IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 321 of 2006

CNR No. ODHC010003262006

[An application under Section 374(2) of the Code of Criminal Procedure from the judgment of conviction and sentence dated 08.06.2006 passed by learned Addl. Sessions Judge, Rairangpur in C.T. Case No.3 of 2006]

AFR **Manoj Kumar Pal** **....** **Appellant**

-Versus-

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

Advocate(s) appeared in this case through hybrid mode:

For Appellant : Ms. Sasmita Nanda,
Legal Aid Counsel

For Respondent : Ms. Suvalaxmi Devi,
Addl. Standing Counsel

CORAM:

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing : 27.08.2026 :: Date of Judgment:01.09.2026

SASHIKANTA MISHRA, J.

The appellant, Manoj Kumar Pal, faced trial in C.T. No. 3 of 2006 in the Court of the Additional Sessions Judge, Rairangpur for committing the murder of one Pallabi Nanda

and her son Susanta Nanda of village Laxmiposi and attempting to commit the murder of her daughters, Susmita Nanda and Sarmista Nanda, besides committing house-trespass with intent to commit an offence punishable with imprisonment for life. By judgment dated 08.06.2006, the trial Court convicted him under Sections 302, 307 and 450 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo RI for six months for the offence under Section 302 IPC; RI for seven years and to pay a fine of Rs.3,000/-, in default to undergo RI for three months for the offence under Section 307 IPC; and RI for five years and to pay a fine of Rs.3,000/-, in default to undergo RI for three months for the offence under Section 450 IPC. The sentences were directed to run concurrently, with the period of detention undergone as an under-trial prisoner being set off against the sentences.

2. Prosecution case, briefly stated, is as follows.

On the intervening night of 24/25.04.2004, at midnight, the appellant entered the house of the informant, Aswini Nanda in his absence and assaulted his wife, Pallabi

and their children with a bhujali. As a result of the assault, Pallabi and her son Susanta sustained fatal injuries and died at the spot, while their daughters, Susmita and Sarmista sustained injuries. It is stated that the occurrence was witnessed by the younger son, Subrat Kumar Nanda (PW-1), who, on hearing the commotion, concealed himself underneath a *palank* (bed). According to the prosecution, Susmita (PW-4) switched on a torch and focused its light on the face of the assailant, whereupon P.Ws.1, 4 and 5 identified him as the appellant, who was known to the family. On hearing the hullah and commotion coming from the house, Anirudha Nanda (PW-3), the elder brother of the informant, whose house was situated nearby, came to the spot and saw a person coming out of the house and fleeing away. On entering the house, he found Pallabi and Susanta dead and Susmita and Sarmista injured. PW-3 thereafter shifted the injured to the S.D. Hospital, Rairangpur, for treatment. The informant, who was away from home on work as a bus driver, returned in the morning after receiving information about the incident. He found his wife and son lying dead inside the room and was informed by

PW-1 that the appellant had committed the assault. On such information, he lodged the FIR. On the basis of the FIR, Bisoi P.S. Case No. 30 of 2004 was registered under Section 302 IPC. Upon completion of investigation, charge-sheet was submitted against the accused under Section 302/307 IPC.

3. The defence of the accused person was one of complete denial and false implication. Defence also stated that on the night of occurrence, he was at Jamsola and had not been present at the place of occurrence. It was also pleaded that following the recovery of a child's dead body near his house at village Luhakani in 2003, the villagers had suspected him of criminal activities and had falsely implicated him.

4. To prove its case, prosecution examined nine witnesses and exhibited fifteen documents. That apart, prosecution also proved five material objects. Defence, on the other hand, did not adduce any evidence.

5. After analyzing the evidence on record, the trial Court held that the death of deceased persons was

homicidal and the prosecution had established the involvement of the appellant through the evidence of the eyewitnesses, particularly PWs.-1 and 4, corroborated by the evidence of the injured witness PW-5 and the medical evidence of PW-6. It also rejected the defence plea of mistaken identity and tutoring of the child witnesses and held the appellant guilty under Sections 302, 307 and 450 IPC. Accordingly, he was convicted and sentenced as stated hereinbefore.

6. Heard Ms. Sasmita Nanda, learned Legal Aid Counsel for the appellant and Ms. Suvalaxmi Devi, learned Addl. Standing Counsel for the State.

7. Ms. Nanda assails the impugned judgment of conviction on the following grounds:

i) The evidence of PWs.-1, 4 and 5 is unreliable and suffers from material omissions, contradictions and inconsistencies.

ii) PWs.-1 and 5 being child witnesses, their testimony required careful scrutiny,

particularly in view of the possibility of tutoring.

iii) The identification of the appellant by the witnesses in the darkness is doubtful and the possibility of mistaken identity cannot be ruled out.

iv) There is no independent corroboration of the testimony of the interested witnesses.

v) The prosecution has failed to establish any motive.

vi) The medical and other circumstantial evidence does not connect the appellant with the occurrence.

8. Per contra, Ms. Suvalaxmi would argue that the impugned judgment calls for no interference. According to her, the prosecution case is established by the consistent testimony of PWs.-1 and 4, particularly PW-4, who is an injured eyewitness and was well acquainted with the appellant. Her evidence is corroborated by PW-1, PW-5 and

the medical evidence of PW-6. The fact that PWs.-1 and 5 were children at the relevant time does not render their testimony unreliable, there being no material to suggest tutoring. The plea of mistaken identity is untenable as the appellant was known to the witnesses earlier and was identified in the torchlight. The evidence of PW-3 and the medical evidence lend further support to the prosecution case. The absence of proof of motive is immaterial where the prosecution has otherwise established the guilt of the appellant by reliable direct evidence.

9. We have heard learned counsel for the parties and have taken note of the rival contentions. We have also perused the case record and the impugned judgment.

10. At the outset, there is no dispute that the deaths of Pallabi and Susanta were homicidal. PW-6, the doctor, who conducted the post-mortem examinations found multiple incised injuries on both the deceased. In the case of Pallabi, injury No.1 was a deep incised wound across the neck cutting the trachea, oesophagus, carotid vessels and jugular veins. PW-6 opined that the injury was sufficient to

cause death in the ordinary course of nature and the cause of death was massive haemorrhage and shock. Similarly, in the case of Susanta, injury Nos.1 and 2 were found sufficient to cause death in the ordinary course of nature, the cause of death again being massive haemorrhage and shock. He further opined that the injuries could be caused by weapon like bhujali. The medical evidence, therefore, establishes that the deaths were homicidal and were the result of injuries caused by a sharp-cutting weapon. The injuries found on PWs.-4 and 5 also shows that they were present at the place of occurrence.

11. Before we proceed to independently examine the evidence, it would be apposite to refer to the principles of appreciation of the evidence of an eyewitness, particularly where the witness is a child and where the question of identification arises. The evidence of a witness cannot be discarded only because he or she is related to the deceased or is otherwise interested. What is required is a careful scrutiny of the testimony to ascertain whether it inspires confidence. Similarly, the evidence of a child witness is not

to be rejected only on account of his or her age. As held by the Supreme Court in the case of ***Suryanarayana v. State of Karnataka***[1], the evidence of a child witness requires close scrutiny and the possibility of tutoring has to be ruled out but corroboration is a rule of prudence and not an absolute requirement. Minor discrepancies in the testimony of a child witness, particularly those not touching the material particulars of the occurrence, cannot by themselves furnish a ground for discarding otherwise convincing evidence.

12. In the present case, PW-4 is an injured eyewitness. PW-4 stated that at about midnight she was sleeping inside the room along with her sister Sasmita and deceased Susanta in *palank* (bed) while her mother Pallabi and brother Subrat were sleeping on the floor. On hearing a '*chin chin'* sound she woke up and found a person inside the room. She stated that she focused the torchlight towards the face of the person and identified him as the appellant, whom she already knew. She further stated that the appellant was holding a bhujali and assaulted her, causing

[1] (2001) 9 SCC 129

injuries to her finger, neck and head. She thereafter witnessed the appellant assaulting Susanta in the abdomen and head and also assaulting her sister Sarmista. Her evidence is that Susanta died at the spot and the appellant thereafter fled from the house. PW-6, examined her and found five incised injuries and all the injuries were caused by a sharp-cutting weapon. Thus, the medical evidence corroborates the version of PW-4 that she was present at the place of occurrence and was assaulted with a sharp-cutting weapon.

13. It was argued by Ms. Nanda that there are omissions in her statement recorded under Section 161 Cr.P.C. with regard to the manner in which she caught hold of the bhujali, the assault on Susanta and the fact that she was brought to the hospital by her elder father. It is well settled that every omission in a previous statement does not amount to a contradiction. Only such omissions as amount to contradiction in respect of a material part of the prosecution case can materially affect the credibility of a witness. Reference in this regard may be had to the case of

Alauddin v. State of Assam[2], wherein the Supreme Court observed as follows-

> *"9. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the court which is inconsistent with what he has stated in his statement recorded by the police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164CrPC has been recorded states factual aspects before the court which he has not stated in his prior statement recorded under Section 161(1) or Section 164CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the police, which he states before the court in his evidence. The Explanation to Section 162CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the Explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination."*
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> *{Emphasis added}*

The testimony given by PW-4 has remained unshaken, mainly on the material aspects that she was present in the room, the appellant entered the room armed with a bhujali and assaulted her and the other members of the family and that Pallabi and Susanta sustained fatal injuries.

14. Much has been argued before us in regard to the discrepancy as to who focused the torchlight. PW-1 did not

[2] (2024) 12 SCC 224

state before the IO that PW-4 had focused the torchlight rather, as argued by Ms. Nanda, he stated that the torchlight was focused by the deceased Susanta. In his evidence before the trial Court, however, PW-1 stated that PW-4 had focused the torchlight. PW-5 has also attributed the focusing of the torchlight to PW-4 and PW-4 herself stated before the IO that she had focused the torchlight. In our considered view, this discrepancy does not go to the root of the prosecution case.

15. What is material is not the identity of the particular person who physically focused the torchlight but whether the witnesses had an opportunity to see the assailant and whether such opportunity enabled them to identify him. The consistent evidence emerging from the evidence of PWs.-1, 4 and 5 is that the torchlight was focused on the assailant and they were thereby able to see his face and identify him as the appellant. The appellant was not a stranger to these witnesses. PW-4 has stated that she knew the appellant as he had married the daughter of her uncle. PW-5 has also stated that the appellant was

known to her and used to come to their house. Therefore, the discrepancy as to whether the torchlight was focused by PW-4 or by deceased Susanta is only with regard to the manner in which the visibility was created and does not affect the fact that the appellant was seen and recognized in the torchlight. The discrepancy, therefore, cannot reasonably be treated as sufficient to discredit the identification of the appellant. Reference in this regard may be had to the case of ***Sarwan Singh v. State of Punjab***[3], wherein the Supreme Court observed that where the accused is already known to the witnesses and the witnesses are acquainted with him, the absence of a prior test identification parade does not by itself render the identification in Court unreliable. The Court emphasized that the ultimate test is the acceptability and credibility of the evidence of the witness. In the present case, the appellant was known to PWs.-4 and 5 and was not a stranger to the family. The identification, therefore, is not a case of the witnesses identifying an unknown person for the first time in Court.

[3] (2003) 1 SCC 240

16. Ms. Nanda, relying on the statement of PW-5 in response to the suggestions put to her in cross-examination, has also sought to discredit the identification of the appellant on the ground that the assailant was wearing goggles and the portion of his face below the nose was covered with a towel. We have carefully considered this submission. PW-4, however, stated that the towel was around the appellant's head and specifically stated that his face was not covered and he was not wearing goggles. PW-9, the I.O. also stated that his investigation did not reveal that the accused was wearing goggles or had covered his face with a towel. In such circumstances, the statement of PW-5 deposed in response to the defence suggestions cannot be considered in isolation to discard her entire testimony. PW-5 was about six years old at the time of the occurrence and about eight years old when she deposed before the trial Court. Her statement that due to the lapse of time, she did not remember the incident in all its details cannot, by itself, render her evidence unreliable. Most importantly, when questioned by the trial Court as to how she could depose if she did not remember the incident, she stated that she

knew that the accused had assaulted them with a bhujali. Thus, although she may not have been able to recollect every detail of the occurrence, she could recall the material fact concerning the identity of the assailant and the assault. The evidence of PW-5, therefore, has to be read as a whole and not by isolating an answer given in cross-examination. It is the duty of the Court to discern the material and reliable aspects of her testimony rather than discard it only because she was unable to recollect every detail of the occurrence. Her evidence, when considered along with the evidence of PW-4 as well as the evidence of P.Ws.1 and 9, does not create any reasonable doubt regarding the identification of the appellant.

17. Ms. Nanda has also argued that PW-1 having concealed himself underneath the *palank* could not have seen the assailant or witnessed the occurrence. This submission cannot be accepted for the reason that PW-1 stated that on hearing '*chin chin*' sound, he woke up and saw the appellant assaulting his mother, who was sleeping on the floor near him. Out of fear, he concealed himself

underneath the *palank*. He further stated that when his sister Susmita focused the torchlight on the face of the assailant, he identified him as the appellant and continued to witness the assault from underneath the *palank*. Thus, PW-1 had an opportunity to see the assailant before taking shelter and subsequently identified him in the torchlight. The only fact that he concealed himself underneath the *palank* out of fear does not render his testimony regarding identification unreliable. For our own satisfaction, we have also perused the photographs of the place of occurrence available in the case diary and find nothing therein to suggest that a person concealed underneath the *palank* could not have seen the assailant in the manner stated by PW-1. The photographs lend support to his ocular account. His evidence, therefore, cannot be discarded only because he took shelter underneath the *palank* during the occurrence.

18. Coming to the evidence of PW-5, we find that the trial Court, after being satisfied that she was capable of giving rational answers, accepted her evidence. In her

evidence, she stated that the appellant was known to her and attributed the assault upon her mother, brother and sister to him. She stated that the appellant was identified in the torchlight and further described the manner in which the assault was committed. Though in cross-examination she stated that due to lapse of time, she did not remember the incident, such answers cannot be considered in isolation. She was questioned by the Court as to whether she was deposing what she had herself seen or on the instruction of her father and sister, she stated that she was deposing on the basis of what she had seen. There is no material on record to establish that her evidence was the result of tutoring. Her presence at the place of occurrence is also supported by the injuries found on her by PW-6, one of which was grievous in nature. PW-6 further opined that all the injuries sustained by her could have been caused by a weapon like a bhujali. Her evidence, therefore, cannot be discarded merely because she was a child witness.

19. We shall now consider the evidence of PW-1. He stated that on hearing a sound he woke up and saw a

person standing inside the room and after torchlight was focused on the person, he identified him as the appellant. He also stated that the appellant was armed with a bhujali and assaulted his mother, brother and sisters. He himself concealed under the *palank* during the occurrence. His evidence is consistent on the material aspect that he had an opportunity to see the assailant in the torchlight and recognized him as the appellant, who was already known to him. The defence has sought to create an infirmity from the fact that PW-1 did not state before the IO that PW-4 had focused the torchlight and had attributed the focusing of the torchlight to deceased Susanta. In our considered view, this discrepancy is not of such a nature as to render his entire testimony unreliable. The essential fact stated by him remains that the assailant was visible in the torchlight and that he was able to identify him.

20. Thus, from overall appreciation of evidence of PWs.-1, 4 and 5, we find that they have given a consistent account of the incident. All three witnesses stated that the

assailant was seen in the torchlight and was identified as the appellant.

21. Ms. Nanda also tried discredit the above witnesses for the reason they are interested witnesses. In our considered view, there is no force in this submission as the witnesses themselves were injured and the deceased persons were their mother and brother. There was no reason for them to falsely implicate the appellant while shielding the real offender, if at all it was somebody else.

22. Also, PW-3's evidence lends support to the prosecution case. He stated that as he reached the house on hearing hullah, he saw a person fleeing from the house and, on entering found Pallabi and Susanta dead and P.Ws.4 and 5 injured, whom he thereafter took to the hospital. Though he is not an eyewitness to the assault, his evidence provides corroboration. Medical evidence of PW-6 also corroborates the ocular version as the injuries found on the deceased and injured witnesses were incised injuries capable of being caused by a bhujali. As regards the absence of an

independent eyewitness, the occurrence having taken place inside the house at midnight, such absence is natural.

23. The other arguments raised by Ms. Nanda i.e. the plea of false implication on account of the appellant's previous involvement or suspicion in a motorcycle theft case, are not supported by any material. There is no plausible reason why PWs.-4 and 5, who themselves sustained injuries, would falsely implicate the appellant in the murder of their own family members. The absence of a proved motive also does not affect the prosecution case, which rests on direct ocular evidence supported by medical evidence. As regards the plea of alibi that the appellant was at Jamsola, no evidence has been adduced in support thereof, whereas P.Ws.1, 4 and 5 have directly placed him at the place of occurrence. The defence, therefore, has failed to create any reasonable doubt on these grounds.

24. There is, however, one aspect which has not been argued before us but requires consideration. The trial Court, while convicting the appellant, has also recorded a conviction under Section 450 IPC, though no specific charge

under the provision appears to have been framed against him. The question, therefore, is whether such conviction can be sustained.

25. Section 464 Cr.P.C. makes it clear that a conviction is not rendered invalid only on account of omission to frame a charge or an error, omission or irregularity in the charge, unless it has in fact occasioned a failure of justice. In the case of ***Radha Mohan Singh v. State of U.P.***[4], the Supreme Court held that, in view of Section 464 Cr.P.C., an appellate or revisional Court can convict an accused for an offence for which no charge was framed, provided no failure of justice has been occasioned. The relevant consideration is, whether the accused was aware of the basic ingredients of the offence, whether the material facts sought to be established against him were clearly put to him and whether he had a fair opportunity to defend himself.

26. In the present case, the prosecution case from the very inception was that the appellant entered the house of

[4] (2006) 2 SCC 450

the informant at about midnight, armed with a bhujali, and committed the assault upon the inmates of the house. The evidence led by the prosecution was also directed towards establishing his unlawful entry into the house with the intention of committing the offences with which he was charged. The material facts constituting the offence of house-trespass were thus part of the prosecution case and were within the knowledge of the appellant. Further, the circumstances relating to his entry into the house and the commission of the assault were put to him in his examination under Section 313 Cr.P.C., thereby affording him an opportunity to explain the same. The defence was one of complete denial and false implication and no prejudice was demonstrated to have been caused by the absence of a separate charge under Section 450 IPC.

27. Thus, from a conspectus of the analysis of the evidence, reasoning of the trial Court and its findings, the contentions raised and the discussions made hereinbefore, we are left with no doubt that the accused was rightly

convicted by the trial Court. We, therefore, find no reason to interfere with the impugned order.

28. In the result, the appeal fails and is therefore, dismissed. The accused-appellant being on bail, his bail bonds be cancelled and he be taken to custody forthwith to serve the remaining part of the sentence.

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(**Sashikanta Mishra, J)**

Manash Ranjan Pathak, J. I agree.

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(Manash Ranjan Pathak, J)

Orissa High Court, Cuttack
The 1st September, 2026/A.K. Rana, P.A.

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