

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, PHULBANI**

**PRESENT:-**

**Sri R.K.Tosh, LL.B.,  
Additional Sessions Judge, Phulbani**

**S.T. CASE NO.16/18 OF 2013-2009**  
(S.T. 03/2009 of Fast Track Court, Phulbani)

(Arising out of Tumudibandh PS case no.37  
dt.23.08.2008 and GR Case No.176/2008)

**Dated, this the 30<sup>th</sup> September, 2013.**



State

Prosecution

Versus

1. Durjo @ Dujyodhana Sanamajhi, aged about 36 years, S/o Late Asinga Sanamajhi, Vill: Badagaon, PS: Tumudibandha,
2. Munda Badamajhi, aged 36 years, S/o Late Danura Badamajhi, Vill: Durungipadi, PS: Tumudibandha,
3. Sanatana Badamajhi, aged 31 years, S/o Gimi Pradhan, Village: Lamdabadi, PS: Tumudibandha,
4. Garnath Challanseth, aged 39 years, S/o Bachan Challanseth, Village: Sartul, PS: Kotgarh,
5. Bijaya Kumar Sanaseth, aged 37 years, S/o Salei Sanaseth, Village: Talamadhuguda, PS: Kotgarh,
6. Bhaskar Sanamajhi, aged 33 years,



S/o Budui Sanamajhi,  
Village: Kutiguda, PS: Kotgarh,

7. Budhadev Naik, aged 42 years,  
S/o Munga Naik,  
Of Village: Kilanga, PS:Tumudibandh,

All are of District: Kandhamal.

.... Accused Persons

Counsel for the Prosecution:

Sri A.K. Pradhan,  
Public Prosecutor, Phulbani

Counsel for accused Persons:

Sri S.K.Padhy & associates,  
Advocates, Phulbani

Date of argument 13.09.2013

Date of judgment 30.09.2013

(OFFENCES CHARGED UNDER SECTION 147,148,449, 380, 302  
READ WITH SEC.149 AND SECTION 120-B OF THE  
INDIAN PENAL CODE AND SECTION 25 & 27 OF ARMS ACT)



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### JUDGEMENT

#### THE CASE

1. Hindu monk Vedanta Keshari Swami Laxamanananda Saraswati (here-in-after referred as "**Swamiji**") was brutally murdered in his Jaleshpeta hermitage in the district of Kandhamal by some unknown assailants on the sacred day of Janmashthami i.e. 23<sup>rd</sup> August 2008. He was a highly revered spiritual leader whose life was dedicated to tribal welfare. It is on the record that Swamiji combated fraudulent conversion by Christian missionaries and a supporter of anti cow slaughter movement. He was working for socio economic well being of marginalized and indigent in Kandhamal and it is alleged that the Missionaries those used charity as a facade for converting people away from their native faith with alliance of Maoists are the perpetrators and conspirators of the assassination of Swamiji. The assassination followed wide spread communal riot in the district of Kandhamal causing huge casualty and loss to public property. It is alleged that during August, 2008 a threatening letter was circulated amongst the District Administration at Kandhamal to eliminate Swamiji, but surprisingly despite police protection the life of Swamiji could not be saved. The above named accused persons have been committed as perpetrators and conspirators



behind the killing of Swamiji and charged for commission of offences punishable u/s.147, 148, 449, 380, 302 read with section 149 and section 120B of Indian Penal Code and Section 25 and 27 of the Arms Act.

**FACTUAL EXPOSE**

2. The facts of the prosecution case as revealed from the case record is that on 23.08.2008 at about 7.55 p.m. Swamiji along with his disciples were present at the hermitage at Jaleshpeta under Tumudibandh Police Station and were preparing celebration of Janmasthanmi. At that time 20 to 25 unknown persons being armed with guns trespassed inside the Ashram and fire indiscriminately killing Swamiji and four of his associates namely Amrutanandji, Mata Bhaktimayee, Kishore Baba and Puranjan Ganta. It is alleged that within a span of 15 minutes the assailants have fired more than 50 rounds causing death of the above persons. The Informant Bramhachari Madhaba Chaitanya and other inmates of the Ashram including the students of Kanyashram immediately rushed to the spot and found the dead bodies of Swamiji and others lying under pool of blood with bullet injuries. This fact was immediately reported to O.I.C., Tumudibandh over telephone by the police personnel deputed for security of Swamiji, who immediately rushed to the spot. Ultimately the present F.I.R. was filed before the police who immediately swung into action. The services of the Scientific Officer, DFSL, Phulbani was sought for, who visited the spot, took photographs of the dead bodies and the site, seized empty cartridges and other incriminating materials. Post mortem examination on the dead bodies of Swamiji and others conducted at the spot after making necessary lighting arrangements. The investigation of the case was later handed over to the Crime Branch and the investigating officer during investigation found involvement of Maoists organization beside Christian Missionaries behind the killing of Swamiji and others. He also found a well organized conspiracy of the missionaries and Maoists to eliminate Swamiji. Ultimately on completion of investigation he submitted charge sheet keeping further investigation of the case open. After completion of the formalities the present accused persons were committed to the file of Hon'ble Sessions Judge, Phulbani and transferred to this Court for disposal according to law.



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**THE DEFENCE**

3. The accused persons pleaded innocence and false implication.

**THE DETERMINATES**

4. Points for determination in this case is:

- (i) Whether on 23.08.2008 at about 7.55 p.m. at Jaleshpeta Ashram the accused persons were members of an unlawful assembly in prosecution of common object of which was to commit murder etc., committed the offence of rioting?





- (ii) Whether on the said date, time and place the present accused persons were members of an unlawful assembly in prosecution of common object of which was to commit murder etc., committed the offence of rioting and at that time they were armed with deadly weapons like gun, knife etc.?
- (iii) Whether on the said date, time and place the present accused persons were members of an unlawful assembly in prosecution of common object of which was to commit house trespass in order to commit offence punishable with death, trespassed inside Jaleshpeta Ashram with an intention to commit murder of Swami Laxamanananda Saraswati and others?
- (iv) Whether on the said date, time and place the present accused persons were members of an unlawful assembly in prosecution of common object of which was to commit the offence of theft, committed theft of mobile phones by removing the same from the possession of Swami Laxamanananda Saraswati and others?
- (v) Whether on the said date, time and place the accused persons were members of an unlawful assembly in prosecution of common object of which was to commit murder, committed murder of Swami Laxamanananda Saraswati, Amrutanandji, Mata Bhaktimayee, Kishore Baba and Puranjan Ganta?
- (vi) Whether during the year 2008 the present accused persons were a party to a criminal conspiracy to commit murder of Swami Laxamanananda Saraswati and others?
- (vii) Whether on 23.08.2008 at 7.55 p.m. at Jaleshpeta Ashram the accused persons were in possession of any arm, fire arm and ammunition without any valid license?
- (viii) Whether on the date, time and place the accused persons used arm, fire arm and ammunition without any valid license?

5. The prosecution has examined 35 witnesses and exhibited as many as 58 documents and XXVIII material objects to establish the charges. P.W.22 is the informant. P.W.1, 8, 9 are the security officials deputed at the Ashram. P.W. 8, 9, 24, 25, 27, 32, 33 are the eyewitnesses to the incident. P.W.5, 21, 26 and 35 are the Scientific Officers. P.W.11 is the Executive Magistrate in whose presence the inquest was conducted. P.W.15, 19, 2, 23 are the Medical Officers those conducted Post Mortem examination on the dead body of Swamiji and others. P.W. 12, 16 and 29 are the investigating officers whereas others are post occurrence witnesses as well as witnesses to the seizure. On the other hand the accused Bijaya Kumar Sanaseth, Garanath Challanseth have examined themselves as defence witnesses beside exhibiting 04 documents to prove their case.

6. At the outset I would like to have a discussion on the background and the motives behind commission of the above crime. Learned



**MOTIVE &  
BACKGROUND**

P.P. submitted before me that due to strong protest by Swamiji against conversion and cow slaughter, the Christian missionary in connivance with Maoists organizations have committed the offence and the evidence on record clearly indicate the same. He has also submitted that although in a case basing upon the evidence of eyewitnesses, motive assumes little significance yet in such a case the motive most provide additional strength to the foundation of prosecution case. On the counter argument learned advocate on behalf of the accused persons urged that the prosecution has failed to establish not only the motive but also any evidence to connect the involvement of Christian missionaries behind the offence. It cannot be doubted that motive is a factor which prompts a person to commit the crime. Absence of motive does not corrode the credibility of prosecution case but it must be impressed that motive behind a crime is a relevant fact and normally prosecution is expected to adduce evidence in respect thereof. In cases where prosecution is not able to establish a motive behind the alleged crime it assumes importance especially in cases where the prosecution rests on circumstantial evidence or on witnesses who have inimical background. Proof of motive on the part of the accused persons to commit an offence satisfies a judicial mind about the likelihood of the authorship but in its absence it is only proper on the part of the Court to have a deeper search for motive. It is well settled in law that where direct evidence worth of credence the question of motive is only of academic importance. Section 8 of the Evidence Act provides that the evidence with regard to motive and preparation are relevant. Existence of motive for committing a crime is not an absolute requirement of law but it is always a relevant factor which should be taken into consideration by the Court as the same is very likely to render assistance to the Courts well analyzing the prosecution evidence and determining the guilt of the accused. [(2010) 9 SCC 189, AIR 2011 SC 1777 Kulvinder Singh and another vs. State of Haryana, AIR 2011 SC 3387 Dandu vs. State of Andhra Pradesh].



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In one case reported in AIR 2011 SC 1403 (2011 AIR SCW 1845) in Sheo Shankar Singh v. State of Jharkhand & another, while dealing with the issue of motive, the Hon'ble Court held:

*"Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eyewitnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of*



the eyewitnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eyewitness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eyewitnesses. (See Shivaji Genu Mohite v. The State of Maharashtra, AIR 1973 SC 55; Hari Shankar v. State of U.P. (1996) 9 SCC 40 and State of Uttar Pradesh v Kishanpal and Ors. (2008) 16 SCC 73; (AIR 2009 SC (Supp.) 1238; 2008 AIR SCW 6322))

7. In the present case it is clear from the evidence of P.W.14 that Swamiji was a protestor of cow slaughter and a pioneer among the Hindu fundamentalists and was looking after the education, health and general development of the weaker section of the society. A month prior to the present incident at his instance, a criminal case was initiated for slaughtering of cow for which there was a threat to his life. During cross-examination this witness has given further clarity and stated that during the year 2007 there was an attack on the life of Swamiji by Christians. The work of Swamiji for upliftment of the tribal community of Phulbani beside preventing conversion has definitely created bad blood among the Christian community. Learned Addl.P.P. has drawn the attention of this Court to the contents of Ext.53 which indicate that on 25.05.2008 a meeting was held at Betikola Darish Counsel Church, in which a resolution was passed to punish the perpetrators responsible to prevent missionary work. The resolution further indicate to observe a Christian celebration day in case of success of the mission in punishing the persons responsible. The contents of Ext.56 and 57 further indicate that there was a strong protest against the work of Swamiji wherein he was warned to refrain from activities of religious conversion of people and opposing cow slaughter. The police basing upon the receipt of a threatening letter vide Ext.57 has made Station Dairy entry and made security arrangements for Swamiji. Admittedly the present accused persons are Christians and as per the evidence of P.W.17 (paragraph 7) soon after the incident some of the accused persons namely Bijaya and Garanath distributed sweets at Kotgarh Church. The prosecution has also relied upon a Letter left by the assailants at the site vide Ext.6/2 wherein there was threat to Swamiji for his work. No doubt the prosecution has relied heavily upon the evidence of the eyewitnesses beside other circumstantial evidence, but in my considered view the incident discussed above clearly provide a strong edifice to the structure of prosecution. This Court has got every reason to believe that



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because of the welfare activities of Swamiji and his organization the missionaries operating in the locality have bore grudge and wanted to eliminate him and have got a strong motive for that purpose.

**THE  
EVIDENCE**

8. Let us have a discussion on the factual aspect of the prosecution case. As per the evidence of the informant P.W.22 on the relevant day at about 7.55 p.m. while they were preparing for Janmasthan Puja at Jaleshpeta Ashram and Swamiji and his disciples were in their room, heard the sound of gun fire. Immediately he came down from the Mandap and heard the voice of Mata Bhaktimayee saying "BANDHUKARE MARIDELE MARIDELE". He also noticed Malati, a student of class-VIII of the Ashram, running towards Mandap and disclosed that some black persons have killed everybody inside the room. This witness has stated to have marked the incident behind the mango tree and found 8 to 10 persons breaking the door of room of Swamiji by means of a long kati and also heard the sound of gun fire. He also heard the sound from inside the room of Swamiji beside sound of gun fire from the guest room. Thereafter he noticed about 20 to 25 persons moving away through the southern gate of the Ashram. It is specifically stated at paragraph-5 the persons breaking the door have tied black cloth and put mask and monkey cap on their face, those persons were armed with gun and kati. Apprehending danger to life he did not proceed to the room of Swamiji and came back to the Mandap with students. About half an hour thereafter the police came to the spot and after ensuring the identity of the police officials they came out. At paragraph 6 this witness gave a detail discussion of the said place where the dead bodies of Swamiji, Mata Bhaktimayee, Kishore Baba, Amrutanandji and Puranjan Ganta were lying in pool of blood with gunshot injuries on their bodies. This witness has stated to have lodged the F.I.R. at the spot. The other inmates of the Ashram P.W.25 supporting the case of the prosecution has stated that on the relevant day while he was present inside the room of Mata Bhaktimayee noticed four persons coming towards them and thereafter started firing from the gun. Immediately he pushed Amrutanandji who was available at the room of Mata Bhaktimayee and tried to escape from the back door but at that time a bullet stroke on the right side wall of the room of Mata Bhaktimayee and he could managed to escape. Thereafter he concealed himself and heard the sound of gun firing. At paragraph 3 he has stated to have noticed the presence of about 20 to 25 persons those managed to escape through the southern gate. Thereafter he noticed the dead body of Swamiji and others lying dead with gunshot injury in



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a-pool of blood. Swamiji was lying dead inside his toilet with gunshot injury. He also noticed the right leg of Swamiji hacked. About half an hour thereafter the police personnel came and took further steps for inquest and post mortem on the dead bodies. This witness at paragraph 8 of his evidence has stated since four gun men were having mask on their face he could not identify them. This witness was cross-examined by learned P.P. u/s.154 Evidence Act. The inmates of the Ashram who are the witnesses to the incident, P.W.32 Kumudini Pradhan and P.W.33 Malati Pradhan during evidence have stated that during the year 2008 on the day of Janmasthanmi some culprits have trespassed into the Ashram and killed Amrutanandji Baba, Swami Laxamanananda Saraswati, Mata Bhaktimayee, Kishore Baba and a guardian namely Puranjan Ganta. P.W.33 has stated that at the relevant time she was inside the room of Mata Bhaktimayee along with Manika Behera and Malati Pradhan and Amrutanand Baba. At that time two assailants entered inside their room and stood at the door while two other assailants entered inside their room and opened fire for which Baba Amrutanandji fell down with bullet injuries. Immediately she along with others rushed to the roof where Janmasthanmi celebration was going to be held, but Mata Bhaktimayee returned to her room. They shouted from the roof. The other eyewitness Malati Pradhan giving a detail description of the incident have stated that at the relevant time they were watching T.V. inside the room of Mata Bhaktimayee who was getting ready for the Puja. At that time two assailants entered inside the room and opened fire at Amrutanandji and two others were standing outside the room. This witness has clearly stated that two assailants who entered inside the room were masked whereas the other two who standing outside the room were never masked. It is further stated that the assailants those entered inside the room were armed with shotguns and the persons who were standing outside were having normal guns. Latter she found the dead bodies of Swamiji and others. Police officials those deputed duty at the Ashram including the security Guard of Swamiji (P.W.1, 8 and 9) supporting the prosecution case have stated that on the relevant day at about 7.55 p.m. They heard sound of gun fire inside the Ashram and noticed the dead bodies of Swamiji and others lying in pool of blood with bullet injuries. The police was later informed. P.W.8 has further clarified that the persons those trespassed inside the Ashram while leaving threw away a letter directing him to hand over the same to the journalists. The I.O. seized the said letter Ext.6/2. The first investigating officer P.W.16 Madhusudan Jenasamanta who arrived at the spot on receipt of phone call from one Bhramananda Pradhan



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found five dead bodies lying inside the Ashram in pool of blood. Later he received the F.I.R. and took up investigation and arranged to conduct inquest on the dead bodies in presence of the Executive Magistrate P.W.11. The FIR has been marked as Ext.13 whereas the inquest reports have been marked as Ext. 7 to 11. He also prepared the dead body challan vide Ext. 15 to 19 and seized the incriminating materials like cartridges, blood stains and other articles vide Ext.20 and 23. He also seized the letter given by one Azad on production by constable Simanchal Patra P.W.8 vide seizure list Ext.6. The scientific officers P.W.5 has also taken photographs of the site and collected the blood sample and handed over the same to the I.O. and submitted a detail report of the spot visit vide Ext.1. The investigating officer has stated to have arranged post mortem examination on the dead bodies of Swamiji and others. The prosecution has also examined the Medical Officers P.W.15, who conducted post mortem examination on the dead body of Kishore Baba, P.W.19 who conducted post mortem examination on the dead body of Puranjan Ganta, P.W.20 who conducted post mortem examination on the dead body of Swami Laxamanananda Saraswati, P.W.23 who conducted post mortem examination on the dead body of Mata Bhaktimayee. The above medical officers have submitted the post mortem report vide Ext.12, 24, 26, 30 and opined that the death was due to shock and hemorrhage and damage to vital organs by gunshot injury. They have further stated that the injuries are homicidal and ante mortem in nature. The medical officers have further opined that the injuries can be possible by fire arm including the muzzle loading gun (Ext.30).



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9. Learned P.P. has submitted before this Court that the above evidence clearly indicate that the death of Swamiji and others was homicidal and ante mortem in nature. The accused persons have never disputed the death of Swamiji and others due to gunshot injury. Therefore now this Court should have a deeper scrutiny on the evidence to ascertain the persons responsible i.e. behind the killing. I have carefully gone through the evidence on record with regard to the alleged incident leading to death of Swamiji and four others. All the witnesses examined by the prosecution including the police personnel deputed at the Ashram have categorically stated that on the relevant day some unknown persons trespassed inside the Ashram and committed murder of Swamiji and four others by firing them from a close range. The inquest report and post mortem examination report clearly indicate the nature and cause of injury on Swamiji and others. It is a fact that



the prosecution has failed to examine the medical officer who conducted post mortem on the dead body of Amrutanandji but the inquest report Ext.10 clearly indicate that the death of Amrutanandji was due to gunshot. There has been absolutely no cross-examination on the above score. The photographs submitted by the scientific officer provided additional support to the case and the site of incident which clearly establish that the death of Swamiji and others at the Ashram was due to gunshot injury. Recovery of empty cartridge lead, bullet, lathi vide Ext.20 to 23 and the report of the Scientific Officer. On examination of the above materials vide report Ext.33, 34, clearly indicate that the death of Swamiji and others was homicidal in nature and the injuries are ante-mortem. Now it has become a duty of this Court to ascertain the persons responsible for causing the death of Swamiji and others.

**DIRECT EVIDENCE  
CONNECTING  
CULPRITS**



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**CIRCUMSTANTIAL  
EVIDENCE  
CONNECTING  
CULPRITS**

10. In order to establish the identity of the culprits the prosecution has heavily relied upon the evidence of P.W.32 and 33 those are the students of Kanyashram. P.W.32 during her evidence has stated to have marked the presence of four assailants with the help of CFL bulb in their room. At paragraph 4 of the examination this witness has clarified that from amongst the accused persons the assailants are present in the dock. The court has marked the demeanor of this witness and mentioned that the witness feels apprehensive to particularly identify the culprits, but gave description of the assailants as a black and tall person and later the said person was identified as Durjyodhan Sanamajhi. Of course this witness was cross-examined at length, the witness has clarified that due to shock she was seriously scared and did not disclose about the occurrence before the police. The other witness P.W.33 Malati Pradhan giving details of the identity of the assailants have stated that during incident two assailants entered inside the room were masked whereas two others standing outside the room were never masked. This witness has identified accused Durjyadhan Sanamajhi and Bijaya Kumar Sanaseth as the persons who were standing outside the room with normal gun. The assailants who entered inside the rooms were having shotguns. The prosecution has examined the other officials of the School P.W.31 and 34 and proved the admission register of the school.

11. The other witnesses upon which the prosecution has also relied heavily are P.W.17 and 18. Of course during initial examination both the witnesses failed to support the prosecution, during later stage they were examined on recall as per the direction of the Hon'ble High Court and gave details of the incident before this Court. P.W.17 supporting the case of the





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prosecution has stated that due to fear in his mind, in pursuant to the threat extended by some unknown persons he could not venture to depose before the Court. Under the protection of police he has come to depose out of his free will and mind. At paragraph 7 it is stated that three to four days prior to the death of Swamiji in one evening he was proceeding to Kotgarh Bazar from his house and on the way near the main gate of Kotgarh High School saw Bijay Chalanseth, Garanath Chalanseth, Budha Nayak, Duryodhan Sanamajhi, Bhaskar Sanamajhi having assembled discussing themselves. Since they were talking on Swamiji, he could not resist his curiosity to listen the discussion and managed to hide himself behind the boundary of the High School. Bijaya was telling Duryodhan and Budha to arrange people with weapons to go to Jaleshpeta Ashram. About 3 to 4 days after Swamiji was murdered and soon thereafter Bijaya and Garanath distributed sweets in Kotgarh Church. It is further stated that two to three days thereafter some unknown persons came to the village in a motorcycle and warned the villagers not to tell anything before the police in connection with the death of Swamiji. This witness was cross examined exhaustively on the location where he heard the discussion but nothing substantial has been elicited in support of the accused persons. Likewise P.W.18 during his re-examination has stated that during August 2008 he had been to the jungle in search of Buffalos but failed to trace it. While returning he found a group of persons engaged in discussions among themselves. He tried to conceal himself and ascertain the gist of their discussion. It is clearly stated that the persons engaged in discussion were Garanath, Bijay, Duryodhan, Buddha, Sanatan, Bhaskar and Munda. He knew all the above persons earlier and beside the above persons 10 to 15 others persons including some female and some persons in khaki dress were also present there. This witness has identified the accused persons present in the dock. At paragraph 8 he has stated that those persons were discussing about a plan to murder Swamiji and the persons with khaki dress were holding gun. About 8 days thereafter Swamiji was murdered on the day of Janmasthanmi and visited the Ashram and found the dead bodies. This witness has also stated about the threat given by the unknown persons to the villagers. At paragraph 14 of the cross-examination this witness has clarified that the persons present were discussing to murder but he cannot specifically say about the utterances of each person present in the group.

12. In order to connect the circumstances the prosecution has also heavily relied upon the evidence of P.W.29. who is the Deputy Superintendent



of Police, CID, Crime Branch, Cuttack and the investigating officer in the present case. He has stated that soon after taking charge of investigation vide Office Order No.300, dtd.28.08.2008, examined the documents prepared by the previous investigating officer and visited the spot. He also scrutinized the letter Ext.6/2 thrown by the culprits at the spot which was handed over to the police by P.W.8 and satisfied about the involvement of the Maoists organization behind the crime. During investigation he examined Uttam Gauntia basing upon the information on 05.10.2008 he searched the house of Duryodhan Sanamajhi at village Badagaon and seized a single barrel muzzle loading gun from the ceiling of his bed room in presence of witnesses vide Ext. 4 (M.O.XII). He also searched the house of Munda Badamajhi and seized one single barrel muzzle loading gun from the bed room of his house at village Durungipodi vide Ext.5 (M.O. XIV). As both Duryodhan and Munda failed to produce any license they were taken to custody. On the same night he also searched the house of Sanatan Badamajhi and on search of his house at village Landabali found one shirt having holes which can be used as masks and seized the same vide seizure list Ext.3 and M.O. XIII. On 13.11.2008 he examined Birendra Kanhar and Mahasingh Kanhar and found conspiracy to commit murder of Swamiji. This witness has further clarified that during investigation he arranged Ballistic examination of the seized guns by experts at SFSL, Bhubaneswar. At paragraph 14 the I.O. has stated that on 12.12.2008 he got reliable information regarding presence of the accused persons Bijay, Garnath, Buddha, Bhaskar near a forest near village Sartul under Kotgarh police station to attend a meeting held by Maoists. On 13.12.2008 he reached Kotgarh P.S. and found Kotgarh police already apprehended Bijay and Garnath. He interrogated both of them. On the next day he apprehended Bijay, Garnath, Buddha and Bhaskar and shifted them to Chandill police station on security point of view for further interrogation. Where he recovered a cell phone from the possession of Bijaya and another Cell phone from the possession of Garanath and seized the cell phones vide Ext. 40 and 41 and M.O. XVII, XVI. The I.O. has further claimed to have obtained the call details report from Bhubaneswar Circle in respect of the seized telephones (SIM card No.9437992341 and 9437973341) vide Ext. 43 and 44. After receipt of the ballistic expert and opinion of the medical officer and sanction from the District Magistrate, Kandhamal, he submitted the charge sheet. During cross-examination the I.O. has denied that the witnesses namely Birendra Kanhar and Mahasingh Kanhar have been set up against the accused persons as they are Christians. The I.O. has further to



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have seized the Register vide Ext. 53 on production by one Ashok Sahu but has admitted to have never examined the witnesses Malati and Kumudini during investigation, as they are not present in the Ashram during visit. P.W.6, 7 and 13 are the witnesses to the seizure of the above Guns and Shirt and claimed that in their presence the above articles were seized by the I.O. vide Ext.3, 4 and 5. P.W.13 has further identified the culprits during examination and further identified the houses to the police.

13. The learned public prosecutor while meticulously arguing the case has submitted that there was clear-cut motive behind assassination of Swamiji and others and the present accused persons are the perpetrators and conspirators of the said crime. Relying heavily upon the rulings of Hon'ble Court in case reported in 2004 (4) Crimes 294 (SC) in *Munsi Singh and others vs. State of M.P. and (2011) 50 OCR SC 236 in Mohammed Arif @ Ashfaq vs. State of NCT of Delhi and AIR 2007 SC 2425 in Hira and another vs. State of Rajasthan*, has urged before me that although the investigating officer has failed to conduct T.I. Parade in respect of the suspects during the investigation yet that cannot be a ground to discard the entire prosecution case which is otherwise clear. It is also urged that this Court has no reason to disbelieve the investigating officer who in due discharge of his duties apprehended the accused persons and after collection of sufficient materials submitted charge sheet against them. On the counter argument learned advocate on behalf of the accused persons drawn the attention of this Court to the inconsistencies available in the prosecution case and submitted that the prosecution has very well attempted to implicate the accused persons by hiring witnesses. Whenever the witnesses failed to support the prosecution case at the initial stage, they started supporting during examination on recall for the reasons best known to the prosecution. The evidence of P.W.33 should not be relied upon as she is a child witness and whenever the witnesses have constantly stated that the accused persons were masked, evidence of P.W.32 and 33 those identified the accused persons namely Duryodhan and Bijaya should not be relied upon. He has relied upon the rulings of Hon'ble Court in cases reported in 2007 (38) OCR SC 558 in *Harischandra vs. State of Maharashtra, (2005) 31 OCR 421 in Republic of India vs. Rabindra Kumar Pal @ Dara Singh and 2011 (1) OLR (SC) 818 in Rabindra Kumar Pal @ Dara Singh vs. Republic of India*.

14. The facts presented by prosecution in the previous paragraphs indicate that on the relevant day about 20 to 25 persons by forming an



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**LEGAL POSITION  
& DISCUSSION**



unlawful assembly trespassed inside the Ashram with the evil intention to commit the murder of Swamiji and others. Now this leaves us with the question whether the commission of murder by member of an unlawful assembly does have murder as its common object. It is now well settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly or such members or assembly knew that offence is likely to be committed in prosecution of that object. [Lalji v. State of U.P. (1989) 1 SCC 437: (AIR 1989 SC 754); Allauddin Mian v. State of Bihar, (1989) 3 SCC 5: (AIR 1989 SC 1456) Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392: (AIR 1995 SC 1219: 1995 AIR SCW 1980)].



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In another case reported in AIR 2011 SC 3581 in Ram Chandran and others vs. State of Kerala Hon'ble Apex Court has dealt with the scope and object of section 149 IPC at length and held that:

*"section 149 essentially have two ingredients, (i) that the offence must be committed by any members of unlawful assembly consisting five or more persons and (ii) in such offence must be committed in prosecution of the common object u/s.141 IPC of that assembly or such as the members of that assembly knew was likely to be committed in prosecution of the common object. Clarifying the expression common object the bench has further observed that it is not necessary that "there should have a prior concert in the sense of a meeting of minds of the members of the unlawful assembly. The cause object may form on the spur of the moment. It is enough if it is then adopted all the members and is shared by all of them".*

In another case reported in AIR 2011 SC page 3327 in Waman and others vs. State of Maharashtra Hon'ble Court has stated that in order to attract section 149 IPC it must be shown that the incriminating act was done to accomplice the common object of the unlawful assembly. It must be within the knowledge of other members that the offence is likely to be committed in prosecution of



the common object and if such requirement is satisfied, then they would be held liable u/s.149 IPC. It is thus clear that it is not possible to define the constituents or dimensions of an offence u/s.149 IPC simplicitor with regard to dictionary meaning of the words "Unlawful Assembly or Assembly". "An assembly is a company of members assembled together in a place, usually for a common purpose. The court is concerned with the unlawfully whenever five or more persons committed a crime with a common object or intent then each of them would be liable for commission of such offence in terms of section 141 and 149 IPC".

15. In the instant case the evidence on record clearly indicate that about 20 to 25 persons have trespassed inside the Ashram and at that time they were armed with deadly weapons like gun etc. No doubt the witnesses examined by the prosecution could identify only two out of them namely accused Duryodhan and Bijaya but it cannot be said that there was no unlawful assembly. The other eyewitnesses to the incident P.W.1 at paragraph-1, P.W.9 at paragraph 1 of his evidence have clearly stated regarding trespass of more than 20 persons inside the Ashram. Otherwise evidence on record indicate that those persons were armed with guns, knife and other weapons. The above normally indicate that those persons were having common object to commit any offence. Accordingly their assembly can be termed as unlawful within the meaning of section 141 of Indian Penal Code. In view of the settled position of law discussed above each member of the assembly will be held liable for which offences committed by any member of that assembly. I must mention that there is absolutely no cross examination on that score and inclined to conclude that there was an unlawful assembly inside the Ashram with a common object to commit murder of Swamiji.

16. Learned Advocate on behalf of the accused persons have drawn the attention of the Court that the witnesses those initially turned hostile have been examined on recall and during re-examination they supported the case of the prosecution. This unusual behavior of the witnesses clearly indicate that at a later stage the witnesses have been tutored at the instance of the police.

Hence this Court should go slow while accepting on the testimony of their evidence. His submission is basically referred to the evidence of P.W.17 and

18. Learned P.P. on the counter argument submitted that whenever this type of offence have been committed in a highly planned manner, it is difficult to expect a witness to speak the truth. Even now a days the witnesses are not



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ready to speak the truth for so many reasons which is almost known to everybody. Whenever the witnesses P.W.17 and 18 have shown the courage to speak the truth before the Court, the Court should not disbelieve their statements on record. This issue has been widely discussed by Hon'ble Apex Court in one case reported in AIR 1988 SC 696 in Appa Bhai vs. State of Gujarat:

*"Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner."*



In another case reported in Rana Pratap v. State of Haryana, (AIR 1983 SC 680) Chinnappa Reddy, J. speaking for the Court succinctly set out what might be the behavior of different persons witnessing the same incident. Hon'ble Court observed: (SCC p.330, SCC (cri) P.604, Para 6. (at P.682 of AIR):

*"Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."*



Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim FALSUS IN UNO FALSUS IN OMNIBUS has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy or reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.

In Shivaji Sahebrao Bobade & Another v. State of Maharashtra, AIR 1973 SC 2622, Hon'ble Court has held that:

*"...Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent..." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analyzing the evidence and appraising the soundness of the contrary conclusions reached by the court below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant..."*

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See also Bhagwan Singh & others vs. State of M.P., AIR 2002 SC 1621  
Gangadhar Behera & others vs. State of Orissa, AIR 2002 SC 3633 and S.  
Ganesan v. Rama Raghuraman & others, (2011) 2 SCC 83 (AIR 2011 SC (Cri.) 419).

On appreciation of hostile witnesses Hon'ble Apex Court in one case reported in AIR 1997 SC 2780 in State of Gujrat vs. Anirudh Singh has observed:

*"Every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society. Every citizen who has knowledge of the commission of cognizable offence has a duty to law information before the police and cooperate with the investigating officer who is enjoined to collect the evidence and if necessary summon the witnesses to give evidence. He is further enjoined to adopt scientific and all fair means to unearth the real offender, lay the charge sheet before the court competent to take cognizance of the offence. The charge sheet needs to*





contain the facts constituting the offence/s charged. The accused is entitled to a fair trial. Every citizen who assists the investigation is further duty bound to appear before the Court of Session or competent criminal court, tender his ocular evidence as a dutiful and truthful citizen to unfold the prosecution case as given in his statement. Any betrayal in that behalf is a step to destabilize social peace, order and progress."

The fact that the witnesses were declared hostile at the instance of public prosecutor and he was allowed to cross-examine the witnesses furnishes no discretion for rejecting en-block the evidence of the witnesses. However, the Court has to be very careful with an emphasis that the witness who makes different statements at different times has no regards for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness & normally it should look for corroboration to his testimony (AIR 2003 SC 4230 in State of Rajasthan vs. Bhabani and another).

In another case reported in AIR 2006 SC 951 in Radha Mohan Singh and others. Vs. State of U.P. Hon'ble Apex Court has observed:

"..... It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed of the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof..."

Similar view has been observed by Hon'ble Apex Court in cases reported in AIR 2009 SC (Suppl.) 4282 in Mahesh v. State of Maharashtra, AIR SC 2558 in Rajendra and another vs. State of U.P., 2010 (6) SCC 533 in Gobindapa and others vs. State of Karnataka. In the present case no doubt P.W.17 and 18 were declared hostile at the instance of learned public prosecutor and in a later part they were re-examined on recall and clearly deposed about the complacency of the present accused persons in the offences. Both the above witnesses were cross-examined at length but nothing substantial has been elicited to disbelieve their witness. In my considered view that whenever the witnesses showing courage to depose about the facts within their knowledge this Court cannot refuse to act upon the said evidence. A truthful witness has become a rare commodity and a criminal court must learn to show due sensitivity to his evidence instead of rejecting the evidence in toto. No doubt the facts presented by the prosecution established highly organized and pre-planned way in committing offence. Therefore this Court should give due



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weightage to the evidence having an eye upon the circumstances instead of brushing aside the evidence as unreliable/ interested/ tainted with bias. Sounding a note of caution for the trial Court, Hon'ble Apex Court in one case reported in AIR 2002 SC 1965 in Krishna Mochi and another vs. State of Bihar, Hon'ble Apex Court has said:

*"that the Court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by short Judgment so as to achieve the yardstick for disposal. Some discrepancy is bound to be there in out and every case which should not weight with the Court so long as it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the Court should tread upon but if the same are boulders, Court should not make an attempt to jump over the same. These days when crime is looming much and humanity is suffering and society is so much affected thereby duties and responsibilities of Court have become much more. Now the maxim "let hundred guilty person acquitted, but not a single innocent be convicted is in practice is challenging World over and the Court have been compelled to accept that society suffers by wrong convictions and it equally suffers by wrong acquittals."*



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In another case reported in AIR 1999 SC 883 Mohan Singh and another vs. State of U.P. Hon'ble Apex Court has observed that the Courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth so long as chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is the solemn duty of Courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the Court within permissible limit to find out the truth. It means on one hand no innocent persons should be punished but on the other hand to see no person committing an offence should get scot free if in spite of such effort suspicion does not dissolve, it remains writ at large benefit of doubt has to be credited to the accused.

17. In the present case the evidence of P.W.17 and 18 those witnessed the congregation of the accused persons more particularly in company of persons dressed in police clothe armed with guns clearly pointed out to an unholy nexus between the accused persons and the Maoists organization. P.W.24 has also clearly stated about involvement of the Maoists outfit with the present accused persons and specifically stated that accused Bhaskar is in hand with the Maoists and has undergone training at Daringibadi



for 15 to 20 days. I failed to appreciate the submission by learned advocate on behalf of the accused persons that the evidence of the said witnesses should be rejected as a whole. However the trustworthiness of the witnesses will be discussed at the later part of the judgment.

Law on appreciation of evidence has been widely discussed by Hon'ble Court which can be summarized as follows:

"A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an even in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (vide: *Kashmira Singh v. State of Madhya Pradesh*, AIR 1952 SC 159; *State of Punjab v. Jagir Singh Baljit Singh & Anr.*, AIR 1973 SC 2407; *Shankarlal Gyarasilal Dixit v. State of Maharashtra*, AIR 1981 SC 765; *Mousam Singha Roy & Ors. v. State of West Bengal*, (2003)-12-SCC-377 and *Aloke Nath Dutta & Others v. State of West Bengal*, (2007) 12-SCC-230.)"

In *Sarwan Singh Rattan Singh v. State of Punjab*, AIR 1957 SC 637, Hon'ble Court observed (Para 12) -

"Considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence [before an accused can be convicted]."

18. Citing the evidence adduced by P.W.32 and 33 learned advocate on behalf of the accused persons submitted before me that their



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evidence should not be accepted as they have been examined after a pretty long time. Further P.W.32 happens to be a child witness and it is dangerous to accept his evidence to connect accused Dujyodhan with the alleged offences. Referring to the evidence of P.W.34 it is alleged that actually no student with name Malati Pradhan was pursuing her studies at Kanyashram during the relevant period, for which her evidence carries no meaning. On the counter argument learned Addl. P.P. has submitted that P.W.32 and P.W.33 are the students of Sanskrit of the Kanyashram. A student of Sanskrit requires high memory power to get the Sanskrit verses slokas etc. in mind. Therefore even if investigating officers have committed an error by not examining them at an appropriate time, this Court cannot refuse to accept their credibility. It is also urged that the evidence of P.W.32 and 33 being highly interested for the prosecution should not be relied upon to record a conviction. Law on appreciation of evidence of witnesses of so call interested/ related witnesses has been widely discussed by Hon'ble Apex Court wherein it has been held that an interested witness must have some direct interest in having the accused somehow convicted for some extraneous reason and a near relative of the victim is not necessarily an interested witness. Hon'ble Apex Court has constantly held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on sole testimony of an single witness. That is the logic behind the section of 134 of the Evidence Act. But if there are doubt about the testimony the Court will insist on corroboration. In fact it is not the number, the quantity but the quality that is material. The time honoured principle is that evidence has to be weighed and not counted. [Vadivelu Thevar v. State of Madras; AIR 1957 SC 614; Jagdish Prasad v. State of M.P. AIR 1994 SC 1251: (1994 AIR SCW 564); Sunil Kumar v. State Govt. of NCT of Delhi AIR 2004 SC 552: (2003 AIR SCW 6026); Namdeo v. State of Maharashtra AIR 2007 SC (Supp.) 100: (2007 AIR SCW 1835); Kunju @ Balachandran v. state of Tamilnadu, AIR 2008 SC 1381: (2008 AIR SCW 835); Bipin Kumar Mondal v. State of West Bengal AIR 2010 SC 3638 (2010 AIR SCW 4470) Mahesh & another v. State of Madhya Pradesh (2011) 9 SCC 626 AIR 2012 SC 2172, 2012 AIR SCW 2898); Kishan Chand v. State of Haryana in 2013 (1) SC 222, (AIR 2013 SC 357: 2013 AIR SCW 210).

Likewise appreciation of evidence of a child witness has been discussed in a judgment reported in AIR 2012 SC 2955 in K. Venkata Swamulu vs. State of Andhra Pradesh, wherein it has been held that:



"the evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the Court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it."

It is a settled principle of law that a child witness can be 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 reliable one and his/her demeanor 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.

19. In the present case no doubt P.W.32 is a child witness but there is no reason to discard her evidence. The presiding officer after necessary satisfaction that the witness able to give rational answers to the queries has examined her and nothing substantial has been elicited during cross-examination to conclude that she was tutored. Rather at Para 7 she has stated that as she was shocked on the scene and seriously scared she did not disclose the occurrence before police. I find sufficient merit in the submission by learned P.P. that the said witness being a student of Sanskrit can be said



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to have got a strong memory and her evidence with regard to identity of Duryodhan cannot be doubted. With regard to the dispute over identity of Malati Pradhan, I find the answer at Ext.55. The said document indicate that Malati Pradhan was admitted to Kanyashram as a student having got admission vide SI.No.55/2004 in class-VI and the said student P.W.33 at paragraph 5 of the cross-examination has clearly stated to have got admission in the school in class-VI in 2004. May be the informant P.W.22 at Para 4 of the evidence has stated that during incident he heard the scream of Malati Pradhan, a student of Class-VIII of the Ashram, but in view of clear evidence of Malati Pradhan, which is supported by documents, the evidence of P.W.22 cannot be given much weight. This Court inclined to hold that said Malati Pradhan is a truthful witness and was available at the spot during the incident. The prosecution has also laid clear evidence to hold that the other eyewitness P.W.33 was reading at Sanskrit Kanyashram, Jaleshpeta during the relevant year having taken admission in the Kanyashram vide SI.No.8/194 (Ext.54/1). The evidence of P.W.33 who categorically identified the presence of Duryodhan Sanamajhi and Bijaya Sanaseth also inspire confidence. This witness has clearly stated to have marked the presence of the above persons with the light available in the room. I must mention, her cross-examination instead of demolishing the case of the prosecution has provided additional support to it, who in categorical term has stated that the bullet hit on the head of Amrutanandji during incident. May be this witness was failed to say about the wearing apparels of the assailants, this Court cannot refuse to accept the testimony considering the mental faculty of the witness on such brutal incident. My above view is supported by the observation of Hon'ble Apex Court in one case, 2013 SC 1085 in Kuria and another v. State of Rajasthan wherein at paragraph 18 it has been observed

*"Sterling worth, is not an expression of absolute rigidity, the use of such an expression in the context of criminal jurisprudence would mean a witness worthy of credence, one who is reliable and truthful. This has to be gathered from the entire statement of the witnesses and the demeanour of the witnesses, if any, noticed by the Court. Linguistically, 'sterling worth' means 'thoroughly excellent' or 'of great value'. This term, in the context of criminal jurisprudence cannot be of any rigid meaning. It must be understood as a generic term. It is only an expression that is used for judging the worth of the statement of a witness. To our mind, the statements of the witnesses are reliable, trustworthy and deserve credence by the Court. They do not seem to be based on any falsehood."*

In my considered view, P.W.32 and 33 those identified the presence of accused Duryodhan and Bijaya at the site have did an excellent job and their



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evidence has got a high value for the purpose of this case. The submission that the investigating officer has failed to examine them at appropriate time may be regarded as a fault on his part but the same has got no merit to doubt the credibility of these witnesses.

20. Learned advocate on behalf of the accused persons also drawn the attention of the Court that the investigating officer has manufactured the case in order to rope the accused persons and this Court in absence of any corroboration from independent source should not rely upon his evidence. He has shown the seizure of guns, shirt at the house of Duryodhan Sanamajhi, Munda Badamajhi and shirt at the house of Sanatan Badamajhi and had attempted to implicate them for some ulterior motive. Otherwise the evidence of investigating officer cannot be accepted as he failed to arrange T.I. Parade for the suspects for which the entire investigation can be said to be perfunctory. Hon'ble Supreme Court in a case reported in AIR 1996 SC 3079 in Tahir vs. State while dealing with a similar question has held:

*"In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and it found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."*

Wherever, the evidence of the police officer, after careful scrutiny, inspires confidence and it found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. The courts have also expressed the view that no infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction. In the case of *Girija Prasad* (AIR 2007 SC 3106 2007 AIR SCW 5589) (*supra.*) Hon'ble court noticed the judgment of the Court in the case of *Aher Raja Khima vs. State of Saurashtra*, AIR 1956 SC 217, a judgment pronounced more than half a century ago noticing the principle that the presumption that a person acts honestly applies as much in



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favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefore. This principle has been referred to in a plethora of other cases as well.

21. Learned P.P. relying upon the rulings of Hon'ble Court in one case reported in 2011 50 OCR 459 (supra) has urged before me that the investigating officer may be negligent in not examining the eyewitnesses available at the spot, but it cannot be the sole ground to reject the prosecution case. It is also urged that absence of T.I Parade is also not a ground to disbelieve the prosecution case. He has relied upon observation of Hon'ble Apex Court in one case reported in 2004 (4) Crimes 294 (SC) (Supra.) in which it has been held at Para 17 that as a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parade belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.

22. I have carefully gone through the entire evidence adduced by the investigating officer P.W.29. In categorical terms he has stated that soon after taking investigation he examined the documents prepared by the previous I.O. P.W.16 and on scrutiny of the documents left by the assailants at the spot vide Ext.6/2 satisfied about the Maoists link in the offence. His evidence with regard to seizure of the muzzle loading guns from the house of Duryodhan Sanamajhi, Munda Badmajhi and a gun from the house of Sanatan



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Badmajhi clearly implicate the above accused persons. The report of the ballistic expert P.W.26 and 35 those seized the cartridges and the guns have also opined that the injuries on Mata Bhaktimayee can be possible by a muzzle loading gun (Ext.30). The guns were in working condition. It is important to note that the I.O. during investigation has also obtained a query of the ballistic expert who vide his report dtd.12.02.2009, Ext.35, has informed that the Muzzle Loading guns seized in this case have been used four to five months back. The accused persons have simply denied seizure but in my view the same cannot be a ground to otherwise discard the evidence collected by the investigating officer. The above evidence connects the presence of the accused persons at the site.

**THE  
CONSPIRACY**

It is submitted by learned P.P. referring the case report in Kotgarh High School and the forest as noticed by P.W.17 and 18 who were discussing to eliminate Swamiji can be accepted as a conspiracy within the meaning of section 120B of Indian Penal Code. Accordingly although there is no evidence on record regarding their actual presence at the spot, this Court can convict them as they are conspirators. A criminal conspiracy is generally hatched in secrecy owing to which direct evidence is difficult to obtain. The evidence therefore can be proved, either by adducing circumstantial evidence or by way of necessary implication. However, in the event that circumstantial evidence is incomplete or vague, it becomes necessary for which prosecution to provide adequate proof regarding the meeting of minds which essential in order to hatch a criminal conspiracy by adducing sensitive evidence in Court. Furthermore to constitute an offence of conspiracy it is not necessary that the person involved have knowledge of all the stages of action. In fact, mere knowledge of the main object/ purpose of conspiracy would warrant the attraction of relevant penal provisions. Thus an agreement between two persons to do or to cause an illegal act is the basic requirement of the offence of conspiracy under the penal statute. (AIR 2010 SC 528 *Mir Nagvi v. CBI*, AIR 2009 SC (Supp.) 1629 *Baldev Singh vs. State of Punjab*, AIR 2011 SC 1713 in *Susil Suri vs. CBI*).

Learned advocate on behalf of the accused persons relying upon 2012 53 OCR (SC) 1125 *Balkishan vs. State of M.P.*, urged that prosecution has failed to establish the ingredients of criminal conspiracy. Hence the accused persons cannot be convicted.

I have already discussed at length regarding involvement of accused Duryodhan Sanamajhi and Bijaya Kumar Sanseth, who were present at the spot and duly identified by the prosecution witnesses during



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commission of the offences. Other parts of the evidence clearly indicate a well planned conspiracy by all the accused persons to eliminate Swamiji. The evidence of P.W.17 and 18 those marked the presence of the accused persons along with other persons wearing khaki dress and there was a discussion on the murder of Swamiji clearly indicate that the central theme of the discussion was to eliminate Swamiji. The evidence of P.W.17 that soon after the incident accused Garanath and Bijaya were distributing sweets at Kotgarh Church further indicate principle object behind the conspiracy which nothing but assassination of Swamiji. There being an agreement between the accused persons to eliminate Swamiji this Court can safely infer that a conspiracy has hatched by the accused persons to eliminate Swamiji in active connivance of the Maoists organization.

In my considered view the prosecution has successfully laid circumstantial evidence to connect the accused persons with the alleged offences. At first there was a motive followed by a conspiracy of the accused persons to eliminate Swamiji followed by act. The seizure of the guns from the possession of the accused persons namely Duryodhan and Munda and the connecting link between the gun and the injury on deceased Bhaktimayee vide Ext.30 and the evidence of the scientific officer that the seized guns were used about four to five months prior to the date of report dtd.12.02.2009 clearly establish that the present accused persons have used the said guns which are later recovered from their possession. In my view the above evidence has created a complete chain connecting the accused persons with the alleged offences.

24. Highlighting the evidence of investigating officer with regard to seizure of mobile phones from the possession of Bijaya Sanseth and Garanath Chalanseth vide Ext.40 and 41 during their interrogation at Kotgarh police station and the receipt of call detail reports of said mobile phones vide Ext.43 and 44, learned P.P. submitted that the accused persons have also committed offence of theft of mobile phones. The call detail report indicate that on the alleged date of incident the mobile phones were switched off which not only indicate their complacency with the offence but also the fact of theft of the mobile phones. Learned advocate on behalf of the accused persons submitted that the prosecution has failed to produce any document in support of ownership of the possession of mobile phones. Even if for sake of argument it is accepted that the mobile phones were switched off on the alleged date of incident that cannot be a ground to connect with the offence. Admittedly no document in support of mobile phones has been produced by the prosecution.



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There is also lack of clear evidence with regard to possession of mobile phones there may be recovery of mobile phones from the possession of Bijay and Gurunath, but in absence of clear evidence it cannot be concluded that they have committed theft of the mobile phones. Of course the accused persons namely Bijaya Kumar Sanaseth and Garanath Challanseth have examined themselves as P.W.1 and P.W.2 to disprove the theft of mobile phones, in the absence of any positive evidence from the side of prosecution no offence under 380 I.P.C. is made out.

25. In the previous paragraphs I have already discussed regarding seizure of guns from the possession of Duryodhan Sanamajhi and Munda Badamajhi vide Ext.4 and 5. There is no reason to disbelieve the above seizure. The report of the ballistic expert vide Ext.31, 32 and 33 clearly indicate that the seized guns were in working order. The evidence of the ballistic expert P.W.26 who vide Ext.35 has further stated that the muzzle loading guns were used four to five months prior to the date of examination clearly indicate that around the occurrence date the said guns have been used. The accused persons have failed to produce any license in support of possession of their guns. Learned advocate on behalf of the accused persons relying upon the rulings of Hon'ble Apex Court in cases reported in AIR 1972 SC 1756 in Gunmant Lal v. State of Madhya Pradesh and AIR 1972 SC 1899 in Pabitar Singh vs. State of Bihar has urged before me that there is lack of clarity in the evidence with regard to seizure of guns from the conscious possession of the accused persons. The evidence on record indicate that the family of the accused persons were also staying in the said house. Hence no offence under sections Arms is made out. The above submission failed to convince me. The investigating officer has stated to have seized the guns from the possession of the accused persons. Nothing has been elicited during cross-examination rather the investigating officer at paragraph 35 of the cross-examination has admitted that during search of house of Duryodhan none of the inmates were present there. This clearly indicate that Duryodhan was in conscious possession of the gun. Likewise there has been no cross-examination with regard to seizure of gun from conscious possession of accused Munda Badamajhi. The investigating officer has obtained Sanction Order vide Ext.45 to launch prosecution. Since the guns have been seized from the possession of Munda Badamajhi and Duryodhan Sanamajhi and the District Magistrate, Phulbani have sanctioned for their prosecution under Arms Act both of them are liable for offences u/s.25 and 27 of the Arms Act. The

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FINDING**

other accused persons can never be held liable for the offences under Arms Act.

26. I have already discussed the evidence as well as the settled position of law on the related issues at length. Hon'ble Court has constantly reminded trial Courts to be very sensitive in cases particularly involving heinous offences and cases involving sentiment of general public. It is also reminded that the trial Court owes obligation to the citizen of the country to see the perpetrators of the crime involving the sentiment of general public should be brought to justice. Now-a-days the offences are committed in a highly professional manner and very often the perpetrators wanted to gain political mileage by committing offences to attract the attention of general public. The case at hand is a classic example in which one of the luminary of Hindu community who dedicated the whole life for the upliftment of the tribal community of this under developed district of Orissa lost his life. The facts as presented before the Court speaks volumes on the manner in which he was assassinated leaving little chance to the law enforcing agencies to apprehend them. It is on the record that some of the perpetrators were masked and executed crime within a short span of time while armed with guns and other weapons of offence. The above has further enhanced the duty of the Court to be extra vigilant while examining the evidence on record. In the previous paragraphs I have already observed that the death of Swamiji and four others were homicidal and the injuries noted in their body were ante mortem in nature. The prosecution has led elaborate evidence and attempted to connect the present accused persons in connection with homicidal death of Swamiji and others. So far as the evidence of the eyewitnesses P.W.32 and 33 are concerned this Court has already observed they are reliable witnesses. Both the above witnesses have clearly indicated about the complacency of the accused Duryodhan and Bijaya with the alleged offences. The circumstantial evidence connecting the other accused persons with the alleged offence leading to recovery of weapons of offence beside opinion of the ballistic expert coupled with the evidence of criminal conspiracy has further clearly connected the other accused persons namely Munda, Sanatan, Garanath, Bhaskar and Budhadeb. The evidence on record has clearly established that the above persons including Duryodhan and Bijaya were having sufficient motive to eliminate Swamiji and in pursuance of such motive conspired to eliminate Swamiji and having made preparation to commit the offence executed the same killing Swamiji and four others inside Jaleshpeta Ashram. In the previous paragraphs I have discussed in detail about the conspiracy angle in



sd/-



which it is found that the present accused persons in connivance with the Maoists organizations have eliminated Swamiji. I must mention that learned advocate on behalf of the accused persons has very well attempted to create a shadow over the genuineness of the prosecution case and wanted to establish that the witnesses more particularly P.W:17, 18, 32, 33, 24 and at last the investigating officer P.W.29 are highly unreliable witnesses, but I failed to appreciate his effort. As noted earlier the offence has been committed in a highly professional manner. Therefore it is not normally expected that there will be direct evidence to connect all the perpetrators with the crime. The evidence collected by prosecution against the above named accused persons is sufficient and clear enough to connect them with the alleged offences. Accordingly it is held that on 23.08.2008 the accused persons being members of an unlawful assembly in prosecution of common object of which not only trespassed inside Jalespeta Ashram but also committed murder of Swamiji and others. In absence of clear evidence regarding theft of mobile phones this part of the prosecution case most fail. They were also held for conspiring to eliminate Swamiji. With regard to the offence under Arms Act there is sufficient material on record that Duryodhan and Munda Badamajhi were not only in possession of arms and ammunition but also used the same during commission of the offence. The prosecution has also obtained the Sanction Order from the District Magistrate. Accordingly both of them are also found to be held liable for commission of offences under the Arms Act.

27. **In the result,** I hold the accused persons guilty of offences u/s.147, 148, 449, 302/149 and section 120B of the Indian Penal Code. Further I hold the accused persons namely Duryodhan Sanamajhi and Munda Badmajhi guilty of offences u/s.25(1-B) (a) and 27 (1) of the Arms Act beside other offences referred above. Further, I hold all the accused persons not guilty for the offences punishable u/s.380/149 I.P.C. and acquit them there under.

No order on seized properties since split up case against other accused persons is pending.

Pronounced the judgment in the Open Court on this 30<sup>th</sup> day of September, 2013 under my hand and seal of the Court.

Additional Sessions Judge  
Phulbani

Typed out to my dictation  
and corrected by me.

Additional Sessions Judge  
Phulbani



sd/-  
THE  
RESULT



**HEARING ON THE QUESTION OF SENTENCE DTD.03.10.2013:**

Heard the learned P.P. and advocate on behalf of the convicts on sentence at length. Learned advocate on behalf of the convicts urged before me that as per the evidence of the I.O. there is no criminal antecedent of the convicts. Further the convicts as well as their family have suffered a lot due to long detention of the convicts in custody. Therefore this Court should take liberal view while imposing punishment.

On the counter argument learned P.P. submitted that this Court may impose punishment strictly in accordance with law considering the nature and gravity of the offences.

Considering the facts and circumstances of the case, its reparation in the society and other related matters, this Court is inclined to award the convicts Sanatan Badamajhi, Garanath Challanseth, Bijaya Kumar Sanaseth, Bhaskar Sanamajhi and Budhadev Naik to undergo Rigorous imprisonment for 02 (two) years and to pay a fine of Rs.1000/- (Rupees one thousand) in default of payment to undergo further R.I. for 03 (three) months for the offences u/s.147 I.P.C., Rigorous imprisonment for 02 (two) years and to pay a fine of Rs.1000/- (Rupees one thousand) and in default of payment of fine to undergo further R.I. for 03 (three) months each for offences u/s.148, IPC, Rigorous imprisonment for 05 (five) years and to pay a fine of Rs.6000/- (Rupees six thousand) and in default of payment of fine to undergo further R.I. 06 (six) months each for the offence u/s.449/149 I.P.C., to undergo Imprisonment for Life each for the offence punishable u/s.302/149 I.P.C. and to undergo Imprisonment for Life each for the offence punishable U/s.120-B of I.P.C.



Sd/-



Further in case of convicts Duryodhan Sanamajhi and Munda Badamajhi, this Court is inclined to award Rigorous imprisonment for 02 (two) years and to pay a fine of Rs.1000/- (Rupees one thousand) in default of payment to undergo further R.I. for 03 (three) months each for the offence u/s.147 I.P.C., Rigorous imprisonment for 02 (two) years and to pay a fine of Rs.1000/- (Rupees one thousand) and in default of payment of fine to undergo further R.I. for 03 (three) months each for the offence u/s.148 IPC, Rigorous imprisonment for 05 (five) years and to pay a fine of Rs.6000/- (Rupees six thousand) and in default of payment of fine to undergo further R.I. 06 (six) months each for the offence u/s.449/149 I.P.C., Rigorous imprisonment for 02(two) years and to pay a fine of Rs.1000/- (Rupees one thousand) in default to undergo R.I. for 03 (three) months each for the offence u/s.25 (1-B) (a) of Arms Act, Rigorous imprisonment for 03 (three) years and to pay a fine of Rs.1000/- (Rupees one thousand) in default to undergo further R.I. for 03 (three) months each for the offence u/s.27(1) of Arms Act; Imprisonment for Life each for the offences punishable u/s.302/149 I.P.C. and Imprisonment for Life each for the offence punishable U/s.120-B of I.P.C.



sq/-

Further, all the above sentences shall run concurrently. The period of sentence, if any, be set off.

Pronounced the sentences in the Open Court on this 3<sup>rd</sup> day of October, 2013 under my hand and seal of the Court.

Additional Sessions Judge  
Phulbani

Typed out to my dictation  
and corrected by me.

Additional Sessions Judge  
Phulbani



**List of witnesses examined for the prosecution:-**

P.W.1	Biswambar Sahu
P.W.2	Uttam Gauntia
P.W.3	Akrura Pradhan
P.W.4	Trilochan Dandasena
P.W.5	Kabiraj Behera
P.W.6	Umeswari Pujari
P.W.7	Bharti Sethi
P.W.8	Simanchal Patra
P.W.9	Pandra Singh
P.W.10	Nilakantha Sadangi
P.W.11	Manoj Kumar Padhi
P.W.12	Sridhar Mahanta
P.W.13	Krishnama Ghadei
P.W.14	Purusottam Lenka
P.W.15	Dr. Biswanath Murmu
P.W.16	Madhusudan Jena Samanta
P.W.17	Mahasingh Kanhar
P.W.18	Birendra Kanhar
P.W.19	Sk. Maniruddin
P.W.20	Dr. V. Girijapati
P.W.21	Srujan Prakash Das
P.W.22	Brahmachari Madhab Chaitanya
P.W.23	Dr. Madhusmita Dash
P.W.24	Prasanta Kumar Parida
P.W.25	Brahmachari Shankar Chaitanya
P.W.26	Ramnath Swain
P.W.27	Manika Behera
P.W.28	Manansananda Tripathy
P.W.29	Santosh Kumar Pattnaik
P.W.30	Sankarshan Pradhan
P.W.31	Kabi Chandra Natha
P.W.32	Kumudini Pradhan
P.W.33	Malati Pradhan
P.W.34	Nayana Acharya
P.W.35	Dr. Sujata Mohanty



sd/-

**List of witnesses examined for the defence:-**

D.W.1	Bijaya Kumar Sanseth
D.W.2	Garanath Chhalanseth

**List of exhibits marked for the prosecution:-**

Ext.1	Report of Scientific Officer
Ext.1/1	Signature of P.W.5
Ext.2	Seizure list dtd.16.09.2008
Ext.2/1	Signature of P.W.5
Ext.3	Seizure list of Black colour half shirt dtd.15.10.2008
Ext.3/1	Signature of P.W.6
Ext.4	Seizure list dtd.5.10.2008 of country made gun seized from the house of Duryodhan Sanamajhi
Ext.4/1	Signature of P.W.6
Ext.5	Seizure list dtd. 05.10.2008 of SBML Gun from house of Munda Badamajhi
Ext.5/1	Signature of P.W.6
Ext.3/2	Signature of P.W.7 on Ext.3
Ext.4/2	Signature of P.W.7 on Ext.4



Ext.5/2	Signature of P.W.7 on Ext.5
Ext.6	Seizure list dtd.23.08.2008 of a Letter.
Ext.6/1	Signature of P.W.8 on Ext.6
Ext.6/2	Letter delivered by Gun man (Azad)
Ext.6/3	Signature of P.W.8 on Ext.6/2
Ext.7	Inquest report on the dead body of Swami Laxamanananda Saraswati
Ext.7/1	Endorsement with signature of P.W.11 on Ext.7
Ext.8	Inquest Report on the dead body of Mata Bhaktimayee
Ext.8/1	Signature of P.W.11 on Ext.8
Ext.9	Inquest report on the dead body of Kishore Baba
Ext.9/1	Signature of P.W.11 on Ext.9
Ext.10	Inquest report on the dead body of Amrutanandji
Ext.10/1	Signature of P.W.11 on Ext.10
Ext.11	Inquest report in the dead body of Puranjan Ganta
Ext.11/1	Signature of P.W.11 on Ext.11
Ext.4/3	Signature of P.W.13 on Ext.4
Ext.5/3	Signature of P.W.13 on Ext.5
Ext.3/3	Signature of P.W.13 on Ext.3
Ext.12	Post Mortem Report on dead body of Kishore Baba
Ext.12/1	Signature of P.W.15 on Ext.12
Ext.12/2	Signature of Dr. V. Girijapati on Ext.12
Ext.13	F.I.R.
Ext.13/1	Signature with endorsement of P.W.16 on F.I.R.
Ext.13/2	Signature with endorsement of P.W.16 on F.I.R.
Ext.13/3	Formal F.I.R.
Ext.13/4	Signature of P.W.16 on Formal FIR
Ext.6/3	Signature of P.W.16 on Ext.6/2
Ext.6/4	Signature of Madhusudan Sethi
Ext.6/5	Signature of Pradeep Kumar Baliarsingh on Ext.6
Ext.14	Spot Map
Ext.14/1	signature of P.W.16 on Spot Map
Ext.14/2	Index to the Spot Map
Ext.14/3	Signature of P.W.16 on Index to the spot map
Ext.7/2	signature of P.W.16 on Ext.7
Ext.8/2	Signature of P.W.16 on Ext.8
Ext.9/2	Signature of P.W.16 on Ext.9
Ext.10/2	Signature of P.W.16 on Ext.10
Ext.11/2	Signature of P.W.16 on Ext.11
Ext.15	Dead Body Challan in respect of Swami Laxamanananda Saraswati
Ext.15/1	Signature of P.W.16 on Ext.15
Ext.16	Dead Body challan in respect of Mata Bhaktimayee
Ext.16/1	Signature of P.W.16 on Ext.16
Ext.17	Dead body challan in respect of Kishore Baba
Ext.17/1	Signature of P.W.16 on Ext.17
Ext.18	Dead body challan in respect of Amrutanandji
Ext.18/1	Signature of P.W.16 on Ext.18
Ext.19	Dead body challan of Puranjan Ganta
Ext.19/1	Signature of P.W.16 on Ext.19
Ext.20	Seizure List dtd.24.08.2008
Ext.20/1	Signature of P.W.16 on Ext.20
Ext.21	Seizure list dtd.24.08.2008
Ext.21/1	Signature of P.W.16 on Ext.21
Ext.22	Seizure list dtd.24.08.2008
Ext.22/1	Signature of P.W.16 on Ext.22
Ext.23	Seizure list dtd.24.08.2008



Sd/-



Ext.23/1 signature of P.W.16 on Ext.23  
 Ext.24 Post Mortem Report on dead body of Puranjan Ganta  
 Ext.24/1 Signature of P.W.19 on Ext.24  
 Ext.25 Query Report regarding nature of Fire Arm  
 Ext.25/1 Signature of P.W.19 on Ext.25  
 Ext.26 Post Mortem Report on the dead body of Swami Laxamanananda Saraswati  
 Ext.26/1 Signature of P.W.20 on Ext.26  
 Ext.26/2 Signature of Dr. Biswanath Murmu  
 Ext.26/3 Signature of Dr. Sk. Maniruddin  
 Ext.27 Polygraph test report (3 sheets)  
 Ext.28 Polygraph test report  
 Ext.13/5 Signature of P.W.22 on Ext.13  
 Ext.20/2  
 To Signature of P.W.22 on Ext.20, 21, 22 and 23.  
 Ext.23/2  
 Ext.7/3  
 To Signature of P.W.22 on Ext.7 to 11  
 Ext.11/3  
 Ext.29 P.M. Report on the Dead body of Mata Bhaktimayee  
 Ext.29/1 Signature of P.W.23 on Ext.29  
 Ext.30 Query Report of P.W.23  
 Ext.30/1 Signature of P.W.23 on Ext.30  
 Ext.7/4  
 To Signature of 25 on Ext. 7 to 11  
 Ext.11/4  
 Ext.20/3  
 To Signature of P.W.25 on Ext.20 to 23  
 Ext.23/3  
 Ext.31 Chemical Examination Report (3 sheets)  
 Ext.31/1 Signature of P.W.26 on Ext.31  
 Ext.32 C.E. Report  
 Ext.32/1 Signature of P.W.26 on Ext.32  
 Ext.33 Biology Report  
 Ext.34 Serology Report (2 sheets)  
 Ext.35 Query Report  
 Ext.35/1 Signature of P.W.26 on Ext.35  
 Ext.36 Requisition for further examination of accused persons  
 Ext.37 Prayer for remand of accused persons to police custody  
 Ext.37/1 Signature of P.W.28 on Ext.37  
 Ext.38 Prayer for further remand of accused persons to police custody  
 Ext.38/1 Signature of P.W.27 on Ext.38  
 Ext.39 Production of accused persons before Court  
 Ext.39/1 signature of P.W.27 on Ext.39  
 Ext.40 Seizure List dtd.14.12.2008 of Cell Phone No.9437973341  
 Ext.41 Seizure List dtd.14.12.2012 of Cell Phone No.9437992341  
 Ext.14/4 Signature of P.W.29 on Ext.14  
 Ext.4/4 Signature of P.W.29 on Ext.4  
 Ext.4/5 Signature of Duryodhan Sanamajhi on Ext.4  
 Ext.5/4 Signature of P.W.29 on Ext.5  
 Ext.3/4 Signature of P.W.29 on Ext.3  
 Ext.42 Forwarding Report of Seized Gun and shirt to SFSL, Bhubaneswar.  
 Ext.42/1 Signature of P.W.29 on Ext.42  
 Ext.40/1 signature of P.W.29 on Ext.40  
 Ext.40/2 Signature of Bijaya Kumar Sanseth on Ext.40  
 Ext.41/1 Signature of P.W.29 on Ext.41



sd/-



Ext.41/2	Signature of Garanath Challanseth on Ext.41
Ext.43	Call Detail Report of Mobile Phone No.9437992341
Ext.44	Call Detail Report of Mobile Phone No.9437973341
Ext.45	Sanction order of Collector, Phulbani
Ext.46	Ballistic Examination Report
Ext.47	Seizure list dtd.02.09.2008
Ext.47/1	Signature of P.W.29 on Ext.47
Ext.47/2	Signature of Shankar Chaitanya on Ext.47
Ext.48	Seizure List dtd.23.10.2008
Ext.48/1	Signature of P.W.29 on Ext.48
Ext.48/2	Signature of Ashok Sahu on Ext.48
Ext.49	Extract of Station Diary Entry No.492, dtd.22.08.2008
Ext.50	Xerox copy of the Letter written by Pahadia Brundagana
Ext.51	P.M. Report of Amrutanandji
Ext.52	Video Clip played via T.V.
Ext.53	Register seized from Ashok Sahu
Ext.54	Admission Book of Shankar Chaitanya Sanskrit Kanyashram, Jaleshpeta
Ext.54/1	Relevant entry vide Sl. No.8/194 relating to Kumudini Pradhan
Ext.55	Admission Register of Shankar Chaitanya Sanskrit Kanyashram
Ext.55/1	Relevant entry vide Sl.No.55/2004
Ext.54/2	Relevant entry vide Sl. No.19/05 of Folio No.347502
Ext.56	Xerox Copy of Station Diary Entry Book.
Ext.57	Xerox copy of Letter issued by Pahadia Brundagana
Ext.58	Attendance Register of Shankar Chaitanya Sanskrit Kanyashram, Jaleshpeta



sd/-

**List of exhibits marked for the defence:-**

Ext.A	Statement of Malati Pradhan recorded u/s.161 Cr.P.C.
Ext.A/a	Signature of P.W.29 on Ext.A
Ext.B	Cover Packet of Nokia-1110 Mobile Phone
Ext.B/1	User Guide of Nokia-1110
Ext.C	Money Receipt against purchase of Mobile Phone
Ext.D	Cover of Mobile Telephone

**List of M.Os. marked for the prosecution:-**

M.O.I to XI	Photographs
M.O.XII	Gun received from the house of Duryodhan Sanamajhi
M.O.XIII	Black Colour half shirt from house of Duryodhan.
M.O.XIV	Country made gun
M.O. XV	Danda of Swamiji
M.O.XVI to XVII	Mobile phone of Swamiji and Amrutanandji bearing no.9437921554 and No.9438039895
M.O.XVIII	Video Cassette
M.O.XIX	Video C.D.
M.O.XX	Pistol
M.O.XXI	
XXIa to XXIh	Empty Cartridges (Nine numbers)
M.O.XXII, XXIIa to XXIIq	Empty cartridges (sixteen numbers)



M.O.XXIII, XXIIIa to XXIIIc	Live Cartridges (four Nos.)
M.O.XXIV	Pallets recovered from bodies and from the spot (14 in No.)
M.O.XXV	Empty Cartridge
M.O.XXVI, XXVI/a	Broken pieces of PVC Door (2 Nos.)
M.O.XXVII	Five pieces of pallets and three nos. of flattened lid collected by Scientific Officer.
M.O.XXVIII	Gunny containing human blood stains collected from the spot
M.O.XXVIII/a	Signature of P.W.30 on Video Clip.

List of M.Os. marked for the defence:-  
N I L

*sd/-*  
Additional Sessions Judge  
Phulbani



*True copy*  
*3/10/13*  
*Steno to ADJ*  
*Phulbani*