

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B) No. 1848 of 2017

with

Cr. Appeal (D.B) No. 1424 of 2024

(Against the judgement of conviction dated 26.05.2017 and the order of sentence dated 27.05.2017 passed by the learned Additional Sessions Judge-II, West Singhbhum at Chaibasa in S.T. No. 266 of 2011)

1. Mohan Bodra S/o Late Rasai Bodra,
2. Gardi Jamuda, S/o Late Gomo Yadav'
3. Kanuram Bodra, S/ Late Daniya Bodra
4. Bal Krishna Bodra, S/o Golu Bodra

All are residents of Village-Harjora, P.O-Jharjhara, P.S-Toklo, District-West Singhbhum.

..... .. **Appellants**

[In Cr. Appeal (D.B) No. 1848 of 2017]

Landu Jamuda, aged about 62 years, S/o late Gardi Jamuda, R/o-village-Harjora, P.O & P.S-Toklo, District-West Singhbhum, Chaibasa, Jharkhand

..... .. **Appellant**

[In Cr. Appeal (D.B) No. 1424 of 2024]

Versus

The State of Jharkhand

... .. **Respondent**
(in both the cases)

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellants : Mr. Manoj Kumar Chaubey, Advocate
Mr. Madhav Prasad, Advocate
[in Cr. App (DB) No.1848 of 2017]
Mr. Mayank Mohit Sinha, Advocate
[in Cr. App (DB) No.1424 of 2024]
For the State : Mr. Saket Kumar, APP
[in Cr. App (DB) No.1848 of 2017]
Mr. Pankaj Kumar, Public Prosecutor
[in Cr. App (DB) No.1424 of 2024]

C.A.V On 27.04.2026

Pronounced on 15/05/2026

Per Sujit Narayan Prasad, J.

1. Since both the appeals arise out of the common judgment of conviction dated 26.05.2017 and the order of sentence dated 27.05.2017 passed by the

learned Additional Sessions Judge-II, West Singhbhum at Chaibasa in S.T. No.266 of 2011, as such they have been tagged together and taken up together for analogous hearing and are being disposed of by this common order.

2. The criminal appeal being Cr. Appeal (DB) No.1848 of 2017 under section 374(2) of the Code of Criminal Procedure, 1973 and the criminal appeal being Cr. Appeal (DB) No.1424 of 2024 under section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 are directed against the judgment of conviction dated 26.05.2017 and the order of sentence dated 27.05.2017 passed by the learned Additional Sessions Judge-II, West Singhbhum at Chaibasa in S.T. No. 266 of 2011 whereby and whereunder the appellants, above-named, have been convicted under sections 307/34, 302/34, 201/34 of the Indian Penal Code and under section 3/4 of Prevention of Witch (DAAIN) Practices Act and sentenced to undergo RI for life under section 302/34 of the Indian Penal Code with a fine of Rs.20,000/- each and in default to pay fine amount, they were directed to go further RI for six months. They are further sentenced to undergo RI of 7 (seven) years with a fine of Rs.5000/- each for the offense under section 307/34 of the Indian Penal Code and in default to pay fine amount, they were directed to go further additional RI for six months. They are further sentenced to undergo RI of 5 years with a fine of Rs.5000/- each for the offence under section 201/34 of the Indian Penal Code and in default to pay fine amount, they were directed to go further additional RI for six months. They are further sentenced to undergo RI of 3 months with a fine of Rs.1000/- each for the offence under section 3/4 of the Prevention of Witch (DAAIN) Practices Act and in default to pay fine amount, they were directed to go further additional RI for one month. It has further been directed that all the sentences shall run concurrently and the

period undergone by them during the trial of this case shall be set off from the sentence awarded to them.

Factual Matrix

3. The *fardbeyan* of the informant Soma Mahli(P.W.-1) was recorded by the S.I. K. Tirkey, officer-in-charge of Toklo P.S. on 27.08.2011 at 13:40 hours at Matkam Lodo forest P.S. Toklo.

4. The prosecution story, in brief, as per the *fardbeyan* of the informant Soma Mahli(P.W.-1) is that on the last Tuesday (23.08.2011), at about 7.30 pm in the evening, informant went near the house of his brother Budhram Mahli (deceased). In the meantime, about 4-5 persons took away the informant's brother Budhram Mahli (deceased) and his wife Kunti(deceased) from their house by abusing and dragging them beneath a tree nearby. The informant could not identify them due to darkness.

5. Informant further stated that several villagers had also assembled beneath the said tree and the informant saw that 1. Gardi Jamuda, 2. Mohan Bodra @ Jokdo Bodra, 3. Jiten Mahli, 4. Santosh Gagrai, 5. Landu Jamuda, 6. Kanuram Bodra, 7. Singrai Mahli, 8. Sukhram Mahli, and 9. Bal Krishna Bodra @ Jendo Bodra, all resident of village-Harjora, P.O & P.S-Toklo, District-West Singhbhum, were assaulting the informant's brother Budhram Mahli with *lathi* and *danda* in the light of torch. The wife of Budhram, namely, Kunti tried to save her husband upon which the said miscreants assaulted her also with *lathi* (stick). The Informant also tried to save his brother and told the accused persons to leave him upon which Landu Jamuda and Santosh Gagrai assaulted him with *lathi* on his head due to which he sustained injury and fell down.

6. Thereafter, the informant escaped from there and hide himself nearby and in the light of torch, they saw that accused persons tied the hands of Budhram and Kunti by rope and they took them towards the hillocks by saying that as you are *Ojha* and you used to kill the villagers and offer *pooja*, today we will kill and throw you. The informant apprehended that the accused persons will kill him and, hence, he spent the night in the forest itself due to fear.

7. Informant further stated that on 27.08.2011, the police reached in village thereafter, the informant also accompanied with the police party in search of dead body and after making massive search, the dead bodies of Budhram and Kunti were recovered from the dense forest on the Matkam Lodo mountain, in decomposed condition, at about a distance of 50 meters in ditch (Khai) and neck of both dead bodies was incised. The informant claimed that the abovenamed accused persons had cut throat of his brother Budhram and *bahu* Kunti and thereafter, concealed their dead body due to *ojha/ guni*.

8. On the basis of the *fardbeyan* of the informant Chakaradharpur(Toklo) P.S. case no. 107/2011 dated 27.08.2011 was registered against nine accused persons namely, 1. Gardi Jamuda, 2. Mohan Bodra, 3. Jiten Mahli, 4. Landu Jamuda, 5. Kanuram Bodra, 6. Santosh Gagrai, 7. Singrai Mahli, 8. Sukhram Mahli, 9. Balkrishna Bodra @ Jondo Bodra under sections 307/302/201/34 I.P.C. and section 3/4 of Prevention of Witch Practices Act. After investigation charge sheet was submitted against the accused persons/ appellants and after cognizance, the case was committed to the Court of Sessions.

9. Charges were framed against the accused persons/appellants under sections 307/34, 302/34 and 201/34 of the IPC and under section 3/4 of the

Prevention of Witch Craft Act read with section 34 of IPC to which the accused/appellants pleaded not guilty and claimed to be tried.

10. Trial commenced and the statements of the accused persons were recorded under Section 313 of Cr.P.C. At the conclusion of trial, the accused/appellants herein were convicted and sentenced as aforesaid by the learned trial Court.

11. The aforesaid order of conviction and sentence is under challenge in these appeals.

Submission of the learned counsel for the appellants:

12. Learned counsel appearing for the appellants have taken the following grounds for interfering with the finding recorded by the learned trial Court in the impugned judgment:

(i) The prosecution has miserably failed to establish the charge said to be proved beyond all reasonable doubt.

(ii) The further ground has been taken that the conviction is under sections 302 /34 of the Indian Penal Code but no any evidence in order to substantiate the common intention among the appellants to the deceased has been laid by the prosecution, as such, there cannot be any conviction against the appellants, in absence of any specific overt act said to be committed by these appellants even if the entire prosecution version will be taken into consideration in entirety.

(iii) It has been stated that the conduct of the informant is highly unnatural and improbable and there is no justified reason as to why the informant kept silence for four days after the incident and he did not disclose about the incident to any person in the village which makes the entire case of prosecution suspicious.

(iv) It has been contended that that the incident is allegedly of dated 23.07.2011 whereas the F.I.R. has been lodged on 27.08.2011 after much delay and no explanation has been given for this inordinate delay in filing of F.I.R which also makes the prosecution case suspicious and the name of abovenamed accused persons has been brought by the informant in this case after thought and due to previous enmity as per the evidence of PW-8.

(v) It has been contended that the prosecution witnesses are none other than the interested witnesses and there is clear lack of any positive evidence and, hence, conviction and sentence of these appellants is bad in law.

(vi) It has been contended that the prosecution has failed to establish the intention or motive behind the crime as alleged.

(vii) It has been contended that as per the *fardbeyan* of the informant it was alleged that several villagers were present at the place of occurrence but the prosecution has failed to examine any independent witness.

13. The learned counsel for the appellants, based upon the aforesaid grounds, has submitted that the judgment of conviction passed by the learned trial Court convicting the appellants under sections 307/34, 302/34, 201/34 of the Indian Penal Code read with section 3/4 of Prevention of Witch (DAAIN) Practices Act, therefore, is not sustainable and fit to be set aside.

Submission of the learned counsel for the State:

14. On the contrary, the learned Public Prosecutor assisted by the learned Additional Public Prosecutor appearing for the State has defended the

impugned judgment of conviction and order of sentence by taking the following grounds:

(i) The conviction under section 307/34, 302/34, 201/34 of the Indian Penal Code read with section 3/4 of Prevention of Witch (DAAIN) Practices Act against these appellants does not suffer from an error, since, ample evidence has been produced by the prosecution.

(ii) It has been contended that the informant P.W.-1 has supported the prosecution story as he is the eye witness to the part of the occurrence and, therefore, appellants have been rightly convicted under section 307/34, 302/34, 201/34 of the Indian Penal Code read with section 3/4 of Prevention of Witch (DAAIN) Practices Act and, as such, the impugned judgment does not require any interference.

(iii) The argument has been advanced that the ample material has been produced by the prosecuting agency who established the case under sections section 307/34, 302/34, 201/34 of the Indian Penal Code read with section 3/4 of Prevention of Witch (DAAIN) Practices Act so far as the appellants are concerned since the fact has come in course of evidence produced by P.W.-1 that these appellants had taken away the deceased from their house by abusing and dragging them beneath a tree of nearby place on the suspicion that they are *ojha* and they used to kill the villagers by offering *pooja*. Thereafter, the accused persons assaulted them and later on their dead body was found in the dense forest on the Matkam Lodo mountain, in decomposed condition.

(iv) The argument has also been advanced that P.W.-1 has supported the prosecution version supported by the medical evidence.

15. The learned State counsel, based upon the aforesaid premise, has submitted that the impugned judgment so far as these appellants are concerned, does not suffer from any error and does not require any interference under sections 307/34, 302/34, 201/34 of the Indian Penal Code read with section 3/4 of Prevention of Witch (DAAIN) Practices Act, hence, these criminal appeals are fit to be dismissed.

Analysis

16. We have heard learned counsel for the parties, perused the documents available on record as also the finding recorded by the trial Court in the impugned judgment.

17. We have also gone through the testimonies of the witnesses as available in the Trial Court records as also the exhibits appended therewith.

18. Learned trial Court, based upon the testimonies of witnesses, has passed the judgment of conviction and has convicted the appellants under Sections 307/34, 302/34, 201/34 of the Indian Penal Code read with section 3/4 of Prevention of Witch (DAAIN) Practices Act and sentenced them as referred hereinabove.

19. This Court, before considering the argument advanced on behalf of the parties, is now proceeding to consider the testimonies of witnesses which have been recorded by the learned trial Court.

20. It is evident from the record that in order to substantiate the case, the prosecution has altogether examined ten witnesses out of whom P.W.-1 Soma Mahli, is the informant of the case, P.W.-2 Anil Kumar Mahto, P.W.3-Kishore Bodra, P.W.-4-Mishri Lal Mahli, P.W.-5 Dr. Vinod Kumar Pandit,

who conducted postmortem over the dead body of the deceased, P.W.-6 Dashrath Mahli, P.W.-7-Basanti Mahli, PW8-Rupa Mahi, P.W.-9-Kishore Tirkey, who is the investigating officer and P.W.-10 Dr. Anuj Kumar Choudhary who had examined the injured Soma Mahli(P.W.-1).

21. Apart from oral testimony of witnesses, following documentary evidences have also been produced which have been marked as exhibits:

- (i) Ext-1 - Signature of Soma Mahli (P.W.-1) on fardbeyan;
- (ii) Ext-1/1 - Signature of Anil Kumar Mahto (P.W.-2) on fardbeyan;
- (iii) Ext-2 – Postmortem report of Kunti Mahli;
- (iv) Ext.2/1-Postmortem Reprot of Budhram Mahli;
- (v) Ext-3 – Entire fardbeyan;
- (vi) Ext-4 – Original inquest report of Budhram Mahli;
- (vii) Ext.4/1 - Original inquest report of Kunti Mahli;
- (viii) Ext.5 – Confessional statement of accused Mohan Bodra; and
- (ix) Ext.6 – Formal F.I.R.

22. P.W.-1 Soma Mahli is the informant of the case. Informant has stated in his evidence that deceased Budhram Mahli was his younger brother and the deceased Kunti Mahli was wife of his younger brother Budhram Mahli. At about 7:30-8:00 PM in the fateful night of the occurrence, he was inside his house. On hearing *halla*, he saw accused persons Mohan Bodra, Sukhram Mahli, Singrai Mahli, Jiten Mahli, Lando Jamuda, Gardi Jamdura, Kanuram Bodra, Balkrishna Bodra @ Jendo Bodra and Santosh Gagrai were assaulting the Budhram and his wife (Kunti) beneath the tree by *lathi*. He was having a torch and in the light of torch he identified the aforesaid accused person. He restrained the accused upon which they assaulted him on his head due to which he sustained injury. He has stated that his brother and his wife Kunti were killed on the allegation that they were witch. He informed the Choukidar, namely, Lakhan Soy, who informed the police.

23. Informant further stated that police came in the village and interrogated from him and recorded his *fardbeyan* which bears his signature which has

been marked as Ext.-1. Police had sent him to Chakradharpur hospital for treatment where his treatment was done. Informant identified the accused persons, Sukra Mahli, Mohan Bodra, Lando Jamda, Kanuram Bodra, Balkishun and Gardi Jamuda in the Court but he did not identify the rest accused.

24. In his cross-examination, P.W.-1 stated that Budhram (deceased) lived separately. On hearing noise, he went out alone to the place of occurrence. At the time of occurrence there was no electricity and it was raining. He was injured and treated in Chakradharpur hospital for three days but does not remember the date. He does not know if anyone else saw the incident. He told the Chowkidar about the occurrence but he did not inform other villagers about the incident. The police recorded his statement, but he does not recall the date. He identified nine accused to the police and believes they killed his brother and his wife.

25. P.W.-2 Anil Kumar Mahto has stated in his examination-in-chief that he knew Budhram Mahli and Kunti Mahli (both are deceased) and he heard that both of them had been murdered. The police came in village and seized the dead body and its *panchnama* was prepared over which he had signed as a witness. He has stated that he had also signed over the *fardbeyan* of Soma Mahli as a witness which has been marked as Ext.1/1. In his cross-examination, P.W.-2 has stated that he was not in village and he had signed on the document at the police station which was plain paper.

26. P.W.-3 Kishore Bodra has been declared hostile. He has stated in his examination-in-chief that Kunti was his sister and Budhram Mahli was his brother-in-law (*Jija*) and both had been murdered about two years ago. He did not know who had murdered his brother-in-law (*Jija*) and sister. He has further stated that the police had not recorded his statement.

27. In his cross-examination, by the learned APP, P.W.3 denied the suggestion that accused Kanuram had told him that the accused persons had assaulted Kunti and Budhram with *lathi* and murdered them after taking from their house. He has stated that the dead body of his sister and brother-in-law were recovered from Matkam Lodo forest. He identified Kanuram Bodra, Bal Krishna Bodra, Mohan Bodra, Gardi Jamuda and Sukhram Mahli, but, he did not identify the rest accused person.

28. In his cross-examination, on behalf of the accused persons, P.W.-3 has stated that Kunti was his elder sister and Budhram was his brother-in-law. He has stated that he used to visit his sister and brother-in-law's house on routine manner. He Soma Mahli(informant) is the brother of Budhram and he resides separate from them at about a distance of about 1 KM. He is also a resident of same village but *tola* is separate. Soma Mahli did not meet him and Soma Mahli had not told him anything about the incident. At the time of incident Soma Mahli was not present and he had gone outside.

29. P.W.-4-Misri Lal Mahli has been declared hostile. He has stated in his examination-in-chief that he knew Budhram Mahli who had been murdered. The said Budhram was murdered but he did not know that who had murdered and how they had murdered.

30. P.W.-5 Dr. Vinod Kumar Pandit, had conducted postmortem examination of the deceased. He had stated in his evidence that on 28.08.2011, he was posted at Sadar Hospital, Chaibasa as a Medical Officer and on that day, at 9:30 AM, he conducted postmortem examination on the dead body of Kunti Mahli who was identified by the police No.262, Birendra Kumar Ram and found the following injuries on her body:

- (i) *Head is separated from the rest of the body at the level of neck. Wound margin sharp, clot present at wound bed under Sub-cutaneous tissue.*
- (ii) *Heart-Empty, stomach empty*

- (iii) *Right lower leg eaten up by wild animals*
- (iv) *Two sharp and one lacerated wound on vulva and perinium.*
- (v) *Time Since Death: More than 48 hours but within one week as rigor mortis absent. Foul smelling of body, body swollen, blebs on skin porh. Advance stage of putrefaction present. Whole body is partially eaten by animals and rodents.*

Doctor opined that cause of death was due to hemorrhage and shock and injuries were caused by sharp object and time since death was more than 48 hours. P.W 5 has identified the postmortem report in his writing and signature which has been marked as Ext.2.

31. P.W5 had also conducted the postmortem examination on the dead body of Budhram Mahli, on the same day which was brought and identified by the Constable No.262, Birendra Kumari Rai. The doctor has found the following antemortem injuries over the dead body of Budhram Mahli:

- (i) *Head is separated from the rest of the body at the level of neck, wound margin sharp, clot under skin margin present.*
- (ii) *Advance stage of putrefaction present, body swollen.*
- (iii) *Blebs found, maggots developed.*
- (iv) *Foul selling of body.*
- (v) *Body is destroyed by wild animals and rodents.*

Cause of death: Hemorrhage and shock.

Injuries are caused by sharp object.

Doctor opined that Cause of death was due to hemorrhage and shock and injuries were caused by sharp object and time since death was more than 48 hours but, within one week as rigor mortis was absent. P.W 5 has identified the postmortem report in his writing and signature which has been marked as Ext.2/1.

32. In his cross-examination, Doctor P.W.-5 stated that he did not find any injury on head of both the dead bodies and did not mention any antemortem injury on head. The dead bodies were of within one week and head was not eaten by wild animal but it was possible that wild animal might eaten the same. Sharp cut wound is produced by the sharp object such as *garasa*, sword etc. which has sharp and solid margins. The rigor mortis starts developing from one to two hours of the death of person in smaller joints and five to six

hours in large muscles and joints, completely developed in 12 to 36 hours and passed away in 48 hours in normal and ideal conditions of environment.

33. P.W.-6 Dasrath Mahli has stated in his evidence that he knows the deceased, namely, Budhram Mahli and his wife Kunti. They had been murdered about 3 years ago and at the time it was at about 8:00 pm. He heard the sound of assault but he did not identify the voice of anyone. He did not know that how the deceased had been murdered. He has stated that the police interrogated him and he told about the incident. Soma Mahli (P.W.-1) had told him that Mohan Bodra, Gardi Jamuda and Jitan Mahli had murdered the deceased.

34. In his cross-examination, P.W.-6 stated that he had not seen the murder being committed but he went to police station. He had talked with Soma Mahli after one week of the incident and in between he used to meet Soma Mahli, but there was no conversation with him. There are about 50 houses in Harjoda village and the Jamuda, Malhi and Mahto community live there, in separate *tolas*. He has stated that the people of mahli community were settled in Harjoda village and they used to work in village in the function of marriage etc. He has denied the suggestion since Soma Mahli had previous dispute and, as such, he has falsely implicated the accused persons in the alleged occurrence.

35. P.W.-7-Basanti Mahli is the daughter of the deceased. She has stated in her evidence that Budhram Mahli and Kunti Mahli were her father and mother and they were murdered in the year of 2011 and at that time she was working in Delhi. She has stated that Rani Purty told her that her mother and father had been murdered, hence, she came to her village after completion of their Sharadh Karam. Her elder father (Uncle) Soma Mahli told her that Jiten

Mahli had murdered her mother whereas Jokro Bodra @ Santosh Hansda had murdered her father.

36. P.W.-8-Rupa Mahli is the father of the deceased Budhram Mahli. He has stated in his evidence that his son Budh Ram and his wife had been murdered about three years ago and Balkrishna, Santosh Sahu, Keravma, Landu, Gardi, Jitan, Singrai and Sukhram had committed the murder. P.W-8 claim to identify all the accused persons before the Court and has said that the accused persons had committed the said murder due to enmity. But again, he identified the accused Sukhram only before the Court and has refused to identify the rest accused persons saying that he is unable to see clearly.

37. P.W.9-Kishore Tirkey is the Investigating Officer of the case. He has stated in his examination-in-chief that on 27.08.2011 he was posted as Officer-in-Charge of Toklo Police Station. At about 8:30 O'Clock in the morning, he received a secret information that in the village of Harjoda one couple, i.e., husband and wife had been murdered and their dead bodies have been thrown in the forest. On getting such information, he entered the *sanha* no. 391 in Station diary and thereafter proceeded for village Harjoda along with ASI Yugal Kishor Choudhary, Constable No.262 Birendra Kumar Ram and members of armed forces. After reaching to village Harjoda, he took the village Munda, ward member and some villagers with him and reached in the forest of Matkam Lodo and recovered the decomposed dead bodies of Budhram Mahli and his wife Kunti Mahli. He recorded the *fardebayan* of Soma Mahli and started investigation from the place of occurrence itself. He identified the *fardebayan* in his writing and signature and having signature of Soma Mahli and Anil Kumar Mahto over it, and having endorsement in his writing and signature as well as another endorsement in the writing of the

then Officer-in-Charge of Chakradharpur Sakaldeo Ram and the entire *fardebayan* has been marked as Ext.-3.

38. Investigating Officer, further stated that he had prepared the inquest report of both the dead bodies which were in his writing and signature and which bears the signature of witnesses, namely, Anil Kumar Mahto and Kanuram Bodra also. The carbon copy of these inquest reports has been marked as Ext.-4 and Ext.- 4/1. He had sent the *fardebayan* to Chakradharpur police station for registering formal F.I.R. by chowkidar and he had started the investigation of this case from the place of occurrence itself. He sent both the dead bodies to Sadar Hospital, Chaibasa for its postmortem along with constable Birendra Kumar Ram. He recorded re-statement of the informant in which he told the name of nine accused persons as well as one accused, Chhota Sahu Bodra. Thereafter, he visited the place of occurrence which is situated at about 3 KM away from village Harjoda in the dense forest of Matkam Lodo hills, where the decomposed dead bodies of Budhram and his wife Kunti were found in damaged condition having maggot in it and bad smell. There was a distance about 30 yards in between the two dead bodies and the throat of both the dead bodies were cut by sharp weapon.

39. Investigating Officer, further stated that as already 4 days was elapsed and there was rain also, so bloodstained was washed and it could not be seized. He has stated that he had recorded the statement of the witness of inquest report, namely, Anil Kumar Mahli who told him that Budhram used to offer puja by cutting black hen in his house and he used to make humor of villagers, hence, the abovenamed accused persons had murdered them.

40. Investigating Officer had further disclosed the details of the second place of occurrence and stated that the accused persons had taken Budhram and his wife Kunti abusing them beneath this tree. He had recorded the

statement of witness, namely, Kishor Bodra, who told that on 24.07.2011 at about 8:30 O' clock his friend Kanuram Bodra had disclosed that all the accused persons named in FIR had committed murder of his Jija Budhram and sister Kunti and thrown their dead body in Matkamlodo forest.

41. Investigating Officer has further stated that he had recorded the confessional statement of Mohan Bodra which bears signature of Mohan Bodra and the signature of accused, namely, Jiten Mahli, Gardi Jamuda, Santosh Gagrai and thumb impression of accused Chhota Sahu Bodra as well as his signature which has been marked as Ext.-5.

42. In his cross examination, investigating officer stated that the place of occurrence is situated at about 23 KM from the police station and he had received the information of this incident from the village Chowkidar. There are about 60-70 houses in this village and the people of tribal and Mahli community resides there.

43. P.W.-10 Dr. Anuj Kumar Choudhary has stated that on 27.08.2011, he was posted at Sub-Divisional Hospital, Chakradharpur, West Singhbhum and on the same day, he had examined the informant Soma Mahli (the injured witness) and found the following injuries:

(a) Site of injury left partial scalp

Size of injury: length -1/4 cm, wide-1/4 cm, depth 1/4 cm;

Age of injury: within 72 hours, caused by weapon.

Nature of injury-Simple.

(b) Site of injury: Whole body.

Type of Injury-Blunt trauma.

Age of Injury-Within 72 hours.

Caused by hard substance.

Nature of injury-Simple.

(c)Mark of identification-Birth mark left side of face.

44. In his cross-examination, Doctor P.W.-10 stated that injury which was found on the body of injured, cannot be caused due to falling on mountain while running. P.W.-10 further stated that as the colour of injured was reddish, so he can say that the injury was caused within 72 hours.

45. This Court, on the basis of aforesaid factual aspect vis-à-vis argument advanced on behalf of parties, is now proceeding to examine the legality and propriety of impugned judgment of conviction and order of sentence by formulating following questions to be answered by this Court:

1. *Whether the informant PW6 Soma Mahli (brother of the deceased) is trustworthy and reliable, to convict the appellants under Section 307/34, 302/34, 201/34 of the Indian Penal Code and under section 3/4 of Prevention of Witch (DAAIN) Practices Act?*
2. *Whether on the basis of the testimony P.W.-6 Soma Mahli, can it be said to be a case based on circumstantial evidence or if it based upon the circumstantial evidence the chain is being completed or not?*

46. Since both the issues are interlinked, hence, both the issues are taken up together.

47. Ongoing through the evidences of the prosecution witnesses, this court finds that P.W.-1 Soma Mahli, is the informant of the case and he had alleged that on 23.08.2011, at about 8:00 pm in the evening his younger brother Budhram Mahli (deceased) and Budhram's wife namely Kunti were dragged out of their house by the accused persons/appellants herein and were taken beneath a tree nearby and were assaulted by the accused persons/appellants with *lathi* and *danda*. Thereafter, hands of both Budhram and Kunti were tied by rope and they were taken towards the hillocks.

48. The Informant has further alleged that he had seen the incident in the light of torch which was carried by the accused and he also tried to restrain the accused persons, but he was also assaulted with *lathi* on his head. After, four days, i.e., on 27.08.2011 dead bodies of both Budhram and Kunti were recovered from the dense forest of the Matkam Lodo mountain, in decomposed condition. The motive behind the murder of both Budhram and Kunti, as has come up in the evidence is *ojha/guni* (witchcraft) practiced by them.

48. The learned trial Court heavily relied on the testimony of the informant P.W.-1 Soma Mahli and considered him as an eye witness of the case and convicted and sentenced the appellants as aforesaid.

49. Hence, in the present case, ongoing through the evidence, this Court finds that there are two places of occurrence-

i. First place of occurrence as alleged by the informant Soma Mahli (P.W-1), is the tree nearby the house of the deceased, where both the deceased Budhram and Kunti, were taken by the accused persons/appellants herein on the night of 23.08.2011 at about 8:00 pm and both of them were assaulted by the accused persons/appellants with *lathi* and when the informant tried to restrain the accused persons/appellants, then he was also assaulted by the accused persons/appellants.

ii. Second place of occurrence is dense forest of the Matkam Lodo mountain, from where the dead bodies of both the deceased Budhram and Kunti were recovered, on 27.08.2011, in decomposed condition.

50. Since, in the present case, informant Soma Mahli (P.W-1), has been considered as an eyewitness to the first place of occurrence i.e. witnessing the assault on both the deceased Budhram and Kunti, nearby the house of the

deceased, under a tree and but later on, recovery of the dead bodies of both the deceased after four days of the alleged assault, from Matkam Lodo mountain, in decomposed condition which has not been witnessed by the P.W.1 or any other witnesses. Thus, from the aforesaid, it is evident that this case is based upon the theory of last seen and circumstantial evidences.

51. Before we analyse and appreciate the circumstances that have weighed with the trial Court, we think it apposite to refer to certain authorities pertaining to delineation of cases that hinge on circumstantial evidence.

52. There is no quarrel with the settled position of law that in the case of circumstantial evidence, the chain should be complete then only there will be conviction of the concerned accused person, as has been laid down by the Hon'ble Apex Court in the case of *Hanumant son of Govind Nargundlar vs. State of Madhya Pradesh, AIR 1952 SC 343* wherein it has been held that "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

53. The same view has been taken by the Hon'ble Apex Court in *Bakhshish Singh vs. State of Punjab, (1971) 3 SCC 182* wherein the Hon'ble Apex Court has observed that the principle in a case resting on circumstantial evidence is well settled that the circumstances put forward

must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. These circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

54. The Hon'ble Apex Court while laying down such proposition in the said case has considered the factual aspect revolving around therein and while considering the fact has only found the incriminating evidence against the appellant was his pointing the place where the dead body of the deceased had been thrown which the Hon'ble Apex Court has not considered to be circumstantial evidence though undoubtedly it raises a strong suspicion against the appellant. The Hon'ble Apex Court while coming to such conclusion has observed that even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In that pretext, the law has been laid down at paragraph-9 thereof, which reads as under:

"9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again, those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion

consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

55. It is, thus, evident from the close analysis of the aforesaid judgments, the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(iii) the circumstances should be of a conclusive nature and tendency,

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

56. The Hon'ble Apex Court has reiterated the said principle again in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116* holding all the above five principles to be the golden principles which constitute the panchsheel of the proof of a case based on circumstantial evidence. The Hon'ble Apex Court in the said case as under paragraph-155, 156, 157, 158 and 159 has been pleased to hold that if these conditions are fulfilled only then a Court can use a false explanation or a false defence as

an additional link to lend an assurance to the Court and not otherwise.
 paragraphs-155, 156, 157, 158 and 159 of the said judgment read as under:

"155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus: "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and 2025:JHHC:13669-DB compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500] Lagu case [AIR 1960 SC 500] as also the principles enunciated by this Court in Hanumant case [(1952) 2 SCC 71] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases -- Tufail case [(1969) 3 SCC 198] , Ramgopal case [(1972) 4 SCC 625] , Chandrakant Nyalchand Seth v. State of Bombay [Criminal Appeal No 120 of 1957,], Dharambir Singh v. State of Punjab [Criminal Appeal No 98 of 1958,]. There are a number of other cases where although Hanumant case [(1952) 2 SCC] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration [(1974) 3 SCC 668, 670] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607,] , Shankarlal Gyarasilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405,] -- a five-Judge Bench decision.

158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision

of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: "But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. such absence of explanation or false explanation would itself be an additional link which completes the chain."

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation."

57. The foremost requirement in the case of circumstantial evidence is that the chain is to be completed. In ***Padala Veera Reddy v. State of A.P. [1989 Supp (2) SCC 706*** the Hon'ble Apex Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

"10. ... (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

58. In *Ram Singh v. Sonia (2007) 3 SCC 1*, while referring to the settled proof pertaining to circumstantial evidence, the Hon'ble Apex Court reiterated the principles about the caution to be kept in mind by court. It has been stated therein as follows:

"39. ... in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts."

59. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

60. This Court, after referring the impugned judgment and advertng to the testimony as recorded in course of the trial of the witnesses produced on behalf of the prosecution has found that none of the witnesses have deposed that they have seen commission of crime particularly in between the first place of occurrence, from where both the deceased were taken to the second place of occurrence at Matkam Lodo mountain, from where dead bodies of both the deceased were recovered.

61. The informant of the case Soma Mahli (P.W.-1), is the younger brother of the deceased and to test his trustworthy and reliability, this Court had gone into the testimony informant of the case Soma Mahli (P.W.-1).

62. Informant in his *fardbeyan* had stated that he had seen the assault on both the deceased, by the accused persons/appellants, in the torch light and the said torch light was in the hand of the accused persons. But, contrary to this statement given in his *fardbeyan*, informant had stated in his examination-in -chief, that he was holding the torch in his hand and he had identified the accused persons/ appellants in the torch light.

63. Further, in his cross-examination the informant has reverted to his statement given in his examination-in -chief regarding holding of torch light. In his cross-examination informant had specifically deposed that he had not stated to the police that who was holding the torch.

64. Further, in his cross-examination, P.W.-1(informant) stated that Budhram (deceased) lived separately. On hearing noise, he went out alone to the place of occurrence. But, ongoing to the evidence of P.W.-3, who is the brother-in -law of the Budhram (deceased), this Court finds that P.W.-3, in his cross-examination had stated that Soma Mahli (informant) is the brother of Budhram (deceased) and he resides separate from them at about a distance of about 1 KM. Though, P.W.-3 was declared hostile, but, the evidence of P.W.-3, which relates to fact that both brothers, i.e., informant Soma Mahli(P.W.-1) and the Budhram (deceased) lived separately and distance between their house is about 1 KM, can be taken into consideration as per the settled position of law as settled by the Hon'ble Apex Court in catena of judgments by holding that merely because the witness is declared as hostile, whole of his evidence is not liable to be thrown away.

65. At this juncture it would be pertinent to see the judgments rendered by the Hon'ble Apex Court on the issue of hostile witness. In case of *Attar Singh v. State of Maharashtra, (2013) 11 SCC 719*, the Hon'ble Apex Court held that merely because a witness becomes hostile it would not result in

throwing out the prosecution case, but the court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. The Hon'ble Apex Court further held that testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused. Paragraph-14 to 17 of this judgment is quoted herein below-

“14. We have meticulously considered the arguments advanced on this vital aspect of the matter on which the conviction and sentence imposed on the appellant is based. This compels us to consider as to whether the conviction and sentence recorded on the basis of the testimony of the witness who has been declared hostile could be relied upon for recording conviction of the appellant-accused. But it was difficult to overlook the relevance and value of the evidence of even a hostile witness while considering as to what extent their evidence could be allowed to be relied upon and used by the prosecution. It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well settled by a catena of decisions that the court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by this Court in Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59] whereby the learned Judges of the Supreme Court reversed the judgment of the Karnataka High Court which had discarded the evidence of a hostile witness in its entirety.

15. Similarly, other High Courts in Gulshan Kumar v. State [1993 Cri LJ 1525 (Del)] as also Kunwar v. State of U.P. [1993 Cri LJ 3421 (All)] as also Haneefa v. State [1993 Cri LJ 2125 (Ker)] have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in State of U.P. v. Chet Ram [(1989) 2 SCC 425 : 1989 SCC (Cri) 388 : AIR 1989 SC 1543 : 1989 Cri LJ 1785] , it was held that if some portion

of the statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in Shatrughan v. State of M.P. [1993 Cri LJ 120 (MP)] that hostile witness is not necessarily a false witness. Granting of a permission by the court to cross-examine his own witness does not amount to adjudication by the court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in Sat Paul v. Delhi Admn. [(1976) 1 SCC 727 : 1976 SCC (Cri) 160 : AIR 1976 SC 294]

16. Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.

17. While examining the instant matter on the anvil of the aforesaid legal position laid down by this Court in several pronouncements, we have noticed that the support rendered by the daughter Mangibai approving the incident should be accepted as reliable part of evidence in spite of she being a hostile witness. The witness Mangibai's evidence pushes the accused with his bag to the wall and the accused is obliged to explain because her evidence shows that the accused was the only person in the company of the deceased soon before the death. The defence of the accused that Nagibai's injury was a result of fall is ruled out by medical evidence and the details available of the location in the panchnama of offence. The courts below thus have rightly drawn some support from the reports of the chemical analysis since all the articles of the victims and clothes of the accused are found having bloodstains of human Blood Group A. This was in view of the fact that the results of the analysis for determination of the blood group of the victim and accused were conclusive when blood sent in phial was analysed. Thus, the evidence of the daughter of the deceased coupled with other material as also evidence of other witnesses i.e. Ramesh, Khandu, Bhatu and Makhan, provided a complete chain and the prosecution successfully proved

that the incident occurred in the manner and the place which was alleged.”

66. Again, in case of ***Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731*** the Hon’ble Apex Court held that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. Relevant paragraph of this judgment is quoted herein below-

“87. Therefore, this Court cautioned that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared “hostile” does not result in an automatic rejection of his evidence. Even, the evidence of a “hostile witness” if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence.”

67. Again, the Hon’ble Apex Court in the case of ***C. Muniappan and Ors. v. State of T. N, (2010) 9 SCC 567***, reiterated that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. Paragraph 81 to 83 of this judgment is quoted herein below-

“81. It is settled legal proposition that:

“6. ... 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 witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.”

(Vide Bhagwan Singh v. State of Haryana⁴³, Rabindra Kumar Dey v. State of Orissa⁴⁴, Syad Akbar v. State of Karnataka⁴⁵ and Khujji v. State of M.P.⁴⁶, SCC p. 635, para 6.)

82. *In State of U.P. v. Ramesh Prasad Misra⁴⁷ this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra⁴⁸, Gagan Kanojia v. State of Punjab⁴⁹, Radha Mohan Singh v. State of U.P.⁵⁰, Sarvesh Narain Shukla v. Daroga Singh⁵¹ and Subbu Singh v. State⁵².*

83. *Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.”*

68. In the backdrop of the aforesaid settled position of law this Court is advertent to factual aspect of the instant case. Herein question arises when the distance between the house of Soma Mahli (informant) and Budhram (deceased), is about 1 KM, as per the testimony of P.W.3, then how informant can hear *halla* from a distance of 1 KM and reach at the place of occurrence, as stated by the informant in his examination-in-chief and witness the assault on both the deceased and hence, it cast serious doubt over the testimony of the informant.

69. Though as per the prosecution case, informant had seen the alleged assault on both the deceased by the accused persons/appellants and taking away both the deceased to the mountain, but, in his cross-examination, informant had stated that he had not disclosed about the occurrence to the people nearby since four days from the occurrence, and, hence, raises doubt in the credibility of the evidence of the informant.

70. The fact of not informing the incident to the villagers, by the informant, is also proved from the evidence of P.W.-6 who had stated in his cross-examination that he had talked with Soma Mahli (informant) after one week of the incident and in between he used to meet Soma Mahli, but there was no conversation with him about the alleged incident.

71. Further, informant in his evidence had stated that he had told the village *chowkidar* about the occurrence. The investigating officer (P.W.-9) of the case had stated in his examination-in-chief that on 27.08.2011 at about 8:30 O'Clock in the morning, he received a secret information that in the village of Harjoda one couple, i.e., husband and wife had been murdered and their dead bodies have been thrown in the forest. Then, investigating officer (P.W.-9), in his cross-examination had deposed that he had received information about the incident from village *chowkidar*.

72. Hence, question arises when as per the prosecution case both the deceased were assaulted by the accused persons/appellants in the night of 23.08.2011, at about 8:00 PM, and informant had witnessed the assault on both the deceased and he had informed the village *chowkidar*, then, prosecution has not given any cogent explanation why FIR was lodged after delay of four days i.e. on 27.08.2011 and this delay of four days has not been satisfactorily explained by the prosecution.

73. It has also been held by the Hon'ble Supreme Court in many cases that when the sole eye witness is partisan or related or inimical witness, the Court must be cautious and evidence of such witness may require corroboration from independent reliable sources before making conviction. In the case of **Ramji Surjya Padvi vs. State of Maharashtra, AIR 1983 SC 810**, the relevant portion of the judgment reads thus:

"There is no doubt that even where there is only a sole eye-witness of a crime, a conviction may be recorded against the accused concerned

provided the Court which hears such witness regards him as honest and truthful. But prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness particularly where such witness also happens to be closely related to the deceased and the accused are those against whom some motive or ill-will is suggested."

74. Like-wise, in the case of **Govindaraju @ Govinda v. State By Sriramapuram P.S. & Anr. (2012) 4 SCC 722**, the Hon'ble Apex Court cautioned about relying on testimony of sole eye-witness in following terms:

"Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eyewitness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty."

75. Another decision in the case of **Bhimappa Chandappa Hosamani & Ors. Versus State of Karnataka, 2006 (11) SCC 323** would be worth-while to notice, in which the Hon'ble Apex Court dealt with the evidence of sole eye-witness and held as follows: -

"We have undertaken a very close and critical scrutiny of the `evidence of P.W.--1 and the other evidence on record only with a view to assess whether the evidence of P.W.--1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the Court must be satisfied that the testimony of the solitary eye witness is of such sterling quality that the Court finds it safe to base a conviction solely on the testimony of that witness. In doing so the Court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the Court as

wholly truthful, must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness."

76. In the present case, the testimony of P.W.-1, the sole eyewitness to a part of the occurrence, has not found corroboration from any other prosecution witness. Moreover, the conduct of P.W.-1 subsequent to the alleged incident does not inspire confidence in the mind of the Court. It is noteworthy that the deceased were none other than the brother and sister-in-law of the informant, yet despite allegedly witnessing the occurrence, he failed to disclose the incident to any villager or person for a period of four days. Such unexplained silence casts a serious doubt on the veracity of his testimony and renders it unsafe to rely upon. An unexplained 4-day silence is often seen as "unnatural conduct," suggesting the testimony is a result of consultation, tutoring, or fabrication.

77. Furthermore, even from the testimony of the Investigating Officer, it is evident that he had deposed to having received secret information regarding the alleged incident. However, this witness has nowhere stated that the informant himself reported the occurrence to him. On the contrary, in his cross-examination, he admitted that the information was received from the *chowkidar*. Further, the informant has also stated that he informed the part of the alleged occurrence to the *chowkidar* but from record it is evident that the said *chowkidar* has not been examined by the prosecution, thereby leaving a vital link in the chain of evidence unsubstantiated.

78. In "*State, of Orissa Vs. Mr. Brahmananda Nanda*", AIR 1976 SC 2488 eye-witness did not disclose the name of assailant for a day and a half. The Hon'ble Supreme Court has held that where in a murder case the entire prosecution case depended on the evidence of a person claiming to be eye-witness and this witness did not disclose the name of the assailant for a day

and a half after the incident and the explanation offered for non-disclosure was unbelievable, such non-disclosure was a serious infirmity which destroyed the credibility of the evidence of the witness and the High Court was correct in rejecting it as untrustworthy and acquitting the accused. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

“Where in a murder case the entire prosecution case depended on the evidence of a person claiming to be eyewitness and this witness did not disclose the name of the assailant for a day and a half after the incident and explanation offered for non-disclosure was unbelievable, held that such nondisclosure was a serious infirmity which destroyed the credibility of the evidence of the witnesses.”

79. In the light of the above settled position of law, this Court has no doubt to say that no straight-jacket formula can be applied in all cases of late disclosure by eyewitnesses and the credibility of the witnesses are to be judged in the prevailing facts and circumstances of each case. However, that judgment should be arrived at keeping in mind the normal human conduct and the probable circumstances including the explanation offered regarding non-disclosure of the facts relating to commission of such a heinous offence.

80. In the present case, this Court, upon consideration of the aforesaid factual aspects and the settled position of law, is of the view that the evidence tendered by the informant, P.W.-1, does not inspire confidence. His testimony is neither trustworthy nor reliable, and therefore cannot safely be acted upon for sustaining conviction.

81. The prosecution has failed to establish a complete chain of circumstances. The testimony of P.W.-1, the informant, remains uncorroborated by any other witness examined on behalf of the prosecution. Furthermore, as discussed in the preceding paragraph, the version of P.W.-1

is full with contradictions, thereby diminishing its evidentiary value and rendering it unsafe to form the sole basis for conviction.

82. Accordingly, both the issues are hereby answered.

83. Further at this juncture it requires to refer herein the settled proposition of law that the principle of 'benefit of doubt' belongs exclusively to criminal jurisprudence. The pristine doctrine of 'benefit of doubt' can be invoked when there is reasonable doubt regarding the guilt of the accused, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of *State of Haryana Vrs. Bhagirath & Ors.*, reported in (1999) 5 SCC 96, wherein, it has been held at paragraph-7 as under: -

"7. The High Court had failed to *consider the implication of the evidence of the two eyewitnesses on the complicity of Bhagirath particularly when the High Court found their evidence reliable. The benefit of doubt was given to Bhagirath "as a matter of abundant caution". Unfortunately, the High Court did not point out the area where there is such a doubt. Any restraint by way of abundant caution need not be entangled with the concept of the benefit of doubt. Abundant caution is always desirable in all spheres of human activity. But the principle of benefit of doubt belongs exclusively to criminal jurisprudence. The pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords the benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused.*"

84. It needs to refer herein that the Hon'ble Apex Court, in the case of "*Allarakha K. Mansuri v. State of Gujarat*" reported in (2002) 3 SCC 57 has laid down the principle that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the

accused and the other to his innocence, the view which is favourable to the accused should be adopted, for ready reference, paragraph 6 thereof requires to be referred herein which reads hereunder as :-

“6. -----The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. —”

85. It needs to refer herein before laying down the aforesaid view, the Hon’ble Apex Court in the case of “***Sharad Birdhichand Sarda v. State of Maharashtra***” (*Supra*) has already laid down the same view at paragraph 163 which is required to be referred which read hereunder as-

“163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.---”

86. Further, it is also settled connotation of law that the prosecution has to prove the charge beyond all reasonable doubt in order to prove the charges against the accused.

87. The Hon'ble Apex Court in catena of decision has propounded the proposition that in the criminal trial, there cannot be any conviction if the charge is not being proved beyond all reasonable doubts, as has been held in the case of ***Rang Bahadur Singh & Ors. Vrs. State of U.P.***, reported in (2000) 3 SCC 454, wherein, at paragraph-22, it has been held as under:-

“22. The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A

criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime."

88. Likewise, the Hon'ble Apex Court in the case of ***Krishnegowda & Ors. Vrs. State of Karnataka***, (supra), has held at paragraph-26 as under: -

"26. Having gone through the evidence of the prosecution witnesses and the findings recorded by the High Court we feel that the High Court has failed to understand the fact that the guilt of the accused has to be proved beyond reasonable doubt and this is a classic case where at each and every stage of the trial, there were lapses on the part of the investigating agency and the evidence of the witnesses is not trustworthy which can never be a basis for conviction. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt."

89. This Court, after having discussed the factual aspect and legal position as discussed hereinabove, is of the view that since the prosecution has miserably failed to prove the charges against these appellants beyond all reasonable doubt, as such, the impugned judgment of conviction and order of sentence requires interference by this Court.

90. Accordingly, impugned judgment of conviction dated 26.05.2017 and the order of sentence dated 27.05.2017 passed by the learned Additional Sessions Judge-II, West Singhbhum at Chaibasa in S.T. No. 266 of 2011, is hereby quashed and set aside.

91. The appellants, namely, Mohan Bodra, Gardi Jamuda, Kanuram Bodra, Bal Krishna Bodra and Landu Jamuda are acquitted from the charges under sections 307/34, 302/34, 201/34 of the Indian Penal Code and under section 3/4 of Prevention of Which (DAAIN) Practices Act.

92. Since, as per record, the appellants, namely, Mohan Bodra, Gardi Jamuda, Kanuram Bodra, Bal Krishna Bodra and Landu Jamuda are in

custody and, as such, they shall be set free forthwith, if not wanted in connection to any other criminal case.

93. In the result, these criminal appeals stands allowed and disposed of as such.

94. Pending Interlocutory Applications, if any, stand disposed of.

95. Let the Trial Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

(Sujit Narayan Prasad, J.)

I Agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Sudhir
Jharkhand High Court,
Dated: 15/05/2026
AFR

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