

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B) No. 145 of 1998 (R)

(Against the judgment of conviction dated 07.04.1998 and the order of sentence dated 13.04.1998 passed by the learned 5th Addl. Sessions Judge, Hazaribagh in Sessions Trial No. 105 of 1991)

1.Kishun Nayak, son of Jhabban Nayak
2.Guru Charan Nayak, son of Jhabban Nayak
3.Ganesh Nayak, son of Jhabban Nayak
4. Mathura Nayak, son of Jhabban Nayak
5.(Smt.) Munna Devi, wife of Ganesh Nayak
All residents of village Choube, P.S-Barkattha, District-Hazaribagh
..... ... **Appellants**
Versus
The State of Bihar ... **Respondent**

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

For the Appellants : Mr. B.M Tripathi, Sr. Advocate
Mr. Naveen Kr. Jaiswal, Advocate
For the State : Mrs. Nehala Sharmin, Spl.PP

C.A.V on 09.04.2026 **Pronounced on 04/05/2026**

Per Sujit Narayan Prasad, J.

1. The instant appeal under section 374(2) of the Code of Criminal Procedure is directed against judgment of conviction dated 07.04.1998 and the order of sentence dated 13.04.1998 passed by the learned 5th Addl. Sessions Judge, Hazaribagh in Sessions Trial No. 105 of 1991 whereby and whereunder the appellants, named above, have been convicted under sections 148, 302/34 and 307/34 of the Indian Penal Code and sentenced to undergo RI for life under section 302/34 of the Indian Penal Code, RI for 10 years under section 307/34 of the

Indian Penal Code and RI for 3 years under section 148 of the Indian Penal Code and all the sentences shall run concurrently.

2. Before proceeding further, it is pertinent to mention that the appellants, namely, Jagdish Nayak, Hulo Nayak and Rama Nayak have died during the pendency of the instant appeal and, as such, the present appeal *qua* the aforesaid appellants were abated vide order dated 06.04.2026, passed by this Court.

Factual Matrix

3. The prosecution case was instituted on the *fardbayan* of the informant Tulsi Nayak (P.W.-5) son of late Atwari Nayak of village Choubey, P.S Barkattha, District-Hazaribagh recorded on 05.07.1990 at 11 hrs., at Choubey Middle School.

4. The informant has stated in his *fardbeyan* that on 05.07.1990 at about 5:00 AM, he had gone towards Tara Ahar for easing. There he heard *halla* coming out from the side of Middle School. On hearing *halla*, as soon as, he went to the north of the middle School, he saw accused persons, namely, Kishun Nayak armed with tangi; Jagdish Nayak armed with lathi; Gurucharan Nayak armed with *berchha*; Ganesh Nayak armed with lathi; Mathura Nayak armed with tangi; Chatri Nayak (since dead) armed with lathi; Hulo Nayak armed with lathi, Rama Nayak armed with *berchha* and Munna Devi armed with tangi, had surrounded his father Atwari Nayak (deceased) from all around and were assaulting his father on the road.

5. The Informant further alleged that just before he reached there, his two brothers, namely, Sahdeo Nayak (P.W.-3) and Rameshwar

Nayak (P.W.-1), had reached there and were trying to save their father. The informant by raising *halla* tried to save his father and his brother. At this, the accused persons chased him to assault and threatened him to kill. Then, informant out of fear did not go there and went near his new house and began raising *halla* from there. His father wanted to run away from there to save his life, then accused Kishun Nayak and Mathura Nayak with *tangi* and *berchha* respectively assaulted on his father's head with intention to kill him as a result of which his father fell down.

6. Thereafter, the accused persons, namely, Jagdish Nayak (since dead), Gurucharan Nayak, Ganesh Nayak, Chatri Nayak (since dead), Hulo Nayak (since dead), Rama Nayak (since dead) and Munna Devi with their weapons, *lathi*, *berchha* and *tangi* continued assaulting his father. His both brothers fell on his father and covered him, but, the accused persons continued assaulting his father. On *halla*, Nakul Choudhary (P.W.-2), Nanhak Nayak and informant's mother Bandhani Devi (P.W.-4) came there and on seeing them, accused persons fled away. When informant along with aforesaid persons reached near his father, he found his father in pool of blood and later on he died. He had injuries over his head with *tangi* and *berchha* and both the hands of his brothers Rameshwar Nayak (P.W.-1) was fractured and blood was oozing out from the mouth and nose of his brother Sahdeo Nayak (P.W.-3).

7. The informant had stated the cause of occurrence was land dispute relating to partition of land with the accused persons, who are

their *agnate*. It is further alleged that on 04.07.1990 the cattle of the accused person had grazed the paddy seedlings in the field of the informant and the informant had given the cattle in the cattle pond, which annoyed the accused persons and to fulfill the old grudge committed murder of his father and also attempted to commit murder of his two brothers.

8. On the basis of the *fardbeyan* of the informant, a formal FIR being Barkattha P.S. Case No.39 dated 05.07.1990 was registered against the appellants under sections 147/148/323/325/341/307/302 of IPC. After investigation, the police submitted charge sheet against the accused persons/appellants for the offences under sections 147/148/149/323/324/325/326/4/341/307/302 of the IPC and after cognizance, the case was committed to the Court of Sessions.

9. Charges were framed against the accused persons/appellants under sections 148, 302/34 and 307/34 of the IPC to which the accused/appellants pleaded not guilty and claimed to be tried.

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

11. The aforesaid order of conviction and sentence is under challenge herein.

Submission of the learned senior counsel for the appellants:

12. Learned senior counsel for the appellants has taken the following grounds for interfering with the findings recorded by the learned trial Court in the impugned judgment:

(i) The learned trial Court has decided the case from a wrong angle of vision and, thus, came to an erroneous decision.

(ii) The prosecution has failed to prove the time, place and manner of occurrence.

(iii) It has been contended that the evidence of the witnesses is highly contradictory, hence, finding of conviction arrived at by the learned trial Court cannot be sustained in law.

(iv) It has been contended that there are serious discrepancies in the medical evidence and prosecution case and the same casts a serious doubt on the prosecution case and the manner of occurrence.

(v) It has been contended that PW-1, PW-2, PW-3 and PW-5 having stated in their evidence that they gave detailed information on reaching Barkatha Police Station on 05.07.1990 which was recorded, being the First Information Report, but, it has not been brought on record, hence, cast serious doubt on the entire prosecution case.

(vi) It has been contended that subsequent *fardbeyan* of PW-5 forming part of the F.I.R. marked as Exhibit-2 recorded at village Choube could not be a First Information

Report under law and the same being after-thought and could not be taken as the First Information Report of the case, under Law.

(vii) It has been contended that the learned trial Court seriously erred in law in not appreciating that on the face of consistance evidence of PW-1, PW-2 and PW-3 and PW-5 that informant Tulsi Nayak (P.W.-5) gave his statement on reaching Barkatha Police Station on 05-07-1990 and the same having been recorded, the subsequent version of the PW-5 informant before the police after reaching at village Choube after 5 hours of the occurrence could not be treated as First Information Report under Law.

(viii) It has been contended that the learned trial Court has failed to take into consideration that the prosecution having suppressed the earlier First Information Report which could have thrown light on the first and foremost version of the prosecution case.

(ix) Learned counsel also submitted that Investigating Officer had not mentioned the hour of recording of statement of particular witnesses in the case diary and hence, raises suspicion in the prosecution case.

(x) It has been contended that the prosecution has failed to produce the copy of the Station Diary entry regarding the information got by P.W.-6 before proceeding to village Choube, i.e., the place of occurrence, and the learned trial

Court could have drawn adverse inference against the prosecution for withholding material documents.

(xi) It has been contended that P.W.-1 having not named Ganesh Nayak among one of the accused being present at the place of occurrence and, as such, the prosecution has failed to prove its case regarding his presence at the place of occurrence.

(xii) It has been contended that it is apparent from the testimony of P.W.-1, P.W.-2, P.W.-3, P.W.-4 and P.W.-5 that they had reached at the place of occurrence after the incident occurred and, as such, they are not the eye witnesses and they have falsely implicated the appellants due to previous dispute and enmity.

(xiii) It has been contended that the medical report and post-mortem report as well as the medical evidence of doctors (P.W.-7 and P.W.-8) did not support the manner of occurrence.

(xiv) It has been contended that it is the prosecution case that the appellants, namely, Guru Charan Nayak and Mathura Nayak assaulted the deceased with *berchha* but non-finding of any pointed injury on the body of deceased or injured witnesses itself falsifies the case of prosecution regarding assault upon the deceased and injured witnesses with *berchha*.

(xv) It has been contended that neither any bloodstained earth nor any expert report regarding human bloodstained earth was produced and proved during trial to show that there was any assault on the place of occurrence causing bleeding injury and in absence of it, the learned trial Court has erred in coming to the conclusion by holding the appellants guilty of murder which is not sustainable in the eyes of law.

(xvi) It has been contended that the inquest report has not been produced and proved during the trial and, as such, the prosecution has failed to prove its case beyond reasonable doubt.

(xvii) It has been contended that after the occurrence many people assembled there as the place of occurrence was within the radius of dense population as it is the middle of the village but no independent witness was examined to prove the prosecution case which falsifies the case of prosecution.

(xviii) It has been contended that P.W.-3 having stated in his examination-in-chief that on 05-07-1990 at about 6:00 AM, while he was ploughing the field it were only accused persons, namely, Kishun Nayak and Guru Charan Nayak who came to him armed with *berchha* and *tangi* and abused him and asked him to go with them to plough the field and, hence, there being no whisper about presence of

other appellants at that time, then the question of their participation in the alleged occurrence becomes seriously doubtful and the present appellants have falsely been implicated in the present case due to old land dispute and enmity between the parties.

(xix) It has been contended that the learned trial Court seriously erred in law in not taking into consideration and relying upon the defence of the appellant Munna Devi regarding her alibi having been at her *naihar* on the relevant date and time of occurrence in as much as she has given birth to a child and was ill and unable to walk and under treatment of a doctor there and her *naihar* was about 150 K.M. from the place of occurrence, in spite of even unshaken evidence of DW-1 and DW-2 on the point of alibi, the conviction of the appellant Munna Devi is absolutely bad in law.

13. The learned senior counsel for the appellants, based upon the aforesaid grounds, has submitted that the impugned judgment of conviction and order of sentence passed by the learned trial Court convicting the appellants under sections 148, 302/34 and 307/34 of the Indian Penal Code, therefore, is fit to be quashed and set aside.

Submission of the learned Spl. P.P for the State:

14. While defending the impugned judgment of conviction and sentence, the learned Spl. Public Prosecutor appearing for the State has argued by taking the following grounds:

(i) The conviction of the appellant under sections 148, 302/34 and 307/34 of the Indian Penal Code does not suffer from error, since, ample evidence has been produced by the prosecution.

(ii) The Informant himself had seen that the appellants had brutally assaulted the deceased (informant's father) with *lathi, tangi and berchha* due to which he died on the spot and, as such, the impugned judgment does not require any interference.

(iii) P.W.-1 and P.W.-5 are the injured eye witnesses and both these witnesses were also assaulted by the appellants when they tried to save the life of his deceased father.

(iv) The argument has also been advanced that the doctor (P.W.-7) had found incised wound on the head and other parts of the deceased and, hence, doctor has supported the prosecution version of inflicting assault by these appellants.

15. The learned Spl. Public Prosecutor appearing for the State, based upon the aforesaid premise, has submitted that the impugned judgment so far as these appellants is concerned, does not suffer from any error and does not require any interference so far as the appellant's conviction under section sections 148, 302/34 and 307/34 of the IPC is concerned, hence, the instant appeal is fit to be dismissed.

Analysis

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

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

18. 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.

19. Prosecution had examined altogether nine prosecution witnesses out of whom P.W.-5 Tulsi Nayak, is the informant of the case and son of the deceased; P.W.-1 Rameshwar Nayak and P.W.-3 Sahdeo Nayak are also the sons of the deceased and P.W.-4 Bandhni Devi, is the wife of the deceased; P.W.-2 is Nakul Choudhary; P.W.-6 Ram Sewak Rai, is the Investigating Officer of the case; P.W.-7 is Dr. Kashmiri Kumar, who had conducted postmortem examination on the dead body of the deceased; P.W.-8 is Dr. Binay Kumar Jha, who had examined the injured witness P.W.-1 and P.W.-3. P.W.-9 is Bijay Ram, who is dresser at Primary Health Centre, Koderma, who is a formal witness.

20. On the other hand, to defend themselves two witnesses have been examined on behalf of the accused persons. D.W.1 Nemchand Nayak, is the younger brother of accused Munna Devi and D.W.2 is the accused/appellant Munna Devi herself.

21. P.W.-1 Rameshwar Nayak, is the son of the deceased. This witness has stated in his evidence that on 05.07.1990, at 6:00-6:30 AM, he was sleeping at his house. He had heard *halla* of his mother and came out from his house and saw that accused Kishan Nayak. Mathura Nayak, Gurucharan Nayak, Jagdish Nayak (since dead), Rama Nayak (since dead), Chatri Nayak (since dead), Hulo Nayak (since dead) and Munna Devi had surrounded his father and were assaulting him. Kishun Nayak and Mathura Nayak were armed with *tangi*, Jagdish Nayak was armed with *lathi*, Gurucharan Nayak was armed with *berchha*; Rama Nayak, Hulo Nayak, Chatri Nayak were armed with *lathi* and Munna Devi was armed with *tangi* and they were assaulting his father. When he went to save his father, then the accused persons left his father and began to assault him.

22. P.W.-1 has further stated that accused Kishun Nayak and Mathura Nayak assaulted him with *tangi* on his head. Accused Mathura Nayak also assaulted him on his leg with *tangi*; Rama Nayak and Gurucharan Nayak assaulted him with *berchha* on his head and leg; Munna Devi assaulted him with *tangi*; Jagdish Nayak assaulted him with *lathi* on his back. He has further stated that the accused persons broke his both hands.

23. P.W.-1 has further stated that his brother Sahdeo Nayak (P.W.-3) came to rescue him but he was also assaulted with *berchha* as a result of which he fell down. Tulsi Nayak((P.W.-5) raised *halla*, then co-villagers, namely, Nakul Choudhary (P.W.-2) and Nanhak Nayak came there and after that the accused persons fled away. His father had died at the place of occurrence. He has further stated that villagers took him for treatment at Barkattha and from Barkattha, he was referred to Hazaribagh and Sahdeo Nayak was sent back to the house after treatment. P.W.-1 has also stated that the paddy seedlings of field were grazed by the cattle of the accused persons prior to the alleged occurrence and they had sent cattle in the cattle pond upon which the accused persons were annoyed and committed this occurrence.

24. P.W.-1 in his cross-examination, had stated that accused persons stayed at the place of occurrence for ten minutes, after death of his father and fled away from there after coming of the villagers. The house of the accused persons is adjacent to his house. P.W.-1 further stated that occurrence of assault took place towards northern side of his house about 100 steps ahead on the road and on *halla* of his mother he had rushed to the place of occurrence and his father was fallen down in a pool of blood and his mother had covered him to save his life. His brothers, namely, Sahdeo Nayak (P.W.-3) and Tulsi Nayak (P.W.-5) had also gone at the place of occurrence.

25. P.W-1 has further stated in his cross-examination that he was admitted for about 7 days at the Sadar Hospital, Hazaribagh and was treated there. He had told to the police that Mathura Nayak had assaulted

him with tangi on his leg. He had sustained two *berchha* injury-one at his head and another on his leg.

26. P.W.-2 Nakul Choudhary has stated in is evidence that on 05.07.1990 at about 6.30 AM, he had gone near the pond to ease out himself. He heard *halla* from the side of the house of Atwari Nayak (deceased), he ran there and saw that the accused persons were assaulting Atwari Nayak (deceased) due to which he had fallen down. Rameshwar Nayak (P.W.-1) had also fallen down due to assault and Sahdeo Nayak (P.W.-3) was being chased and when Sahdeo Nayak reached towards him then, he saved him. P.W.-2 has further stated that the accused persons were armed with *lathi* and *tangi* in their hands and after making assault they had fled away. Atwari Nayak (deceased) died at the place of occurrence. Thereafter, Rameshvar Nayak and Sahdeo Nayak were brought to the Barkattha P.S. and police had recorded their statement and Sahdeo Nayak was admitted for treatment and Rameshwar Nayak was referred to Hazaribag for treatment.

27. P.W.-2 in his cross-examination had admitted that he had deposed against the accused persons in a case prior to the alleged occurrence. He had seen Atwari Nayak(deceased) lying on the road fifteen steps from his house and when he reached at the place of occurrence, on hearing *halla*, accused person did not flee away and when he reached there, the accused persons started fleeing away from there towards eastern side where Middle School was situated. On his raising *halla*, the villagers assembled at the place of occurrence.

28. P.W.-2 further stated in his cross-examination, that when he reached at the place of occurrence, the accused persons were chasing and assaulting Sahdeo Nayak (P.W.-3), who ran towards his old house situated at northern side. The accused persons had chased him for about 150-200 yards and two accused persons were chasing Sahdeo Nayak and they were armed with *tangi* and *berchha*. He has stated that at that time he was near the dead body of Atwari Nayak and later on he along with the villagers went to Sahdeo Nayak (P.W.-3), where he was fallen down and Sahdeo was in a pool of blood but he was not unconscious.

29. P.W.-3 Sahdeo Nayak is the son of the deceased and he has stated in his evidence that incident occurred on 05.07.1990 at 6:00 AM and he was ploughing the field. Accused Kishun Nayak and Gurucharan Nayak armed with *berchha* and *tangi* came there and abused and said to go for ploughing the field to which he refused. In the meantime, his father taking lunch box and rain coat had left for duty. Accused persons surrounded him and accused Kishun Nayak, Mathura Nayak and Munna Devi, assaulted his father with *tangi* and accused Gurucharan Nayak and Rama Nayak assaulted his father with *berchha* and accused Jagdish Nayak, Ganesh Nayak, Chhatri Nayak and Hulo Nayak assaulted his father with *lathi* due to which his father had fallen down. When his mother and Ramehswar Nayak (P.W.-1) went to save him then, the accused person had broken the hands of Ramehswar Nayak. He went there to save them upon which Rama Nayak had assaulted him with *berchha* and Kishun Nayak with *tangi*. He ran away to save his life and after that Nakul Choudhary (P.W.-2) saved him. He has further stated that Rameshwar Nayak was brought to Barkathha for treatment from

where he was sent to Hazaribagh for treatment. *Daroga jee* took him to the house and the dead body of his father was lying on the place of occurrence and it was sent for post-mortem examination.

30. In his cross-examination, P.W.3- stated that he was ploughing the field of Hulo Choudhary on share cropping basis. On *halla* of his brother and mother, he ran towards the place of occurrence where he saw his father was fallen down. He also started raising alarm and when the accused persons started assaulting him, he ran towards the village then Nakul Choudhary (P.W.-2) came there. At about 300 steps away from the place of occurrence where his father was fallen down, he was saved by Nakul Chaudhary. He has further stated that he had been assaulted at the place where his father was assaulted. He was taken away by Kishori Pandit, Tulsi Nayak and Rameshwar Nayak had brought back him. They reached Barkathha police station at about 10:00 AM and his statement was recorded there.

31. P.W.-4 Bandhani Devi is the wife of the deceased. She has stated in her evidence that on the day of occurrence at about 6:00 AM in the morning, her husband Atwari Saw (deceased) came out the house with tiffin and rain coat and left for his duty. When he proceeded about 100 steps from his house, then accused Kishun Nayak, Mathura Nayak and Munna Devi, assaulted her with *tangi* and accused Gurucharan Nayak and Rama Nayak assaulted her husband with *berchha*, and accused Jagdish Nayak, Ganesh Nayak, Hulo Nayak and Chhatri Nayak and assaulted her husband with *lathi*.

32. P.W.-4 further stated that on her raising *halla*, her son Rameshwar Nayak (P.W.-1) came out from the house to save his father then he was also surrounded and assaulted by accused Gurucharan, Kishun, Ganesh with *berchha*, *tangi* and *lathi* respectively. Thereafter, her elder son Sahdeo (P.W.-3) came to save him, then he was also chased and assaulted. Nakul Choudhary (P.W.-2) had seen the assault on her elder son, Rameshwar and her husband. Tulsi Nayak (P.W.-5), is her younger son and he had also come at the place of occurrence, but he was also assaulted, hence, he ran away and came near her at the door. People of locality assembled there. Her husband was killed by the accused persons at the place of occurrence itself.

33. P.W.-4 in her cross-examination, stated that her sons had assembled at the place of occurrence quickly and the incident was also seen by Tulsi Nayak (P.W.-5) and Nakul Chaudhary (P.W.-2). She further stated that when her husband left for duty she was standing at door and her husband had been assaulted on *kachchi* road. Her younger son Tulsi and Sahdeo went to bring the police and *daroga jee* came there at about 12:00 Noon. She has further stated that a land dispute with the accused persons was continuing from one year before the date of occurrence and the accused persons had made to graze their paddy sideling.

34. P.W.-5 Tulsi Nayak is the informant and younger son of the deceased. He has stated in his evidence that incident occurred on 05.07.1990, in the morning at about 6:30 AM. He had gone towards Tara Ahar to ease himself and he heard *halla* in loud voice coming out from

the side of his house. He ran towards his new house from where the *halla* was made and on reaching there he saw Kishun Nayak armed with *tangi*, Jagdish Nayak armed with *lathi*, Gurucharan Nayak armed with *berchha*, Ganesh Nayak armed with *lathi*, Mathura Nayak armed with *tangi*, Chattri Nayak and Phulo Nayak both armed with *lathi*, Rama Nayak armed with *berchha* and Munna Devi armed with *tangi* had surrounded his father and were assaulting him. His mother came out from her house and tried to save his father and his two brothers, Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) were also trying to save their father and he also tried his best to save father but thereafter the accused persons left his father and started assaulting his brothers Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3). When he tried to save them, the accused persons also chased him for assault. In the meantime, his father who had fallen down and wanted to run away from there but accused Kishun Nayak and Mathura Nayak gave him *tangi* blow on his head as a result his father fell down and died. He ran away to the door of his new house.

35. P.W.-5 further stated that accused persons assaulted his brother Rameshwar Nayak and knocked him down and assaulted his elder brother Sahdeo Nayak after chasing him. In the meantime, Nakul Chaudhary (P.W.-2) reached there and saved both his brothers. Villagers assembled there, then, they told them about the occurrence. Thereafter, they went to Barkattha police station along with his two injured brothers and gave information at the police station. Both his brothers were treated at Barkattha hospital and thereafter his brother Rameshwar Nayak was referred to Hazaribagh.

36. P.W.-5 has further stated that the dead body of his father was lying at the place of occurrence and *daroga je* came there. *Daroga ji* had recorded his statement in the village. P.W.-5 has identified his signature over the *fardbeyan*, which was marked as Ext.-1.

37. In his cross-examination, P.W.-5 stated that he had gone to the police station along with his two injured brothers. He had reached the police station at about 9:00 AM. He had orally told the police about the occurrence and informed that his father had been murdered and his dead body was lying at the place of occurrence. Thereafter, the police reached in the village at the place of occurrence along with him on a police jeep.

38. P.W.-5 in his cross-examination, further stated that Tara Ahar pound is at a distance of 15-200 yard away from his house. On hearing *halla*, he reached at the place of occurrence, then he saw that the accused persons were assaulting his father and his mother was trying to save him. He has further stated that while he was rushing towards the place of occurrence, he saw the occurrence. He saw that his brother Rameshwar Nayak (P.W.-1) had fallen over his father and covered him and was telling the accused persons to leave him.

39. P.W.-5 further stated that after he reached the place of occurrence, then villagers assembled there. When the accused persons were making assault, he was present there. He has stated before the police that when his father tried to flee away, accused Kishun Nayak and Mathura Nayak had assaulted him with tangi on his head.

40. P.W.-6 Ram Sewak Rai is the Investigating Officer of the case. He has stated in his evidence that on 05.07.1990, he was posted at

Barkattha police station. He got information through rumour that one person in village Choubey was murdered. He proceeded towards village Choubey after making entry in the Station Diary and after reaching there he recorded the statement of Tulsi Nayak (P.W.-5). Investigating officer has proved the said statement which is in his hand writing and signature and the *fardbeyan* was marked as Ext.-2. He prepared the inquest report and sent the dead body to Koderma Hospital for postmortem examination.

41. Investigating Officer has stated that place of occurrence is village road to the south-west of Middle School Choubey. The house of the deceased is about 15-20 yards north-east from the place of occurrence and the exit of the house is towards the road. Investigating Officer further stated that he found plenty of blood at the place of occurrence which were seized by him in presence of two independent witnesses and prepared seizure list of it. He has further stated that he had seized one bloodstained white *gamcha*, a pair of leather shoe and aluminum tiffin from the place of occurrence. Investigating Officer had proved the formal FIR which was marked as Ext.-4. He had recorded the statement of injured witnesses Sahdeo Nayak and Rameshwar Nayak, and prepared their injury requisition and sent them to Barkattha Hospital for treatment.

42. In his cross-examination, Investigating Officer had stated that neither Tulsi Nayak, Rameshwar Nayk, Sahdeo Nayak or Nakul Chaudhary had come to the police station and informed him about the occurrence. Investigating Officer had denied the suggestion that Tulsi

Nayak had come to the police station and informed him about the occurrence, but, he did not record his statement. No person from village Choubey had accompanied him for the place of occurrence. He has stated that before proceeding for the place of occurrence, no injured person came to him at the police station. Investigating officer further stated that he had recorded the statement of Rameshwar Nayak (P.W.- 1) and Rameshwar Nayak had not stated in his statement that Mathura Nayak had assaulted him with *tangi* on his leg.

43. P.W.7-Dr. Kashmiri Kumar, is the Lady Medical Officer at Sadar Hospital, Koderma, who had conducted postmortem over the dead body of the deceased on 06.07.1990 at 9:30 A.M., and found the following antemortem injuries on the body of the deceased:-

(i) *Sharp cut incised wound over left parietal bone posteriorly about 1 ½" x ¼".*

(ii) *Two sharp cutting incised wound about ½" x ½" in length both over the left side of occipital*

(iii) *Sharp cutting incised wound bone deep over right cheek about 1 " x 1/3" in length;*

(iv) *Incised lacerated wound over medial surface of right ankle joint muscle deep and about 1 ½" x ¼" in length.*

On dissection clotted blood was found below the scalp and at the region of occipital temporal bones and fracture of skull was found of the left occipital temporal joint with blood oozing out.

2. Both lungs were pale.

Heart – pale and empty.

Liver, spleen, kidney – pale.

Bladder- empty.

Stomach-empty.

3. Time elapsed since death was about 24 hrs.

4. Cause of death – death occurred due to shock and hemorrhage due to above mentioned injuries.

5. The injuries found on the dead body was possibly by tangi.

44. The post-mortem report was marked as Ext.-3. In her cross-examination, the doctor stated that all the injuries except injury no. (iv) were caused by sharp cutting weapons and injury nos.(i) to (iii) were not by hard blunt substance. She has further admitted the fact that punctured wound is possible by *berchha*.

45. P.W.-8 Dr. Binay Kumar Jha is the medical officer who examined the injured witness Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) on 05.07.1990 at Primary Health Centre, Barkattha. Doctor had examined Rameshwar Nayak (P.W.-1), on 10:35 AM and found the following injuries:

- (i) *Incised wound 4 cm x 1 cm x 1 ½ cm on the left parietal side.*
- (ii) *Incised wound 3 cm x 1 cm x 1 ½ cm on the vault of head;*
- (iii) *Bruise with obvious fracture and dislocation of right forearm at junction of upper 2/3 and lower 1/3;*
- (iv) *Bruise with obvious fracture left forearm at wrist joint with laceration;*
- (v) *Bruise with obvious fracture of left leg of lower end and about ankle joint (fibula bone);*
- (vi) *Bruise 9 cm x 2 cm at right thigh lateral side;*
- (vii) *Lacerated wound 3 cm x 1 cm back of left joint above heel.*

46. The doctor has stated that Injury no.(i) and (ii) are caused by sharp cutting weapon and the rest injuries were caused by hard and blunt substance. All the injuries are of within six hours duration. He has further stated that injury no. (i), (ii), (vi) and (vii) are simple and injury no.(iii), (iv) and (v) are grievous in nature. He has further stated that the patient was referred to Sadar Hospital, Hazaribagh for radiological

examination and report which was not received till submission of the injury report. Doctor has proved the injury report of Rameshwar Nayak (P.W.-1), which was marked as Ext.-5.

47. The doctor has further stated that on the same day at 10:55 AM he has also examined Sahdeo Nayak(P.W.-3) and found the following injuries:

- (i) *Incised wound 2 ½ cm x 1 cm x 1 cm on face below right eye;*
- (ii) *Incised wound 1 cm in leg and overlapped by skin on right side of face at the base of ala of nose.*
- (iii) *Abrasion at upper lip 1 cm in mid line;*
- (iv) *Abrasion 5 mm x 1 mm at bridge of nose;*
- (v) *Bruise 3 cm x 1 cm on right forearm;*
- (vi) *Abrasion 2 mm on right side of nostril;*
- (vii) *Bruise 10 cm x 2 cm on the middle of right thigh;*
- (viii) *Bruise 7 cm x 2 cm on left upper arm.*

The doctor has stated that all the injuries are of within six hours duration. Injury nos.(i) and (ii) are caused by sharp cutting instrument, rest all by hard and blunt substances. All the injuries are simple in nature. Doctor has proved the injury report of Sahdeo Nayak (P.W.-3), which was marked as Ext.-5/1.

48. In his cross-examination, P.W.-8 stated that he cannot differentiate between *berchha* and *bhala*. By sharp pointed weapons punctured injuries are generally caused. But he did not find any punctured injuries. At para-13 of his cross-examination he stated that without X-ray, he was not in a position to say which bone was fractured.

49. P.W.-9 is a dresser in Primary Health Centre, Barkattha, who is a formal witness. He has stated that he has brought this injury register

on the order of the Court which always remains in his custody. He has further stated that the original injury report was prepared in carbon process along with injury register. He has further stated that the injury reports (Ext.5 and 5/1) were prepared in the same process.

50. Further, two witnesses were also examined on behalf of the defence.

51. D.W.1 Nemchand Nayak, is the younger brother of accused/appellant Munna Devi. DW1 has stated that in the month of May, 1990 Munna Devi had come at his house being pregnant. He has further stated that on 15.07.1990 she left his house. He has further stated that on 11.06.1990 his sister Munna Devi had delivered a child and on 05.07.1990 she was at this house in village Kharbito. She was weak and was unable to move anywhere. He has further stated that she was treated by Dr. Sheo Shanker Lal who was a Government doctor. He had executed a medical certificate regarding her treatment, photo copy of the same has been marked as 'X' for identification.

52. During his cross-examination, he has stated that the distance of the Choubey village is about 150 KM from his house. He has admitted that one can reach at village Choubey from his village Kharbito only in one day. He has admitted that his sister (Munna Devi) was treated by doctor after delivering the child. He has stated that *chatti* ceremony of the child was held at his house.

53. D.W.2-Munna Devi has corroborated the statement of DW1. She has stated that she gave birth to a male child at her *maike*. After birth of child, she was treated by Dr. Shiv Shankar as she had fallen ill.

She has stated that when she reached at her *sasural* after delivery in the month of *Sawan* 1990, she came to know that she was also made an accused in this case. She has stated that she was released on bail by the learned Session Judge, Hazaribagh on the ground of alibi and true copy of the bail order has been marked as Ext.-A on behalf of the defence. She has further stated that her son is now aged about six years and he is physically present in the Court. D.W.2 has admitted in her cross-examination that she did not get herself treated by a lady doctor during pregnancy. She has denied the fact that she was involved in the murder of Etwari Nayak (the deceased).

54. Learned trial Court, based upon the testimonies of witnesses and material available on record, has passed the impugned judgment and convicted and sentenced the accused persons (appellant herein) to undergo RI for life under section 302/34 of the Indian Penal Code, RI for 10 years under section 307/34 of the Indian Penal Code and RI for 3 years under section 148 of the Indian Penal Code and all the sentences were ordered to run concurrently.

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

i. Whether the material came in course of trial is sufficient to attract the offence committed under section 307/34 and under section 302/ 34 of IPC against the preset appellants?

ii. Whether appellants can be acquitted solely on the ground of defective investigation?

56. Ongoing through the evidences of the prosecution witnesses, this Court finds that in the present case allegation is that Atwari Nayak(deceased), who is the father of the informant Tulsi Nayak (P.W.-5), was killed by the appellants, who are the *agnate* of informant party. The background of the case is land dispute between the parties.

57. Again, ongoing through the evidence of the prosecution witnesses, this Court finds that Atwari Nayak(deceased) was resident of village -Choubey, P.S.- Barkattha, District-Hazaribagh and was head of his family. He worked in railway as gangman and on the day of occurrence on 05.07.1990, at about 6:00 AM in the morning, he was going for duty. In the meantime, appellants variously armed with *tangi*, *berchha* and *lathi* surrounded him and assaulted him as a result he died on the spot itself. On *halla*, two other sons of deceased, namely, Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) had reached at the place of occurrence and tried to save the life of his father, but, both Rameshwar Nayak and Sahdeo Nayak, were assaulted by the accused persons/appellants, as a result both brothers, namely, Rameshwar Nayak and Sahdeo Nayak, were also injured.

Re : Issue No.(i)

58. Coming to the issue no.(i) i.e. whether the material came in course of trial is sufficient to attract the offence committed under section 307/34 and under section 302/ 34 of IPC against the present appellants?

59. This Court finds that initially eight appellants had filed the present appeal out of which appellants Jagdish Nayak, Hulo Nayak and Rama Nayak, died during the pendency of the appeal, hence, their appeal was abated, as has been discussed in the preceding paragraph.

60. Hence, now appeal of remaining five appellants has to be decided in the present appeal.

61. This Court finds from the impugned judgment that learned trial Court had convicted the appellants relying on the testimony of the injured eye witnesses Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3), as well as eye witnesses P.W.-2 Nakul Choudhary and P.W.-4 Bandhni Devi, who is the wife of the deceased and informant Tulsi Nayak (P.W.-5) which were compatible with the medical evidence of the doctors P.W.-7 and P.W.-8.

62. 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 injured eye witness.

63. The law is well settled that the judgment of conviction can be passed on the basis of the evidence of injured witnesses which has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly, as per the judgment rendered by Hon'ble Apex Court in the case of *State of M.P. v. Mansingh, (2003) 10 SCC*. The relevant paragraph of the said judgment is being referred hereunder as :- .

“The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential. It is fairly conceded by the learned counsel for the accused that though mere non-mention of the assailants’ names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether the prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render the prosecution version brittle.”

64. Likewise, in case of ***Neeraj Sharma v. State of Chhattisgarh, (2024) 3 SCC 125***, at paragraph-22 of the judgment, the Hon’ble Apex Court held as follow-

“22.The importance of injured witness in a criminal trial cannot be overstated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as extremely valuable evidence in a criminal trial.”

65. Further, in case of ***Birbal Nath v. State of Rajasthan, (2024) 15 SCC 190***, the Hon'ble Apex Court reiterated that the statement of an injured eyewitness is an important piece of evidence which cannot be easily discarded by a court. Minor discrepancies do not matter. Paragraph-31 of the said judgment is quoted herein below-

“31. The High Court has gone wrong in its appreciation of the case, both on facts as well as on law. The statement of an injured

eyewitness is an important piece of evidence which cannot be easily discarded by a court. Minor discrepancies do not matter. In State of M.P. v. Mansingh⁵ where conviction of the accused by the trial court, inter alia, under Section 302, was set aside by the High Court on the so-called discrepancies of an injured witness this Court while allowing the State's appeal against the acquittal said this: (SCC p. 419, para 9)

"9. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses, PWs 4 and 7. Minor discrepancies do not corrode the credibility of otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential."

66. Further, the Hon'ble Apex Court in the case of ***Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365***, has laid down certain legal principles, which the Courts are required to keep in mind while appreciating the evidence of an injured eyewitness. Paragraphs- 26 to 27 of the said judgment are being referred hereunder as-

"26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. 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.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. 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.

26.6. 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.

27. 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.”

67. Thus, it is evident that for proving the charge on the basis of the evidence of injured eye witness, it would be necessary to prove the presence of injured eyewitness at the time and place of the occurrence unless there are material contradictions in the deposition of injured eye witness. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

68. Hence, in the present case, this Court is firstly proceeding to find out the place of occurrence, where Atwari Nayak(deceased) was attacked and killed and in order to save life of the father, two sons of the deceased, Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) had rushed at the place of occurrence, but, they were also attacked by the assailant as a result of which both of them also sustained injuries.

69. Injured witness Rameshwar Nayak (P.W.-1) has stated in his cross-examination that the house of the accused persons/appellants, is adjacent to their house and the occurrence of assault took place towards northern side of his house about 100 steps ahead on the middle of the road.

70. Investigating Officer P.W.-6 has stated that the place of occurrence is village road to the south-west of Middle School Choubey and Middle School Choubey, is about 30-40 yards north-east of it. The house of the deceased is about 15-20 yards north-east from the place of occurrence and the exit of the house is towards the road.

71. Hence, from the evidence of P.W.-1 and the Investigating Officer, this Court finds that the place of occurrence is very near to the house of the informant and it is about 15-20 yards only.

72. Now, reverting back to evidence of Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3), who have been projected as injured eye witnesses by the prosecution.

73. Rameshwar Nayak (P.W.-1), who is the son of the deceased has stated in his evidence that on 05.07.1990, at 6:00-6:30 AM, he was sleeping at his house and on *halla* of his mother, he came out from his

house and saw that accused persons/appellants variously armed with *tangi*, *berchha* and *lathi* had surrounded his father and were assaulting him. When he went to save his father, then the accused persons left his father and began to assault him.

74. Regarding injuries sustained by him, Rameshwar Nayak (P.W.-1) has stated that the appellants Kishun Nayak and Mathura Nayak assaulted him with *tangi* on his head. P.W.-1 has also stated in his cross-examination that appellant Mathura Nayak had also assaulted him on his leg with the back of the *tangi*. P.W.-1 had further stated that appellant Gurucharan Nayak assaulted him with *berchha* on his head and leg and appellant Munna Devi assaulted him with *tangi*.

75. On going through the evidence of Dr. Binay Kumar Jha (P.W.-8), who had examined the injured Rameshwar Nayak (P.W.-1), he had found seven injuries on his body out of which two injuries were incised wounds, four were bruise and one lacerated wound and out of the seven injuries doctor had opined that three injuries were grievous in nature.

76. Doctor had found two incised wounds on parietal side and on vault of head of the injured Rameshwar Nayak (P.W.-1), which are as follows- incised wound 4 cm x 1 cm x 1 ½ cm on the left parietal side and incised wound 3 cm x 1 cm x 1 ½ cm on the vault of head.

77. The other injuries sustained by the injured Rameshwar Nayak (P.W.-1) are-(i) Bruise with obvious fracture and dislocation of right forearm at junction of upper 2/3 and lower 1/3, (ii) Bruise with obvious fracture left forearm at wrist joint with laceration, (iii) Bruise with obvious fracture of left leg of lower end and about ankle joint (fibula bone), and (iv) Bruise 9 cm x 2 cm at right thigh lateral side.

78. Thus, ocular evidence of injured Rameshwar Nayak (P.W.-1), as to assault inflicted on him by the accused persons/appellant is fully corroborated by the medical evidence of doctor P.W.-8, wherein incised wounds were found on the head and bruise and lacerated wound were found on both right and left forearm and leg of Rameshwar Nayak (P.W.-1).

79. Again, coming to the ocular evidence of the Sahdeo Nayak (P.W.-3). Sahdeo Nayak has stated in his evidence that accused persons/appellants armed with *tangi*, *berchha* and *lathi* had surrounded his father and assaulted him. When his mother (P.W.-4) and brother Ramehswar Nayak (P.W.-1) went to save him, then the accused persons had broken the hands of Ramehswar Nayak (P.W.1). He went there to save them upon which appellant Kishun Nayak assaulted him with *tangi*. He ran away to save his life, then, Nakul Choudhary (P.W.-2) saved him.

80. P.W.-8 Doctor had examined Sahdeo Nayak (P.W.-3) and Doctor had found eight injuries on his body out of which two were incised wounds, three bruises and three abrasions.

81. Doctor had opined that injury nos.(i) and (ii), caused to Sahdeo Nayak (P.W.-3) were caused by sharp cutting instrument and remaining injuries were caused all by hard and blunt substances. All the injuries were simple in nature.

82. Hence, from the evidence of both the injured witnesses, Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3), who are the sons of the deceased, this Court finds that, on the day of occurrence,

both the brothers were assaulted by the appellants and sustained injuries while attempting to save the life of their father from the assault.

83. Now, coming to the incident of murder of Atwari Nayak (deceased). From the evidence of the prosecution witnesses this Court finds that there are two injured eye witnesses and other eyewitnesses are also available who witnessed the assault and murder of Atwari Nayak(deceased).

84. P.W.-4 Bandhni Devi, who is the wife of the deceased and P.W.-2 Nakul Choudhary and P.W.5 Tulsi Nayak informant are the eye witnesses of the alleged occurrence. Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3), who are sons of the deceased, both were claimed as the injured eye witnesses, of the alleged occurrence.

85. Informant-Tulsi Nayak (P.W.-5), is the son of the deceased. Informant had stated in his evidence that on the day of occurrence, appellants armed with *tangi*, *bercchha* and *lathi* had surrounded his father and were assaulting him. His mother (P.W.-4) came out the house and tried to save his father and his two brothers Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) were also trying to save his father. His father tried to flee away, then appellant Kishun Nayak and Mathura Nayak, had assaulted his father with *tangi* on his head.

86. Coming to the evidence of P.W.-4 Bandhni Devi, who is the wife of Atwari Nayak(deceased). P.W.-4 Bandhani Devi has stated in her evidence that on the day of occurrence at about 6:00 AM in the morning, her husband Atwari Saw (deceased) came out the house with tiffin and rain coat and left for his duty. When he had proceeded about

100 steps from his house, then appellants-Kishun Nayak, Mathura Nayak and Munna Devi, assaulted her husband with *tangi* and accused Gurucharan Nayak assaulted her husband with *berchha*, and accused Ganesh Nayak, had assaulted her husband with *lathi*.

87. P.W.-4 has further stated that, upon raising *halla*, her son Rameshwar Nayak (P.W.-1) came out of the house to save his father, whereupon he was also surrounded and assaulted by appellant Gurucharan with a *berchha*, Kishun with the blunt side of a *tangi*, and Ganesh with a *lathi* on his hand.

88. Further, the other eye witness of the present case P.W.-2 Nakul Choudhary has stated in is evidence that on 05.07.1990 at about 6:30 AM, he had gone near the pond to ease out himself. He heard *halla* from the side of the house of Etwari Nayak (deceased), he ran there and saw that the accused persons were assaulting Atwari Nayak (deceased) due to which he had fallen down. Rameshwar Nayak (P.W.-1) had fallen down due to assault and Sahdeo Nayak (P.W.-3) was being chased and when Sahdeo Nayak reached towards him then, he saved him from the appellants. P.W.-2 has further stated that the accused persons were armed with *lathi* and *tangi* in their hands and after making assault they had fled away. Atwari Nayak (deceased) died at the place of occurrence.

89. Further, Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3), both are the injured eye witnesses and they were present at the place of occurrence and they had also sustained injuries when they were trying to save life of their father, as has been discussed in the preceding paragraph.

90. On going through their evidence, this Court finds that injured Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) had stated that appellants Kishun Nayak and Mathura Nayak had assaulted their father with *tangi* and appellant Gurucharan Nayak assaulted his father with *berchha*. Sahdeo Nayak (P.W.-3) and Bandhani Devi (P.W.-4) also stated that appellant-Ganesh Nayak, assaulted the deceased with *lathi*.

91. Further, ongoing through the medical evidence this Court finds that P.W.7 Dr. Kashmiri Kumar, had conducted postmortem examination over the dead body of the Atwari Nayak (deceased) and found four injuries on the body of the deceased out of which three were incised wounds on his head. The injuries found on the person of the deceased were –(i) Sharp cut incised wound over left parietal bone posteriorly about 1 ½” x ¼”, (ii) Two sharp cutting incised wound about ½” x ½” in length both over the left side of occipital, (iii) Sharp cutting incised wound bone deep over right cheek about 1” x 1/3” in length, and (iv) Incised lacerated wound over medical surface of right ankle joint muscle deep and about 1 ½” x ¼” in length.

92. Hence, from the evidence of injured eye witnesses Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) and eyewitnesses P.W.-4 Bandhni Devi, who is the wife of the deceased and P.W.5 informant who is son of the deceased, P.W.-2 Nakul Choudhary villager, the role of the present appellants in the murder of deceased Atwari has fully been established. Further, the statement of aforesaid witnesses was fully substantiated by the medical evidence of the Doctor P.W.-7, who had conducted the postmortem over the dead body of the deceased.

93. Further, this Court finds that appellants-Kishun Nayak and Mathura Nayak had assaulted Rameshwar Nayak (P.W.-1) with *tangi* on his head and appellant-Mathura Nayak had also assaulted Rameshwar Nayak with *tangi* on his leg. Appellant-Gurucharan Nayak assaulted Rameshwar Nayak with *berchha* on his head and leg. Doctor P.W.-8, who had examined Rameshwar Nayak (P.W.-1) had found three grievous injuries on his body.

94. The other injured witness Sahdeo Nayak (P.W.-3) was assaulted by the appellant-Kishun Nayak with *tangi*.

95. Further, the learned trial Court by taking aid of Section 34 of the IPC has convicted the present appellants under sections 302 and 307 of IPC, therefore, at this juncture it would be apt to discuss the ingredients of Section 34 of the IPC.

96. To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability. But if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked, reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Jai Bhagwan v. State of Haryana, (1999) 3 SCC 102.***

97. As held by the Constitution Bench of the Hon'ble Apex Court in ***Mohan Singh v. State of Punjab, AIR 1963 SC 174***, common intention denotes action in concert, and a prior meeting of minds-the

acts may be different, and may vary in their character, but they are all actuated by the same common intention. However, prior concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons. Thus, the question as to whether there is any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused persons had the common intention to commit the offence with which they could be convicted.

98. In the aforesaid backdrop of the settled position of law, this Court has revisited the entire testimony including the material available on record wherefrom the testimony of injured eye witnesses Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) and eye witnesses P.W.-4 Bandhni Devi, who is the wife of the deceased, P.W.-2 Nakul Choudhary and Informant P.W.-5 Tulsi Nayak and medical evidence of the Doctors P.W.-7 and P.W.-8, this Court finds that the Kishun Nayak, Guru Charan Nayak, Ganesh Nayak and Mathura Nayak having common intention to kill the Atwari Nayak (deceased) had assaulted the deceased with *tangi, berchha and lathi* as a result deceased died on the spot.

99. Hence, prosecution has proved the charge against the appellants-Kishun Nayak, Guru Charan Nayak, Ganesh Nayak and Mathura Nayak under section 148 and section 302/34 of IPC.

100. Further, the two sons of the deceased Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3), had tried to save life of his father but, they were also assaulted by the appellants-Kishun Nayak, Guru Charan Nayak and Mathura Nayak as a result both Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) had sustained injuries.

101. Hence, prosecution has proved the charge against the appellants-Kishun Nayak, Guru Charan Nayak, Ganesh Nayak and Mathura Nayak under section 307/34 of IPC.

102. So far as conviction of the appellant-Munna Devi is concerned, this Court finds that defense has brought on record medical certificate, issued by the Government Doctor, which has been marked as 'X' for identification. On going to this medical certificate, this Court finds that she had given birth to a male child on 11.06.1990 and she was advised for bed rest.

103. Further, this Court finds from cross-examination of P.W.-4 Bandhni Devi, who is the wife of the deceased, wherein P.W.-4 had also stated that the appellant-Munna Devi, had given birth to a child one month before the date of occurrence (i.e. 05.07.1990).

104. Hence, this Court is of the considered view that the involvement of appellant-Munna Devi in the crime becomes doubtful, and she is entitled to the benefit of doubt.

105. Accordingly, issue no.(i) is hereby answered.

Re: Issue No.(ii)

106. Regarding this issue, i.e., whether appellants can be acquitted solely on the ground of defective investigation. The learned counsel for the appellants has submitted that the inquest report has not been produced and proved during the trial and Investigating Officer had not mentioned the hour of recording of statement of particular witnesses in the case diary and prosecution has failed to produce the copy of the Station Diary entry regarding the information got by the Investigating Officer (P.W.-6) before proceeding to the place of occurrence. Hence, learned counsel for the appellants has contended that prosecution case becomes doubtful and only due to previous enmity with the informant side, appellants herein, who are the *agnate* of the informant side, have been roped in the present case.

107. Admittedly, the aforesaid instances are the indicative of perfunctory investigation but it is settled position of law that sterling evidence of the prosecution witness cannot thrown away due to laches in the investigation.

108. At this juncture, it would be pertinent to see the judgments rendered by the Hon'ble Apex Court on defective investigation. The law is well settled that in cases of defective investigation; the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect.

109. In case of *Karnel Singh v. State of M.P., (1995) 5 SCC 518*, the Hon'ble Apex Court has held that in cases of defective investigation, the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the

investigating officer if the investigation is designedly defective.

Paragraph-5 of this judgment is quoted herein below :

“5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the ‘chaddi’. That is the reason why we have said that the investigation was slipshod and defective.”

110. Further, in the case of ***Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517***, the Hon’ble Apex Court has laid down that acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant. Paragraph-13 of this judgment is quoted herein below:

“13. Before parting with this case we consider it appropriate to observe that though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigating officers created a mess by bringing on record Exh. 5/4 and GD Entry 517 and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly

committed to favour the appellant. In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.”

111. Again, in the case of ***State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715***, the Hon’ble Apex Court has laid down that investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is settled law that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Relevant paragraph of this judgment is quoted herein below-

“19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to

the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."

112. In case of **C. Muniappan v. State of T.N., (2010) 9 SCC 567**, the Hon'ble Apex Court, laid down that there may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the Investigating officer and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. Paragraph-55 of this judgment is quoted herein below-

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (Vide Chandrakant Luxman v. State of Maharashtra [(1974) 3 SCC 626 : 1974 SCC (Cri) 116 : AIR 1974 SC 220] , Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] , Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085 : AIR 1998 SC 1850] , Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] , State of Karnataka v. K. Yarappa Reddy [(1999) 8 SCC 715 : 2000 SCC (Cri) 61 : AIR 2000 SC

185] , Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] , Allarakha K. Mansuri v. State of Gujarat [(2002) 3 SCC 57 : 2002 SCC (Cri) 519] and Ram Bali v. State of U.P. [(2004) 10 SCC 598 : 2004 SCC (Cri) 2045])”

113. Again, in case of ***Ashok Kumar Singh Chandel v. State of U.P., (2022) 20 SCC 114***, the Hon’ble Apex Court laid down that this Court has observed in a number of cases that defective investigation by the investigating authorities by itself does not vitiate the case of the prosecution when there are credible eyewitness testimonies as well as other compelling pieces of evidence. Paragraph-156 and 157 of this judgment is quoted herein below-

“156. Fax is not part of the investigation. Even assuming that there is some defect in the investigation on this count, it will have no bearing on the prosecution case. This Court has observed in a number of cases that defective investigation by the investigating authorities by itself does not vitiate the case of the prosecution when there are credible eyewitness testimonies as well as other compelling pieces of evidence. In Karnel Singh v. State of M.P. [Karnel Singh v. State of M.P., (1995) 5 SCC 518 : 1995 SCC (Cri) 977] this Court held that : (SCC p. 521, para 5)

“5. ... In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

(emphasis supplied)

157. Similarly in C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] this Court held : (SCC p. 589, para 55)

“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or

to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial.”

(emphasis supplied)

114. In the backdrop of the aforesaid settled position of law, this Court is of the considered view that since in the present case, Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3), are the injured eye witnesses, who were injured by the appellants, when they were trying to save life of his father. Further, P.W.-2 Nakul Choudhary, P.W.-4 Bandhni Devi, who is the wife of the deceased and informant P.W.-5 Tulsi Nayak are also the eye witnesses of the case and they had witnessed the assault on Atwari Nayak (deceased) and both the injured Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3). The ocular evidence of P.W.-1, P.W.-2, P.W.-3 and P.W.-4 and P.W.5 are corroborated by the medical evidence of the Doctors P.W-7 and P.W.-8.

115. Therefore, as per the ratio rendered by the Hon’ble Apex Court in the case of *Ashok Kumar Singh Chandel v. State of U.P., (supra)* the benefit of perfunctory investigation cannot be extended to the present appellant.

116. Accordingly, issue no(ii) has been answered.

117. Learned counsel for the appellants has contended that it is the prosecution case that appellant Guru Charan Nayak had assaulted the deceased as well as injured Rameshwar Nayak (P.W.-1) with *berchha* but Doctors P.W.-7 and P.W.-8, did not find any pointed injury on the body of deceased or the injured Rameshwar Nayak (P.W.-1), which itself falsifies the case of prosecution regarding assault upon the deceased and injured witnesses with *berchha*.

118. Hence, learned senior counsel for the appellants had contended that there is contradiction in ocular evidence of the witnesses and medical evidence of the Doctors P.W.-7 and P.W.-8.

119. At this juncture, it needs to refer herein that this Court is conscious with the settled legal position that where there is a contradiction between medical evidence and ocular evidence, the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, but at the same time it is equally settled position that when medical evidence makes the ocular testimony improbable, then it becomes a relevant factor in the process of the evaluation of evidence and when 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. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of “*Bhajan Singh v. State of Haryana*”, (2011) 7 SCC 421, the relevant paragraph of the aforesaid judgment is being quoted 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.”

120. This Court finds that the injured eye witness Rameshwar Nayak (P.W.-1) had deposed that he and his father were assaulted by Guru Charan Nayak, with *berchha*. Other witnesses Sahdeo Nayak (P.W.-3), Bandhani Devi (P.W.-4) and informant P.W.-5 Tulsi Nayak had also deposed that appellant Guru Charan Nayak had assaulted the deceased with *berchha*. Further from testimony of P.W.4 and P.W.5, it is evident that Guru Charan Nayak had assaulted the deceased with *berchha*. This factual aspect has already been dealt with in the preceding paragraphs.

121. In the present case accused persons/appellants, who were eight-nine in numbers variously armed with weapon such as *tangi*, *berchha* and *lathi* had assaulted Atwari Nayak(deceased), Rameshwar Nayak (P.W.-1) and Sahdeo Nayak (P.W.-3) and in the assault Atwari Nayak was killed and Rameshwar Nayak (P.W.-1) had also sustained injury caused by *berchha*, when he had gone at the place of occurrence to save life of his deceased father.

122. Hence, in the present case, the contradiction raised by the learned senior counsel for the appellants that no pointed injury was found in the medical evidence though it is the prosecution case that *berchha* was used by the appellants, is not tenable in the facts and circumstance of the present case due to the reason that P.W.-1,P.W.-3, P.W-4 and informant P.W.-5 had witnessed the assault on the deceased and P.W.-1 himself is an injured eye witness.

123. Learned senior counsel for the appellants has also contended that PW-1, PW-2, PW-3 and PW-5 (informant) having stated in their evidence that they gave detailed information on reaching Barkatha Police Station on 05.07.1990, which was recorded and that being the First Information Report, but, it has not been brought on record. Hence, subsequent *fardbeyan* of informant (P.W.-5) forming part of the First Information Report marked as Exhibit-2 recorded at village Choube could not be First Information Report under law and the same being after-thought could not be taken as the First Information Report of the case, under Law. Hence, prosecution has suppressed the earlier First Information Report which could have thrown light on the first and foremost version of the prosecution case and so, cast serious doubt on the entire prosecution case.

124. To test the veracity that earlier First Information Report was suppressed, this Court has gone to the deposition of the injured Rameshwar Nayak (P.W.-1), who is the son of the deceased and he was also assaulted by the accused persons/appellants. Rameshwar Nayak (P.W.-1), has deposed in his cross-examination that villagers had took him and his elder brother Sahdeo Nayak (P.W.-3), to the police station and they had informed about the occurrence to the *daroga jee* and *daroga jee* had immediately issued the requisition slip and sent them to the hospital.

125. The other injured witness, Sahdeo Nayak (P.W.-3), had also stated in his cross-examination that they had reached the Barkattha police station at about 10:00 AM and *daroga jee* had sent him to the Barkattha Hospital, where he was treated.

126. Hence, from the above testimony of both the injured witness P.W.-1 and P.W.-3, this Court finds that as both P.W.-1 and P.W.-3, were injured and, hence, when both were taken to the police station, then, Officer-in-Charge, had sent both the injured to Barkattha Hospital, for treatment.

127. Further, ongoing to the deposition of Tulsi Nayak (P.W.-5), who is the informant of the case, this Court finds that he has specifically deposed in his evidence that they had given information about the incident to *daroga jee* at the police station, but, *daroga jee* did not take his statement at the police station and *daroga jee* took his statement in village. In his cross-examination also, informant had stated that *daroga jee* had taken him to the village on jeep.

128. Hence, from the evidence of injured P.W.-1 and P.W.-3, facts emerge that after being injured by the appellants, both P.W.-1 and P.W.-3 along with the informant P.W.-5 had gone to the police station and officer-in-charge had sent both the injured P.W.-1 and P.W.-3 to the hospital for treatment, which is evident from their injury report Ext.-5 and Ext.-5/1 respectively. Thereafter, the informant P.W.-5 had come to his village with the Officer-in-Charge and Officer-in-Charge (P.W-6 Investigating Officer) had recorded the *fardbeyan* of the informant in the village, which is apparent from the *fardbeyan* itself Ext.-2

129. Hence, the contention of the learned senior counsel for the appellants that prosecution has suppressed the earlier First Information Report, is beyond the facts and evidence of the present case and therefore, not tenable.

130. This Court, having discussed the factual aspect and legal position and considering the finding recorded by the learned trial Court, is of the view that the prosecution has been able to prove the charges under sections 148, 302/34 and 307/34 of the Indian Penal Code beyond all shadow of doubts against the present appellants, namely, Kishun Nayak, Guru Charan Nayak, Ganesh Nayak and Mathura Nayak, therefore, order impugned requires no interference by this Court so far the aforesaid appellants are concerned.

131. On the basis of the discussion made hereinabove, the appellant-Munna Devi, is acquitted of all the charges by giving benefit of doubt and she is discharged from the liabilities of the bail bonds.

132. Accordingly, impugned judgment of conviction dated 07.04.1998 and the order of sentence dated 13.04.1998 passed by the learned 5th Addl. Sessions Judge, Hazaribagh in Sessions Trial No. 105 of 1991 requires no interference by this Court, so far as appellants, namely, Kishun Nayak, Guru Charan Nayak, Ganesh Nayak and Mathura Nayak, are concerned.

133. Accordingly, the instant appeal stands dismissed against the appellants, namely, Kishun Nayak, Guru Charan Nayak, Ganesh Nayak and Mathura Nayak.

134. The instant appeal stands allowed against the appellant-(Smt.) Muna Devi.

135. Consequent upon dismissal of the appeal, appellants, namely, Kishun Nayak, Guru Charan Nayak, Ganesh Nayak and Mathura Nayak, since, are enjoying the suspension of sentence after order passed by this Court directing to release them during pendency of the appeal,

the bail bonds of these appellants are hereby cancelled and they are directed to surrender before the learned trial Court for serving out the sentence passed against them.

136. Needless to say, that if the appellants, namely, Kishun Nayak, Guru Charan Nayak, Ganesh Nayak and Mathura Nayak 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.

137. Pending I.As, if any, stands disposed of.

138. Let a copy of this order/judgment be sent to the learned trial Court concerned for needful.

139. Let lower Court records be transmitted to the Court concerned, forthwith.

(Sujit Narayan Prasad, J.)

I Agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

*Sudhir
Jharkhand High Court,
Dated:04/05/2026
AFR*

Uploaded on 05/05/2026.