

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B) No. 474 of 1998(P)
with

Cr. Appeal (D.B) No. 477 of 1998(P)

(Against the judgement of conviction dated 28.07.1998 and the order of sentence dated 29.07.1998 passed by the learned 6th Addl. Sessions Judge, Dumka in Sessions Case No. 306 of 1995)

Nundeo Mehra son of Jhalku Mehra, resident of village-Amlachatar, P.S-Jama, Sub-Division and District-Dumka

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

[In Cr. Appeal (D.B) No. 474 of 1998(P)]

1. Naresh Mehra, son of late Phagu Mehra
2. Shankar Mehra, son of Jhalku Mehra
Both residents of village-Amla Chatar, P.S-Jama, Sub-Division, District-Dumka.
3. Jai Kant Mehra son of Lukhu Mehra R/o Village- Gaddi Virajpur, P.S-Jarmundi, Sub-Division and District-Dumka

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

[In Cr. Appeal (D.B) No. 477 of 1998(P)]

Versus

The State of Bihar (now Jharkhand) **Respondent**
(in both the cases)

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellants : Mr. Parambir Singh Bajaj, *Amicus Curiae*
[in both the cases]

For the State : Mr. B.N. Ojha, Spl. P.P
[in Cr. Appeal (DB) No.474 of 1998(P)]
Mr. Anup Pawan Topno, APP
[in Cr. Appeal (DB) No.477 of 1998(P)]

C.A.V On 06.02.2026

Pronounced on 12/03/2026

Per Sujit Narayan Prasad, J.

1. Since both the appeals arise out of the common judgment of conviction dated 28.07.1998 and the order of sentence dated 29.07.1998 passed by

the learned 6th Addl. Sessions Judge, Dumka in Sessions Case No. 306 of 1995, as such they have been tagged and taken up together for analogous hearing and are being disposed of by this common order.

2. It needs to mention herein that the appellants in Criminal Appeal (DB) No.477 of 1998 (P), namely, the appellant no.2-Suresh Mehra, appellant no.3-Jhalku Mehra, appellant no.5-Dinesh Mehra, appellant no.7-Lukhu Mehra and appellant no.8-Lakxman Mehra had died during pendency of the said appeal and, as such, vide order dated 05.02.2026, the appeal being Criminal Appeal (DB) No.477 of 1998 (P) stands abated against these appellants.

Prayer

3. These appeals under section 374(2) of the Code of Criminal Procedure, 1973 are directed against the judgment of conviction dated 28.07.1998 and the order of sentence dated 29.07.1998 passed by the learned 6th Addl. Sessions Judge, Dumka in Sessions Case No. 306 of 1995 whereby and whereunder the appellant, namely, Nundeo Mehra [in Cr. Appeal (DB) No.474 of 1998(P)] has been convicted under section 302 of the Indian Penal Code and sentenced to undergo life imprisonment for the said offence whereas the alive appellants in Cr. Appeal (DB) No.477 of 1998(P), namely, Naresh Mehra, Shanker Mehra and Jai Kant Mehra have been convicted under sections 148 of the Indian Penal Code and sentenced to undergo RI for two years for the said offence.
4. The prosecution story, in brief, as per the *fardbayan* dated 23.02.1995 of the informant Daya Devi (P.W-6), is that on 22.02.1995 at 9 PM, informant Daya Devi and her husband Kisto Mehra (P.W.-5), after having their meals were sitting at the *dhaba* (Verandah) of their house and an earthen lamp was burning. At that time, accused/ appellant-Nundeo Mehra

armed with a *bhujali*, Shankar Mehra armed with a knife, Jhalku Mehra with axe and Laxman Mehra, Suresh Mehra, Naresh Mehra, Dinesh Mahra, Lukhu Mehra and Jaikant Mehra, all armed with *lathi* entered the house of the informant and Nundeo Mehra, Shankar Mehra and Jhalku Mehra called out the name of the informant's husband and said that they would kill Kisto Mehra, upon which Kisto Mehra fled away. Thereafter, all the accused persons came to the *dhaba* (Verandah) and searched for Kisto Mehra.

5. It is further stated in the *fardebayan* of the informant that when the accused persons could not find the husband of the informant, then Nundeo Mehra, Shankar Mehra and Jhalku Mehra dragged out Santu Mehra(deceased), aged about 65 years, the father-in-law of the informant, who was sleeping inside the room and Nundeo Mehra assaulted with *bhujali* on the forehead, neck and nose and killed him. It is alleged that Laxman Mehra removed a silver neckless from the person of the informant, Lukhu Mehra took out silver *payals* from the box of the informant and Jaikant Mehra took away Rs. 800/-from another box, Dinesh Mehra removed a brass *lota* and *thali*. Thereafter, all the accused persons flee away, whereafter the informant raised *halla* upon which co-villagers came and she narrated the occurrence to them about killing of her father-in-law.
6. It is stated in the *fardebayan* that the motive for the aforesaid occurrence was that there were an old enmity and litigation with Nundeo Mehra and Jhalku Mehra due to which the accused persons murdered the father-in-law of the informant.
7. On the basis of the *fardebayan* of the informant, Jama P.S. Case No. 16 of 1995 dated 23.02.1995 was registered under sections 302/380/34 of the IPC against the accused persons. After investigation, the police submitted

the charge sheet against the accused/appellants for the offences under sections 147, 148, 149, 448, 380 and 302 of IPC and cognizance of the offence was taken and the case was committed to the Court of Sessions.

8. Charges were framed against the accused persons/ appellants, namely, Nundeo Mehra, Shankar Mehra, Jhalku Mehra, Lakshman Mehra, Suresh Mehra, Naresh Mehra, Dinesh Mehra, Lukhu Mehra and Jai Kant Mehra under sections 149 IPC r/w 302 IPC and 148 of IPC. Separate charge was framed under section 380 of the IPC against the appellants, namely, Lakshman Mehra, Lukhu Mehra, Jai Kant Mehra and Dinesh Mehra and thereafter, the trial commenced and at the conclusion of trial appellants were convicted and sentenced as aforesaid.
9. The aforesaid order of conviction and sentence is under challenge in these appeals.

Submission of the learned counsel for the appellants:

10. Learned *Amicus Curiae* appearing for the appellants have taken the following grounds for interfering with the finding recorded by the learned trial Court in the impugned judgment:

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

(ii) The further ground has been taken that the conviction of the appellant Nundeo Mehra, is under sections 302 of the Indian Penal Code but no any cogent evidence has been laid by the prosecution, as such, there cannot be any conviction against this appellant.

(iii) It has been contended that though the informant is claimed to be an eye witness but as per the prosecution story, on seeing the assault by these appellants on her father-in-law, the informant did not come forward to save him nor at the time of occurrence she

raised any *hallah*, rather she raised *hallah* after fleeing away of the appellants from the place of occurrence, which is suspicious itself since the informant herself has stated in her *fardbayan* that there was inimical term in between her family and the appellants.

(iv) It has been contended that on the fateful night of the alleged occurrence it was about 9 PM and admittedly an earthen lamp was burning. The informant has stated that she had seen the appellant-Nundeo Mehra who assaulted her father-in-law with *bhujali* in the light of the earthen lamp and other appellants armed with *lathi*, axe and knife were standing near the place of occurrence, but the said earthen lamp was not seized by the police nor it was exhibited, as such, the statement of the informant is concocted one, only to falsely implicate the appellants in the present case due to inimical term.

(v) It has been contended that the appellants are alleged to have been convicted on the basis of the statement of sole eye witness, i.e., the informant whose credential is doubtful as both the parties were in inimical terms and, hence, appellants have been implicated in the present case due to prior enmity between the parties, as such, conviction of the appellants is not justified in the eyes of law.

(vi) It has been contended that conviction of the appellants namely, Naresh Mehra, Shankar Mehra and Jai Kant Mehra, under section 148 of IPC is not sustainable in absence of any specific overt act said to be committed by these appellants.

(vii) It has been contended that that the deposition of the other witnesses, except the informant, on the point of occurrence is doubtful for the reasons that none of the witnesses had seen the

occurrence and they are only the hearsay witness and most of them have denied that they were present at the place of occurrence and, as such, the story being concocted with a purpose to falsely implicate the appellants cannot be ruled out.

11. The learned Amicus *Curiae*, based upon the aforesaid grounds, have submitted that the judgment of conviction passed by the learned trial Court convicting the appellant in Criminal Appeal (DB) No.474 of 1998 (P), namely, Nundeo Mehra under section 302 of the Indian Penal Code and, the alive appellants in Criminal Appeal (DB) No.477 of 1998 (P), namely, Naresh Mehra, Shankar Mehra and Jai Kant Mehra, under section 148 of IPC, therefore, is not sustainable and fit to be set aside.

Submission of the learned counsel for the State:

12. On the contrary, the learned counsels appearing for the State has defended the impugned judgment of conviction and order of sentence by taking the following grounds:

(i) The conviction of the appellant Nundeo Mehra under section 302 of the IPC and remaining other appellants under section 148 of IPC does not suffer from an any error, since, ample evidence has been produced by the prosecution.

(ii) Informant himself had seen that the appellant, namely, Nundeo Mehra who had brutally assaulted her father-in-law with *bhujali* due to which he died whereas other appellants were standing near the place of occurrence armed with *lathi*, knife and an axe and, as such, appellant in Criminal Appeal (DB) No.474 of 1998(P), namely, Nundeo Mehra has been rightly convicted under section 302 of the Indian Penal Code and the alive appellants in

Criminal Appeal (DB) No.477 of 1998(P), namely, Naresh Mehra, Shankar Mehra and Jai Kant Mehra under section 148 of the Indian Penal Code and, as such, the impugned judgment does not require any interference.

(iii) The argument has been advanced that the ample material has been produced by the prosecuting agency who established the case under sections 302 of the Indian Penal Code so far as the appellant- Nundeo Mehra is concerned since the fact has come in course of evidence produced by P.W.-6, the informant, that the appellants called her husband with intention to kill him but he fled away and when the appellants did not find her husband in the house, they dragged her father-in-law outside from his room and the appellant, Nundeo Mehra assaulted him with *bhujali* on his neck, forehead and nose due to which he died whereas other appellants were standing near the place of occurrence. Therefore, the learned trial Court has rightly convicted the appellants as aforesaid.

(iv) The argument has also been advanced that P.W.-6, the informant, who is said to be the eye witnesses has supported the prosecution version supported by the medical evidence.

(v) It has been contended that the inquest report witnesses PW8-Baleshwar Mehra and PW9- Jeevan Hembrom have fully supported the prosecution case.

13.The learned State counsels, based upon the aforesaid premise, has submitted that the impugned judgment so far as these appellants are concerned, does not suffer from any error and does not require any interference, hence, these criminal appeals are fit to be dismissed.

Analysis:

14. We have heard learned counsel for the parties, perused the documents available on record as also the finding recorded by the trial Court in the impugned judgment.
15. We have also gone through the testimonies of the witnesses as available in the trial Court records as also the exhibits appended therewith.
16. Learned trial Court, based upon the testimonies of witnesses, has passed the judgment of conviction and has convicted the appellant in Criminal Appeal (DB) No.474 of 1998(P), namely, Nundeo Mehra under Sections 302 of the Indian Penal Code and sentenced him to undergo RI for life for the said offence and the alive appellants in Criminal Appeal (DB) No.477 of 1998(P), namely, Naresh Mehra, Shankar Mehra and Jai Kant Mehra for the offence under Section 148 of the Indian Penal Code and sentenced them to undergo RI for two years for the said offence.
17. This Court, before considering the argument advanced on behalf of the parties, is now proceeding to consider the testimonies of witnesses which have been recorded by the learned trial Court.
18. It is evident from the record that in order to substantiate the case, the prosecution has altogether examined ten witnesses out of whom P.W6- Daya Devi, is the informant of the case and daughter-in-law of the deceased; P.W.-1 Kalidas Mehra; P.W.-2 Badri Sao; P.W.-3 Gopal Mehra; P.W.-4 Modi Rai, P.W-5 Kisto Mehra, who is the informant's husband and son of the deceased; P.W-7 Aklu Kunwar, is the investigating officer; P.W8-Baleshwar Mehra @ Baleshwar Das and P.W-9 Jeevan Hembrom are the inquest report witnesses and P.W.-10 Dr. Subhan Murmu had conducted postmortem over the dead body of the deceased.

19. On the other hand, to defend their cases, the appellants have also examined two witnesses who are, D.W.-1-Maheshwar Pandey and D.W.-2 Shambhu Mehra.
20. P.W.-1-Kalidas Mehra, is hostile witnesses. He has stated in his evidence that on the day of occurrence at about 7-8 P.M., in the night, he heard *halla* from the house of Santu Mehara (deceased) and ran towards his house and on reaching there he saw Santu Mehra, laying in an injured condition, in front of his door and he was dead. At that time, Santu Mehra's son, namely, Kisto Mehra (P.W.-5) was not at his house and he had fled away, but Kisto's wife was at home. Kisto's wife (Daya Devi-informant) had told that she had identified the accused, but she would disclose the name of the accused later on. P.W.-1 further stated that accused persons are his cousin brother. P.W.-1 was declared hostile by the prosecution.
21. In his cross-examination by the defense, P.W.-1 has stated that when he reached at Daya Devi's house, Kisto Mehra was not present in his house and after half an hour Kisto Mehra came to his house and at that time he was shivering and on enquiry, Kisto said that he was feeling cold. P.W.-1 also told that Kisto had come to his home after bathing from the pond and he was wearing only vest and brief. P.W.-1 further stated that when he reached Daya Devi's house, Daya Devi and her mother were present there, but they were not weeping and hence, he understood that they were happy.
22. In his cross-examination by the prosecution, P.W.-1 stated that he had not told to the *daroga jee* that Kisto Mehra had returned to his house after half an hour after taking bath from the pond as *daroga jee* had not asked him about it.
23. P. W-2 Badri Sao has stated in his evidence that the occurrence took place last year and it was cold night on Wednesday and at that time he was at

his house. On hearing *halla*, he went to the house of Santu Mehara (deceased) and saw Santu Mehra in an injured condition in his house and he was dead. P.W.-2 further stated that at that time Kisto Mehra and Kisto Mehra's wife (Daya Devi-informant) was there and none of them had said about name of the assailants. He further stated that quarrel was continuing between both the parties, from long before, but, he does not know the reason for quarrel.

24.P.W.-2 in his cross-examination, stated that the deceased and his son used to live separately and the food was cooked separately. He has further stated that Kisto Mehra came after he reached there and at that time Kisto Mehra was wearing underwear only and he was wet. P.W.-2 further stated that he had a conversation with Kisto Mehra and Daya Devi (the informant).

25. P.W.-3-Gopal Mehra, is hostile witness. He has stated in his evidence that incidence occurred last year and it was winter night and he was at his house. He heard *halla* from the house of Santu Mehra and he went there and there he saw Santu Mehra in an injured condition and he was dead and significant amount of blood was spilled there. P.W.-3 further stated that at that time, Santu Mehra's daughter-in-law (Daya Devi-informant) was in the house and when he reached, Daya Devi started weeping.

26.In his cross-examination by the defence, P.W.-3 stated that when he was at the home of Kisto Mehra, at that time Kisto Mehra was not in his home and he came after half an hour and at that time he was not wearing anything and he was only in underwear. P.W.-3 further stated that there was prior enmity between the parties.

27.P.W.-4 Modi Rai in his evidence stated that at the time of incidence, it was 8 -8.30 P.M in the night and he was at his home. On hearing *hallah*

from Santu Mehra's home, he reached there and saw the dead body of Santu Mehra with cut injuries on his head and neck. He has stated that Daya Devi (informant) and her child were present there but the wife of the deceased was not present there at that time. He has stated that on being asked from the informant she told him that *dacoits* had come. He has stated that there was no quarrel in between Santu Mehra (the deceased) and his son Kisto Mehra.

28.P.W.5-Kisto Mehra is the son of the deceased. He has stated in his evidence that incidence is of 22.02.1995 and it was Wednesday night. After taking meal, at about 9 PM, he along with his wife and son were sitting at their door and the door was open and his father, after taking meal, was sitting inside the room. At that time, some persons entered the courtyard of his house after breaking *tati (bamboo fencing)* of the east of his house. P.W.-5 further stated that 8-9 persons had entered the courtyard out of which he had identified accused Nundeo Mehra, who was armed with *bhujali* and Nundeo Mehra was calling where is Kisto Mehra (P.W.-5) giving life threats upon which he fled away through the window situated at south of the verandah to save himself. He has stated that he identified Nundeo Mehra in the light of the earthen lamp.

29. At para-2, he had deposed that on that day, his mother was not present in the house as she went to her daughter's house. At para-4 he has stated that after 10-15 minutes when he returned to his house on hearing *hallah*, he saw his father was lying dead with cut injuries on neck and face, in front of the door and none of the accused persons was present there. At para-5 he has stated that on earlier occasion the accused Nundeo Mehra had entered his house and tried to outrage modesty of her wife for which he lodged a case against him. Nundeo Mehra, had also lodged one case

against him. P.W.-5 further stated that due to these reasons and due to land dispute, in between the accused Nundeo Mehra and him, the accused persons had killed his father.

30.P.W.-5 in his cross-examination, has denied the suggestion that he had stated before the police that at the time of occurrence he sat at the door along with his wife only and not with his son and also regarding breaking of the *tati* by the accused while entering his house. At para-9 he has stated that he did not tell the police about the molestation of his wife by the accused-Nundeo Mehra for which a case was lodged against him. At para-10 he has stated that he flew away from the house through window and hide himself in a *Palash* tree situated in front of window and denied the suggestion that he did not tell the police about the same.

31. At para-11, he denied the suggestion that he did not tell the police about identification of the accused Nundeo Mehra in the light of earthen lamp. At para-13, he has denied the suggestion that he himself had murdered his father and went to the pond to wash away the blood on his body thereafter he returned naked and his wife created a rumour that his father Santu Mehra had been killed by criminals and on the next day they had falsely implicated the accused persons due to enmity.

32. P.W.-6 Daya Devi is the informant herself. She has stated in her evidence that the occurrence took place about one year ago and it was *Phalgun* and the day was Wednesday and it was 9 PM. After taking meal, she was sitting with her husband at her *dhaba* (verandah), which is in the courtyard of her house. In the meantime, breaking the bamboo door of her house, accused Nundeo Mehra armed with *bhujali*, accused Shankar Mehra armed with knife, Jhalku Mehra armed with an axe and Laxman Mehra, Dinesh Mehra, Naresh Mehra, Suresh Mehra, Lukhu Mehra and Jai Kant

Mehra all armed with *lathi*, entered there and she identified the accused persons in the light of burning earthen lamp.

33. At para-3, she has stated that Nundeo Mehra, Jhalku Mehra and Shankar Mehra called out the name of her husband (P.W.-5) and using abusive language stated “*Niklo Tumko Jaan se Maar Denge*” upon which her husband fled away through the window. On her sought, her father-in-law came out of his room upon which Nundeo Mehra, at the door of the room itself, assaulted him with *bhujali* and other accused persons, armed with *lathi* and other weapons, were standing near her and due to assault, her father-in-law fall down due to the injury. Informant further stated that after committing murder of her father-in-law, accused Laxman Mehra snatched away her silver neckless, Dinesh Mehra took away *lota-thali*, Jai Kant Mehra took out Rs.850/- from her box and Lukhu Mehra removed her silver anklets (*payal*) from box and thereafter, accused persons fled away. After that, she raised *hallah* upon which co-villages Modi Rai, Gopal Mehra, Kali Mehra, Badri Shah etc. came and asked her the names of the assailants, then, she told them that she identified the accused, but since she feared life threats, hence, she would disclose the name of the assailants only at police station. She has also stated that her husband (P.W.-5) had ran away out of fear of his life and he returned back when the co-villagers arrived.

34. In her cross-examination, the informant has stated that her statement was recorded twice by *daroga jee*, first at the police station and second time, her statement was recorded at her house. Informant further stated that she had witnessed the occurrence and her husband did not witness the occurrence. After raising *hallah*, her father-in-law ran towards outside from his room. She has stated that she gave statement to the police that

Nundeo Mehra, Jhalku Mehra and Shankar Mehra had dragged out her father-in-law from the room and Nundeo Mehra had assaulted with *bhujali* on his neck, forehead and nose. At para-15, she has denied the suggestion that she had not told *daroga jee* that co-villagers asked to her about the assailants, then she had told that since she feared life threats and she would disclose the name of the assailants only at police station. At para-16, she has denied the suggestion that she had told *daroga jee* about enmity with the defendants. At para-19 and 20 she has denied that her father-in-law did black magic(exorcism) due to which many persons came to her house and she had in contact with these persons, due to which her father-in-law objected and he used to live in another separate courtyard. At para-23, she has stated that *daroga jee* had seen the earthen lamp at her house. At para-25 she has stated that *daroga jee* had seized the blood stained earth from the dead body.

35. P.W.-7 Aklu Kunwar, is the investigating officer of the case.

Investigating Officer has stated in his evidence that on 12.02.1995, he was posted at Jama police station on the post of A.S.I. He has proved the signature and writing of Mahendra Prasad Gupta, the officer-in-charge on the formal F.I.R, which has been marked as Ext.-2. Investigating officer has identified the inquest report, which is in his writing and signature and it was prepared in front of two witnesses Balewshwar Das and Jivan Mehra. The inquest report was marked as Ext.-3. Investigating officer has further identified his writing and signature on the seizure list of blood-soaked earth, which was marked as Ext.-4.

36. Investigating officer has described the place of occurrence stating that the place of occurrence is situated at village Amla Chatar and in the eastern side Harijan Tola. He has stated that the house of the informant was made

up of mud and *khapra* facing towards the eastern side. He has stated that to enter this house, there is a path from the north-west which is paved with bamboo and palm leaves. There is courtyard (*aangan*) inside the house and there was an exit towards southern side of courtyard and there was Verandah with doors adjacent to the east. Investigating officer has stated that informant in her *fardbayan* has mentioned about this Verandah by saying it *dhaba* where she was sitting with her husband and from adjoining this Verandah, there is *dhaba* (Verandah), in which there was a space for window which was about 3 to 4 feet.

37. At para-5, investigating officer has stated that it was informed that informant's husband had fled away through this window. Investigating officer has denied the suggestion that P.W.-1 Kalidas Mehra and P.W.-3 Gopal Mehra had stated before him that P.W.-5 Kistu Mehra had reached at the place of occurrence after half an hour.

38. In his cross-examination, Investigating Officer stated that he had seized the bloodstained earth but the same was not sent for its chemical examination and he did not seize the earthen lamp.

39. P.W.-8-Baleshwar Mehra @ Baleshar Das is the witness of inquest report, who has identified and proved his signature over it which has been marked as Ext-6. He has stated that *daroga jee* had read and explained to him the inquest report and he had put his signature over it.

40. P.W.-9 Jeevan Mehra is another witness to the inquest report. P.W.-9 has identified his signature on the inquest report, which has been marked as Ext.-6/1.

41. P.W.-10 Dr. Subhan Murmu, is the doctor who had conducted postmortem over the dead body of Santu Mehra on 24.02.1995 and found the following injuries on the body of Santu Mehra:

- (i) *Sharp cutting incised circular wound over forehead extending from the left side of the occipital region measuring 12" x 2" x one deep.*
- (ii) *Sharp cutting incised wound over the left side of the face extending from the left eye to left ear lobule measuring 8" x 1 ½" x bone deep with fracture of the zygomatic bone.*
- (iii) *Sharp cutting incised wound over the front of the neck measuring 4" x 2" x tracheal cut.*
- (iv) *Sharp cutting incised wound over the vault to the scalp measuring 3" x 1 ½" x bone deep.*

Cause of death- *In his opinion, the death was caused due to hemorrhage and has opined that the above injuries were sufficient to cause death and has stated that weapon used could be sharp cutting weapon, may be "bhujali" and the time elapsed since death was within 24 hours.*

42. On the other hand, the defence has also examined two witnesses D.W.-

1 Mahendra Pandey and D.W.-2-Shambhu Mehra. Both these defense witnesses have stated in their evidence that when they had reached at the place of occurrence, thereafter, Kesto Mehra, came there and he was in wet condition as Kesto Mehra, had come after taking bath and he was only in underpant.

43. Now, this Court is adverting to the contention of the learned counsel for the parties wherein the learned counsel for the appellants has mainly taken the ground that due to old dispute in between the appellants and the informant's family, they have been falsely implicated in the case and that the informant with connivance with his husband had killed Santu Mehra (deceased) as Santu Mehra objected the relationship of the informant with the persons who came to his house for the purpose of exorcism.

44. On the other hand, learned APP appearing for the State has stated that the discrepancies so pointed out by learned counsel for the appellants are not enough to disbelieve the prosecution story.

45. This Court, on the basis of the aforesaid factual aspect vis-a-vis argument advanced on behalf of parties, has to decide the legality and propriety of the impugned judgment of conviction and order of sentence particularly

whether the informant P.W.-6 who is the sole eye witness of the case, is trustworthy and reliable, to convict the accused/ appellant in Criminal Appeal (DB) No.474 of 1998(P), namely, Nundeo Mehra under Section 302 of IPC and the other alive appellants in Criminal Appeal (DB) No.477 of 1998(P), namely, Naresh Mehra, Shanker Mehra and Jai Kant Mehra under sections 148 of IPC.

46. This Court finds from the impugned judgment that learned trial Court has convicted the appellants relying on the deposition of the informant P.W.-6 Daya Devi, who is the daughter-in-law of the Santu Mehra (deceased). Learned trial Court observed that P.W.-6 is the sole eyewitness of the occurrence and there is consistency in the informant's statement as to manner of assault and place of occurrence, which the defense has not been able to erode.

47. Before we analyse and appreciate the circumstances that have weighed with the trial Court, this Court think it apposite to refer to certain authorities pertaining to evidentiary value of the sole eyewitness.

48. 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.

49. 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-honored 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.

50. 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***, 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 negated accordingly."

51. 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."

52. Further, the Hon'ble Apex Court in the case of ***Kalu @ Amit vs. State of***

Haryana, (2012) 8 SCC 34 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."

53. The Hon'ble Apex Court in case of ***Sheelam Ramesh v. State of A.P.,***

(1999) 8 SCC 369 in Para -18 held as follows:-

"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."

54. Thus, on the basis of the aforesaid discussion, it is apparent that the conviction can be based on the evidence of a sole eyewitness if his evidence inspires confidence reason being that Courts are concerned with quality and

not with quantity of evidence and in a criminal trial as per the statute there is no legal impediment on relying upon the testimony of sole eyewitness.

55. At this juncture, it would be pertinent to examine the testimony of the alleged sole eyewitness P.W.-6 Daya Devi, who is the informant of the case, in the backdrop of aforesaid legal proposition.

56. Hence, this Court is now proceeding to examine the evidence of the informant-P.W.-6 Daya Devi vis-a-vis the Investigating Officer-P.W.-7 particularly as to place of occurrence and manner of assault more specifically from where informant had seen the alleged assault on Santu Mehra (deceased) by the accused/appellant Nundeo Mehra by *bhujali* resulting in death of the deceased.

57. Informant P.W.-6 Daya Devi has stated in her examination-in-chief that on the day of occurrence at 9 PM, after taking meal, she was sitting with her husband Kisto Mehra (P.W.-5) at her *dhaba* (Verandah) and the said *dhaba* (Verandah), is in the courtyard of her house itself. In the meantime, breaking the bamboo door of her house, accused/appellant Nundeo Mehra, armed with *bhujali*, and other accused persons/appellants armed with lathi and knife had entered into her house and she identified the accused persons in the light of burning earthen lamp. Accused persons called out the name of her husband Kisto Mehra (P.W.-5), upon which her husband fled away through the window. On informant's *halla*, informant father-in-law (Santu Mehra) came out of his room upon which Nundeo Mehra (appellant herein), assaulted him with *bhujali* at the door of the room itself, as a result Santu Mehra sustained injury and died.

58. But, ongoing through the evidence of the investigating officer P.W.-7, this Court finds that investigating officer has given description of the place of occurrence according to which there is *aangan* (courtyard) in the

informant's house and to the north of the courtyard, there is cow shed fitted with door, in the south there is room fitted with door and Verandah and in the east there is cow shed which is without door and in the west, there is way to exit from inside the house to outside and adjacent to this way, there is a room with door, in the north, which is the house of Santu Mehra (deceased) and others and attached to this room there is Verandah in the west from where there is way to exit to the west and which has door.

59. Hence, from the evidence of the investigating officer, this Court finds that Santu Mehra (deceased) was living in a separate house situated in the western side of the informant's courtyard, in which there is room in the northern side of it and attached to this room there is Verandah in the west from where there is way to exit and in the front of the door, deceased dead body was found.

60. The fact of living of deceased in a separate house has been substantiated by the P.W.2 who in his cross-examination of P.W.-2 has stated that the deceased and his son used to live separately and the food was cooked separately.

61. Further, ongoing to the inquest report Ext.-3, this Court finds that body of the deceased was found lying on the ground in the west, on the western door of the deceased house, in the west facing house of the informant.

62. Hence, from the evidence of the Investigating Officer P.W.-7 and inquest report Ext.-3, fact emerges that dead body of Santu Mehra (deceased) was found on the exit of the deceased house, then, in such a situation the question arises that how informant can witness the alleged occurrence from her courtyard. Further in the aforesaid situation the vivid description given by the informant that during the alleged assault by the accused/appellant-Nundeo Mehra, other accused persons were standing

near her and were armed with weapons and threatened her not to raise *halla*, not appears to be true.

63. Thus, the veracity of the prosecution case on the point that the deadly assault on the deceased was alleged to be made by the accused/appellant-Nundeo Mehra has not been established beyond reasonable doubt.

64. Further, this Court finds contradiction in the evidence of the informant. This Court also finds that informant in her *fardebayan* had specifically stated that at the time of occurrence her father-in-law Santu Mehra (deceased) was sleeping in his room and accused/appellants Nundeo Mehra and Shanker Mehra had dragged him out of his room and had assaulted him near the door of the room.

65. But, Contrary to this statement made in her *fardebayan*, informant has stated in her examination-in -chief that on hearing *halla*, her father-in- law came out from his room and he was assaulted at the door of the room.

66. Hence, this contradiction in the evidence of the informant as to whether Santu Mehra (deceased) was dragged out of his room by the accused/appellants or Santu Mehra himself had come out of his room, amount to material contradiction in the evidence of the informant and, that too, when informant has been projected as sole eye witness of the case on basis of which conviction of the accused/appellants have been made.

67. Thus, from the aforesaid discussion, this Court is of the considered view that the testimony of the informant P.W.-6 who had been claimed as sole eyewitness is not fully trustworthy and reliable.

68. Further, this Court finds that conduct of the informant's husband Kisto Mehra, who was examined as P.W.-5 was also unrealistic during the entire occurrence. Kisto Mehra (P.W.-5) in his cross- examination had stated that he escaped from his house through the window and hide himself in a *Palash*

tree. But, contrary to this statement of Kisto Mehra (P.W.-5), this Court finds that P.W.-2 had reached to the deceased house on hearing *halla* and in his cross-examination P.W.-2 stated that Kisto Mehra came after he had reached at the deceased house and at that time Kisto Mehra (P.W.-5) was wearing underwear only and he was in wet condition.

69. The aforesaid fact had also been corroborated from the deposition of D.W.-1 Mahendra Pandey and D.W.-2-Shambhu Mehra. Both these defense witnesses have stated in their evidence that when they had reached at the place of occurrence, thereafter, Kesto Mehra, came there and he was in wet condition as Kesto Mehra, had come after taking bath and he was only in underpant.

70. At this juncture it needs to refer herein the settled connotation of law that the defence witness is also to be given equal weightage as is to be given to the prosecution witnesses as has been held by Hon'ble Apex Court in the case of *Munshi Prasad v. State of Bihar, reported in (2002) 1 SCC 351* at para 3 which reads hereunder as:

“3. Without attributing any motive and taking the evidence on its face value, therefore, it appears that the place of occurrence was at 400-500 yards from the place of Panchayat and it is on this piece of evidence, the learned advocate for the State heavily relied upon and contended that the distance was far too short so as to be an impossibility for the accused to be at the place of occurrence — we cannot but lend concurrence to such a submission : a distance of 400-500 yards cannot possibly be said to be “presence elsewhere” — it is not an impossibility to be at the place of occurrence and also at the Panchayat meet, the distance being as noticed above : the evidence on record itself negates the plea and we are thus unable to record our concurrence as regards acceptance of the plea of alibi as raised in the appeal. Before drawing the curtain on this score, however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and

treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution — a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors' witnesses."

71. Further, the Hon'ble Apex Court has reiterated the same view in a judgment rendered in the case of ***Mahendra Singh v. State of Madhya Pradesh reported in (2022) 7 SCC 157.***

72. Further it has categorically come in the evidence of P.W. 1, although he had been declared hostile, who has stated that when he reached at Daya Devi's house (P.W.6), Kisto Mehra was not present in his house and after half an hour Kisto Mehra came to his house and at that time he was shivering and on enquiry, Kisto said that he was feeling cold. This witness has also deposed that Kisto (P.W.5) had come to his home after bathing from the pond and he was wearing only vest and brief.

73. At this juncture, it needs to refer herein that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***C. Muniappan and Ors v. State of T. N reported in AIR 2010 Supreme Court 3718.***

74. Thus, the from the testimony of P.W.1 also, it is evident that the conduct of P.W.5 cannot be said to natural reason being that it is beyond imagination that the person who are in fear of his life will go to take bath.

75. Thus, on the basis of the discussion made hereinabove, this Court is of the view that since the testimony of P.W.6 is not fully trustworthy and further the testimony also appears not fully reliable in the pretext of his conduct as discussed hereinabove in the paragraphs, is of the view that the present appellants are eligible for benefit of doubt.

76. It needs to refer herein that the Hon'ble Apex Court in catena of decisions has propounded the proposition that in the criminal trial, there cannot be any conviction if the charge is not being proved beyond all reasonable doubts, therefore, this Court has to see whether this case falls under the law, as propounded by Hon'ble Apex Court, in the case of ***Rang Bahadur Singh & Ors. Vrs. State of U.P., [(2000) 3 SCC 454]*** or not, wherein it has been held that a criminal Court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. For ready reference, paragraph-22 of the judgment is quoted as under:-

“22. The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all concerned. At the same time, we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime.”

77. Likewise, the Hon'ble Apex Court in the case of ***Krishnegowda & Ors. Vrs. State of Karnataka (2017) 13 SCC 98***, has held at paragraph-26 as under: -

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

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

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

79. Likewise, the Hon'ble Apex Court in the case of ***Krishnegowda v. State of Karnataka*** (Supra) at paragraph- 32 and 33 has held as under:-

"32. --- --- The minor variations and contradictions in the evidence of the eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of the prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets the benefit of doubt.

33. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Bentham, "witnesses are the eyes and ears of justice.-----"

80. It needs to refer herein that the Hon'ble Apex Court, in the case of *Allarakha K. Mansuri v. State of Gujarat* reported in (2002) 3 SCC 57 has laid down the principle that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted, for reference, paragraph 6 thereof requires to be referred herein which reads hereunder as :-

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

81. It needs to refer herein before laying down the aforesaid view, the Hon'ble Apex Court in the case of *Sharad Birdhichand Sarda v. State of Maharashtra* reported in (1984) 4 SCC 116 has already laid down the same view at paragraph 163 which is required to be referred which read hereunder :

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

82. This Court, after having discussed the factual aspect and legal position, is of the view that the learned trial Court on the basis of wrong assumption and surmises had come to the finding that the testimony of the informant P.W.-6 is trustworthy and reliable and based upon that convicted the appellants, therefore the same is required to be interfered with.

83. Thus, in the entirety of the facts and circumstances, this Court is of the view that the prosecution failed to prove the charges beyond all reasonable

doubt against the appellants, for the reasons and grounds, as discussed hereinabove.

84. Accordingly, the impugned judgment of conviction dated 28.07.1998 and the order of sentence dated 29.07.1998 passed by the learned 6th Addl. Sessions Judge, Dumka in Sessions Case No. 306 of 1995, cannot sustain and are hereby set aside.

85. In consequence thereof, the instant appeals stand allowed.

86. Since the appellants are on bail, as such the appellants are acquitted of their criminal liability and discharged from the liability of their bail bonds.

87. This Court is thankful to Mr. Parambir Singh Bajaj, *Amicus Curiae*, for his assistance rendered to this Court. Member Secretary, Jharkhand State Legal Services Authority, Ranchi, shall pay remuneration to the learned *Amicus Curiae*, as per rules.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

*Jharkhand High Court,
Dated: 12/03/2026
Sudhir
AFR*