IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.1139 of 2017

Bakra Mundaiya @ Bakra Munduiya @ Sidiyu, son of Late Gura Mundaiya, Resident of village Hatnabera, P.O. and P.S. Jhinkpani District West Singhbhum at Chaibasa

…. …. **Appellant**

Versus

The State of Jharkhand …. …. **Respondent**

With

Cr. Appeal (DB) No.963 of 2017

Bir Singh Mundaiya @ Kebeya @ Vir Singh Munduiya @ Lebiya @ Bir Singh Munduiya, Son of Late Sidiu Mundaiya, resident of Village-Hatnabera, P.O-Asura, P.S: -Jhinkpani, Dist:- Singhbhum West, Chaibasa …. …. **Appellant**

Versus

The State of Jharkhand …. …. **Respondent**

With

Cr. Appeal (DB) No.1094 of 2017

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1. Vijay Mundaiya, Son of Binnu Mundaiay
2. Jagdish Devgam, Son of Turi Devgam
3. Manoj Mundaiya @ Tella, S/o Late Ladura Mundaiya.
4. Ghanshayam Mundaiya, Son of Patar Mundaiya

All are resident of Village:-Hatnabera, P.O & P.S:-Jhinkpani, Dist:- Singhbhum West, Chaibasa

…. …. **Appellants**

Versus

The State of Jharkhand …. …. **Respondent**

With

Cr. Appeal (DB) No.1269 of 2017

Vibhishan Raidas @ Ravidas @ Jagdish, son of Gura Ravidas, resident of Village-Hatnabera, P.O. & P.S.-Jhinkpani, District-Singhbhum West. …. …. **Appellant**

Versus

The State of Jharkhand …. …. **Respondent**

With

Cr. Appeal (DB) No.922 of 2018

Govind Mudaiya, Aged about-31 Years, S/o-Late Manda Bajay Mundaiya, Resident of village-Hatnabera, P.O.-Asura, P.S. Jhinkpani, District-Singhbhum West, Chaibasa

…. …. **Appellant**

Versus

The State of Jharkhand …. …. **Respondent**

[Against the common judgment of conviction dated 22.04.2017 and order of sentence dated 24.04.2017 passed by the learned

Additional Sessions Judge-II, West Singhbhum in Sessions Trial No.34 of 2013**]**

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P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

…..

For the Appellants : Mr. Gautam Kumar, Advocate
Mr. Birat Kumar, Advocate
[In Cr. Appeal (DB) Nos.1139, 963, 1094 of 2017]
Mr. Manoj Tandon, Advocate
Ms. Shivani Bhardwaj, Advocate
Mr. Shubham Kumar, Advocate
Mr. Ritwik Raj, Advocate
[In Cr. Appeal (DB) No.1269/2017]
Mr. Anjani Kumar, Advocate
[In Cr. Appeal (DB) No.922 of 2018]

For the State : Mrs. Nehala Sharmin, Spl. P.P.
[In Cr. Appeal (DB) Nos.1139 of 2017]
Mr. Abhay Kumar Tiwari, A.P.P.
[In Cr. Appeal (DB) No.1094/2017
Mr. Pankaj Kumar, P.P.
[In Cr. Appeal (DB) No.1269/2017]
Mr. Rajneesh Vardhan, A.P.P.
[In Cr. Appeal (DB) No.922/2018]

…..

C.A.V. on 07/04/2026 ***Pronounced on 13/05/2026***

Per Sujit Narayan Prasad, J.

Prayer

1. The aforesaid appeals [Cr. Appeal (DB) No.1139 of 2017], [Cr. Appeal (DB) No.963 of 2017], [Cr. Appeal (DB) No.1094 of 2017] and [Cr. Appeal (DB) No.1269 of 2017] filed under Sections 374 (2) of the Code of Criminal Procedure, are directed against the common judgment of conviction dated 22.04.2017 and order of sentence dated 24.04.2017 passed by the learned Additional Sessions Judge-II, West Singhbhum at Chaibasa in Sessions Trial No.34 of 2013.

2. The Cr. Appeal (DB) No.922 of 2018 has been preferred under Sections 374 (2) of the Code of Criminal Procedure, is directed against the judgment of conviction dated 25.04.2018 and order of sentence dated 27.04.2018 passed by the learned Additional Sessions Judge-II, West Singhbhum at Chaibasa in Sessions Trial (S) No.34 of 2013.

3. From the aforesaid orders, the above-named appellants have been convicted and sentenced as follows: -

Sl.No.	**Name of Appellants**	**Conviction**	**Period of Sentence & Fine**
1.	Bakra Mundaiya @ Bakra Munduiya @ Sidiyu @ Sidiu **(Cr. Appeal (DB) No.1139/17)**	Under Sections 364/34, 302/34 & 307/34 IPC, Section 27 of the Arms Act	R.I. of 10 years along with fine of Rs.5000/- for the offence under Section 364/34 IPC. In default of payment of fine, an additional R.I. of six months. Further, R.I. for life along with fine of Rs.10,000/- for the offence under Section 302/34 IPC, In default of payment of fine, further an additional R.I. of 6 months. Further, R.I. of ten years along with fine of Rs.10,000/- for the offence under Section 307/34 IPC. In default of payment of fine, an additional R.I. of 6 months. Further, R.I. of seven years along with fine of Rs.5000/- for the offence under Section 27 of the Arms Act. In default of payment of fine, an additional R.I. of 6 months. All the sentences have been directed to run concurrently.
2.	Bir Singh Mundaiya @ Vir Singh Munduiya @ Lebiya @ Bir Singh Munduiya @ Kebeya **(Cr. Appeal (DB) No.963/17)**	Under Sections 364/34, 302/34 & 307/34 IPC	R.I. of 10 years along with fine of Rs.5000/- for the offence under Section 364/34 IPC. In default of payment of fine, an

			additional R.I. of six months. Further, R.I. for life along with fine of Rs.10,000/- for the offence under Section 302/34 IPC, In default of payment of fine, further an additional R.I. of 6 months. Further, R.I. of ten years along with fine of Rs.10,000/- for the offence under Section 307/34 IPC. In default of payment of fine, an additional R.I. of 6 months. All the sentences have been directed to run concurrently.
3.	Vijay Mundaiya **(Cr. Appeal (DB) No.1094/17)**	Under Sections 364/34, 302/34 & 307/34 IPC	R.I. of 10 years along with fine of Rs.5000/- for the offence under Section 364/34 IPC. In default of payment of fine, an additional R.I. of six months. Further, R.I. for life along with fine of Rs.10,000/- for the offence under Section 302/34 IPC, In default of payment of fine, further an additional R.I. of 6 months. Further, R.I. of ten years along with fine of Rs.10,000/- for the offence under Section 307/34 IPC. In default of payment of fine, an additional R.I. of 6 months. All the sentences have been directed to run concurrently.
4.	Jagdish Devgam **(Cr. Appeal (DB) No.1094/17)**	Under Sections 364/34, 302/34 & 307/34 IPC	R.I. of 10 years along with fine of Rs.5000/- for the offence under Section 364/34 IPC. In default of payment of fine, an additional R.I. of six months. Further, R.I. for life along with fine of Rs.10,000/- for the offence under Section 302/34 IPC, In default of payment of fine, further an additional R.I. of 6 months. Further, R.I. of ten years along with fine of Rs.10,000/- for

			the offence under Section 307/34 IPC. In default of payment of fine, an additional R.I. of 6 months. All the sentences have been directed to run concurrently.
5.	Manoj Mundaiya @ Tella **(Cr. Appeal (DB) No.1094/17)**	Under Sections 364/34, 302/34 & 307/34 IPC	R.I. of 10 years along with fine of Rs.5000/- for the offence under Section 364/34 IPC. In default of payment of fine, an additional R.I. of six months. Further, R.I. for life along with fine of Rs.10,000/- for the offence under Section 302/34 IPC, In default of payment of fine, further an additional R.I. of 6 months. Further, R.I. of ten years along with fine of Rs.10,000/- for the offence under Section 307/34 IPC. In default of payment of fine, an additional R.I. of 6 months. All the sentences have been directed to run concurrently.
6.	Ghanshayam Mundaiya **(Cr. Appeal (DB) No.1094/17)**	Under Sections 364/34, 302/34 & 307/34 IPC	R.I. of 10 years along with fine of Rs.5000/- for the offence under Section 364/34 IPC. In default of payment of fine, an additional R.I. of six months. Further, R.I. for life along with fine of Rs.10,000/- for the offence under Section 302/34 IPC, In default of payment of fine, further an additional R.I. of 6 months. Further, R.I. of ten years along with fine of Rs.10,000/- for the offence under Section 307/34 IPC. In default of payment of fine, an additional R.I. of 6 months. All the sentences have been directed to run concurrently.
7.	Vibhishan Raidas @ Ravidas @ Jagdish **(Cr. Appeal (DB) No.1269/17)**	Under Sections 364/34, 302/34 & 307/34 IPC, Section 27 of the Arms Act	R.I. of 10 years along with fine of Rs.5000/- for the offence under

			Section 364/34 IPC. In default of payment of fine, an additional R.I. of six months. Further, R.I. for life along with fine of Rs.10,000/- for the offence under Section 302/34 IPC, In default of payment of fine, further an additional R.I. of 6 months. Further, R.I. of ten years along with fine of Rs.10,000/- for the offence under Section 307/34 IPC. In default of payment of fine, an additional R.I. of 6 months. Further, R.I. of seven years along with fine of Rs.5000/- for the offence under Section 27 of the Arms Act. In default of payment of fine, an additional R.I. of 6 months. All the sentences have been directed to run concurrently.
8.	Govind Mudaiya **(Cr. Appeal (DB) No.922/18)**	Under Sections 364/34, 302/34 & 307/34 IPC	R.I. of 10 years along with fine of Rs.5000/- for the offence under Section 364/34 IPC. In default of payment of fine, an additional R.I. of six months. Further, R.I. for life along with fine of Rs.10,000/- for the offence under Section 302/34 IPC, In default of payment of fine, further an additional R.I. of 6 months. Further, R.I. of ten years along with fine of Rs.10,000/- for the offence under Section 307/34 IPC. In default of payment of fine, an additional R.I. of 6 months. All the sentences have been directed to run concurrently.

4. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence,

deems it fit and proper to refer the background of prosecution case, as per the fardbeyan of the informant.

Prosecution case

5. The prosecution case in brief is that the informant, Panchay Munduiya was engaged in work of mason and on 26-08- 2012, at about 5 o' clock in the evening, when he was returning to his house after completing his work, the informant reached near the village Aashura where one Birendra Munduiya, resident of village Hatnabeda, also came there and he was also returning to his village.

6. The informant purchased some radish from Gudri Bazar and thereafter, he was returning to his village by his bicycle. In course of returning, when the informant reached to the playground of village Tokligoda in front of the river, the Virsingh Munduiya @ Lebiya, Ghanshyam Mundaiya, Subedar Mundaiya @ Raikonda, Bakra Munduiya @ Sidiyu, Vijay Mundaiya, Vibhishan Ruidash @ Jagdish, Manoj Mundaiya, Jagdish Devgam, Bablu Munda and Govind Mundaiya came there and they restrained the informant and started assaulting him. In the meantime, one co-villager of informant, namely, Birendra Munduiya also came there.

7. Thereafter, all the above-named accused persons brought their Motorcycles and they made informant to sit on Motorcycle of Ghanshyam. They all took them towards Dadima passing through Munda Agardiha etc. by saying that there is a Ojha and

he disturbed his mind by doing some pooja by that Ojha and it will be verified by said Ojha there.

8. It has been further stated that before the village of Dadima, there are hillocks and forest and there was a tamarind tree besides the road. The accused persons stopped all the Motorcycles there, beneath the said tamarind tree and they took the informant and the Birendra Muduiya to the pond passing through the paddy field and made them to sit on a stone lying near the said pond. In the meantime, it had become dark and the accused persons told the informant to disclosed the house of the Ojha. The informant showed his inability by saying that there is neither any village nor any house, how can he say it. Thereafter, the accused Bankra Munduiya took a pistol from his waist and he fired bullet at the Birendra Munduiya. The accused Vibhishan also shot bullet to the informant.

9. It has been further stated that when the informant regained his consciousness, he found himself lying in water of pond. Thereafter, he came out of pond any how and raised noise, upon which, the villagers came there and they took the informant to Dadima village and seeing the condition of informant, they sent him to Sadar Hospital where his treatment was being done and the informant came to know that Birendra Munduiya has been killed by bullet shot and thereafter, he had been also thrown in the pond.

10. The fardbeyan of informant was recorded by S.I. Mahendra Kumar of Sadar P.S. at Sadar Hospital, Chaibasa on Bed No.16 of male ward, on the basis of which, this case was registered against altogether eleven accused persons under Sections 364, 302 & 307/34 I.P.C.

11. After completion of investigation, the Investigating Officer submitted charge-sheet against the eleven accused persons, namely, Bir Singh Munduiya @ Lebeya, Ghnshyam Muduiya, Bakra Munduiya @ Sidiyu, Bijay Munduiya, Vibhishan Roidash @ Ravidash, Manoj Munduiya @ Tella, Jagdish Devgam, Govind Munduiya, Bablu @ Diku, Sura @ Naresh Munduiya and Subedar Munduiya @ Rephonda U/s 364, 302, 307/34 I.P.C. and 27 Arms Act showing the accused persons, namely, Sura @ Naresh Munduiya and Subedar Munduiya @ Rephonda as Absconder.

12. Thereafter, the cognizance of the offence was taken against altogether aforesaid eleven accused persons under Section 364, 302, 307/34 IPC and Section 27 of the Arms Act. The case was committed to the Court of Sessions. The charge was framed against nine accused persons, namely, Bakra Munduiya, Vibhishan Munduiya, Jagdish Devgam, Govind Munduiya, Bablu Munda, Vijay Munduiya, Ghanshayam Munduiya and Vir Singh Munduiya and Manoj Munduiya under Section 364/34, 307/34, 302/34 IPC and Section 27/35 of the Arms Act and the same was read over and explained to them in

Hindi, upon which, they claimed not to be guilty and demanded for trial.

13. Subsequently, the case was committed against altogether eleven accused persons, showing the two accused persons, namely, Subedar Munduiya and the Sura @ Naresh Munduiya as absconder and there is no order regarding the said two absconding accused persons.

14. After the evidence of prosecution, the statement of eight accused persons as well as one accused person, namely, Govind Mundaiya under Section 313 Cr.P.C. was recorded, in which, they denied from prosecution evidence and claimed themselves to be innocent and accordingly trial proceeded.

15. Subsequently, in course of trial, one of the accused persons, out of said nine accused persons, namely, Govind Mudaiya (appellant in Cr. Appeal (DB) No.922 of 2018) remained absent and accordingly, his bail was cancelled and warrant of arrest and Process under Section 82 and 83 Cr.P.C. has been issued against him and subsequently, his case record was split up from the rest accused/appellant persons and this supplementary case record was opened in his name. Hence, the trial of the above-named accused/appellant Govind Mudaiya has been done in the session trial being S.T.(S) No. 34 of 2013.

16. In both the sessions trial, the prosecution has examined altogether nine witnesses, i.e., **P.W.1-Pachay Munduiya (Informant), P.W.2- Manay Munduiya, P.W.3-Lakhindra**

Munduiya, P.W.4-Dr. Mahabir Prasad Gopalika, P.W.5-Jitendra Nath Munduiya, P.W.6-Moyka Sirka, P.W.7-Dr. M.K. Sinha, P.W.8-Parshuram Paswan (Investigating Officer) and P.W.9-Dr. Devi Prasad Hansda (Doctor).

17. The learned Trial Court, after perusal of record, found the charge levelled against the appellants proved. Accordingly, the appellants have been found guilty, as such, convicted and sentenced vide impugned judgment of conviction dated 22.04.2017 and order of sentence dated 24.04.2017 as aforesaid, which is the subject matter of instant appeals.

Submission of the learned counsel for the appellants

18. Learned counsel for the appellants, in all the cases, have submitted that the impugned judgment of conviction and order of sentence suffers from infirmity on the following grounds: -

(i) It has been contended that no independent eyewitness has been examined and there are vital contradictions in the details of injury given in the inquest report of deceased.

(ii) It has further been contended that the prosecution case is highly improbable and the same is concocted one.

(iii) The evidence of PW-1 is full of contradictions and inconsistencies as this witness has stated that the villagers brought him to the hospital but this witness has not disclosed the name of any villager who get him from the pond, whereas, the PW-8 stated that PW-6 in course of

investigation stated that the informant PW-1 stated before him about the said occurrence but the PW-6 has been declared hostile and therefore the whole evidence of PW-1 is not fit to be relied.

(iv) There is no explanation as to why the informant did not raise noise when the accused persons were allegedly taking him from near the ground of Tokali. Further, no persons of Village Dadima have been examined as the prosecution witness in this case makes the entire prosecution case suspicious and hence, the accused persons are liable to be acquitted by giving them benefit of doubt.

(v) The evidence of PW-1 is not consistent with the Doctor who has examined the PW-1, as the injuries caused to the informant by fire arm has not been opined by the Doctor which itself suggests that the prosecution has failed to prove its case beyond all reasonable doubts.

(vi) It is very well settled proposition of law that the prosecution has to prove its case beyond all reasonable doubt, whereas, in the present case, the prosecution version is totally failed to stand as apart from PW-1, no other witness is there to support him and the evidence of PW-1 itself falsified.

(vii) The Hon'ble Supreme Court has already held in the case of ***Lalu Manjhi and another Versus State of***

Jharkhand reported in ***2003 (3) SCC 401*** that conviction cannot rests solely on the testimony of a single witness if it lacks credibility, consistency and corroboration particularly Investigation lapses and the present case also the investigation is not proper one as the investigating officer did not prepare any site plan of the place of blood of stain not occurrence simple collected neither any weapon of offence is seized nor any witness near the place of occurrence at the time of incident has been interrogated and the prosecution case is totally failed.

(viii) The prosecution witnesses have not remained consistent with their version if the testimony of all the witnesses will be taken into consideration, in entirety.

(ix) It has been submitted that the name of the accused persons was not disclosed by the informant, namely, Pachay Munduiya (P.W.1) at the first time to the villagers of the village Dadima and the name of the accused persons has been taken by the informant for the first time in the hospital in his fardbeyan for falsely implicating the accused.

(x) It has also been submitted that due to previous enmity, the appellants have falsely been implicated in the instant case.

(xi) The prosecution has miserably failed in establishing the charges levelled against the appellants beyond all shadow of reasonable doubts.

19. Learned counsel for the appellants, on the aforesaid premise, has submitted that it is a case where it cannot be said that the prosecution has been able to prove the charge beyond all reasonable doubts and they cannot be said to be trustworthy witnesses, therefore, the impugned judgment needs to be interfered with.

Submission of the learned counsel for the Respondent-State

20. *Per Contra,* learned Public Prosecutor as also learned Addl. Public Prosecutor appearing for the respondent-State have defended the impugned judgment by taking the following grounds: -

(I) The learned trial Court, while passing the impugned judgment of conviction/sentence by taking into consideration the testimony of P.W.1, the informant, as he has disclosed in his cross-examination/examination-in-chief, has committed no error.

(II) All the prosecution witnesses have remained consistent on the date, time and place of occurrence.

(III) P.W.-1, the informant was one of the victims of the incident who himself got injured in the said incident, has fully supported the prosecution case.

(IV) P.W.-1, the informant, has also narrated the role of each of the aforesaid accused persons in committing the said incident and he has identified all the accused persons before the Court.

(V) It has well been established from the ocular as well as medical evidence also that the informant, namely, Pachay Munduiya (P.W.1) is an eye witness of the case and he had also sustained bullet injury on the vital part of his body.

(VI) It is quite impossible to say that a person would cause himself such type of bullet injury merely for implicating someone in the case and the oral testimony of the informant cannot be discarded or suspected on this ground that why he was not died also in the said incident.

(VII) There is no such rule that the evidence of an injured witness cannot be relied upon merely on the ground that he is an interested witness.

(VIII) It has also been contended that the prosecution has been able to prove the charges levelled against the accused persons beyond all shadows of reasonable doubts, hence, the judgment of conviction/sentence cannot be said to suffer from an error.

21. Learned Public Prosecutor, as also, learned Addl. Public Prosecutor for the respondent-State, on the aforesaid premise, has submitted by referring to the impugned judgment of conviction/sentence that the learned trial court has given thoughtful consideration on the testimony, based upon the same, the judgment of conviction/sentence has been passed, hence, it cannot be said that the judgment of conviction/sentence suffers from illegality.

Analysis

22. We have heard learned counsel for the parties, perused the documents and the testimony of witnesses as also the finding recorded by the learned trial Court in the impugned order.

23. This Court, before appreciating the arguments advanced on behalf of the parties, as also, the legality and propriety of the impugned judgment, deems it fit and proper to refer the testimonies of prosecution witness.

24. **P.W.1, Pachay Munduiya** has deposed in his examination-in-chief that the incident is of dated 26-08-2012 at about 5 o' clock in the evening. He was doing work of mason in Gutusai at that time and after finishing his work, he was returning to his house by bicycle. His brother Birendra Munduiya met him in Asura. Thereafter, he had purchased some radish from there and, he was returning to his village. The Bir Singh @ Leviya Munduiya, Jagdish Devgam, Ghanshyam Munduiya, GovindMunduiya, Vijay Munduiya, Vibhishan Ravidas, Tela, Manoj Munduiya, Bakra Munduiya, Subedar Singh Munduiya, Naresh Munduiya and Babu Munda restrained him in the way and the Bakra Munduiya told him that he has done some pooja due to which their mind had been disturbed. The Ghanshyam Munduiya got him sat on his motorcycle and the Birendra Munduiya and Vijay Munduiya were on another motorcycle. They took him in the Darima village on the check dam near the forest and they made the Birendra Munduiya and him to sat on a stone.

Bakra Munduiya asked from him that what type of pooja he has done? Thereafter, the Bakra Munduiya shot three bullets from a pistol on the “Kanpatti” (Templed) of Birendra Munduiya and the accused Bibhishan Raidas shot two bullets on his “Kanpatti”. Thereafter, they threw both of them (i.e. this witness and the Birendra Munduiya) in check dam. He started to swim in the water and raised noise, upon which, the villagers came there and they took him to the Dareema village. The villagers called the police and they took him to the hospital where his treatment was done.

25. After two days, he was sent to Jamshedpur for better treatment. This witness has identified the accused persons Lebiya, Bir Singh Munduiya, Govind Munduiya,Tela, Manoj Muduiaya, Ghanshhyam, Vijay Munduiya, Vibhishan Ravidas, Bakra Munduiya and the Jagdish Devgam before the Court also and has further claimed to identify the rest accused persons on seeing them. This witness has further stated that he had given his statement to police in the Sadar Hospital Chaibasa and the police had read over it to him after writing it, and after finding it correct, he put my thumb impression over it.

26. Further, in his cross-examination, this witness has deposed that his brother had met him in Asura at about 5:30 o’ clock and he was on his motorcycle. The distance of Asura from Hatnabera is about 1 Km and the village Dadima is after 3-4 villages from the village Hatnabera. When the Bakra Munduiya

was asking from him about the puja, no other person was there. The accused persons took him by motorcycle and the motorcycle of Bibhishan Raidas was behind them.

27. This witness has further deposed that the Birendra Munduiya along with him was sitting on the check dam side by side in a row and he has further denied from this suggestion of defense that the accused persons had not shot bullet to deceased or him. Further, at para-19 of his cross-examination, this witness has deposed that when the accused persons restrained him in the way, there was no other person and the accused persons had got him sat on motorcycle forcibly and he did not raise noise for his rescue in course of going. He had left his bicycle at the place where accused persons have restrained him for the first time.

28. P.W.2 Manaye Munduiya has deposed in his examination-in-chief that his son Panchay Munduiya used to work as a mason. The incident is of 2 years ago. His son was returning to his house after finishing his work but he did not return. On the next day, he searched for his son Panchai Munduiya but he was not found. The people of Darma village informed him that his son has been admitted in Sadar hospital, Chaibasa. Thereafter, he went to the hospital and he saw his son there. He saw injury over his cheek. His son told him that Vibhishan has shot him bullet near the pond of Darma village and he further told him that the accused Bakra has shot bullet to

Birendra also. This witness has identified the accused persons Bakra and Virendra before the Court also.

29. In his cross-examination, this witness has deposed that he did not see the incident and further, he has denied from this suggestion of defense that no such incident had taken place and the accused persons have been falsely implicated in this case.

30. P.W.3 Lakhindra Munduiya has deposed in his examination-in-chief that the incident is of dated 26-08-2012. His brother Birendra Munduiya, who was B.L.W. in Kumardungi block, did not return to house on that day. On the next morning, the Tantnagar O.P. Police came and told him that one person has died in firing in Manjhari whereas one person was injured whose treatment was being done in Chaibasa Hospital. Thereafter, he came to the Sadar Hospital, Chaibasa and the injured Panchai Munduiya told him that the Sidiu Munda @ Bakra had shot bullet to Birendra Munduiya near the check dam of Delma village and the Bibhishan Raidas @ Jagdish had shot bullet to Panchai Munduiya by the pistol, kept in his waist and thereafter, they had thrown both of them into the check dam under this impression that they have died. When the Panchai Munduiya regained his consciousness, he found himself in water. He came from water and raised noise upon which the people of Dalima village came there and they took the Panchai Munduiya to hospital. The Birendra Munduiya was died at the place of occurrence itself.

31. This witness has identified both the accused persons before the Court and stated that the Panchai Munduiya had not told him the name of other persons as assailant.

32. Further, in his cross-examination, this witness has deposed that he had not seen the incident. The injured Panchai Munduiya had told him about the incident on Bed No.16. This witness has further denied from this suggestion of defense that no such incident had taken place.

33. P.W.4, Dr. Mahabir Prasad Gopalika has deposed in his examination-in-chief that he had examined the Panchai Munduiya on 27-08-2012 at about 0.30 A.m. at Sadar Hospital, Chaibasa and found the following injuries:-

(i) 5 mm round hole inverted margin with dark ring around the wound behind the left ear at left mastoid area deep about 4 inch oblique in direction, bleeding present.

(ii) 3 mm round hole inverted margin with abrasion brown in colour around the wound near right side of nose at medial canthus right eye.

(iii) Lacerated wound 2 inch x ¼ inch deep to muscles right hand.

(iv) Body ache

(v) Hard mobile small body felt at (1) left side of nose near medial canthus of left eye and (2) at sub mental area below chin.

This witness has further deposed that patient was advised for x-ray and referred to M.G.M.C.H., Jamshedpur and he has

further deposed that the injury 3 to 5 are caused by hard blunt substance and simple in nature whereas the opinion reserved for Injury No. 1 and 2 due to non-availability of x-ray report.

This witness has further deposed that the injury report was written and signed by him (Ext.1).

In his cross-examination, this witness has deposed that he had referred the patient to higher center for management, treatment and opinion. He did not get any x-ray report.

34. P.W. 5, Jitendra Nath Munduiya has deposed in his examination-in-chief that incident is of dated 26-08-2012. The Birendra Munduiya was murdered by shooting with bullet and the Panchai Munduiya was injured by shooting bullet. The Bakra @ Sidiu Mundaiya had fired bullet on the left “Kanpatti” of Birendra Munduiya due to which he was died on the place of occurrence itself whereas the Vibhishan Raidas had shot bullet on Panchai Munduiya on his left Kanpatti and injured him.

35. Apart from above named accused persons, the Birendra Singh Munduiya, Jagdish Devgam, Ghanshyam Mundaiya, Vijay Mundaiya, Manoj Mundaiya, Subedar Singh Munduiya and Naresh Munduiya etc. were also involved.

36. The accused persons had taken the deceased and injured in the Gourburu forest and made them to sat on stone and thereafter, shot bullet to them. This witness has further deposed that the accused persons had restrained the Panchai Munduiya near Tokli Goda ground and they had taken the Birendra

Munduiya and Panchai Munduiya on motorcycle from there. The Bakra Munduiya had told that he has done some puja with the help of Ojha, due to which, his mind was disturbed and the mother of Bibhishan Raidas was also not getting well in spite of her treatment.

37. This witness has further deposed that the dead body of Birendra Munduiya was found in the water of the pond of Dadima village in front of hill and he has identified the accused persons before the Court also. He had gone to see the Panchai Munduiya in Sadar hospital and he had told him about the incident.

38. In his cross-examination, this witness has deposed that he came to know about the incident on 27-08-2012. The Police had taken his statement on 27-08-2012 at about 9:00 a.m in the morning and whatever he has told today, was known to him from the Panchai Munduiya.

39. This witness has further deposed that the motorcycle was Hero Honda Splender and its number was JH-06A-2979. This witness has further denied from this suggestion of defense that as the Panchai Munduiya is his cousin brother, he is falsely deposing before the Court and implicating the accused persons in this case.

40. **P.W. 6 Moyka Sirka** has been declared hostile and he has not deposed anything about the incident.

41. **P.W.7, Dr. M. K. Sinha** has identified the discharge Report of Panchay Munduya issued from MGM College Hospital,

Jamshedpur (Ext.2) and deposed that this discharge report was prepared by Dr. Gauri Shankar Baraik, of orthopedic department and it bears his signature (Ext.2.)

42. Further, in his cross-examination, this witness has deposed that this discharge report was not prepared by him.

43. P.W.8, Parshuram Paswan, has deposed in his examination-in-chief that on 26-08-2012, he was posted as the Officer-in-charge of Tantnagar O.P. At about 22:30 o' clock in the night, he received an information on his phone from Dadima village that two persons have been shot bullet there, out of which, one person has died and one was injured. He entered Sanha No. 348/2012, dated 26- 08-2012 and proceeded for Dadima village at about 22:40 o' clock along with A.S.I. Mahadev Dubey and armed forces. He reached to Dadima village at about 11:15 o' clock where one person was found in serious injured condition. On being interrogated, he was unable to reply clearly and he could hardly say his name as Panchai Munduiya, S/o Manai Munduiya, resident of village Hatnabera, P.S. Jhinkpani from.

44. On being further interrogated, he has stated that Birendra Munduiya has been also shot bullet and killed by his villagers and they have thrown him in check dam of Dadima village.

45. This witness has further deposed that seeing the serious condition of said person, he sent him to the Sadar Hospital along with A.S.I. Mahadev Dubey. Thereafter, he reached to the check

dam, situated in the forest and hillocks outside the village of Dadima along with the armed forces and villagers and tried to search the dead body of deceased in the light of torch but the dead body could not be traced due to night. The A.S.I. Mahadev Dubey got admitted the injured Panchai Munduiya in Sadar Hospital and he returned from there. Thereafter, he returned to Dadima O.P. along with armed forces.

46. On 27-08-2012 at about 7 o’ clock, he again proceeded for village Dadima along with constable Anil Kumar and reached there at 7.30 o'clock and along with the villagers, he went to the check dam situated in the east to the village near the Gaurburu hillock. He started search of the dead body of Birendra Munduiya with the help of villagers and after making a sincere search, the dead body of deceased was found in the western side of check dam at about 9.40 o’ clock. He got the dead body out of pond and examined his body. He found that a bullet was trapped besides the left ear of deceased and there was an injury in the back side of his head of the size 1.5 inch.

47. He prepared inquest report which was in his writing and signature which bears the signature of Sadanand Purty and Pratap Purty (Ext.3). He recovered two khokha of 7.6 MM from the place of occurrence and seized it after preparing seizure list which was in his writing and signature and bears the signature of Sadanand Purty and Pratap Purty also (Ext.4).

48. This witness has further deposed that villagers told him that in the left side of kachcha road of Dadima to Aangariya, beneath the tamarind tree, two motorcycles are standing from the night which may be either of the deceased or of the accused of this case. He took both the motorcycle in his possession. The brother of deceased identified the Yamaha Motorcycle No. BR16S 5133 to be of the deceased Birendra Munduiya whereas another Hero Honda Motorcycle No. JH-06A-2979 was duly seized after preparing seizure list in his writing and signature which bears signature of witnesses Sadanand Purty and Pratap Purty also (Ext.5).

49. This witness has further deposed that the motorcycle of deceased bearing No. BR16S-5133 was handed over to the brother of deceased Lakhindra Munduiya on his request. The constable No. 488 Surajdev Ray brought the fard beyan of Panchai Munduiya from Sadar police station, Chaibasa, on the basis of which, he has registered the instant case U/s 364, 302, 307/34 I.P.C. and Section 27 of Arms Act. He took the charge of investigation of this case and he sent the fard beyan for entering formal F.I.R. in Manjhari P.S.

50. This witness has identified the fardbeyan of informant Panchai Munduiya in the writing and signature of A.S.I. Mahendra Kumar and bearing the thumb impression of informant Panchai Munduiya and has further deposed that the endorsement on this fardbeyan is in his writing and signature

and the second endorsement is in the writing and signature of Binod Oraon (Ext.6).

51. This witness has further deposed that in course of investigation, he had visited the place of occurrence and he has disclosed the details and boundaries of the place of occurrence also. This witness has further testified that he had recorded the statement of witnesses Moyka Sirka on the place of occurrence who had told him that he was going to his village from Tantnagar by his motorcycle and when he came in between the village Aangardiha and Dadima, he heard cry of someone from the side of check dam situated near the Gaurburu hillock and after hearing noise, several people of Dadima village also came there. They went towards check dam and found a person in the way going towards the village and crying. He was injured and there was bleeding from his ear and nose. They brought him to Dadima village and on being asked, the said person could hardly tell his name as Panchai Munduiya and he further told that he is resident of Hatnabera.

52. The said person also told that his co-villagers Vir Singh Munduiya, Ghanshyam Munduiya, Vijay Mundaiya, Bakra Munduiya, Vibhishan Roidas, Subedar Munduiya, Jagdish Devgam, Govind Munduiya, Manoj Munduiya, Sura Munduiya and the Bablu Munda of village Takhta Bazar Jodapokhar have shot bullet to his brother Birendra Munduiya also. He had informed about the incident on phone and seeing the serious

condition of injured, he sent Pratap Purty for arranging vehicle, in the meantime, he went there and he sent the injured to Sadar hospital with government vehicle with the assistance of some boys. Thereafter, he searched the dead body of Birendra Munduiya in check dam but it could not be found on that day and on 27-08- 2012 said dead body has been recovered and sent to Sadar Hospital for postmortem after preparing inquest.

53. This witness has further deposed that he had recorded the statement of witnesses Pratap Purty, Manai Munduiya and Lakhindra Munduiya who supported the prosecution case. He raided for arrest of accused persons but they were found absconding from their houses.

54. This witness has given the details of the first place of occurrence from where, the accused persons had taken the deceased and injured on their Motorcycle to the second place of occurrence and shot bullet to them and thrown them in check dam and further he has also given the details of second place of occurrence also.

55. This witness has further deposed that he had verified the registration of motorcycle No. JH-06A-2979 which was found to be registered in the name of Krishna Munduiya. The accused persons Bakra Mundaiya @ Sidiu, Bir Singh Mundaiya @ Kebeya, Gobind Mundaiya had surrendered before the Court. He obtained the postmortem report of deceased Birendra Mundaiya and injury report of injured Panchai Munduiya from the Sadar

Hospital, Chaibasa and MGM, Hospital. He had taken the accused Bakra Mundaiya @ Sidiu in police remanded for 48 hours and interrogated him but he kept silence.

56. This witness has identified all the accused persons before the Court and has further deposed that after finding the case true he had submitted charge-sheet against the accuse persons 1. Subedar Mundaiya @ Rokonda, 2. Sura @ Naresh Mundaiya (showing them absconder) and the accused persons 3- Bir Singh Mundaiya @ Lebeya, 4- Ghanshyam Mundaiya 5- Bakra Mundaiya @ Sidiu 6- Vijay Mundaiya 7- Vibhishan Roidas (Ravidash) 8- Manoj Mundaiya 9- Jagdish Devgam 10- Gobind Mundaiya and 11- Bablu @ Diku Munda U/s 364, 302, 307/34 I.P.C. and 27 Arms Act.

57. Further, in his cross-examination, this witness has deposed that the Tamarind tree, where the motorcycles were standing, is about 300 yards east from Dadima village and the place where motorcycle standing was visible to the people passing from there. But the motorcycles were standing and hence it could not be apprehended about any incident by seeing the motorcycle. This witness has further said that the village of deceased is situated at about a distance of 5-6 Km from the place of occurrence and except the accused Bablu Munda, all the accused persons are co-villagers of deceased and the house of accused Bibhishan Raidas @ Jagdish is in front of the house of deceased.

58. This witness has further deposed that no incriminating articles were recovered from the possession of accused persons. He had not seized the blood stained cloth of deceased. This witness has further denied from this suggestion of defense that his investigation is defective.

59. P.W.9, Dr. Devi Prasad Hansda has deposed in his examination-in-chief that on 27-08-2012, he was posted at Sadar Hospital, Chaibasa as a Medical Officer. On the same day, at about 1.30 P.M., a dead body of Birendra Mundiya @ Vikram was brought and identified by police No.31 Amit Kumar and he had conducted postmortem and found following anti-mortem injuries:-

(a) Firearms entry wound on scalp right occipital reason 5.5 inch. Posterior to right ear. Size 3 cm. oval in shape with burning and tattooing present. margin inverted.

(b) Firearm exit wound on scalp left temporal region ½ inch below left ear. Size 4 cm. inverted margin with profuse blooding. Bullet trapped in exit wound. Bullet seized and handed over to investigating Police Officer.

(c) Firearm fracturing skull bones and lacerating brain matter during its passage.

Opinion:-

All the above-mentioned injuries are antimortem in nature caused by firearm injury fired from within two feet distance.

Cause of death: - Hemorrhage and shock due to above mentioned injury.

Time since death: - Within 24 hours. (Rigor mortis present in all four limbs). Further this witness has identified the postmortem report in his handwriting and signature which has been marked as Ext.8.

60. Further, in his cross-examination, this witness has deposed that the rigor mortis remains in all the four limbs from 12- 24 hours. Thereafter, it started to disappear gradually. He has mentioned in the postmortem report that firing was done from a distance of 2 feet because he had found the burning and tattooing on the injury of deceased.

61. This witness has further deposed that burning and tattooing will cause if the firing is done from a distance of up to 2 feet. He has denied from this suggestion of defense that he has not correctly stated about the burning and tattooing and his postmortem report is defective.

62. After due appreciations of evidences, the learned trial Court has found the charges proved beyond reasonable doubt against these appellants and accordingly, they were convicted as aforesaid, against which the instant appeal has been preferred.

63. This Court, in order to appreciate the submissions advanced on behalf of the appellants with respect to the culpability of the appellants in commission of crime under Sections 302, 307 and 364 of the Indian Penal Code vis-à-vis the

evidences adduced on behalf of the parties, deems it fit and proper to refer certain judicial pronouncements in context of contentions raised by the appellants.

64. The learned counsel has contended that the learned trial Court, even in absence of corroboration of the testimony of P.W.1 who is self- proclaimed sole injured eyewitness has convicted the appellants which is bad in the eyes of law.

65. In the aforesaid context this Court thinks fit to discuss the evidentiary value of the sole eyewitness.

66. It is settled proposition of law that the judgment of conviction can be passed on the basis of the testimony of sole eyewitness but the testimony of said witness should be trustworthy and inspire confidence in the mind of the Court. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the courts 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. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

67. The law is well settled that the judgment of conviction can be passed also on the basis of the testimony of sole witness but the testimony of said witness should be trustworthy, as per the judgment rendered by Hon'ble Apex Court in the case of ***Bipin***

Kumar Mondal v. State of W.B., (2010) 12 SCC 91, for ready reference, paragraphs 30 to 34 of the said judgment are being referred hereunder as :-

> *"30. Shri Bagga has also submitted that there was sole testimony of Sujit Mondal, PW 1, and the rest i.e. depositions of PW 2 to PW 8, could be treated merely as hearsay. The same cannot be relied upon for conviction.*
> *31. In Sunil Kumar v. State (Govt. of NCT of Delhi) this Court repelled a similar submission observing that: (SCC p. 371, para 9) "9. ... 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 the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But, if there are doubts about the testimony the courts 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. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.*
> *32. In Namdeo v. State of Maharashtra this Court reiterated the similar view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.*
> *33. In Kunju v. State of T.N., a similar view has been reiterated placing reliance on various earlier judgments of this Court including Jagdish Prasad v. State of M.P. and Vadivelu Thevar v. State of Madras.*
> *34. Thus, in view of the above, the bald contention made by Shri Bagga that no conviction can be recorded in case*

of a solitary eyewitness has no force and is negatived accordingly."

68. Likewise, the Hon'ble Apex Court in the case of ***Kuriya and another vs. State of Rajasthan, (2012) 10 SCC 433*** has held as under: -

" 33. ---The Court has stated the principle that, as a general rule, the Court can and may act on the testimony of a single eyewitness provided he is wholly reliable and base the conviction on the testimony of such sole eyewitness. There is no legal impediment in convicting a person on the sole testimony of a single witness."

69. The Hon'ble Apex Court in the case of ***Kalu @ Amit vs. State of Haryana, (2012) 8 SCC 34*** has held as under:-

"11. We find no infirmity in the judgment of the High Court which has rightly affirmed the trial court's view. It is true that the accused have managed to win over the complainant PW 4 Karambir Yadav, but the evidence of PW 5 Ram Chander Yadav bears out the prosecution case. It is well settled that conviction can be based on the evidence of a sole eyewitness if his evidence inspires confidence. This witness has meticulously narrated the incident and supported the prosecution case. We find him to be a reliable witness."

70. Further, it is a settled law that ocular evidence of the victim or the injured is considered as the best evidence. In the case titled as "***State of U.P. v. Naresh" (2011) 4 SCC 324***, the Hon'ble Supreme Court has observed that: -

*"27. The **evidence** of an **injured witness** must be given due weightage being a stamped **witness**, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate*

*someone else. The testimony of an **injured witness** has its own relevancy and efficacy as he has sustained **injur**ies at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an **injured witness** is accorded a special status in law. The **witness** would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the **evidence** of the **injured witness** should be relied upon unless there are grounds for the rejection of his **evidence** on the basis of major contradictions and discrepancies therein. **(Vide Jarnail Singh v. State of Punjab [(2009) 9 SCC 719: (2010) 1 SCC (Cri) 107], Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and Abdul Sayeed v. State of M.P. [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262])."***

71. In the case titled as "***Balu Sudam Khalde Vs. State of Maharashtra" MANU/SC/0328/2023,*** the Hon'ble Supreme Court of India gave observation as to how the testimony of an injured person is to be considered. The relevant paragraph of the aforesaid judgment is being quoted as under:

*"26. When the **evidence** of an **injured** eye-**witness** is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:*

*(a) The presence of an **injured** eye-**witness** at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*

*(b) Unless, it is otherwise established by the **evidence**, it must be believed that an **injured witness** would not allow the real culprits to escape and falsely implicate the Accused.*

> *(c)The* ***evidence*** *of* ***injured witness*** *hasgreater* ***evide****ntiar y value and unless compelling reasons exist, their statements are not to be discarded lightly.*
> *(d) The* ***evidence*** *of* ***injured witness*** *cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
> *(e) If there be any exaggeration or immaterial embellishments in the* ***evidence*** *of an* ***injured witness****, then such contradiction, exaggeration or embellishment should be discarded from the* ***evidence*** *of* ***injured****, but not the whole* ***evidence****.*
> *(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."*

72. The Hon'ble Apex Court, while relying upon the ratio rendered in the case of ***Balu Sudam Khalde v. State of Maharashtra(supra)*** has reiterated the same view in the case of ***Baljinder Singh v. State of Punjab, 2024 SCC OnLine SC 2622*** and has observed that the sworn testimonies provided by injured witnesses generally carry significant evidentiary weight. Such testimonies cannot be dismissed as unreliable unless there are pellucid and substantial discrepancies or contradictions that undermine their credibility. If there is any exaggeration in the deposition that is immaterial to the case, such exaggeration should be disregarded; however, it does not warrant the rejection of the entire evidence.

73. The Hon'ble Apex Court in the case of ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952*** has observed that Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape

and falsely implicate the accused and further if there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence, for ready reference, the relevant paragraphs of the aforesaid order are being quoted herein, which reads as under:

> *"33.When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:*
>
> *"(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
>
> *(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
>
> *(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
>
> *(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
>
> *(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*
>
> *(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."*

74. Thus, from the aforesaid, it is evident that the testimony of an injured solitary eyewitness holds high evidentiary value, often

acting as the sole basis for conviction due to a "built-in guarantee" of their presence at the crime scene and such evidence cannot be easily discarded.

75. Thus, in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the Accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the Accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

76. The learned counsel for the appellants has further contended that since no independent witness has been

examined on behalf of prosecution, therefore the veracity of testimony of sole eyewitness is not fit to be accepted.

77. In the aforesaid context, it needs to refer herein the settled position of law that the examination of independent witnesses is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. The non-examination of any independent witness by the prosecution will not, by itself, go to the root of the matter so as to affect the decision of the Court, unless the testimonies of other witnesses and the evidences brought on record are found scant or insufficient to establish the guilt of the accused. Reference may be made to paragraph-24 of the judgment rendered by the Hon'ble Apex Court in the case of ***Guru Dutt Pathak vs. State of U.P (2021) 6 SCC 116,*** wherein, it has been observed that the credibility of the prosecution case rests upon the reliability of the witnesses examined, and not merely upon the presence or absence of independent witnesses. The relevant paragraphs of the aforesaid judgment are being quoted herein:

> *"24. One another ground given by the learned trial court while acquitting the accused was that no independent witness has been examined.* ***The High Court has rightly observed that where there is clinching evidence of eyewitnesses, mere nonexamination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution.***
>
> *24.1.* ***In Manjit Singh vs. State of Punjab, it is observed and held by this Court that reliable evidence of injured***

> ***<u>eyewitnesses cannot be discarded merely for reason that no independent witness was examined.</u>***
> *24.2. In the recent decision in Surinder Kumar vs. State of Punjab, it is observed and held by this Court that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated.*
> *24.3. In Rizwan Khan vs. State of Chhattisgarh, after referring to the decision of this Court in State of H.P. vs. Pardeep Kumar it is observed and held by this Court that the examination of the independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case."*
>
> (emphasis supplied)

78. In the case of ***Baljinder Singh @ Ladoo and Others Vs. State of Punjab 2024 INSC 738***, the Hon'ble Apex Court has observed that the prosecution's case cannot be dismissed solely on the ground of the absence of independent witness if other cogent and reliable evidences are available on record, for ready reference, the relevant paragraph of the aforesaid judgment is being quoted as under:

> *"30. It has been rightly pointed out by the Trial Court that the prosecution's case is not that people from the surrounding locality gathered at the time of the incident. In the light of the aforenoted decisions of this Court and upon careful examination of the testimonies of P.W.3, P.W.4, and P.W.5, along with the relevant other evidence on record, the prosecution's case cannot be dismissed solely on the ground of the absence of independent witness."*

79. Thus, it is settled connotation of law that where there is clinching evidence of eyewitnesses, mere nonexamination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal

to the case of the prosecution. It has further been observed that reliable evidence of injured eyewitnesses cannot be discarded merely for reason that no independent witness was examined.

80. The learned counsel for the appellant has further raised the issue of contradiction between the ocular and medical evidence, by submitting that the version of P.W.-1, the informant and injured eyewitness, has not been substantiated by the medical testimony insofar as the allegation of number of bullets being fired upon the deceased is concerned.

81. In the aforesaid context, it requires to refer herein the settled proposition of law that if there is a variance in ocular evidence and medical evidence, then, the ocular evidence has to be given preference over medical evidence, unless and until, the medical evidence completely rules out the ocular evidence.

82. The Hon'ble Supreme Court in the case of ***Bhajan Singh v. State of Haryana***, reported in ***(2011) 7 SCC 421*** has held as under:

> *"38. Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."*

83. In the case of ***CBI v. Mohd. Parvez Abdul Kayuum, (2019) 12 SCC 1,*** the Hon'ble Apex Court has reiterated the

same view, for ready reference, the relevant paragraphs of the aforesaid order are being quoted as under:

> *"…. ….. The witness is not supposed to give all these minute details. It is not a case where medical evidence completely improbabilises the ocular evidence; only in that case the ocular evidence has to be discarded, not otherwise. Reliance has been placed on behalf of the accused on Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] thus: (SCC p. 274, para 39)*
>
> *"39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."*
>
> *65. Even otherwise as submitted on behalf of the prosecution that in case of any discrepancy between the ocular or medical evidence, the ocular evidence shall prevail, as observed in Yogesh Singh v. Mahabeer Singh [Yogesh Singh v. Mahabeer Singh, (2017) 11 SCC 195 : (2017) 4 SCC (Cri) 257] : (SCC pp. 217-18, para 43) "43. The learned counsel appearing for the respondents has then tried to create a dent in the prosecution story by pointing out inconsistencies between the ocular evidence and the medical evidence. However, we are not persuaded with this submission since both the courts below have categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eyewitnesses. We hold that there is no material discrepancy in the medical and ocular evidence and there is no reason to interfere with the judgments [Mahabeer Singh v. State of U.P., 2012 SCC OnLine All*

4428] of the courts below on this ground. In any event, it has been consistently held by this Court that the evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. [See Solanki Chimanbhai Ukabhai v. State of Gujarat [Solanki Chimanbhai Ukabhai v. State of Gujarat, (1983) 2 SCC 174 : 1983 SCC (Cri) 379] , Mani Ram v. State of Rajasthan [Mani Ram v. State of Rajasthan, 1993 Supp (3) SCC 18 : 1993 SCC (Cri) 853] , State of U.P. v. Krishna Gopal [State of U.P. v. Krishna Gopal, (1988) 4 SCC 302 : 1988 SCC (Cri) 928] , State of Haryana v. Bhagirath [State of Haryana v. Bhagirath, (1999) 5 SCC 96 : 1999 SCC (Cri) 658] , Dhirajbhai Gorakhbhai Nayak v. State of Gujarat [Dhirajbhai Gorakhbhai Nayak v. State of Gujarat, (2003) 9 SCC 322 : 2003 SCC (Cri) 1809] , Thaman Kumar v. State (UT of Chandigarh) [Thaman Kumar v. State (UT of Chandigarh), (2003) 6 SCC 380 : 2003 SCC (Cri) 1362] , Krishnan v. State [Krishnan v. State, (2003) 7 SCC 56 : 2003 SCC (Cri) 1577] , Khambam Raja Reddy v. Public Prosecutor [Khambam Raja Reddy v. Public Prosecutor, (2006) 11 SCC 239 : (2007) 1 SCC (Cri) 431] , State of U.P. v. Dinesh [State of U.P. v. Dinesh, (2009) 11 SCC 566 : (2009) 3 SCC (Cri) 1484] , State of U.P. v. Hari Chand [State of U.P. v. Hari Chand, (2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112] , Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] and Bhajan Singh v. State of Haryana [Bhajan Singh v. State of Haryana, (2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241 : (2011) 7 SCR 1] .]"

66. The ocular evidence to prevail has also been observed in Sunil Kundu v. State of Jharkhand [Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422 : (2013) 2 SCC (Cri) 427] thus: (SCC p. 432, para 24)

24. In Kapildeo Mandal v. State of Bihar [Kapildeo Mandal v. State of Bihar, (2008) 16 SCC 99 : (2010) 4 SCC (Cri) 203] , all the eyewitnesses had categorically stated that

the deceased was injured by the use of firearm, whereas the medical evidence specifically indicated that no firearm injury was found on the deceased. This Court held that while appreciating variance between medical evidence and ocular evidence, oral evidence of eyewitnesses has to get priority as medical evidence is basically opinionative. But, when the evidence of the eyewitnesses is totally inconsistent with the evidence given by the medical experts then evidence is appreciated in a different perspective by the courts. It was observed that when medical evidence specifically rules out the injury claimed to have been inflicted as per the eyewitnesses' version, then the court can draw adverse inference that the prosecution version is not trustworthy. This judgment is clearly attracted to the present case."

67. Similarly, in Bastiram v. State of Rajasthan [Bastiram v. State of Rajasthan, (2014) 5 SCC 398 : (2014) 2 SCC (Cri) 608] , it was observed: (SCC pp. 407 & 408, paras 33 & 36)

"33. The question before us, therefore, is whether the "medical evidence" should be believed or whether the testimony of the eyewitnesses should be preferred? There is no doubt that ocular evidence should be accepted unless it is completely negated by the medical evidence. This principle has more recently been accepted in Gangabhavani v. Rayapati Venkat Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182] .

36. Similarly, a fact stated by a doctor in a post-mortem report could be rejected by a court relying on eyewitness testimony, though this would be quite infrequent. In Dayal Singh v. State of Uttaranchal [Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583] , the post-mortem report and the oral testimony of the doctor who conducted that examination was that no internal or external injuries were found on the body of the deceased. This Court rejected the "medical evidence" and upheld the view of the trial court (and the High Court) that the

testimony of the eyewitnesses supported by other evidence would prevail over the post-mortem report and testimony of the doctor. --

84. Thus, from the aforesaid settled position of law, it is evident that in any event, unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy and when it comes to Ocular Evidence and Medical Evidence being inconsistent with each other, the settled law is that the ocular evidence must be given primacy, unless medical evidence completely overrules the ocular evidence.

85. Further, the learned counsel for the appellants has contended that there are vital contradiction and omission in the testimony of the P.W.1, informant (Eyewitness) as after alleged occurrence, the names of the accused/appellants were not disclosed by the informant, namely, Pachay Munduiya (P.W.1) at the first time to the villagers of the village Dadima and the name of the accused persons has been taken by the informant for the first time in the hospital in his fardbeyan for falsely implicating the accused.

86. In the aforesaid context, it needs to refer herein that Minor omissions, discrepancies, or improvements in testimony, do not affect the core of the prosecution's case, which cannot be considered fatal to the prosecution's story and or trivial inconsistencies arising from human memory lapses or time gaps are not sufficient to discredit witnesses or destroy the entire case. Further, different witnesses have different capacity to grasp the scene of offence and to respond in court when cross-

examined by the defense counsel at a length in a heated atmosphere.

87. Further, the Hon'ble Apex Court in the case of ***Mukesh Kumar v. State (NCT of Delhi),*** reported in ***(2015) 17 SCC 694,*** at paragraph-8, has held as under:

> *"8. While the slight difference in the initial version of the prosecution and the FIR version has been reasonably explained by the cross-examination of PW 6, it is our considered view that minor discrepancies, embellishments and contradictions in the evidence of the eyewitnesses do not destroy the essential fabric of the prosecution case, the core of which remains unaffected. Even if we have to assume that there are certain unnatural features in the evidence of the eyewitnesses the same can be reasonably explained on an accepted proposition of law that different persons would react to the same situation in different manner and there can be no uniform or accepted code of conduct to judge the correctness of the conduct of the prosecution witnesses i.e. PWs 1 and 2. The relation between PWs 5 and 6 and PWs 1 and 2 and the deceased, in our considered view, by itself, would not discredit the testimony of the said witnesses. There is nothing in the evidence of PWs 1 and 2 which makes their version unworthy of acceptance and their testimony remains unshaken in the elaborate cross- examination undertaken."*

88. Thus, from the aforesaid proposition of law, it is evident that minor discrepancies, embellishments and contradictions in the evidence of the eyewitness do not destroy the essential fabric of the prosecution case, the core of which remains unaffected. But at the same time, it is equally settled that the discrepancies which go to the root of the matter and shake the basic version of the witnesses that can be annexed with due

importance. More so when there is need of corroboration of the testimony of eyewitness from other available evidences, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***S. Govindaraju v. State of Karnataka, (2013) 15 SCC 315.***

89. The learned Counsel for the appellants has further contended that the conviction cannot rests solely on the testimony of a single witness if it lacks credibility, consistency and corroboration, particularly, investigation lapses and in the present case also, the investigation is not proper one as the investigating officer did not prepare any site plan of the place of occurrence and neither collected blood stain nor any weapon of offence has been seized or any witness near the place of occurrence at the time of incident has been interrogated.

90. In the aforesaid context, it needs to refer herein that if the prosecution able to prove the charge beyond all reasonable doubt based upon the cogent testimony of the injured eyewitness, then, some lacuna in the investigation will not vitiate the prosecution case.

91. Further, the settled position of law is that even if the blood stained earth or cloth is not seized due to inadequate amount or not sent for its examination to Forensic Scientific Laboratory but if the prosecution version is supported by the eye witness, the non-sending of the same for its expert examination will not vitiate the prosecution story, as has been held by Hon'ble Apex Court in

the case ***Surendra Paswan v. State of Jharkhand, (2003) 12 SCC 360***. For ready reference, the relevant paragraph is being quoted as under:

> *"9. So far as the non-seizure of blood from the cot is concerned, the investigating officer has stated that he found bloodstained earth at the place of occurrence and had seized it. Merely because it was not sent for chemical examination, it may be a defect in the investigation but does not corrode the evidentiary value of the eyewitnesses. The investigating officer did not find presence of blood on the cot. The trial court and the High Court have analysed this aspect. It has been found that after receiving the bullet injury the deceased leaned forward and whatever blood was profusing spilled over onto the earth."*

92. Likewise, the Hon'ble Apex Court in the judgment rendered in ***Sheo Shankar Singh v. State of Jharkhand and another, (2011) 3 SCC 654*** has held as under:

> *"56. The same view was expressed by this Court in Surendra Paswan v. State of Jharkhand. In that case the investigating officer had not sent the blood samples collected from the spot for chemical examination.* ***This Court held that merely because the sample was not so sent may constitute a deficiency in the investigation but the same did not corrode the evidentiary value of the eyewitnesses."***

93. The law is well settled that if the blood stained earth, and murder weapon have not been seized, the entire prosecution will not fail as has been held by the Hon'ble Apex Court in the case of ***State of Rajasthan vs. Arjun Singh reported in 2011(9) SCC 115,*** wherein, at paragraph 18, it has been held as under:

> *"18. As rightly pointed out by the learned Additional Advocate General appearing for the State that mere non-*

recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pillets, bloodstained clothes etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gunshot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gunshot wounds respectively while Raj Singh (PW 2) also received 8 gunshots scattered in front of left thigh. All these injuries have been noted by the Doctor (PW-1) in his reports Exts. P-1 to P-4."

94. Further, the Hon'ble Apex Court in the case of ***Ram Avtar Rai vs. State of U.P*** reported in ***(1985) 2 SCC 61,*** wherein, at paragraph-10 it has been held, as under:

"10. ..... It is true that bloodstained earth has not been recovered from the scene of occurrence by the investigating officer though as stated earlier the deceased had sustained as many as 5 lacerated injuries besides a number of contusions and abrasions. From the failure of the investigating officer to recover bloodstained earth from the scene of occurrence it is not possible to infer that the occurrence had not taken place in front of the house of the deceased and PW 1. The evidence of PWs 2 and 3 could not, therefore, be rejected as unreliable as has been done by the learned Sessions Judge. ....."

95. Further, the Hon'ble Apex Court in the case of ***Maqbool & Anr. vs. State of A.P.,*** reported in ***(2010) 8 SCC 359*** wherein at paragraph-20 it has been held, as under:

"20. Secondly, not only PW 2 but even other witnesses have stated that there was sufficient light in and around the place of occurrence because of streetlight, light from the house of the deceased, bus-stand and the nursing home. There is no reason for us to disbelieve PW 1, PW 3 and other witnesses who said that there was sufficient

> *illumination at the place of occurrence and the argument advanced by the appellants hardly has any merit.* ***Yes, it was expected of the investigating officer to seize from the place of occurrence such articles or items including the bloodstained earth or empties, which were available even as per his statement. This lacuna in the investigation stands completely covered by the statement of the witness, the medical report and the eyewitness version."***

96. It is, thus, evident that the law is well settled that merely because the perfunctory investigation, the prosecution case will not vitiate if the prosecution version is being supported by the credible testimony of the eyewitness.

97. It needs to refer herein that since the learned trial Court while convicting the preset appellants has taken aid of the Section 34 IPC, therefore it is considered view of this Court that at this juncture, it would be apt to discuss the core of Section 34 of the IPC. Regarding the question of common intention, capable of being formed within spur of the moments, profitable reference may be made to paragraph-26 of the decision of the Hon'ble Apex Court in ***Krishnamurthy alias Gunodu and Ors. vs. State of Karnataka (2022) 7 SCC 521.*** Paragraph-26, being relevant, is quoted hereunder:

> *"26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be*

prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants."

(emphasis supplied)

98. Section 34, IPC underlines that when a criminal act is done by two or more persons in furtherance of common intention, each of them is liable for the act done as if it were done by him alone.

99. This Court is of the considered view that there cannot be a fixed timeframe for the formation of common intention. It is not essential for the perpetrators to have convened prior meetings to

conspire or to have made elaborate preparations for the crime. The common intention to commit murder may arise even moments before the commission of the act. Since common intention is essentially a mental state of the perpetrators, it is inherently difficult to substantiate by direct evidence. It must, therefore, be inferred from the conduct of the accused immediately before, during, and after the commission of the act.

100. The Hon'ble Apex Court in the case of ***Baljinder Singh @ Ladoo and Others Vs. State of Punjab (supra)*** has observed that the determination of common intention or common object should primarily be within the domain of the trial courts, and at the most the high courts. It should not be the role of this Court to directly adjudicate issues of common intention and common object, for ready reference the relevant paragraph is being quoted as under:

> *"21. Be that as it may, the determination of common intention or common object should primarily be within the domain of the trial courts, and at the most the high courts. It should not be the role of this Court to directly adjudicate issues of common intention and common object. This Court has, in a catena of decisions, elaborated on the differences between section 149 and section 34, IPC; the overlapping nature of section 149 and section 34, IPC; and when can the offence under section 302 read with section 149, IPC be changed to section 302 read with section 34, IPC. Such decisions do provide suitable guidance for the lower courts to draw from, to reach their conclusions."*

101. In the case of ***Chittarmal vs. State of Rajasthan (2003) 2 SCC 266,*** the Hon'ble Apex Court has observed that the non-

applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all, for ready reference, the relevant paragraph is being quoted as under:

> *"14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus, they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. [See Barendra Kumar Ghosh v. King Emperor, AIR 1925 PC 1, Mannam*

Venkatadari v. State of A.P., (1971) 3 SCC 254, Nethala Pothuraju v. State of A.P., (1992) 1 SCC 49, Ram Tahal v. State of U.P., (1972) 1 SCC 136]."

(emphasis supplied)

102. The learned counsel has emphatically contended that no any independent person in the near vicinity of the alleged occurrence has been examined by the prosecution, therefore, the prosecution story lacks credibility.

103. In the aforesaid context, it needs to refer herein that the Hon'ble Apex Court in case of ***Sheelam Ramesh v. State of A.P., (1999) 8 SCC 369*** in Para -18 has categorically held that even if other persons present nearby were not examined, the evidence of the eyewitnesses cannot be discarded. Courts are concerned with quality and not with quantity of evidence. For ready reference, the relevant paragraph is being quoted as under:

"18. According to learned counsel for the accused appellants, though PW 3 has deposed that 10-15 persons were in the vicinity at the time of occurrence, no independent witness was examined by the prosecution. There is nothing on evidence to show that there was any other eyewitness to the occurrence. ***Having examined all the eyewitnesses even if other persons present nearby were not examined, the evidence of the eyewitnesses cannot be discarded.*** *Courts are concerned with quality and not with quantity of evidence and in a criminal trial, conviction can be based on the sole evidence of a witness if it inspires confidence."*

104. In the backdrop of the aforesaid discussions on the proposition of law as well as the factual aspects of the instant case, this Court is required to consider the following issues:—

(i) *Whether the material as has come in course of trial is sufficient to attract the offence committed under Section 302/307/364 read with 34 of the Indian Penal Code against the present appellants?*

(ii) *Whether the only sole testimony of an injured eyewitness is sufficient enough to prove the alleged charges against the appellants beyond all reasonable doubt.*

(iii) *Whether the testimony of the sole injured eyewitness can be discarded on the basis of perfunctory investigation like non sending of blood stain cartridge or non-seizure of the blood stain from the place of occurrence.*

(iv) *Whether the variation between the medical and ocular evidence is sufficient enough to dismiss the prosecution case that too then the said alleged occurrence was witnessed by the sole injured eye-witness.*

105. Since all the aforesaid issues are inextricably interlinked, therefore, the same are being decided hereinbelow by considering them together.

106. On a careful scrutiny of the aforesaid oral testimony of the prosecution witnesses, this Court finds that the prosecution case rests substantially upon the ocular account of P.W.-1, Panchai Mundaiya, who himself is a victim and an eyewitness to the incident. It is established that P.W.-1 was taken to the place of occurrence by the accused persons along with the deceased, and that gunshot injuries were inflicted upon him from close

range. He has categorically deposed that he witnessed the entire incident unfold. In his examination-in-chief, particularly in paragraphs-4 and 5, P.W.-1 has narrated the sequence of events with specificity, thereby lending direct support to the prosecution version. He has categorically deposed in para 4 and 5 of the testimony that the Bir Singh @ Leviya Munduiya, Jagdish Devgam, Ghanshyam Munduiya, GovindMunduiya, Vijay Munduiya, Vibhishan Ravidas, Tela, Manoj Munduiya, Bakra Munduiya, Subedar Singh Munduiya, Naresh Munduiya and Babu Munda restrained him in the way and the Bakra Munduiya told him that you have done some pooja, due to which, our mind is disturbed. The Ghanshyam Munduiya got him sat on his motorcycle and the Birendra Munduiya and Vijay Munduiya were on another motorcycle. They took him in the Darima village on the check dam near the forest and they made the Birendra Munduiya (deceased) and this witness to sat on a stone. The Bakra Munduiya asked from him that what type of pooja you have done? Thereafter, the Bakra Munduiya shot three bullets from a pistol on the “Kanpatti” (Templed) of Birendra Munduiya and the accused Bibhishan Raidas shot two bullets on the “Kanpatti” of this witness.

107. Furthermore, P.W.-1 has duly identified all the accused persons before the Court and has distinctly disclosed the specific role played by each of them in the commission of the offence. His testimony has remained consistent on these material aspects

even during cross-examination. In paragraph 19 thereof, he has categorically stated that when the accused persons restrained him on the way, no other person was present at that time, and he was forcibly made to sit upon the motorcycle by them.

108. Thus, upon due consideration, this Court finds that P.W.-1, Panchai Munuiya, had ample opportunity to observe all the accused persons during the incident. The fact that he himself sustained gunshot injuries on vital parts of his body (*kanpatti*) fortifies his presence at the place of occurrence at the relevant time. In view of the consistency of his testimony and the corroborative circumstances, there appears no reason to disbelieve the oral testimony of this witness.

109. The statement of P.W.-1 further stands corroborated by the oral testimony of P.W.-8, Parasuram Paswan, the Investigating Officer of the case. He has deposed before the Court that on 26-08-2012, at about 10:30 a.m., he received information regarding the incident on his mobile phone, and thereafter, upon reaching Darima village at about 11:15 a.m., he found the informant in an injured condition. The Investigating Officer has categorically stated that the condition of the injured was very serious and he was unable to suitably reply at that time. P.W.-8 has further deposed with specificity that upon interrogation, the injured informant could scarcely utter his name and address owing to his grave condition.

110. The aforesaid statement of P.W.-1, Panchai Munduiya, stands fully corroborated by the medical evidence on record. P.W.-1 has categorically deposed that accused Bakra Munduiya fired three bullets at the kanpatti (temple region) of the deceased Birendra Munduiya. The post-mortem report of the deceased (Exhibit-8) substantiates this account, recording firearm injuries over the skull of the deceased.

111. The doctor who conducted the post-mortem has opined that the injuries were antemortem in nature and were caused by shots fired from a distance of within two feet.

112. It has further been recorded in the post-mortem report that one bullet was found lodged in the exit wound, which was duly removed and handed over to the Investigating Officer. In addition, the Investigating Officer seized two fired cartridges (khokha) from the place of occurrence. Taken together, these circumstances clearly establish that P.W.-1, Panchai Munduiya, is an eyewitness to the incident. These facts also reinforce the correctness of testimony of P.W.1 regarding the details of the occurrence and the distinct role played by each of the accused in committing the offence.

113. The statement of P.W.-1, Panchai Munduiya, regarding the firing of two bullets at his *kanpatti* by accused Vibhishan, finds corroboration in the medical testimony of P.W.-4, Dr. Mahabir Prasad Gopalika. The doctor, upon examining the informant and injured P.W.-1, noted two round hole injuries measuring 5 mm

and 3 mm respectively, having dark and brown colour ring round the injuries and felt hard mobile small body over the left side of nose near medial canthus of left eye and at sub mental area below chin of the Panchay Munduiya (P.W.1).

114. P.W.-4, Dr. Mahabir Prasad Gopalika, has further deposed that the injured patient was referred to M.G.M. Medical College and Hospital, Jamshedpur, for better treatment. The discharge report issued from the said hospital (Exhibit-2) clearly records that gunshot injuries were found on the person, P.W.-1, Panchai Munduiya, the informant, and a bullet was removed.

115. The resemblance between the injuries found on the dead body of the deceased and those sustained by the informant, P.W.-1, Pachay Munduiya, fully corroborates the testimony of P.W.1. It conclusively establishes that P.W.-1 was present at the place of occurrence, who himself is a victim of the incident and he personally witnessed the accused persons committing the offence. In light of such corroboration, there appears no reason to disbelieve or discard the oral testimony of this witness.

116. Insofar as the non-disclosure of the names of the accused persons to the police by the informant on the night of the occurrence, and the alleged delay in recording the fardbeyan, is concerned, this Court finds that P.W.-8, Parsuram Paswan, the Investigating Officer, has stated in his examination-in-chief that upon receiving information about the incident, when he reached village Darima at about 11:15 p.m., he found one person (P.W.1)

in an injured condition who was extremely serious and the said person was not in position to speak. For ready reference, the said part of testimony of P.W.8, is being quoted herein which reads as under:

> *"1. दिनांक 26.08.2012 को मैं तांतनगर ओ०पी प्रभारी के रूप में पदास्थापित था। उस दिन रात्रि 22:30 बजे मोबाईल फोन पर ग्राम दाड़िमा से सूचना मिली कि यहां दो व्यक्तियों का गोली मार दी है। जिसमें एक व्यक्ति की मृत्यु हो गयी है तथा एक घायल है। इस सूचना का सनहा संख्या 348/12 दिनांक 26.08.2012 दर्ज किया तथा सूचना के आवश्यक कर्रवाई हेतु स०अ०नि महादेव दुबे, एवं सशस्त्र बल के ग्राम दाड़िमा के लिए 22:40 बजे प्रस्थान किया। रात्रि करीब 11:15 बजे ग्राम दाड़िमा पहुंचा। जहां एक व्यक्ति का काफी गम्भीर स्थिति में जख्मी पाया। उसे पूछताछ करने पर वह स्पष्ट जबाब देने में असमर्थ था। 1. दिनांक 26.08.2012 को मैं तांतनगर ओ०पी प्रभारी के रूप में पदास्थापित था। उस दिन रात्रि 22:30 बजे मोबाईल फोन पर ग्राम दाड़िमा से सूचना मिली कि यहां दो व्यक्तियों का गोली मार दी है। जिसमें एक व्यक्ति की मृत्यु हो गयी है तथा एक घायल है। इस सूचना का सनहा संख्या 348/12 दिनांक 26.08.2012 दर्ज किया तथा सूचना के आवश्यक कर्रवाई हेतु स०अ०नि महादेव दुबे, एवं सशस्त्र बल के ग्राम दाड़िमा के लिए 22:40 बजे प्रस्थान किया। **रात्रि करीब 11:15 बजे ग्राम दाड़िमा पहुंचा। जहां एक व्यक्ति का काफी गम्भीर स्थिति में जख्मी पाया। उसे पूछताछ करने पर वह स्पष्ट जबाब देने में असमर्थ था।----"***

117. Thus, having regard to the statement of P.W.-8 as well as the injury report and discharge report of the informant (Exhibits-1 and 2 respectively), this Court finds that it cannot reasonably be expected of a person who has sustained such grievous injuries to immediately furnish a detailed *fardbeyan* to the police narrating the entire incident.

118. In such circumstances, the foremost priority of any prudent person would naturally be the preservation of life. The aforesaid fact stands corroborated by the medical records of the informant. The mental state and physical condition of the informant after sustaining such injuries and facing such an occurrence can readily be imagined.

119. It is evident that as soon as the informant regained the ability to speak, his *fardbeyan* was recorded in the hospital. Accordingly, there is nothing unnatural in this regard, and the alleged delay in recording the *fardbeyan* has been satisfactorily explained. The same, therefore, has no fatal impact upon the prosecution case.

120. It has been contended by the learned counsel for the appellants that no independent witness has been examined by the prosecution and that the informant has falsely implicated the accused persons owing to previous enmity. It is urged that, in such circumstances, the sole testimony of the informant cannot form the basis for conviction of the appellants.

121. In the aforesaid context, it is pertinent to observe that the alleged incident occurred at a secluded place near the dam, situated within the forest area and was executed in a planned manner after the deceased and the informant were taken there at such late hours of the night. In these circumstances, it is quite natural that no independent witness would be available at the scene of occurrence.

122. Furthermore, the presence of the informant at the place of occurrence and the fact of his sustaining serious gunshot injuries on the vital part of his body (kanpatti) stand firmly established by both ocular and medical evidence.

123. It has also come on record through the testimony of P.W.-8, Investigating Officer Parasuram Paswan, that it was the informant who first disclosed that the accused persons had shot Birendra Munduiya and had thrown his body into the pond, from which the dead body was subsequently recovered. The discharge report (Exhibit-2) further confirms that a bullet was surgically removed from the informant's injury. In these circumstances, it is neither possible nor conceivable that such injuries could have been self-inflicted merely to falsely implicate the accused. The very fact of the informant sustaining gunshot injuries is itself indicative that he is both an eyewitness and a victim of the incident, and there appears no reason to suspect or disbelieve his testimony.

124. Furthermore, it needs to refer herein that examination of independent witnesses is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Guru Dutt Pathak vs. State of U.P (supra)***, ratio of the said case has already been discussed and mentioned in the preceding paragraphs.

125. Further, the learned counsel for the appellants has sought to assail the testimony of the sole injured eyewitness, P.W.-1, by relying upon the post-mortem report, wherein it has been noted that Firearms entry wound on scalp right occipital reason. 5.5 inch. Posterior to right ear. Size 3 cm. oval in shape with burning and tattooing present.

126. It has further been noted that Firearm exit wound on scalp left temporal region ½ inch below left ear. Size 4 cm. inverted margin with profuse blooding. Bullet trapped in exit wound. Bullet seized and handed over to investigating Police Officer.

127. On the strength of this medical opinion, it has been contended that P.W.-1 has categorically stated that three firearm shots were fired upon the scalp of the deceased by the accused, but such assertion has not been substantiated by medical evidence. It is, therefore, argued that the entire foundation of the prosecution case stands vitiated.

128. It needs to refer herein that this witness (P.W.1) is an injured sole eyewitness and as per the settled position of law the testimony of an injured solitary eyewitness holds high evidentiary value, often acting as the sole basis for conviction due to a "built-in guarantee" of their presence at the crime scene. Such evidence is not easily discarded unless major irreconcilable contradictions exist, as they are unlikely to implicate false perpetrators. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their

statements are not to be discarded lightly, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Balu Sudam Khalde v. State of Maharashtra (Supra).***

129. Admittedly, the injuries found by P.W.-9 do not fully conform to the number of firearm shots as stated by P.W.-1. The question, therefore, arises as to whether such inconsistency is vital enough to discard the entire evidence of the sole injured eyewitness.

130. It is a settled proposition of law that in the event of variance between ocular and medical evidence, the ocular testimony must ordinarily be accorded primacy, unless the medical evidence completely rules out the ocular version. This principle has elaborately been discussed in the preceding paragraphs.

131. So far as the variation between ocular and medical evidence is concerned, it is evident from the post-mortem report (Exhibit-8) that the deceased died of firearm injuries. The record further shows that the post-mortem examination was conducted within hours of the occurrence, as reflected in Exhibit-8. Moreover, from the medical examination of the informant and the discharge slip (Exhibit-2), it stands established that the informant also sustained firearm injuries, which is corroborated by the injury report (Exhibit-1) and the discharge slip (Exhibit-2). Thus, the testimony of the sole injured eyewitness, P.W.-1, on the

material point that the deceased died due to firearm injuries, has been fully substantiated by the medical evidence.

132. We are conscious with the settled position of law as discussed and referred in the preceding paragraphs that in cases where medical evidence completely overrules and makes the ocular evidence completely improbable, the evidence must be considered by the Court in that light and the ocular evidence may be disbelieved but herein, the testimony of P.W.1 injured eyewitness having no material discrepancy.

133. P.W.-8, Parsuram Paswan, the Investigating Officer, has deposed in his examination-in-chief that upon receiving information about the incident, when he reached village Darima at about 11:15 p.m., he found P.W.-1 in an injured condition, whose state was extremely serious and who was not in a position to speak. Having regard to the statement of P.W.-8, as well as the injury report and discharge report of the informant (Exhibits-1 and 2 respectively), this Court finds that it cannot reasonably be expected of a person who has sustained such grievous injuries to be in a mental state capable of memorising and narrating each and every aspect of the incident.

134. Further, it needs to refer herein that the moment when such type of incident occurs in front of any person, then, at that time, his mindset is not in normal stage and when they give their testimony in the Court, he just memorizing the incident and states in front of trial court and as such, in that situation the

Court cannot expect that such witnesses will testify graphic detail of the incident.

135. Thus, on the basis of discussions made hereinabove, discrepancies as raised by the learned counsel for the appellants, are not of such a nature as to render the testimony of the sole injured eyewitness unbelievable or unreliable.

136. On the basis of discussions made hereinabove, this Court is of the considered view that the contention of the learned counsel for the appellant in relation to discrepancies between medical and ocular evidence is so vital that demolished the case of the prosecution, is not fit to be accepted herein.

137. Further, it is settled position of law that in order to render any witnesses' testimony as unreliable, the inconsistencies shall be material one and of such a nature that they create substantive doubts in the mind of the court towards the story or the chain of events as sought to be established by the prosecution but herein the testimony of P.W.1 is unimpeachable and there is no chink in the prosecution case, therefore the benefit of doubt cannot be given to the appellants reason being that it is well-settled principle that the benefit of the doubt must be based on rational and cogent grounds and mere conjectures or irrelevant inconsistencies cannot form the basis for acquittal when the evidence, viewed as a whole, points to the guilt of the accused/appellants.

138. In view of the settled position of law, as discussed and referred in the preceding paragraphs, it is pertinent to note that the Hon'ble Apex Court has consistently held that where the evidence of an injured eyewitness is cogent, credible, and nothing material has been elicited in cross-examination to demolish such testimony, reliance upon the statement of the injured witness, is justified. In such circumstances, conviction of the accused can be sustained solely on the basis of the testimony of the injured eyewitness.

139. Further, as per the settled position of law as discussed and referred in the preceding paragraphs it is evident that there is no legal impediment in convicting a person on the sole testimony of a single witness provided, he is wholly reliable. Herein in the instant Case, P.W.1, being injured eyewitness has fully substantiated the prosecution version and the testimony of P.W.1 has fully been corroborated by the testimony of P.W.4, P.W.8 and P.W.9.

140. At this juncture, it requires to refer herein the settled position of law that the prosecution is not required to meet any and every hypothesis put forward by the accused. The Hon'ble Supreme Court in the case of ***State of Punjab Vs. Karnail Sing*** reported in ***(2003) 11 SCC 271*** has held that the prosecution is not required to meet any and every hypothesis put forward by the accused. It must grow out of the evidence in the case. If a case is proved perfectly, it can be argued that it is

artificial, and where the case has some flaws inevitable because human beings are prone to err, it is argued that it is a doubtful story. Proof beyond reasonable doubt is a guideline, not a fetish. A judge does not preside over a criminal trial merely to see that that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both undefined are public duties.

141. Thus, on the basis of the aforesaid discussion and appreciation of the evidence, this Court finds that the prosecution has successfully established that the appellants had abducted the informant, Panchai Munduiya, as well as the deceased, Birendra Munduiya, from Ashura to village Darima and thereafter, the appellants committed the murder of Birendra Munduiya by shooting him with firearms and further caused gunshot injuries to the informant with such intention, knowledge, that, death had been caused, in furtherance of their common intention.

142. This Court, after having discussed the factual aspect and legal position and considering the finding recorded by the learned trial Court, is of the view that the learned trial Court after giving its thoughtful consideration to the testimony of sole injured eye witness (P.W. 1) being corroborated by the testimony of doctor (P.W.9 and P.W.4) and P.W.8 Investigating Officer has come to the conclusion that the prosecution has been able to prove the charges beyond all shadow of doubt against the

present appellants, therefore, the judgment of conviction/sentence requires no interference by this Court.

143. On the basis of discussions made hereinabove, this Court is of the view that these appeals are bereft of any merit and therefore, stand dismissed.

144. Consequent upon dismissal of these appeals, appellants, namely, Bir Singh Mundaiya @ Kebeya @ Vir Singh Munduiya @ Lebiya @ Bir Singh Munduiya (appellant in Criminal Appeal (DB) No.963 of 2017) Vijay Mundaiya, Jagdish Devgam, Manoj Mundaiya @ Tella & Ghanshayam Mundaiya (appellants in Criminal Appeal (DB) No.1094 of 2017), Govind Mundaiya (appellant in Criminal Appeal (DB) No.922 of 2018) and Vibhishan Raidas @ Ravidas @ Jagdish (Cr. Appeal (DB) No.1269 of 2017), since, are enjoying the suspension of sentence after order passed by this Court directing to release them during pendency of these appeals, the bail bonds of these appellants are hereby cancelled and these appellants are directed to surrender before the learned trial Court for serving out the sentence passed against them.

145. Needless to say, that if the appellants, namely Bir Singh Mundaiya @ Kebeya @ Vir Singh Munduiya @ Lebiya @ Bir Singh Munduiya, Vijay Mundaiya, Jagdish Devgam, Manoj Mundaiya @ Tella, Ghanshayam Mundaiya, Govind Mundaiya and Vibhishan Raidas @ Ravidas @ Jagdish will not surrender, the learned trial Court will take endeavors for securing custody of

these appellants to serve out the sentence as inflicted by the learned trial Court.

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

147. Pending interlocutory application(s), if any, also stands disposed of.

I Agree

(Sujit Narayan Prasad, J.)

(Anubha Rawat Choudhary, J.)

(Anubha Rawat Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated: 13/05/2026
Rohit/-**A.F.R.**
Uploaded on 14.05.2026