

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLREV No.50 of 2004**

In the matter of an application under Section 401 of Cr.P.C., 1973.

1. Radhanath @ Radhakanta
Das (Since deceased)
2. Rangadhar Das
3. Bimbadhar Das

Petitioners

-versus-

State of Orissa

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Opposite Party

For Petitioners : Mr. A.K. Biswal, Advocate

For Opposite Party : Mr. C.R. Swain, AGA

**CORAM:
JUSTICE V. NARASINGH**

DATE OF HEARING : 21.07.2026

DATE OF JUDGMENT : 28.07.2026

V. Narasingh, J. Heard learned counsel for the
Petitioners and learned AGA for the State.

1. This Criminal Revision has been filed assailing the judgment dated 05.01.2004 passed by the learned Additional Sessions Judge, Bhadrak in Criminal Appeal No.32 of 2000 while affirming the



judgment of conviction passed by the learned C.J.M.-cum-Asst. Sessions Judge, Bhadrak in S.T. Case No.105/103 of 1998 and reducing the sentence and directing the Petitioners to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.2,500/- each, in default, to undergo R.I. for three months for commission of offences under Sections 436/34 of the Indian Penal Code (hereinafter referred to as 'IPC').

2. As noted by the order dated 21.07.2026 that since during the pendency of this Revision, Petitioner No.1 (Radhanath @ Radhakanta Das) has passed away, the present Revision is confined to Petitioner Nos.2 & 3 (Rangadhar Das & Bimbadhar Das).

3. The case of the prosecution is that in the night of 22.02.1997 at about 2 a.m. the accused persons illegally set fire to the dwelling house of the informant-Mani Das (P.W.3), as a result of which the entire house and her belongings were burnt to ashes. Being aggrieved with such illegal act of the



accused persons, the informant lodged a written report basing upon which the local police investigated into the matter. During course of investigation, the I.O. visited the spot, examined the witnesses, seized incriminating materials, arrested the accused persons, forwarded them to court and after completion of investigation submitted charge-sheet against all the three accused persons under Sections 436/34 of the IPC.

4. To drive home the charge, the prosecution examined eight witnesses, of whom P.W.3 is the victim-informant and is an eye witness to the alleged occurrence. P.W.1 is her son, P.W.5 is her daughter-in-law, P.Ws.2, 4 and 6 are the local villagers and P.Ws.7 and 8 are the I.Os.

Though no oral evidence was admitted, several documents were exhibited on behalf of the prosecution.

5. Taking into account the evidence adduced primarily by P.W.3 as well as P.Ws.2, 4 and 6, the learned Trial Court, rejecting the plea of alibi



advanced by the Petitioners, convicted them for commission of offences under Sections 436¹/34² of the I.P.C. and directed them to undergo R.I. for four years and to pay a fine of Rs.2,500/- (Rupees two thousand five hundred only), in default of payment, to undergo R.I. for three months.

An appeal having been preferred, the learned Appellate Court did not find any reason to interfere with the finding of guilt recorded by the learned Trial Court and, accordingly, affirmed the conviction while reducing the sentence to six months.

6. It is the submission of the learned counsel for the Petitioners, Mr. Biswal that both the Courts below have failed to appreciate the plea of alibi as advanced even in the face of unrebutted materials

¹ **436. Mischief by fire or explosive substance with intent to destroy house, etc.**—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

² **34. Acts done by several persons in furtherance of common intention.**—When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.



being brought on record that the surviving Petitioners were, at the relevant time, away attending a religious conference from 20.02.1997 to 23.02.1997, admittedly the occurrence having taken place on 22.02.1997.

6-A. Section 11³ of the Evidence Act, 1872 deals with the plea of alibi.

7. It is the settled position of law that the burden lies solely on the accused to prove the plea of alibi to the hilt and only if the accused is able to discharge such burden then only he can substantiate the plea of false implication.

Reference in this regard can be made to the judgment of the Apex Court in the case of ***Binay Kumar Singh v. State of Bihar***⁴, wherein it has been observed thus:-

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³ **11. When facts not otherwise relevant become relevant.**— Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;
(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

⁴ *Binay Kumar Singh v. State of Bihar*, (1997) 1 SCC 283



23. The Latin word alibi means “elsewhere” and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence,



normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey v. State of U.P.* [(1981) 2 SCC 166]; *State of Maharashtra v. Narsingrao Gangaram Pimple* [AIR 1984 SC 63]).

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8. On the touchstone of the above relating to the plea of alibi, the submission of the learned counsel for the Petitioners is to be examined and for the said purpose, this Court deems it proper to scrutinize the evidence on record more particularly



that of the I.O.-P.W.7 who conducted the initial investigation and P.W.8-the I.O. who submitted the charge-sheet.

8-A. P.W.7-I.O. has stated thus in paragraph-2 of his cross-examination:-

“In connection with the present incident no information was lodged before me prior to 10.03.1997. The S.P., Bhadrak supervised the case on 20.3.97. Accused Rangadhar and Radhanath alias Radhakanta took the plea that at the relevant point of time they attended a religious conference at Madhuban, Baripada. In order to ascertain the truth of the said plea, I examined some witnesses who disclosed that the aforesaid accused persons were at the religious conference of Madhuban, Baripada from 20.2.97 till 23.2.97. However, I did not affect arrest of the accused persons as I had to examine some other witnesses in connection with the said plea.”



8-B. P.W.8, the I.O. who took over the investigation and submitted the charge-sheet, has stated thus in paragraph-2 of his cross-examination:

“I have perused the C.D. of the previous I.O.. I have verified the register of Nigamananda Samillani held at Baripada from 21.2.97 to 23.2.97. On verification I came to Know that one Radhakanta Das was the delegate in the said Samillani. I have not examined witnesses namely Nirmala Nayak, Basanta Nayak, Sarat Nayak, Sripati Nayak, Basudev Nayak, Radhashyam Das, Upendra Das. The houses of the accused persons are situated nearby the house of the informant Mani Das. I have not seized any documents standing in the name of Mani Das. It is not a fact that I have submitted charge sheet against the accused persons without any rhyme and reason.”



9. P.W.7 in his cross examination has stated that the accused-Petitioners took the plea that, at the relevant time, they were attending the religious conference at Madhuban, Baripada. To ascertain the veracity thereof, **he examined some witnesses who disclosed that the aforesaid accused persons were at the religious conference from 20.02.1997 till 23.02.1997.**

9-A. At the cost of repetition, it is apt to note that the occurrence in question admittedly took place on 22.02.1997.

10. In the face of the materials which have come to the fore and which prima facie substantiate the plea of alibi, as found by P.W.7- the I.O., it was incumbent upon him to make further investigation. For reasons best known, threads were left hanging and P.W.8, in his cross-examination as quoted above, submitted that he verified the register of Nigamananda Samillani held at Baripada from 21.02.1997 to 23.02.1997 and, on verification, found that one Radhakanta Das (since dead),



Petitioner No.1, was a delegate in the said Samillani, but curiously enough, P.W.8, who took over the investigation, did not mention anything about the present Petitioners.

10-A. The presence of Petitioner Nos.1 and 2 assumes significance in the light of the specific stand taken by them that they were at the religious congregation, the same having been corroborated by the persons examined by P.W. 7 with reference to the plea of alibi put forth by the Petitioners.

10-B. The factum whether the Petitioners 2 and 3 were present at the site or not could have been easily checked from the register, which was, in fact, verified in respect of Petitioner No. 1 (since deceased). However, inexplicably, no attempt was made to unravel the truth and evidently the investigation was slipshod relating to the stand of the Petitioners regarding their presence along with Petitioner No. 1.

11. The approach of the Trial Court as well as the Appellate Court in scrutinizing the evidence so



far as the plea of alibi is concerned leaves much to be desired. Neither Court discussed anything relating to the positive assertion which could be brought out from the evidence of P.W.7 that the Petitioners were away at another place on the relevant day, and no investigation having been made on the said account, the Appellate Court simply glossed over the same and, curiously enough, in its wisdom, dealt with the probable defence of the accused and drew an adverse inference because the accused did not take the plea that they were on the roof trying to douse the fire. Such an approach is unknown to criminal jurisprudence.

12. Coming back to the question of alibi, it is the settled position of law that the burden lies very heavily on the person asserting the plea of alibi. But, once he is able to discharge such burden, the prosecution is required to establish its case beyond reasonable doubt.



13. In the case at hand, taking into account the evidence on record, this Court is of the considered view that Petitioner Nos. 2 and 3 have been able to discharge the initial burden in terms of Section 106⁵ of the Evidence Act, 1872.

For reasons best known, the prosecution did not address the issue, and such an important aspect having not been considered in its proper perspective by the learned Trial Court as well as the learned Appellate Court, this Court is of the considered view that the appreciation of evidence is, thus, ex facie perverse so as to warrant interference by this Court in exercise of its revisional jurisdiction.

14. This Court is not oblivious of the limitations of exercising revisional jurisdiction as stated in the case of ***New India Assurance Company Ltd. v. Krishna Kumar Pandey***⁶, wherein the Apex Court has held thus;

⁵ **106. Burden of proving fact especially within knowledge.**—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

⁶ *New India Assurance Company Ltd. v. Krishna Kumar Pandey*, (2021) 14 SCC 683



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7. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 CrPC, is limited to the extent of satisfying itself as to the correctness, **legality or propriety of any finding, sentence or order passed by an inferior court.** The Revisional Court is entitled to look into the regularity of any proceeding before an inferior court. As reiterated by this Court in a number of cases, **the purpose of this revisional power is to set right a patent defect or an error of jurisdiction or law.**

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15. In the given facts of the present case, this Court is of the considered view that in the event revisional jurisdiction is not exercised in the face of perverse appreciation of the evidence on record, by the Trial as well as Appellate Court as discussed



above, relating to the defence plea of alibi, the same will result in miscarriage of justice.

Accordingly, the order of conviction and imposition of sentence(s) by the Trial Court and as affirmed by the Appellate Court is hereby set aside. The Petitioners 2 & 3 stand acquitted of the charges.

16. The CRLREV is accordingly allowed.

(V. Narasingh)
Judge

*Orissa High Court, Cuttack,
Dated the 28th July, 2026/Ayesha
28.07.2026/Uploaded*