murder of one family which includes a minor child aged about seven years, therefore, the learned trial Court is quite justified in holding that it is a rarest of rare case and awarding death sentence for the heinous and gruesome murders after hearing the appellants on the question of sentence and therefore, it is not a fit case to interfere with the impugned judgment and accordingly, the death reference should be answered in affirmative and the criminal appeal should be dismissed. He placed reliance in the case of Sheo Shankar Singh -Vrs.- State of Jharkhand reported in (2011) 49 Orissa Criminal Reports (SC) 485.

Whether the prosecution has proved the homicidal death of three deceased?:

10. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine the evidence on record as to how far the prosecution has proved that the three deceased Biranchi Naik, Tarani Naik and Naba @ Ekalabya Naik met with homicidal death.

Apart from the inquest reports of the three deceased persons proved by the I.O. (P.W.41) vide Ext.12 relating to deceased Biranchi Naik, Ext.15 relating to deceased Tarani Naik, and Ext.13 relating to deceased Naba @ Ekalabya Naik, the evidence of the three doctors, who conducted postmortem examination over the cadaver of the three deceased are very much relevant for this purpose.

P.W.6 Dr. Anil Kumar Roy conducted autopsy over the dead body of deceased Biranchi Naik in S.D.H., Athmallik on 11.10.2017 and noticed the following external injuries & internal injuries:

- (i) Deep Throat cut injury over front of the neck including cut of esophagus, bronchus, vital vessels i.e. arteries and veins, neck muscle sternocleidomastoid muscle;
- (ii) Four chop cut injuries back of the neck of size 6cm x 4cm x 3cm, 6cm x 4cm x 3cm, 5cm x 4cm x 3cm and 5cm x 3cm x 3cm respectively.

On dissection, he found abdomen filled with gas and all internal organs were intact and congested. He opined that the death was due to deep sharp cut injury of throat, the death was homicidal and ante mortem in nature, the injuries were caused by sharp and hard object and the time since death from the time of postmortem examination was within 24 hours to 36 hours.

The postmortem report has been marked as Ext.7.

No question has been put by the learned defense counsel to P.W.6 relating to the findings in Ext.7 and as such the findings have remained unchallenged.

P.W.12 Dr. Debasis Bhanja conducted autopsy over the dead body of deceased Tarani Naik in S.D.H., Athmallik on 11.10.2017 and noticed the following external injuries and internal injuries:

#### External Injuries:

- i. Incised cut injury of size 9cm x 5cm x 2cm over front part of neck extending from right to left;
- ii. Incised wound behind right ring finger of size 3cm x 2cm x 1cm;
- iii. Incised wound of size 2cm x 1cm x 0.5cm over backside of left index finger;
- iv. Incised wound of size 7cm x 5cm x 2cm over right thigh.

#### Internal Injuries:

- (i) Cut of esophagus, bronchus, neck vessel, neck muscle, sternocleid muscle;
- (ii) Maggot present in cut injury of throat;
- (iii) Abdomen filled with gas;
- (iv) All internal organs are intact and congested.

All the injuries were opined to be ante mortem in nature. The death was caused due to deep sharp cut injury of throat. The nature of death was homicidal. The time since death was within 24 to 36 hours. He opined that the injuries were sufficient to cause the death of a human being. The postmortem report has been marked as Ext.20.

No question has been put by the learned defense counsel to P.W.12 relating to the findings in Ext.20 and as such the findings have remained unchallenged.

P.W.5 Dr. Prajna Paramita Pradhan conducted autopsy over the dead body of deceased Naba @ Ekalabya Naik in S.D.H., Athmallik on 11.10.2017 and noticed the following external injuries and internal injuries:

- (i) A deep throat cut injury in front of the neck, from right to left ear was present, which measures 10cm x 7cm x 7cm;
- (ii) The esophagus, bronchus and all vital arteries and veins were cut;
- (iii) Abdomen is filled with gas;
- (iv) All internal organs were intact and congested;
- (v) Maggots were found on the injuries on throat and nostrils.

She opined that the cause of death was due to deep sharp cut injury of throat and that the death was homicidal in nature and the injury was ante mortem in nature. The injury on neck might have caused by sharp and hard object. The time since death to the time of examination was approximately 24 hours to 36 hours. The postmortem report has been marked as Ext.5.

No questions have been put by the learned defense counsel to P.W.5 relating to the findings in Ext.5 and as such the findings have remained unchallenged.

Thus, from the inquest reports, postmortem reports and the evidence of the doctors coupled with the other evidence on record, it has been proved that all the three deceased met with homicidal death which is also not disputed by the learned counsel for the appellants. As such, the prosecution has proved the homicidal death of all the three deceased.

Principle for appreciating the case based on circumstantial evidence:

11. There is no dispute that there is no direct evidence as to who committed the murder of the three deceased persons and how. The prosecution case hinges on circumstantial evidence. It is well established rule of criminal justice that fouler the crime, the higher should be the degree of proof. A moral opinion howsoever strong or genuine cannot be a substitute for legal proof. When a case is based on circumstantial evidence, a very careful, cautious and meticulous scrutinization of the evidence is necessary.

In the case of Sharad Birdhichand Sarada -Vrs.-State of Maharashtra reported in A.I.R. 1984 SC 1622, it is held that the circumstances from which the conclusion of guilt is to be drawn against an accused should be fully established. The facts so established should be consistent with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved. 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 in all human probabilities that the act must have been done by the accused. These five golden principles for appreciation of a case based on circumstantial evidence have been named as 'Panchsheel'. In the case of Gambhir -Vrs.- State of Maharashtra reported in A.I.R. 1982 S.C. 1157, the Hon'ble Supreme Court held that the circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. In the case of Jaharlal Das -Vrs- State of Odisha reported in (1991) 4 Orissa Criminal Reports (SC) 278, the Hon'ble Supreme Court held that it is to be borne in mind as a caution that in cases depending largely upon circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of proof and such suspicion howsoever strong cannot be allowed to take the place of proof. The Court has to watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

In the light of legal principle about the circumstantial evidence, it is to be examined as to whether the circumstantial evidence in the instant case satisfies the requirement of law. Out of the circumstances enumerated by the learned trial Court, we will first discuss about the motive on the part of the appellants to commit the crime.

Motive:

12. The prosecution has adduced two motives on the part of the appellants to commit the murder of the deceased Biranchi Naik. The first motive is that the deceased had availed huge loan amount from the Arnapura Group and for committing robbery of such amount, the crime was committed. The second one is that there was political hostility between the parties.

The learned trial Court has disbelieved the charge of robbery against the appellants which is not challenged by the State.

The learned counsel for the State Mr. Tripathy fairly submitted that so far as the first motive is concerned, there is no clinching evidence on record.

Coming to the political hostility between the parties, P.W.36 has stated that during the Panchayat election of the year 2017, the mother of appellant Nandakishore Sethi was contesting for the post of Sarpanch and wife of Dillip (P.W.10) was also contesting for the said post. During the election campaigning, the deceased Biranchi was supporting wife of P.W.10, who won the election and mother of Nandakishore Sethi got defeated. He further stated that for the said political reason, there was enmity between the appellant Nandakishore Sethi and deceased Biranchi Naik.

P.W.10 is totally silent that his wife was contesting the election against the mother of appellant Nandakishore Sethi for the post of Sarpanch and won the election. On the other hand, P.W.9, the younger brother of deceased has stated that the mother of appellant Nandakishore Sethi was contesting for the post of Ward Member and the wife of P.W.10 was also contesting for the said post and the mother of the appellant got defeated for which the appellant had enmity with his deceased brother. Thus, there are discrepancies in the evidence of witnesses as to for which post, the mother of the appellant Nandakishore Sethi was contesting the election, whether it was for the post of Sarpanch as stated by P.W.36 or for the post of Ward Member as stated by P.W.9. Wife of P.W.10 has not been examined by the prosecution to clarify on this aspect.

In a case of circumstantial evidence, motive has an important role to play. It is an important link in the chain of circumstances. (Ref: *Indrajit Das -Vrs.- State of Tripura* : (2023) 18 Supreme Court Cases 506). In a case based on circumstantial evidence, motive assumes great significance inasmuch as its existence is an enlightening factor in a process of presumptive reasoning. (Ref: *Sukhram -Vrs.- State of Maharashtra* : (2007) 7 Supreme Court Cases 502). Motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give

any benefit to the accused. (Ref: Ramchand -Vrs.- State of U.P. : (2023) 16 Supreme Court Cases 510). In the case of Shankar (supra), it is held that just like complete absence of motive, failure to establish motive after attributing one, should also give a different complexion in a case based on circumstantial evidence and it will certainly enfeeble the case of prosecution. In the case of Subash Aggarwal (supra), it is held that motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted. In the case of Nandu Singh (supra), it is held that in a case based on circumstantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence, the case of prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.

In view of the foregoing discussions, we are of the view that the prosecution has failed to establish any of the two motive on the part of the appellants to commit the crime by adducing clinching evidence and therefore, we have to scrutinize the materials available on record carefully to see as to how far the prosecution has satisfactorily proved the other incriminating circumstances and whether the chain of circumstances is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellants and it is consistent with the only conclusion of guilt of the appellants. The chain of circumstantial evidence is essentially meant to enable the Court in drawing an inference and thus the task of fixing criminal liability upon a person on the strength of an inference must be approached with abandoned caution.

Last seen evidence:

13. The learned trial Court while jotting down the circumstances available on record against the appellants has mentioned about the preparation on the part of the appellants to call the deceased Biranchi for melody, purchase of liquor, water pouch and mixture for the commission of murder, non-explanation by the appellants for last seen with the deceased Biranchi on 09.10.2017 (Monday) at 09.00 p.m. to 09.30 p.m., taking of the deceased Biranchi to Kalapatnali to see the melody as melody of Thakurgarh was not good and that the dead body of Biranchi was found near Pokanda bridge which comes on the way from grocery shop of P.W.37 to Kalapatnali. All these circumstances can be discussed under one heading i.e. 'last seen evidence'.

It is the prosecution case that the deceased Biranchi Naik was last seen alive in the company of both the appellants. In order to prove this circumstance, the prosecution has examined P.W.37 Girish Kumar Sahoo. P.W.37 is a resident of village Thakurgarh and he has stated that he was running a grocery shop at

Thakurgarh near a foreign liquor shop and that on 09.10.2017 (Monday) at about 9.00 p.m. to 9.30 p.m., the appellants along with the deceased Biranchi came to the counter of foreign liquor shop, purchased liquor and then came to his shop to purchase water pouch, three use and throw glasses and mixture. He further stated that they consumed liquor in front of him and stayed in his shop for 10 to 12 minutes and at that time they were asking the deceased to go to Kalapatanalai to see melody party as the melody in village Thakurgarh was not good and then they moved together in a red color motor cycle. He further stated that on the next day, there was a viral news through mobile phone that the deceased Biranchi had been murdered and after two days of the occurrence, he could find the image of the appellants whose news was viral through the mobile phone and as such he could identify the appellants along with the deceased from the viral video. He stated that Pokanda bridge comes on the way to Kalapatanalai.

In the cross-examination, P.W.37 has stated that he had got no prior acquaintance with the appellant Nandakishore Sethi so also with the deceased Biranchi. He knew the appellant Prakash Behera prior to the occurrence as he had a furniture shop at Thakurgarh market.

Though, according to this witness (P.W.37), he came to know about the murder of the deceased Biranchi Naik through viral news on the next day so also saw the image of the appellants in viral news two days after the occurrence, but he did not come forward to give his statement before police immediately and his statement under section 161 Cr.P.C. was recorded by the I.O. only on 17.11.2017, which was more than a month after the occurrence. He has not stated to have disclosed before anyone to have seen the appellants in the company of the deceased in his grocery shop in the night on 09.10.2017.

P.W.41, the I.O. has stated he examined P.W.37 on 17.11.2017 and further stated that as the shop of P.W.37 was found closed during his repeated visit in connection with investigation, he examined P.W.37 lately. It is not clarified by the prosecution as to how the I.O. could know that P.W.37 had any knowledge about the occurrence. The explanation of delayed examination given by the I.O. is very difficult to be accepted as P.W.37 himself has not stated that his grocery shop was closed after 09.10.2017 rather he stated that he saw the viral video sitting at his shop two days of the incident.

Neither the owner nor the salesman of the liquor shop has been examined to corroborate the evidence of P.W.37 that the appellants had come on 09.10.2017 with the deceased Biranchi to purchase liquor. If liquor was consumed in front of P.W.37 after purchasing water pouch, three use and throw glasses and mixture from the shop of P.W.37 staying there for 10 to 12 minutes, then how I.O. and Scientific Officer as per the spot visit report (Ext.43) could find the liquor bottle and use and throw tumblers with alcohol smell at Pokanda bridge, where the dead body of Biranchi Naik was found. P.W.37 has not stated that after consuming some liquor from the liquor bottle in front of his shop, the appellants carried the balance liquor left in the liquor bottle with them so also the use and

throw glasses. The finding of liquor bottle and use and throw tumblers at Pokanda bridge falsifies the statement of P.W.37 that after purchasing water pouch, three use and throw glasses and mixture from his grocery shop, the appellants and the deceased consumed the same staying there for about 10 to 12 minutes.

If the appellants and the deceased had not stayed for such time as deposed to by P.W.37 for consuming liquor then he could not have got much time to remember their faces. There is nothing on record about the nature of lighting arrangement in the shop of P.W.37. Appellant Nandakishore Sethi was an unknown person to P.W.37 and there is nothing on record that

there were some special features in the appellant which could facilitate P.W.37 to remember his identity. Since no test identification parade in respect of appellant Nandakishore Sethi has been conducted, it is very difficult to accept his identification evidence in Court for the first time as P.W.37 was examined in Court on 08.12.2023, which was more than 6 years after the occurrence.

In the case of Sheo Shankar Singh (supra), it is held that identification of the accused in the Court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a test identification parade then provides corroboration to the witness in the Court who claims to identify the accused persons otherwise unknown to him. Test Identification parades, therefore, remain in the realm of investigation. The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the Court. As to what should be the weight attached to such an identification, is a matter which the Court will determine in the peculiar facts and circumstances of each case. In appropriate cases, the Court may accept the evidence of identification in the Court even without insisting on corroboration.

In the case of Allarakha Habib Memon (supra), it is held as follows:-

"22. Demistalkumar (P.W.12) was also made to identify the accused persons in the dock, but that is another story which we shall consider at a later stage. The witness identified the appellant-accused as the offenders. However, we find that the lame attempt by P.W.12 to make dock identification of the accused in his deposition recorded after nearly two-and-a-half years of the incident is absolutely flimsy and unacceptable. The witness had not given out either the names or the description of the features of the accused in his police statement and thus, if at all, the prosecution was desirous of getting the accused identified

at the hands of this witness, then he should have been made to identify the accused persons in a test identification parade during the investigation. Thus, the identification of the accused by Demistalkumar (P.W.12) for the first time in the dock is totally unbelievable and unacceptable.”

The viral news through which P.W.37 could come to know about the identity of the appellants and the deceased has not been proved in the case. The deceased Biranchi was also unknown to P.W.37 beforehand. At least the I.O. could have confirmed the identity of the deceased showing his photograph to P.W.37 which has not been done.

If the appellants were there in the company of the deceased on 09.10.2017 and taking him in a motor cycle in the night hours to kill him, it is difficult to accept that they would have exposed the deceased to P.W.37 in his grocery shop rather any of the appellants could have gone to the foreign liquor shop so also to the shop of P.W.37 leaving the other appellant in the company of the deceased at a little distance.

In view of the suspicious features appearing in the evidence of P.W.37, it is difficult to accept his sole testimony to apply ‘last seen theory’ in this case against the appellants. Once we are not accepting the evidence of P.W.37, the submission of the learned State Counsel that no explanation has been offered by the appellants in their accused statements as to how the deceased Biranchi Naik died a homicidal death after being last seen alive in their company, though seems attractive but does not hold good in fact and circumstance of the present case.

Seizure of Black Colour Full Pant (M.O.23) at the instance of appellant Nandakishore Sethi:

14. The relevant witnesses to the seizure of black colour full pant (M.O.23) at the instance of the appellant Nandakishore Sethi are P.Ws.1 and 2 and the I.O. (P.W.41) and the relevant seizure list is Ext.1/2. The said seizure is stated to have been made on 12.10.2017 from a bush on the road side of Thakurgarh Pathargumpa road near village Pathargumpa.

P.W.1 has not supported the prosecution case of seizure of black colour full pant rather he has specifically stated that nothing was seized by police in the case in his presence. He has simply proved his signature in the seizure list. He has been declared hostile by the prosecution. In the cross-examination, he has stated that the police took his signature on an unwritten paper.

P.W.2 has also not supported the prosecution case and stated that nothing was seized by police in the case in his presence and he has only proved his signature in the seizure list. Like P.W.1, he has stated that the police took his signature on an unwritten paper.

P.W.41, the I.O. has stated that in presence of P.Ws.1 and 2, the appellant Nandakishore Sethi gave recovery of one black color full pant stained with blood

on which a sticker written thereon as 'ONLY' on the backside of pant and above the back pocket was there. He has proved the seizure list as Ext.1/2 so also the black colour full pant as M.O.23 and the paper slip affixed on the packet as Ext.54.

The appellant Nandakishore Sethi has disputed the seizure of such black colour full pant at his instance in his accused statement.

Though in the seizure list dated 12.10.2017 vide Ext.1/2, it is mentioned that the place of seizure was from a bush on the road side of Thakurgarh-Patharagumpa road near village Patharagumpa, however P.W.41, the I.O. has not stated that the seizure was made from inside the bush. Similarly, in the seizure list vide Ext.1/2, nowhere it is mentioned that after the seizure, the black color full pant was kept in sealed condition. The seal impression has not been affixed to the seizure list.

The black colour full pant (M.O.23) was produced in Court on 14.12.2017 (after two months of its seizure) for sending the same to the S.F.S.L., Rasulgarh, Bhubaneswar. In the forwarding report vide Ext.57, in serial no.29, though this pant is found mentioned, but it is not written therein that it was in sealed condition.

There is no evidence that after the seizure of black colour full pant (M.O.23), it was kept in safe custody till it was produced in Court. In the case of Sinic Patricia (supra), it is held as follows:-

"The claim made by the prosecution that the seized articles were kept in safe custody in the police station till they were produced before the Magistrate is too tall a claim to be accepted. Besides the aforesaid fatal lacuna in the prosecution, there is no evidence to guarantee that the seals on the packets in question were properly made remained intact right from the date of sealing of the packets till they were opened before the Magistrate near about two months after the seizure. As already noted, no evidence is forthcoming to hold that the packets were properly sealed. In absence of evidence of retaining the specimen seal with any reliable person, the apprehension that there was chance of tampering with the packets cannot be lightly brushed aside. The specimen seal was not produced before the Magistrate when packets were opened to bring out samples for the purpose of sending the same to the Chemical Examiner of State Forensic Science Laboratory. It is for the prosecution to establish and cover the entire path by adducing cogent, reliable and unimpeachable evidence that the seized articles were properly sealed and there was no chance of tampering with the packets during the retention of those packets at the police station and the seized articles were the very articles produced before the Magistrate for sending them to the Chemical Examiner. The prosecution has failed to discharge this burden."

In the case of Allarakha Habib Memon (supra), it is held as follows:-

"45. On a threadbare analysis of the entire record, we do not find that the

prosecution examined any witness who had deposed about the link evidence/safe custody of the muddamal articles right from the time they were received at the police station and seized till the time the same reached the FSL. Hence, otherwise also, the FSL report (Exts. 111-115) pales into insignificance."

In the case of Karandeep Sharma @ Razia @ Raju (supra), it is held as follows:-

"55. Evidently, there is not even a semblance of evidence on record to satisfy the Court that the samples/articles collected from the dead body of the child-victim and those collected from the appellant which were later forwarded to the FSL were properly sealed or that the same remained in a self-same condition right from the time of the seizure till they reached the FSL. No witness from the FSL was examined by the prosecution to prove that the samples/articles were received in a sealed condition. Hence, there is every possibility of the samples being tampered/manipulated by the police officers so as to achieve a favourable result from the FSL, thereby, inculcating the appellant in the crime."

P.W.41, the I.O. has stated that after the seizure, he came back to the police station along with the accused persons and the seized articles and then kept it in his custody. The Malkhana Register has not been proved to show that P.W.41 kept the articles seized in the Malkhana. P.W.41 stated to have handed over the charge of investigation on 25.11.2017 to his successor, namely, Prativa Majhi but he has not stated that the seized articles were handed over in sealed condition to Prativa Majhi. Prativa Majhi, the subsequent I.O. has also not been examined to prove the safe custody of the articles seized.

Therefore, the safe custody of the black colour full pant (M.O.23) after its seizure on 12.10.2017 till it was produced in Court on 14.12.2017 and reached the S.F.S.L. is a doubtful feature. Even though small patch of human blood was found on M.O.23 as per Biology Division report dated 15.02.2018, but in view of glaring loopholes in the prosecution case that M.O.23 remained untampered, no importance can be attached to such seizure.

Seizure of White Colour Half Shirt with Stripes (M.O.24) and Hero HF Deluxe Motorcycle at the instance of appellant Nandakishore Sethi:

15. It is the prosecution case that from the house of the appellant Nandakishore Sethi in village Gambharimaliha, on his production, one white colour half shirt with red, blue and black thin stripes (M.O.24) along with Hero HF Deluxe motorcycle were seized on 12.10.2017 by the I.O. (P.W.41) as per seizure list Ext.4. The relevant witnesses on the seizure are P.W.4, P.W.10 and the I.O. (P.W.41).

P.W.4 has stated that two days after the occurrence, police seized a motorcycle, one Katuri, pant and shirt of appellant Nandakishore Sethi at the police station in his presence and also in presence of P.W.10 and prepared the seizure list Ext.4. However, in the cross-examination, he stated that he did not know as to from which place, police brought the motorcycle, Katuri, pant and shirt. He further

stated that the police showed the same at the police station and prepared the seizure list in their presence. He further stated that he did not know the contents of the seizure list and its contents were not read over and explained to him by police.

P.W.10 stated that police seized one motorcycle and one half shirt in his presence as per seizure list Ext.4. However, in the cross-examination, he has stated that he signed the seizure list at Kishorenagar police station and that he could not say from where the police got the shirt and motorcycle.

Thus, the evidence of these two independent seizure witnesses i.e. P.W.4 and P.W.10 is completely silent that the Hero HF Deluxe motorcycle and white half shirt were seized at the instance of the appellant Nandakishore Sethi from his house. These two witnesses have also not stated that after the seizure of the half shirt, it was kept in sealed condition.

P.W.41, the I.O. has stated that on 12.10.2017, he seized one white colour half shirt with red-blue-black thin stripes of the appellant Nandakishore Sethi on which 'LIVERPOOL' had been stitched on the collar and one red colour HERO HF Deluxe motorcycle bearing registration no.OD-19-K-2022 was seized from the house of the appellant in presence of witnesses P.W.4 and P.W.10 and he prepared the seizure list Ext.4. He proved the shirt as M.O.24 and the paper slip affixed on packing as Ext.55.

The seizure list Ext.4 does not indicate that M.O.24 was kept in a sealed condition and specimen seal impression is not given in it.

Apart from the fact that there is no clinching evidence as to where the white color half shirt (M.O.24) was kept after its seizure till it was produced before the Court for sending the same for Chemical Examination but also the forwarding report Ext.57 does not indicate that it was produced in a sealed condition. Moreover, as per the report of Biology Division, no blood was found on the white color half shirt. Thus, the seizure of the shirt under seizure list Ext.4 is no way helpful to the prosecution case. Similarly, there is no evidence that the HERO HF Deluxe motorcycle bearing registration no.OD-19-K-2022 was used in connection with the crime. P.W.37 has stated that he could not say the registration number of the motorcycle.

Thus, the seizure of white colour half shirt and motorcycle under seizure list Ext.4 cannot be used as incriminating evidence against the appellant Nandakishore Sethi. The learned trial Court erred in utilizing the seizure of M.O.24 as an incriminating evidence against the appellant.

Seizure of Katuri (M.O.6) and Gamucha (M.O.7) at the instance of appellant Prakash Behera:

16. The relevant witnesses on the seizure of Katuri (M.O.6) and Gamucha (M.O.7) at the instance of appellant Prakash Behera are P.W.11, P.W.35 and the I.O. (P.W.41) and the relevant seizure list is Ext.19. The said seizure is stated to

have been made on 12.10.2017 from the cultivable land of Bairagi Nayak of village Pokanda.

P.W.11 has stated that on 12.10.2017, the appellant Prakash Behera not only confessed his guilt but also stated to have concealed a chopper and blood stained towel near a bush and then he along with appellant Nandakishore Sethi led them to the place of concealment i.e. land of Bairagi Nayak at village Pokanda and those were seized on production of the appellants as per seizure list Ext.19. In the cross-examination, he has stated that only appellant Prakash Behera brought out the chopper and towel from the bushes and handed over the same to the police. He has not stated about the sealing of either gamucha or Katuri after its seizure. He was not shown the seized gamucha or Katuri by the prosecution for identification in Court.

P.W.35 has stated that the confessional statement of appellant Prakash Behera was recorded vide Ext.18 and then he led the police along with witnesses to the place of hiding and gave recovery of blood stained gamucha along with Katuri from bamboo clump of Bairagi Nayak. He has further stated that in M.O.6, he has put his signature on a paper sticker affixed by police along with the signature of P.W.11 and appellant Prakash Behera. Similarly, he has further stated that M.O.7 is the blood stained gamucha in which a paper slip was affixed and he signed the same and P.W.11 also put his signature. In the cross-examination, he has stated that the place of recovery is situated at a distance of 25 feet from the public road which runs from Pokanda to Mindol and the road nearing the place of recovery is used by the public.

P.W.41, the I.O. has stated that the statement of appellant Prakash Behera was recorded under section 27 of the Evidence Act and he proved the statement as Ext.18. He further stated that the appellant led the police to the cultivable land of Bairagi Nayak and from inside bamboo bush, the appellant produced Katuri (M.O.6) and gamucha (M.O.7) which were seized by him as per seizure list Ext.19 in presence of witnesses P.W.11 and P.W.35. He further stated to have affixed the paper slip on both the articles seized and those were separately packed, sealed and then kept in his personal custody.

In Ext.19 which is a printed form of property seizure memo, below column no.13, a space is provided for giving the specimen of seal, but no specimen seal impression is there.

The Katuri (M.O.6) was produced before the three doctors i.e. P.W.5, P.W.6 & P.W.12 who conducted post mortem examination over the dead bodies of three deceased to obtain their opinion relating to possibility of the injuries sustained by the deceased persons with such weapon.

P.W.5 has stated that the weapon of offence was produced before her without seal and in open condition. However, she stated that the weapon of offence was returned by her with proper seal. She admits that the specimen seal mark was not affixed on her report and that she did not remember if the weapon of offence

was sealed with paper or by means of brass seal. P.W.6 has stated that he could not say whether the weapon which was produced before him by the police for query was sealed or open. P.W.12 however stated that the I.O. produced M.O.6 in a sealed cover and he submitted the query report. From the evidence of the I.O. (P.W.41), it appears that the weapon (M.O.6) was produced before P.W.12 first and then before P.W.6 and lastly before P.W.5.

As already stated, though the evidence of the I.O. (P.W.41) is that after the seizure, the Katuri (M.O.6) was separately packed and sealed and then kept in his personal custody, but when it was produced before the doctors one after another to obtain the query reports, the seal must have been opened. If according to P.W.5, who lastly examined the weapon of offence (M.O.6), it was returned by her with proper seal, then the forwarding report of the weapon vide Ext.57 would have reflected the sealed condition of M.O.6, but it has not been reflected as such. Similarly, the napkin has not been shown to be in sealed condition in Ext.57. No doubt the report of the biology division indicates that the Katuri was stained with human blood and napkin (gamucha) of the accused was also stained with human blood, but no grouping could be made. However, when the safe custody of both these items i.e. Katuri (M.O.6) and Gamucha (M.O.7) before its production in Court for being sent for chemical examination, is a doubtful feature as the malkhana register has not been proved, specimen seal impression is not given in the seizure list and specimen seal was not produced before the Court at the time of production of seized articles for verification before sending it to S.F.S.L., it is very difficult to give any importance to the seizure of Katuri (M.O.6) and Gamucha (M.O.7) as per seizure list Ext.19.

Seizure of Full Shirt (M.O.1) and Jean Pant (M.O.2) at the instance of appellant Prakash Behera:

17. The relevant witnesses on the seizure of full shirt (M.O.1) and jean pant (M.O.2) at the instance of the appellant Prakash Behera are P.W.15 and the I.O. (P.W.41) and the relevant seizure list is Ext.21. The said seizure is stated to have been made on 12.10.2017 from near bamboo bush situated from the side of Brahmanpada Bidisingh Project Nala.

P.W.15 has stated that the appellants were examined by the police who disclosed to have kept the wearing apparels hiding under bamboo bush and the police recorded the statement and as per the statement, the appellant himself produced his wearing apparels from the bamboo bush and handed over the same to police and the seizure list Ext.21 was prepared. He stated that it was a blue colour jean pant with sticker (M.O.2) and a cement colour full shirt with blood stain (M.O.1). In the cross-examination, he has stated that he had no idea whether the police recorded the statements of the appellants or not.

P.W.41 has also stated about such seizure at the instance of appellant Prakash Behera from near bamboo bush. However, the statement given by the I.O. that after making the seizure of recovered articles, he kept it in his personal custody

with proper packing and seal is a doubtful feature as the seal impression is not given in Ext.21 at the appropriate place under the column no.13.

When full shirt (M.O.1) and jean pant (M.O.2) were produced in Court as per forwarding report Ext.57, it was not shown to have in sealed condition. Moreover, as per the biology division report, in full shirt (M.O.1) which is marked as Ext.P-1, no blood was found and in jean pant (M.O.2) which is marked as Ext.P, though human blood was found, but the grouping could not be detected. Moreover, the DNA test report also does not indicate that the human blood found in Ext.P matched with DNA profile of any of the deceased.

Therefore, the seizure of full shirt (M.O.1) and jean pant (M.O.2) at the instance of the appellant Prakash Behera as per the seizure list Ext.21 is no way helpful to the prosecution.

#### DNA Test Report Findings:

18. The learned trial Court has jotted down three circumstances which relates to DNA test report findings i.e. (i) blood stain found on the Katuri (M.O.6) is of human origin of deceased Naba @ Ekalabya Nayak, (ii) blood stain of cut piece of shirt of deceased Naba @ Ekalabya Nayak matched with blood stain found on napkin of appellant Prakash Behera @ Babuli, (iii) blood stain found on cut piece of banian of deceased Biranchi Nayak matched with blood stain found in cut piece of full pant of accused Naba Kishore Sethi @ Ranja.

After registration of the F.I.R., P.W.41, the I.O. started investigation and informed to S.D.P.O., Athamallik and S.P., Angul over telephone for deputation of scientific team to the spot. The Scientific Officer (P.W.40), who was working under DFSL, Dhenkanal visited the three crime scenes on 10.10.2017 and collected materials and produced the same before the I.O., who seized it vide seizure lists Exts.29, 30, 31 and 32. The I.O. also seized some other articles and forwarded the relevant exhibits to Court on 14.12.2017 for sending the same for chemical examination and opinion to S.F.S.L., Rasulgarh, Bhubaneswar. The forwarding report (Ext.57) dated 14.12.2017 would indicate that the weapon of offence i.e., one Katuri, wearing apparels of accused persons and deceased persons, exhibits collected by P.W.40 and the nail clippings of the accused persons which were collected by the Medical officer and seized, were produced before the Court for sending it to S.F.S.L., Rasulgarh, Bhubaneswar.

All total 32 exhibits were forwarded by learned S.D.J.M., Athamallik on 14.12.2017 to the Director, S.F.S.L., Bhubaneswar for necessary examination and opinion. The forwarding report (Ext.57) indicates that the exhibits mentioned in serial nos.1 to 15 were seized on 10.10.2017 on production by the Scientific Officer (P.W.40), the exhibits mentioned in serial nos.16 to 24 were seized on 11.10.2017 on being produced by the constables after post mortem examination of the three deceased and the exhibits mentioned in serial nos.25 to 32 were seized on 12.10.2017. The forwarding report (Ext.57) does not indicate that the exhibits mentioned in serial nos.16 to 30 were in sealed condition when those

were produced.

At this stage, it would be apt to reproduce the order no.9 dated 14.12.2017 of learned S.D.J.M., Athamallik which reads as follows:-

"The case record is put today as the Inspector P. Majhi (name mentioned wrongly in place of P. Lenka), I.I.C. of Kishorenagar P.S. appeared before Court with prayer to send the exhibits in Kishorenagar P.S. case no.91 date 10.10.17 under section 302 I.P.C. turned to under sections 302/363/364/394/201 I.P.C. read with section 25/27 of Arms Act to the Director, S.F.S.L., Rasulgarh for chemical examination.

Prayer is allowed. Verified the exhibits with forwarding report and seizure list. Send the exhibits to the Director, S.F.S.L., Rasulgarh for chemical report. Put up on the date fixed."

The order does not indicate that the unsealed exhibits which were produced, were sealed in Court. It does not indicate that the learned Magistrate verified the conditions of the seals given in some exhibits. No seal was produced before the Magistrate for its comparison with the seals given in some exhibits. No seal impression is there in the seizure lists Exts.1/2. 4, 19 and 21.

The report (Ext.59) of the S.F.S.L., Rasulgarh, Bhubaneswar indicates that all the 32 exhibits in sealed paper/sealed packet were received on 15.12.2017 through Constable R.R. Bagh (P.W.26). The evidence of P.W.26 is completely silent that he carried the exhibits to S.F.S.L.

On 14.12.2017 Prativa Majhi was in-charge of investigation of the case as per the version of P.W.41, but she has not been examined. If as per the forwarding report (Ext.57), some of the exhibits (as mentioned in serial nos. 16 to 30) were produced in Court in unsealed conditions and the order sheet of the Court does not indicate that those were sealed in Court rather those were routed through police to reach the S.F.S.L., then the duty of the prosecution was to explain as to when and where those exhibits were sealed and by whom.

If as per the forwarding report (Ext.57), the seizures were made in between 10.10.2017 to 12.10.2017 then why those exhibits were forwarded to Court on 14.12.2017 i.e., after two months. There is no clinching evidence in whose custody and in what conditions the exhibits were retained before those were produced in Court. Though the I.O. (P.W.41) has stated that he kept the recovered articles in his personal custody with proper packing and seal, but since most of the exhibits were produced in Court on 14.12.2017 not in packed and sealed condition, it is difficult to accept the version of the I.O. (P.W.41) relating to safe custody. The Malkhana register has not been proved, nor was the Malkhana in-charge examined by the prosecution which would have at least shown that the exhibits were kept there safely. The seal impressions were not given on the seizure lists. The I.O. (P.W.41) has stated that on 25.11.2017, he handed over the charge of investigation to his successor Prativa Majhi along with

all relevant documents and Mal items, but Prativa Majhi has not been examined to say what she did after receiving the Mal items and where she kept the same. These are the glaring lapses on the part of the investigation agency which creates doubt that the exhibits were in safe custody and that there was no chance of tampering with the same.

It is pertinent to note that DNA test findings in respect of some of the exhibits, has gone against the appellants and has also been utilized against them. Therefore, when reasonable doubt crops up relating to the safe custody of the exhibits, it is very difficult to give due weight to the DNA test report.

The following conclusions have been arrived at by the Scientific Officer as per the DNA test report findings, which according to the prosecution are very much relevant against the appellants:-

(i) The DNA profile generated from Exhibit marked-N (S.E. from Katuri) is of a human male origin and is matching with the DNA profile generated from Exhibit-M1 (cut piece from shirt of deceased Naba @ Ekalabya Nayak). Table III.

(ii) The DNA profile generated from Exhibit marked-O (cut piece from napkin of accused Babuli @ Prakash Behera) with dropout at DYS391 locus (reference: Journal of Forensic Sciences, July 2004, Vol.49 No.4, Chung et al pp 733-740) is of a human male origin. At 23 numbers of loci the DNA profile of Exhibit marked-M1 (cut piece from shirt of deceased Naba @ Ekalabya Nayak) is matching with DNA profile generated from Exhibit marked-O. Table-IV.

(iii) The DNA profile generated from Exhibit marked-Q (cut piece from full pant of accused Ranja @ Nand Kishore Sethi) is of a human male origin and matching with DNA profile of Exhibit-L1 (cut piece from banian of deceased Biranchi Nayak). Table V.

So far as the DNA profile finding relating to Katuri and napkin is concerned, since we have already held that it is very difficult to give any importance to the seizure of Katuri (M.O.6) and napkin (M.O.7) at the instance of appellant Prakash Behera and its safe custody and particularly when the forwarding report (Ext.57) does not indicate in serial nos.25 and 26 that M.O.6 and M.O.7 were in sealed condition at the time of its production after two months of its seizure, the DNA profile finding becomes irrelevant.

Similarly, so far as DNA profile finding relating to full pant of appellant Nand Kishore Sethi is concerned, since we have held that the safe custody of the black color full pant (M.O.23) after its seizure is a doubtful feature and particularly when the forwarding report (Ext.57) does not indicate in serial no.29 that M.O.23 was in sealed condition at the time of its production after two months of its seizure, the DNA profile finding becomes irrelevant.

Admittedly, the S.F.S.L. report (Ext.59) which includes DNA and serological and biological report has been marked as an exhibit during the examination of the I.O. (P.W.41), who has neither sent the exhibits to Court nor received such

report. The Scientific Officer and A.C.E. undertaking examination, namely, Suchismeeta Behera has not been examined to prove such report.

In the case of Karandeep Sharma alias Razia alias Raju (supra), it is held as follows:-

"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 (P.W.14) who undeniably is not connected with the report in any manner. This Court in the case of Rahul Vs. State of Delhi (supra) 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 Cr.P.C. 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 P.W.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)

40. Thus, in the facts and circumstances of the present case, non-examination of the scientific expert who carried out the DNA profiling is fatal, and the DNA report cannot be admitted in evidence."

In the case of Rahul (supra), it is held as follows:-

"37. In this regard very pertinent observations made by this Court in *Manoj v. State of M.P.* : (2023) 2 SCC 353 deserve to be made. This Court has in detail dealt with the issue of DNA profiling methodology and statistical analysis, as also the collection and preservation of DNA evidence. The relevant paragraphs read as under: (SCC paras 151-56)

"151. During the hearing, an article published by the Central Forensic Science Laboratory, Kolkata [DNA profiling in Justice Delivery System, Central Forensic Science Laboratory, Directorate of Forensic Science, Kolkata (2007)] was relied upon. The relevant extracts of the article are reproduced below:

'Deoxyribonucleic acid (DNA) is genetic material present in the nuclei of cells of living organisms. An average human body is composed of about 100 trillion of cells. DNA is present in the nucleus of cell as double helix, supercoiled to form chromosomes along with intercalated proteins. Twenty-three pairs of chromosomes present in each nucleated cells and an individual inherits 23 chromosomes from mother and 23 from father transmitted through the ova and sperm respectively. At the time of each cell division, chromosomes replicate and one set goes to each daughter cell. All information about internal organisation, physical characteristics, and physiological functions of the body is encoded in DNA molecules in a language (sequence) of alphabets of four nucleotides or bases : Adenine (A), Guanine (G), Thymine (T) and Cytosine (C) along with sugar-phosphate backbone. A human haploid cell contains 3 billion bases approx. All cells of the body have exactly same DNA but it varies from individual to individual in the sequence of nucleotides. Mitochondrial DNA (mtDNA) found in large number of copies in the mitochondria is circular, double stranded, 16,569 base pair in length and shows maternal inheritance. It is particularly useful in the study of people related through the maternal line. Also being in large number of copies than nuclear DNA, it can be used in the analysis of degraded samples. Similarly, the Y chromosome shows paternal inheritance and is employed to trace the male lineage and resolve DNA from males in sexual assault mixtures.

Only 0.1 % of DNA (about 3 million bases) differs from one person to another. Forensic DNA Scientists analyse only few variable regions to generate a DNA profile of an individual to compare with biological clue materials or control samples.

\* \* \*

#### DNA Profiling Methodology

DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA profiling is a complex process of analyses of some highly variable regions of DNA. The variable

areas of DNA are termed genetic markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA profile unique to an individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y-STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoospermic or vasectomised male. Cases In which

DNA had undergone environmental stress and biochemical degradation, miniSTRs can be used for over routine STR because of shorter amplicon size.

DNA profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities available in the laboratory. The analysis principles, however, remain similar, which include:

1. isolation, purification & quantitation of DNA
2. amplification of selected genetic markers
3. visualising the fragments and genotyping
4. statistical analysis & interpretation.

In mtDNA analysis, variations in Hypervariable Region I & II (HVR I & II) are detected by sequencing and comparing results with control samples:

#### Statistical Analysis

Atypical DNA case involves comparison of evidence samples, such as semen from a rape, and known or reference samples, such as a blood sample from a suspect. Generally, there are three possible outcomes of profile comparison:

- (1) Match: If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.
- (2) Exclusion: If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.
- (3) Inconclusive : The data does not support a conclusion of the three possible outcomes, only the "match" between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population. In case of paternity/maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible mutations should be taken into consideration while reporting a match. Paternity or Maternity Indices and Likelihood Ratios are calculated further to support the match.

#### Collection and Preservation of Evidence

If DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed and sent for DNA profiling.”

In a recent decision which was pronounced on 15.07.2025 by the Hon'ble Supreme Court in case of Kattavellai @ Devakar -Vrs.- State of Tamil Nadu reported in MANU/SC/0917/2025: 2025 LiveLaw (SC) 703, it has been held as follows:

“29. The first limb of considering the DNA evidence is the vagina swabs taken from D-2. P.W.37 in her chief examination, stated that once she took the said samples, they were sent to FSL Madurai, for DNA test, but striking an entirely different tone in her cross-examination, she said that having taken these samples she 'might have' handed over the said swabs to the constable on duty. It is noteworthy to observe here itself that P.W.41, who was the constable on duty, makes no such mention of having received the swabs from P.W.37. P.Ws.52 and 54 both state that upon collection, the samples remained with P.W.37 at the Government Hospital. Per contra, P.W.56 states that the samples were kept at Royappanpatti Police Station. P.W.42, who is a police carrier, states that he collected the samples from the Government Medical College and took them to the Regional Forensic Science Laboratory, Madurai, on 29th June, 2011. This means they were sent to the FSL after a delay of 41 days, having been taken on 19th May, 2011. The prosecution has not been able to explain the reason as to why this delay took place. We find force in the argument made on behalf of the Appellant-convict that the circumstances under which the samples were sent from FSL, Madurai to FSL, Chennai, are unclear. P.W.27, who is a Scientific Officer only states that after his analysis of the swab, he sent the same to the DNA wing of the FSL Chennai. No reason is forthcoming as to why and under whose orders the same were sent to a different city. The final DNA report was prepared by P.W.34. He, however, in his evidence does not mention when the samples were received by him or his office. Nor does he depose the conditions in which the sample was received. In this regard, the Appellant-convict contended that the swab itself was received by speed post. We find that to be an incorrect statement of facts. P.W.34 states that the report prepared by him was DNA 152/2011. A perusal of the annexure to the DNA report shows the label given to the document sent by speed post as matching that of the report prepared by P.W.34. So, it is clear that the report was what was sent by speed post, not the swab itself. That apart, had it actually been that the swab was sent by speed post, we would be

nothing short of aghast. Time and again, this Court has emphasized the importance of maintaining the sanctity of these samples and, the investigating authorities actually doing something so glaringly irresponsible would be an affront to any and all observations that have been made by this Court over the years.

30. Having noticed various gaps as above, the logical question that arises is where were the swabs?; why were they sent for forensic analysis belatedly?; were they properly stored?; whether the Malkhana of the Police Station where they were kept according to some of the witnesses, was sufficiently equipped or not; if the same were kept in the hospital, was it ensured that no other member of the staff could have had access to them?; in whose custody were they?; if the swabs were damaged, who shall be held responsible for the destruction of vital evidence, etc. Similar questions arise in connection with the semen sample taken from the Accused as a consequence of an order passed by the Judicial Magistrate, Uthamapalayam, on 13th June, 2011. P.W.56 states that the said samples were sent to FSL, Chennai, on 16th June, 2011 but subsequently returned. It is unclear, yet again, that between 13th and 16th June 2011 where such samples were stored; who was in charge thereof and whether he had kept them in safe custody?; how and in what condition they were sent; when and why they were returned - unfortunately, all these questions have no answer forthcoming from the record.

31. In *Anil v. State of Maharashtra* : (2014) 4 SCC 69 this Court observed that DNA profiles have had a tremendous impact on criminal investigations. A DNA profile is valid and reliable, but the same depends on quality control and procedures in the laboratory. We may add to this position and say, that quality control and procedures outside the laboratory matter equally as much in ensuring that the best results can be derived from the samples collected. We record with some sadness that there are quite a few cases in which DNA evidence, despite being there, has to be rejected for the reason that the manner, in which the samples were handled during and after collection by the concerned doctor, in transit to the lab, inside the lab and the results drawn therefrom, are not in accordance with the best possible practices which would focus on ensuring that throughout this process, the samples remain in pristine, hygienic and biologically suitable conditions.

32. One such instance where DNA evidence had to be rejected, fairly recently, was a three-Judge Bench decision in *Manoj -Vrs.- State of M.P.* : (2023) 2 SCC 353. The Appellants in the said case had been sentenced to death by the 1st Additional Sessions Judge, Indore, for the murder in the course of the robbery of 3 women. Ultimately, the Court commuted the death sentence to life imprisonment with a minimum 25 years sentence; while dealing with such evidence, it made detailed references to a 2007 paper titled *DNA Profiling In Justice Delivery System* published by the Central Forensic Science Laboratory, Kolkata and the previous judgments of this Court wherein the topic of DNA has

been dealt with, as also the 185th report of the Law Commission of India. In this case, DNA was rejected on the ground that recovery, which was affected, was made from an open place, and the likelihood of its contamination cannot be ruled out. It is also observed that the bloodstains found on the articles were disintegrated, and the quantity was insufficient to run any classification tests.

33. Rahul (supra) was a case concerning the kidnap, rape and murder of a woman, wherein 3 persons were convicted by the Special Fast-Track Court, Dwarka Courts in Sessions Case No.91 of 2013. These persons had kidnapped a woman as she returned from work, proceeded to do horrible things to her, and then dumped her lifeless remains in a field, from where it was discovered four days later. The DNA evidence, here, was rejected because it remained in the police Malkhana for two months and in such time, the possibility of tampering could not be ruled out. It was also held that neither the Trial Court nor the High Court had examined the underlying basis of the findings in the DNA reports or whether the techniques used had been reliably applied by the concerned expert. As such, it was concluded that the DNA profile, in the absence of such evidence, had become highly vulnerable when the collection and sealing of the samples sent for examination was not free from suspicion.

34. Prakash Nishad -Vrs.- State of Maharashtra : (2023) 16 SCC 357 was a case concerning the rape and murder of a 6-year-old child. Similar to the present case, it was a case of circumstantial evidence. Based on the disclosure statement made by the Appellant therein, the police found certain garments as also traces of semen of the Appellant on the vaginal smear of the minor victim, based on which he was sought to be convicted. DNA evidence had to be rejected by this Court on the grounds that there was a delay in sending the samples to the FSL, which was unexplained. It was observed that because of the delay, the concomitant prospect of contamination could not be ruled out. The need for expediency in sending samples to the concerned laboratories was underscored.

35. This case, incidentally, if not unfortunately, is another one of the like of the above. Despite the presence of DNA evidence, it has to be discarded for the reason that proper methods and procedures were not followed in the collection, sealing, storage, and employment of the evidence in the course of the Appellant-convict's conviction. DNA, as we have observed, has been held to be largely dependable, even though this evidence is only of probative value, subject to the condition that it is properly dealt with. Over the past decades, many cases have come to their logical conclusion with the aid of DNA evidence in many regions across the world. It is also equally true that many persons wrongly convicted have finally had justice served, with them being declared innocent because of advancements in this technology. It is unfortunate that, alongside such advancements, we still have cases where, despite the evidence being present, it has to be rejected for the reason that the concerned persons, either doctors or investigators, have been careless in the handling of such sensitive evidence."

The learned trial Court in the impugned judgment after noting down the findings

in the DNA test report jumped to the conclusion that from the scientific analysis of DNA report, it is crystal clear that both the appellants have the involvement in the murder of deceased Biranchi Nayak and Naba @ Ekalabya Nayak. There is no discussion in the impugned judgment relating to the proper sealing of the exhibits after its seizure, safe custody of the exhibits, absence of any explanation from the side of the prosecution relating to delayed dispatch of the exhibits to Court and the effect of delay when most of the exhibits were produced in unsealed condition.

In view of the foregoing discussions, we are of the view that the DNA test report findings cannot be used against the appellants.

Sum up:

19. The learned trial Court has held that so far as the kidnapping of the minor deceased Naba @ Ekalabya Naik is concerned, from the circumstantial evidence, the prosecution has proved that the said deceased was kidnapped from the lawful custody of his parents and subsequently his murder was committed inside the jungle from where the dead body was found. After careful analysis of the materials on record, we do not find either any direct evidence or circumstantial evidence in that regard. There is no evidence on record like last seen of the two deceased i.e. Tarani Naik or Naba @ Ekalabya Naik in the company of any of the appellants or kidnapping of the minor deceased Naba @ Ekalabya Naik by the appellants. Therefore, the conviction of the appellants under section 364/34 of I.P.C. is totally misconceived.

Merely at the instance of the appellants, one Katuri and some other articles as per seizure lists Exts.1/2, 4, 19 and 21 were stated to have been seized, cannot be a ground to come to a conclusion that the appellants caused disappearance of evidence of offence by concealing the same unless it is established by cogent evidence that those articles have got any link with the offence committed. The prosecution in this case has failed to establish such aspect. We have already held that no importance is to be attached to the seizure of articles at the instance of the appellants as its safe custody after its seizure before it reached S.F.S.L. is a doubtful feature, seal impressions are found missing in relevant seizure lists, the relevant exhibits were not produced in sealed conditions in Court as per forwarding report, order sheet of Court does not indicate that the articles were in sealed condition and that for the reasons assigned, the DNA test report cannot be used against the appellants. When the incriminating articles stated to have been seized at the instance of the appellants cannot be used as evidence in the case against the appellants for the reasons assigned, it cannot be said that the appellants have caused disappearance of evidence merely at their instance those were recovered. Thus, the conviction of the appellants under section 201/34 of I.P.C. is not sustainable in the eyes of law.

There is also no clinching evidence relating to the involvement of the appellants in the commission of triple murder and therefore, the conviction of the appellants

under section 302/34 of I.P.C. is liable to be set aside.

Conclusion:

20. In view of the evidence available on record, we are not in a position to accept that the prosecution has established its case against the appellants beyond all reasonable doubt. The reasoning assigned by the learned trial Court in convicting the appellants seems to be based on conjecture and suspicion which has got no place in the matter of legal proof of guilt of accused persons in a criminal trial and we are of the view that the impugned verdict is nothing but a sheer moral conviction. Thus we hold that the prosecution has failed to establish the charges against the appellants beyond all reasonable doubt.

We are conscious that grave and heinous crime has been committed and the culprits whosoever they may be, have taken away the lives of three persons including a minor boy aged about 7 years and his parents in an extremely brutal manner, but when there is no satisfactory proof of the guilt of the appellants and that in view of well settled principle of criminal jurisprudence, the Court must always remind itself that more serious the offence, the stricter is the degree of proof and that higher degree of assurance would be necessary to convict an accused, we have no other option but to give the benefit of doubt to the appellants and we are constrained to do so in this case.

In the result, the criminal appeal is allowed. The appellants are acquitted of the charges under sections 302/364/201/34 of I.P.C. The appellants, who are in jail custody, shall be set at liberty forthwith, if their detention is not required in any other case.

21. Accordingly, the Criminal Appeal is allowed. The death sentence reference is answered in negative.

Before parting with this case, we would like to put on record our deep appreciation to Mr. Satya Ranjan Mulia, Mr. Ramesh Ch. Maharana, learned counsel for the appellants so also Mr. Pradip Kumar Panda, learned Amicus Curiae for the preparation and presentation of the case and assisting the Court in arriving at the decision above mentioned. This Court also appreciates the able assistance provided by Mr. Debashis Tripathy, learned Addl. Govt. Advocate. The hearing fees is assessed to Rs.10,000/- (rupees ten thousand) in toto which shall be paid to the learned Amicus Curiae immediately.

The trial Court records along with a copy of the judgment be sent forthwith to the Court concerned and a copy of the judgment be communicated to the D.L.S.A., Angul so that the victim compensation amount of Rs.30,00,000/- (rupees thirty lakh) which was directed to be paid to the minor daughter of deceased Biranchi Naik, namely Saina, shall be paid immediately, if not already paid.

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