

(2020) 04 OHC CK 0003
In the Orissa High Court
Case No : Criminal Appeal No. 484 Of 2010

Santha Charan Pattnaik

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 21-04-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302, 376
Evidence Act, 1872 — Section 25, 106, 118
Code Of Criminal Procedure, 1973 — Section 167(1), 313

Citation : (2020) 04 OHC CK 0003

Hon'ble Judges : C. R. Dash, J; S. K. Panigrahi, J

Bench : Division Bench

Advocate : Devashis Panda, Sudipto Panda, Saswata Pattnaik

Final Decision : Allowed

Judgement

C.R. Dash, J

1. Convict is the Appellant. He was convicted for the offences under Sections 302/376, I.P.C. and was sentenced to suffer imprisonment for life and R.I. for seven years with fine of Rs.10,000/- (ten thousand), in default, to suffer further R.I. for two years respectively with a direction for both the sentences to run concurrently. Hence this Appeal.

2. It happened on 30.09.2008. The spot is the Government Prakalpa (Project) U.P. School at village Nimina under Polasara Police Station in the district of Ganjam. A girl student of Class-VII of that school, aged about 12 years, was seen lying unconscious in the Girls' Urinal by two girl students, namely Kumari Tapaswini Sahu (P.W.7) and Kumari Nandini Behera (P.W.16) when they had gone there to attend the call of nature. They found marks of injuries on her face and neck. It was about 11.30 A.M. then. Both of them immediately rushed to the Headmaster (P.W.10) of the school to report about the incident. There was hue and cry in the school. The body of the girl was brought to the school verandah for first aid nursing.

Some students of the school informed the matter in the house of the victim girl, before Smt. Sanjukta Sahu (P.W.8), the mother of the victim girl. The girl's father namely Biranchi Narayan Sahu (P.W.1), who had gone to the house of one Lingaraj Sahu (P.W.29) to work as a Mason, also got information about the incident and rushed to the school along with said Lingaraj Sahu (P.W.29) and his son Mrutyunjay Sahu (P.W.2). By that time some villagers had already arrived at the spot. All of them decided to take the girl to the hospital, but later on they decided to take the body of the girl to her house. Ram Chandra Sahu (P.W.4), who is agnatic brother of P.W.1, put the unconscious body of the girl on his shoulder and took her to her house followed by the villagers and other teachers of the school.

In her house, her mother (P.W.8) when lifted the frock worn by the girl, found her panty to be stained with profuse bleeding. The villagers present there also felt that there was no life in the body of the girl. Again they brought the body of the girl to the school verandah. By that time some more villagers had already gathered at the spot (school). They manhandled the male teachers of the school present on that day, namely the Appellant - Santha Charan Pattnaik, Headmaster Biswanath Gouda (P.W.10) and Asst. Teacher Durga Prasad Sahu (P.W.11). As the Headmaster (P.W.10) had already telephoned the B.D.O., Polasara, police arrived at the spot in the afternoon. Police team rescued the teachers from the hands of the villagers.

P.W.1, the father of the deceased lodged F.I.R. suspecting the Assistant Teacher Durga Prasad Sahu (P.W.11) to be the perpetrator of the crime, as said Durga Prasad Sahu had passed lewd comments with sexual overtures against the deceased girl six months back.

The Police took up investigation immediately, visited the spot, examined some witnesses and took all the male teachers of the school to the Police Station along with them for interrogation.

On 03.10.2008, between 8.00 P.M. to 10.00 P.M. the Appellant is alleged to have confessed his guilt before the Police while he was in the Hazat of the Police, in presence of some witnesses. Accordingly investigation was taken up with the Appellant to be the main culprit and perpetrator of the crime. The Appellant along with two other male teachers, i.e. P.Ws.10 and 11 were sent for medical examination, the dead body was challaned to the M.K.C.G. Medical College & Hospital, Berhampur for Post-Mortem. Different incriminating seizures were made and witnesses were examined in course of the investigation. On completion of investigation, charge-sheet was filed against the Appellant under Sections 376/302, I.P.C. citing the Assistant Teacher Durga Prasad Sahu as a witness, though F.I.R. was lodged originally against him.

3. In the trial, the accused pleaded not guilty to the charges and claimed to be tried.

4. The prosecution, in support of the charges against the accused- appellant,

examined as many as 35 witnesses and executed a host of documents.

5. The defence, though took the plea of denial, adduced no evidence in substantiation of its plea.

6. Learned Trial Court, in its judgment, has made mention about P.W.1 - father of the deceased, P.W.8 - mother of the deceased and has discussed the evidence of P.W.9, P.W.25, P.W.13 and P.W.33 relating to the circumstances brought on record in evidence.

7. Learned Trial Court has relied on the following circumstances in order to bring the charges to home against the appellant :-

(I) The Appellant was last seen together with the deceased (deposed to by P.W.9) ;

(II) The Appellant had put on his underwear ('Chadi') on reverse side (deposed to by P.W.25) ;

(III) The medical evidence regarding examination of the Appellant (Ext.17) (as deposed to by P.W.13) ; And

The Post-Mortem Report (Ext.29) (as deposed to by P.W.33).

8. On discussion of the evidence on record, learned Trial Court, in paragraph-12 of the Judgment, found thus :-

"It is striking to note that, a cumulative reading of the evidence of P.W.9 together with the medical evidence and non-explanation of the injuries on the person of the deceased, I am constrained to hold that the prosecution has consistently established the guilt of the accused, which is inconsistent with his innocence."

9. Before proceeding to discuss the contentions raised in the Appeal, we feel apposite to examine the Post-Mortem Report so far as the cause of death of the deceased is concerned. Dr. Jyotin Kumar Das (P.W.33), Professor & H.O.D. in the Department of Forensic Medicine and Toxicology, M.K.C.G. Medical College, Berhampur had conducted the Post-Mortem. We feel persuaded to refer to the internal injuries only. P.W.33, on internal examination of the body of the deceased, found the following injuries :-

(i) The skin and subcutaneous tissues of neck and adjacent upper chest corresponding to external injuries No.(3) and (5) were found contused with extravasations of blood. The underlying soft tissues of the neck were found crushed and bruised with extensive extravasations. Fracture separation of the sternum (transverse) was made out on the upper part. The soft tissues and the muscles covering the larynx and trachea were found crushed and lacerated with contusion and extravasations in the sub-mucosal layer of upper respiratory tract.

(ii) Right side pleural cavity contained about 500 Mls. of free fluid blood with fracture of multiple ribs (3rd to 6th) along the right anterior axillary line with contusion and laceration of corresponding inter-costal muscles, punctured

laceration in the pleural. The corresponding right lungs reveal contusions and three numbers of punctured lacerations corresponding to fractured ribs. The pericardial cavity contained about 300 Mls. of fluid blood with a punctured laceration over right ventricle of heart close to right aetrio ventricular junction.

(iii) The abdominal cavity contained about 500 Mls. of free fluid blood with areas of contusion on the wall of small intestine with a rupture laceration 2 cm x 2 cm on the ileum portion of small intestine through which faecal matters had come out.

(iv) The undersurface of the scalp at right postero-parietal area of head was found contused with extravasations. The skull and meninges were found intact with thin sub-dural haemorrhage spreading over postero parieto occipital area mostly to the left.

(v) Vulvo vaginal smears and vaginal swabs were taken and preserved for laboratory examination. Vaginal fluid was soaked into a gauge piece and made air dried and handed over to police in a sealed and labeled paper envelope for further examination at R.F.S.L. / S.F.S.L. along with nail-clippings and sample blood of the deceased.

The aforesaid Post-Mortem examination was held by P.W.33 being assisted by Dr. Kiran Kumar Patnaik (P.W.13) and one Dr. S.N. Mohanty. In their opinion, all the aforesaid injuries were ante-mortem in nature, caused by hard and blunt trauma and are consistent with violence and struggle. Injuries to genital organ were consistent with forcible sex act. The injuries on the neck and chin could have been caused by forceful compression by hand (manual strangulation). In their opinion, death was caused due to complications arising out of the aforesaid multiple injuries. Further they opined that the injuries on neck and chest were sufficient enough, in ordinary course of nature, to cause death.

From the aforesaid discussion, it is clear that, whoever be the predator had dealt with the victim lustfully, mercilessly and very violently in committing the crime. The mode and manner of assault coupled with the act of ravishment shows that he (the predator) had come with a definite and specific intention to deal with the victim (deceased) in the manner he dealt with.

10. Another aspect of the case on which we want to throw light is, whereabouts of the deceased in the school, till her dead body was found in the Girls Urinal.

P.W.8, mother of the deceased has testified that, at about 9.30 A.M. the deceased had left for school along with her friend Krishna Sahu (P.W.24), who is also a student of Class-VII. According to Krishna Sahu (P.W.24), the deceased and she along with others were being taught by a private tutor namely Aswini Kumar Sahu (P.W.3). She and the deceased returned from tuition on that day at about 9.00 A.M. On that day the deceased asked her (P.W.24) to come early, as she wants to go to school early. Accordingly, Krishna Sahu (P.W.24) came to the house of the deceased early and both of them proceeded to the school together.

Krishna Sahu (P.W.24) did not see the deceased thereafter either in the prayer class of the school or in the classroom after the prayer class was over. P.W.24 searched for the deceased, but did not find her.

Tapaswini Sahu (P.W.7) has testified that, she had not seen the deceased in the prayer class, and at the time of Roll-call also she was found absent in the class. P.W.7 and P.W.24, both have testified that the books of the deceased were there in the classroom.

Nandini Behera (P.W.16) has also testified that, she had not found the deceased in the school on that day and she had last seen the deceased at 9.00 A.M. when they had left their tuition for home.

P.W.9 - Pradeep Kumar Sahu in his cross-examination has also testified that he had not seen the deceased either in the prayer class or her going to the classroom after the prayer class was over.

Bharata Sahu (P.W.22), the Monitor of Class-VII, has also testified that when he arrived in the school, he did not find the deceased there. He had seen the deceased proceeding towards her house from the school at about 9.30 A.M. on the date of occurrence and thereafter till her dead body was brought to the verandah of the school, he had not seen her.

Sagar Sahu (P.W.23), a student of Class-V, in his cross-examination has also testified that he had not seen the deceased in the school on the date of occurrence.

P.W.8 - the mother of the deceased has not testified that, after leaving the house with Krishna Sahu (P.W.24) the deceased had returned to the house from the school for any purpose.

P.W. 10 - Biswanath Gouda, the Headmaster of the school was the Class Teacher of Class-VII at the relevant time. During the relevant time there were four male teachers including the Headmaster (P.W.10) himself and one female teacher in the school. The male teachers were namely the Headmaster Biswanath Gouda (P.W.10), Durga Prasad Sahu (P.W.11), the Appellant - Santha Charan Pattnaik and one Bibhuti Bhusan Panigrahi (not examined). Bibhuti Bhusan Panigrahi was absent from the school on the date of occurrence and the Appellant was oldest among all the teachers. He (Appellant) was to retire from service on attaining the age of superannuation on 30.06.2009. Bibhuti Bhusan Panigrahi was the Class Teacher of Class-VI, Durga Prasad Sahu - P.W.11 was the Class Teacher of Class-V, Appellant - Santha Charan Pattnaik was Class Teacher of Class -IV and Mamata Kumari Sahu (P.W.5) was the Class Teacher of Classes - I, II, & III. All the three classes, i.e. Class - I, II & III were being held in one room of the school at the relevant time.

P.W.10 - the Headmaster of the school has further testified that, the deceased was absent at the time of Roll-call, for which he put a 'dot' mark against her name (Roll No.4) in the Attendance Register. In paragraph-9 of his cross-

examination P.W.10 has further testified that, when as per the query of the S.I. of Schools after the incident he told that the deceased was absent at the time of Roll-call, the villagers present there had forced him to show that the deceased was present in the class, but he did not succumb to their pressure.

11. From the aforesaid evidence of witnesses, it is clearly established that the whereabouts of the deceased was not known to anybody after she reached the school along with her friend Krishna Sahu (P.W.24). There is nothing on record to show that the deceased had returned to the house and came late. Except P.W.9 none has testified that they saw the deceased in the school till her dead body was recovered from the Girls' Urinal.

12. According to the Medical Officer - P.W.33, the deceased might have died around 12 hours from the time of holding Post-Mortem Examination. Post-Mortem examination was held at 10.00 P.M. on 30.09.2008 by virtue of the special order of the Collector, Ganjam in view of the sensitivity attached to the case. In his cross-examination, P.W.33 has candidly testified thus :-

"... We cannot exactly pin-point as to when exactly the deceased died and our opinion is variable by 3 hours by either side. When we have opined that the deceased might have died around 12 hours from the time of our holding the Post Mortem Examination, there is a possibility that death might have caused between 7 A.M. to 1 P.M. on 30.09.2008. From our observations death of the deceased might have occurred while she was being ravished or soon thereafter..."

13. According to the prosecution case, the dead body was detected in the Girls' Urinal between 11.15 to 11.30 A.M. P.W.4, who took the dead body of the deceased on his shoulder to the house of the deceased, has testified that there was profuse bleeding from the vagina and when he lifted her to his shoulder, blood drops fell on the ground. P.W.8 - the mother of the deceased testified that when she lifted her daughter's (deceased) frock, she found profuse bleeding from the vagina of the deceased. But, strangely the I.O. during investigation has found blood mark on the spot only, i.e. at the Girls' Urinal of the school. He has not found blood marks either on the verandah of the school or in the house of the deceased or in the spot near the school verandah or on the way from the school to the house of the deceased. Such a fact shows that there has been profuse bleeding after the occurrence, but the bleeding may not continue for long after the death occurs. From the fact that blood soaked with clothes was collected and seized from the Girls' Urinal only, it is to be held that by the time the dead body of the deceased was brought to the verandah of the school, the bleeding had already been stopped.

From such discussion, we are of the view that it is difficult to opine and conclude when death of the deceased occurred. If the dead body was detected soon after the incident and she was immediately brought to the verandah of the school and she was immediately again taken to the house of the deceased, according to us, there would have been a great possibility of bleeding from vagina of the

deceased and also possibility of presence of blood marks in other places, as discussed supra. But, no witness, who had seen the dead body on the verandah of the school, have whispered a word about the factum of ravishment or oozing of fresh blood from the vagina of the deceased, except P.W.4, which has also been negated by the evidence of the I.O., who has not found any blood mark in the verandah of the school or around it and the surrounding circumstances as discussed supra.

In view of such fact, we are constrained to conclude that the death of the deceased might have occurred sometime after she reached school, but it was much prior to detection of the dead body in the Girls' Urinal at about 11.15 to 11.30 A.M.

14. Another aspect of the prosecution case is the confessional statement of the Appellant before Police. The confessional statement was recorded at about 8.00 P.M. on 03.10.2008. By that time the Appellant was in Hazat of the Police, P.W.9 - Pradeep Kumar Sahu had already been examined on 02.10.2008 and Post-Mortem Report had already been received by the I.O. on 01.10.2008. Strangely and surprisingly, the confessional statement recorded by the Police is in complete sync with the prosecution story in verbatim. But rightly such confessional statement has been eschewed by the learned Trial Court being hit by Section 25 of the Evidence Act.

15. Coming to the contentious issues raised by learned counsels for the parties, admittedly the case is based entirely on circumstantial evidence. It is also an admitted fact that, Pradeep Kumar Sahu (P.W.9), on whose evidence the prosecution leans heavily to prove the circumstance of "last seen together", is a child witness.

16. The essentials of circumstantial evidence stand well established by precedents and we do not consider it necessary to reiterate the same and burden the order unnecessarily. Suffice it to outline the three cardinal elements of circumstantial evidence, which are necessary to sustain the conviction :-

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

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

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that, within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. So far as evidence of a child witness is concerned, probative effect and policy behind proving such evidence also stands well established by authoritative precedents. Hon'ble Supreme Court, in the case of Digamber Vaishnav and

Another Vrs. State of Chhattisgarh, (2019) 4 SCC 522, in paragraphs 21 and 23 have discussed about the extent of dependence on the testimony of a child witness. In paragraph-21 of the said judgment, Hon'ble Supreme Court has held thus :-

"21. The case of the prosecution is mainly dependent on the testimony of Chandni, the child witness, who was examined as P.W.8. Section 118 of the Evidence Act governs competence of the persons to testify which also includes a child witness. Evidence of the child witness and its credibility could depend upon the facts and circumstances of each case. There is no rule of practice that, in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand, but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one.

(Emphasis supplied by us)

In paragraph-23 of the judgment, Hon'ble Supreme Court has relied on the case of Alagupandi Vrs. State of Tamilnadu, (2012) 10 SCC 451, wherein Their Lordships have emphasized the need to accept the testimony of a child with caution after substantial corroboration before acting upon it. In the case of Alagupandi (supra), in paragraph-36 of the judgment it was held thus :-

"36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand, but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable."

(Emphasis supplied by us)

18. P.W.9, who is a child of about 12 years old, is the only witness, who is testified to have seen the Appellant near the deceased just before the occurrence. We have to find out whether P.W.9 is reliable and whether there exists no likelihood of his being tutored.

P.W.9 is a student of Class-VI. He has testified that, after the prayer class was over he proceeded to classroom and the Headmaster (P.W.10) took attendance in the class. Around 11 A.M. with permission of the Monitor of the class (not examined) and the Headmaster (P.W.10) he proceeded towards the urinal. While he was proceeding to the urinal, he found the Appellant on the verandah putting on one colour towel ("Ranga Gamuchha") on his head and holding a cane. While approaching the urinal he found the deceased standing in between the vacant place of Classroom No.I and Classroom No.IV, and at that time the Appellant, who was standing, stared at the deceased. When he returned after answering the call of nature, he found the deceased crying and when he asked the reason of her crying, the deceased asked him to go away. When he informed the Appellant that the deceased was crying, the Appellant told him not to bother about that and go to his class. When, as per the instruction of the Appellant he was proceeding to his class, he looked back and found the Appellant proceeding towards the deceased. Ten to fifteen minutes thereafter he (P.W.9) heard hue and cry in the school that the deceased was lying dead in the Girls' Urinal.

In his cross-examination P.W.9 has testified that, he arrived in the school after 10 A.M. and prayer class was held in between 10.10 to 10.20 A.M. He further testified that, when he proceeded to the Headmaster (P.W.10) to seek his permission for attending call of nature, the Headmaster was present in the office room. When he was proceeding to the urinal, Bibhuti Bhusan Panigrahi was teaching to the students in Class-IV and the Appellant was standing near Class-V. The deceased was standing in front of the room where students of Class - I to III were reading. Again he has testified that, while he was returning from the urinal, the Appellant was still standing near the classroom of Class-V.

19. P.W.6 - Reena Subudhi was a part-time teacher in the school since 2008. She had discontinued the job after joining of Mamata Kumari Sahu (P.W.5). At about 10.40 A.M. on the date of occurrence she (P.W.6) had come to the school to meet the Headmaster (P.W.10) for settlement of her pending salary bills. As the Headmaster (P.W.10) was taking attendance of Class-V, she waited for him.

The Headmaster (P.W.1) has testified that, while coming out of Class-V after taking Roll Call, he saw Reena Subudhi (P.W.6), he went with her to his office room, had discussion with her about her Absentee Statement, etc. and then he proceeded to Class-VII. Nandini Behera (P.W.16), who had gone to toilet with his permission, came and reported to the effect that the deceased was lying in the girls' urinal and she was not responding.

20. From the aforesaid evidence on record, it is found that, P.W.9 is lying, because,

(i) Though Bibhuti Bhusan Panigrahi, Class Teacher of Class-VI was absent on that date, as testified by the Headmaster (P.W.10) and as found from the Attendance Register of the Teachers (Ext.11), it was a lie on the part of P.W.9 to testify that Bibhuti Bhusan Panigrahi was taking class in Class-IV when he

(P.W.9) was going to the urinal.

(ii) Reena Subudhi (P.W.6) was all along with the Headmaster (P.W.10) after P.W.10 returned from Class-V, and they both were discussing in the office room about the Absentee Statement, etc. of P.W.6. P.W.9 has testified to have taken permission from the Headmaster (P.W.10) for going to the urinal while he was in the office. P.W.9 has not testified about presence of Reena Subudhi (P.W.6) in the office, though she was present with the Headmaster in the office till the Headmaster proceeded towards Class-VII after discussion with Reena Subudhi (P.W.6), who was admittedly present in the school and helped in bringing the body of the deceased to the verandah of the school.

(iii) In the additional evidence of the Headmaster (P.W.10) recorded on 16.01.2020 by this Court, P.W.10 is testified to have put a 'dot' mark against the name of P.W.9 in the Attendance Register of Class-VI (Ext.9), as at the time of Roll Call he was absent.

21. In his evidence P.W.10 very lucidly has testified that, after the prayer class was over, he proceeded to his office-room and signed the Attendance Register meant for the Teachers. The Appellant also arrived in his office after the prayer class was over and he (P.W.10) proceeded to Class-VII to take the attendance of students and the Appellant proceeded to Class-IV, of which he was the Class Teacher. After Roll Call in Class-VII, he (P.W.10) proceeded to Class-VI for taking attendance, as Bibhuti Bhusan Panigrahi - the Class Teacher of Class-VI was on leave on that day. After taking Roll Call in Class-VI, he proceeded to Class-V, as Durga Prasad Sahu (P.W.11) - the Class Teacher of Class-V had sent information to come to the school little late on that day. Then P.W.10 has specified the time as to what happened at what time on the date of occurrence. According to P.W.10, school time is from 10.00 A.M. to 4.00 P.M. Prayer class was held at 10.30 A.M., which was over by 10 minutes.

He proceeded to take attendance in Class-VII at 10.40 A.M., then he proceeded to take attendance in Class-VI at 10.50 A.M. and then he proceeded to take attendance in Class-V at 11.00 A.M. P.W.10 has further specifically testified that, while he was taking attendance in Class-V, the Appellant was present in Class-IV. Durga Prasad Sahu (P.W.11) has also testified that, when he arrived in the school at 11.00 A.M., he found the Headmaster (P.W.10) coming from Class-V, of which he (P.W.11) was the Class Teacher. From the aforesaid evidence, it is clear that - (a) At 11.00 A.M. the Headmaster (P.W.10), Reena Subudhi (P.W.6) and Durga Prasad Sahu (P.W.11) were there in the premises of the school in between the area from the office of the Headmaster which is one building and classroom of Class-V which is in another building intervened by a vacant space [reference may be made to the Spot Map prepared by the I.O. (Ext.34)]. While P.W.10 was coming out from Class-V, Reena Subudhi (P.W.6) was waiting for the Headmaster (P.W.10) and Durga Prasad Sahu (P.W.11) was coming to Class-V. At that time the Appellant was teaching in Class-IV. If P.W.9 had come to class on that day, he must have come to class after 10.50 A.M., because the Headmaster (P.W.10) has

put a 'dot' mark against his Roll Number while taking attendance of Class-VI, as he (P.W.9) was found to be absent in class. Though P.W.6, P.W.10 and P.W.11 had their movement in the school premises precisely at 11 A.M., they have not seen P.W.9 coming towards urinal of the school.

(b) The Headmaster (P.W.10), as in case of Nandini Behere (P.W.16), has testified that she (P.W.16) had taken his permission to go to attend call of nature, has not testified or whispered a word that P.W.9 had ever come to him to seek permission to go to attend call of nature. Reena Subudhi (P.W.6), who was in the office of P.W.10 on the date of occurrence, has also not whispered a word about coming of P.W.9 to the office of the Headmaster or to the school premises.

All the aforesaid aspects, if taken cumulatively, drive us not to believe P.W.9 as a truthful witness. Further, immediately after P.W.9 left the company of the Appellant and the deceased, as testified by him, in a split second the dead body of the deceased was recovered from the urinal of the school, and the time of death as testified by P.W.9 does not inspire confidence in view of our discussion in paragraph-13 (supra).

22. Another curious fact is that, the I.O. (P.W.35) on 01.10.2008 had made the spot visit and he prepared the Spot Map during that visit, vide Ext.34. In paragraph-11 of his Cross-Examination, P.W.35 has testified thus :-

"....Though some witnesses stated during investigation about the places and locations within the school premises about the presence of the deceased, the accused and P.W.9 immediately before the incident, I have not shown in the spot map those locations....."

P.W.9 was examined on 02.10.2008 by the I.O. (P.W.35), as testified by him, though it is different in the evidence of P.W.9. However, there is nothing on record to find out whether the statement of P.W.9, a vital witness, was sent to the Court while forwarding the Appellant to the Court on 04.10.2008 in compliance of Section 167(1), Cr.P.C. From the aforesaid evidence it is clear that, during the spot visit by P.W.35 on 01.10.2008, either P.W.9 had already disclosed the incident before the villagers who told P.W.35 to show his location in the Spot Map or P.W.9 had already been set up to be tutored for the purpose of the case, as he was an accomplished opera artist and had won prizes for his performance. It is the settled position of law that, when two views are possible from a given fact, the view favourable to the defence should be preferred.

23. Learned Additional Government Advocate relies heavily on the evidence of Abhaya Behera (P.W.27) as a cogent corroborative piece of evidence to the evidence of P.W.9.

From the evidence on record, we find that the prosecution has examined Bipra Pradhan (P.W.21) and Abhaya Behera (P.W.27) to corroborate evidence of P.W.9. Bipra Pradhan (P.W.21) is the cook, who prepares Mid-day Meals in the school. He has turned hostile completely. P.W.27, a student of Class-IV, aged about 10

years, has testified that, "one month back the appellant was teaching mathematics in our class. He (Appellant) gave us the sum to work out and cautioned them not to haul in the class, and so saying he left the class to answer the call of nature. And later on we heard about the death of the deceased." In the cross-examination, P.W.27 has testified that, "Appellant returned back to their class to check the task which he had given to us."

From the evidence of P.W.27 it is not clear at what time Appellant had gone to attend the call of nature. From his evidence it is however clear that, the Appellant returned to class in normal state of mind and started checking the sum he had given the students to work out. Such a mental state is not expected of an ordinary person after committing a ghastly crime. Further, in view of the infirmity as discussed supra in the evidence of P.W.9, we do not feel inclined to accept the evidence of P.W.27 as a corroborative piece of evidence.

The evidence of the Monitor of Class-VI, whose permission P.W.9 is testified to have taken for going to attend the call of nature, would have been a good piece of corroborative evidence, but the Monitor of Class-VI has not at all been examined, though Monitor of Class-VII has been examined as P.W.22.

24. Taking into consideration the evidence obtained on record in their entirety and not in a compartmentalized manner as done by learned Trial Court in case of evidence of P.W.9, we are constrained to hold that P.W.9 cannot be believed to have seen the Appellant near the deceased just before the occurrence.

25. The second circumstance pressed by the prosecution is that, on personal search of the Appellant it was found that he (Appellant) had put on his underwear ('chadi') on the reverse side. The witnesses to this incident are Ladu Kishore Pradhan (P.W.20), Biranchi Pradhan (P.W.25), Rajendra Sahu (P.W.26), Bijay Kumar Pradhan (P.W.28), Balakrushna Sahu (P.W.31) and the I.O. (P.W.35). Learned Trial Court, on this circumstance, has relied on the evidence of P.W.25 alone. P.W.28 has turned hostile on this aspect. Ladu Kishore Pradhan (P.W.20) has testified that, suspecting involvement of the Teachers in the occurrence, the infuriated villagers undressed the Teachers in front of all and it was found that the Appellant was wearing his underwear ('chadi') on the reverse side. On his cross-examination, P.W.20 has testified that he was not examined by Police and for the first time he is deposing such fact before the Court. Biranchi Pradhan (P.W.25), who is a co-villager and Secretary of the Panchayat, has testified that the villagers did not allow the Teachers to go with the Police; they squatted blocking the road, they demanded search of the person and wearing apparels of the teachers, and when the Appellant gave search of his wearing apparels, it was found that he (Appellant) had put on the underwear ('chadi') on the reverse side; when they asked the accused - Appellant as to why he has put on the 'chadi' on the reverse side, the accused replied that since hurriedly he came to the school, by mistake he put on the 'chadi' on the reverse side. It is further testified by him (P.W.25) that, that 'chadi' of the Appellant had deep brownish colour stains in it. In paragraph-3 of his cross-examination, P.W.25 has testified thus -

".....After arrival of the Sub-Collector, Chatrapur and Addl. S.P., Chatrapur, the wearing dresses of the three teachers, who had been confined in the Class Room were taken. From our village three persons also accompanied the Sub- Collector and Addl. S.P. when personal search of the three teachers were taken. I did not go inside the room when search of the wearing apparels of the Headmaster, Durga Prasad Sahu and Santha Charan Patnaik (Appellant), the three teachers were taken, and I heard that Santha Charan Pattnaik had put on the 'chadi' on the reverse side and some stains on his 'chadi' , which I had not seen myself....."

Rajendra Sahu (P.W.26) has testified that, when Police arrived, the angry mob demanded that search of the wearing apparels of the teachers be taken up. (He doesn't state about presence of the Sub-Collector and Addl. S.P., Chatrapur). When that demand was made, the Headmaster (P.W.10) and Durga Prasad Sahu (P.W.11) publicly opened their clothing. When search of the clothes of Santha Charan Patnaik (Appellant) was taken up, it was found that the 'Ganji' and 'Chadi' were blood-stained. He (Appellant) had worn the 'Chadi' on the reverse side. In his cross-examination, P.W.26 has testified that the teachers were undressed in a class-room, they voluntarily removed their shirt / pant, but they did not remove their underwear.

The I.O. (P.W.35) has testified that, he conducted personal search of the three suspected persons on the demand of the villagers. On such search, he found stains like that of blood on the banian and 'chadi' of Santha Charan Patnaik (Appellant). So, he seized the banian and 'chadi' of the accused, vide Ext.25.

None of the witnesses namely P.W.20, P.W.26 and P.W.31 has testified that any of them had gone inside the room where personal search and checking of dress of the teachers including the Appellant was taken.

From the evidence of the aforesaid witnesses, it is found that the I.O. (P.W.35) though took personal search of the three teachers, he is silent about the fact that the Appellant had put on the 'chadi' on the reverse side. P.W.25, on whose sole evidence the learned Trial Court has placed reliance so far as this circumstance is concerned, in his cross-examination has specifically testified that he had no personal knowledge about the search taken inside a room in presence of the Sub-Collector, Chatrapur and Addl. S.P., Chatrapur. His evidence is totally hearsay. Other witnesses, who have testified about the personal search of the teachers, contradict each other on vital aspect. Silence of the I.O. on this aspect is most vital.

In view of such fact, we are constrained to disbelieve the evidence tendered by the prosecution to prove this circumstance too.

26. Another aspect is, injury on the body of the Appellant. This needs no discussion in view of the admitted fact at the Bar that, after the incident, as testified by majority of witnesses, all the three teachers were assaulted by the villagers and blood patches have been found in the Chemical Examination Report (Ext.39) on the vest of the Appellant, on the full shirts of Biswanath Gouda

(P.W.10) and Durga Prasad Sahu (P.W.11).

27. So far as Chemical Examination Report (Ext.39) in respect of the underwear ('chadi') of the Appellant is concerned, no blood or no semen was found in the said C.E. Report (Ext.39). On Benzidine Test conducted by P.W.13 however, so far as his (Appellant's) shirt, vest and underwear are concerned, the test, according to P.W.13, came out to be positive. However, the Chemical Examination Report, which is the outcome of a more surer test, negatived presence of blood on the shirt and underwear of the Appellant. Some patches of blood on his vest, which is of human origin of B+ group, have been found in the Chemical Examination Report (Ext.39) and P.W.13 in paragraph-2 of his examination-in-chief has specifically testified that the Blood Group of the Appellant is B+.

Further, so far as Benzidine Test is concerned, no question has been asked to the Appellant in his examination under Section 313, Cr.P.C., and for that reason such a fact cannot be taken into consideration to find the Appellant guilty.

28. Another feature of the evidence of P.W.13 is that, on examining the private part of the Appellant, namely his penis, the glance penis appeared to be slightly reddish adjoining urethral meatus and there was no other injury except superficial redness around meatus could be detected on the penis of the Appellant-accused. In his cross-examination, P.W.13 testified that, if a person suffers from acute urethritis, there would be redness around the urethral meatus. By the terminology "urethritis" means inflammation of the urethra because of some infection. The superficial redness around the meatus could be seen in acute urethritis. In answer to question No.21, in his statement under Section 313, Cr.P.C., the Appellant has replied that he was suffering from itching of his urethra since some days and for that reason there was redness on the meatus.

29. Another aspect, on which learned Trial Court has leaned heavily in finding the Appellant guilty, is non-explanation of the injuries on the dead body of the deceased by the Appellant. On this aspect, suffice it to say on our part is that, in view of the nature of evidence obtained on record, onus of proof under Section 106 of the Evidence Act never shifts to the defence to explain the injuries on the dead body of the deceased.

30. If we see the evidence of P.W.13 in conjunction with the evidence of P.W.33 - who conducted the Post-Mortem Examination, it would be seen that P.W.33 has specifically testified that, in case of forcible sexual intercourse with a minor girl, there is every likelihood of presence of injuries on the private part of the perpetrator of the crime, namely frenum, glans-penis and prepuce.

31. There being penetration, as found from the medical evidence and especially the Post-Mortem Report in respect of the deceased and there being no injury to the private part of the Appellant except slight redness on his meatus, which has been explained by him (Appellant) and there being no blood and no semen found on his underwear though there was profuse bleeding from the vagina of the girl

(deceased) at the time of ravishment, as found from evidence, we are of the view that there is nothing on record to find the Appellant guilty.

32. Accordingly, we set aside the impugned Judgment of conviction recorded under Section 376/302, I.P.C. against the Appellant and sentences recorded thereunder, and we acquit the Appellant of the charges. If the Appellant is in custody, he be released forthwith. However, if the Appellant is continuing on interim bail after expiry of the interim bail period in view of intervening Lock-down for COVID-19, the interim bail is regularized by extending the same till today and the Appellant be discharged of the bail bond on his appearance before the Trial Court.

33. The CRLA is accordingly allowed.