IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 358 of 2003

[*Against the Judgment of conviction dated 15.02.2003 and Order of sentence dated 22.02.2003 passed by learned 4th Additional Sessions Judge, Fast Track Court, Garhwa in Sessions Trial No. 103/1999 & 129/1999*]

Sarfuddin Ansari, S/o Late Sahin Ansari, Resident of Village – Meral, Tolla – Makuna, P.S. – Meral, District - Garhwa.

... ... **Appellant**

Versus

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

WITH

Criminal Appeal (D.B.) No. 391 of 2003

1. Nazamuddin Ansari.
2. Mazamuddin Ansari.

Both sons of Sarfuddin Ansari, Resident of Village-Meral, Tolla-Makuna, P.S.-Meral, District – Garhwa.

... ... **Appellants**

Versus

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

.....

For the Appellants : Mr. A.K. Kashyap, Sr. Advocate.
Mrs. Lina Shakti, Advocate.

For the Respondent : Mrs. Priya Shrestha, Spl.P.P.

.....

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

C.A.V. on 16.02.2026 Pronounced on 15.04.2026

Per Pradeep Kumar Srivastava, J.

1. Above two criminal appeals arises out of common judgment of conviction and sentence passed in S.T. No. 103/1999 & 129/1999, hence taken together for hearing and adjudication.

2. Present appeals have been preferred by the appellants against the Judgment of conviction dated 15.02.2003

and order of sentence dated 22.02.2003 passed by 4th Additional Sessions Judge, Fast Track Court, Garhwa in S.T. No. 103/1999 & 129/1999, whereby and whereunder Sarfuddin Ansari (appellant in Cr.A. (DB) No. 358/2003) has been held guilty for the offence under Section 302 read with Section 120B of the I.P.C. and Nazamuddin Ansari and Mazamuddin Ansari (appellants in Cr.A.(DB) No. 391/2003) have been held guilty for the offence under Section 302 read with Section 34 of the I.P.C. All the three appellants have been sentenced to imprisonment for life and appellant Sarfuddin Ansari is additionally imposed fine of Rs. 5,000/- as default stipulation.

3. The factual matrix giving rise to these appeals in a narrow compass is that on 28.07.1998, one Chhota Sarfuddin (deceased) proceeded from Meral at about 7:45 A.M. by his cycle to railway station Meral for going to Garhwa. It is alleged that informant Immamuddin (P.W.-3) along with his nephew and brother Fakaruddin Ansari (P.W.-5) riding on separate cycle also went to see off Chhota Sarfuddin at railway station. When they crossed about 200 yards from their village, they saw Jalil, Khalil, Khurseed, Raseed, Nabir, Tauhid, Tabib, Futun were sitting near Mahua tree, who were whispering something against the informant. It is further alleged that at about 8:00

A.M., the informant along with his above two associates reached near the field of Salim Mian at Mahuram, then informant saw that Sarfuddin was standing armed with Farsa at a distance of 50 yards towards the western side of road. He also noticed Nazamuddin and Mazamuddin armed with gadasa and dagger respectively also came running and hide themselves behind the Mahuwa tree of Munni Singh. In the meantime, Nazamuddin gave a gadasa blow from back on the neck of the Chhota Sarfuddin, which resulted in half portion cut of neck and he fell down in the field of Salim Mian due to involuntary motion caused from behind. Thereafter, Naseem Ansari (dead) and Karim Ansari came from eastern side with pistol along with Bara Sarfuddin. It is further alleged that Bara Sarfuddin and Nazamuddin caught hold the legs of Chhota Sarfuddin and Nasim (dead) and Karim caught hold of his both hands and pressed him on earth, then Mazamuddin slitted the neck of Chhota Sarfuddin (brother of informant). It is also alleged that Karim and Naseem fired pointing towards informant and Fakaruddin (P.W.-5), which did not hit them and all the accused persons fled away.

The motive behind the occurrence is previous enmity between Chhota Sarfuddin (deceased) and

Bara Sarfuddin (appellant in Cr.A. (DB) No. 358/2003) in connection with road contract and due to this enmity one year prior to this occurrence, Bara Sarfuddin attempted to cause murder of Chhota Sarfuddin by assaulting on his neck, but he survived after treatment in Ranchi. The accused persons were threatening to kill the deceased from the happening of the previous occurrence.

4. On the basis of above information, FIR was registered as Meral P.S. Case No. 58 of 1998 for the offence under Sections 147, 148, 149, 342, 307, 302 of the I.P.C. and Section 27 of Arms Act against 14 named accused persons. After conclusion of investigation, charge sheet was submitted under Sections 147, 148, 149, 342, 307, 302, 120B of the I.P.C. and Section 27 of Arms Act against 11 accused persons and supplementary charge sheet was also submitted against Misafuddin, as such, cognizance of offence was taken against all the 12 charge-sheeted accused persons for the aforesaid offences. The case was committed to the court of sessions, where above Sessions Trial numbers were registered. One of the co-accused Naseem Ansari died during trial, hence proceeding against him was dropped.

5. The trial proceeded against rest 11 accused persons. The learned trial court, after evaluating the evidence

available on record, has convicted and sentenced the aforesaid three appellants and other eight accused persons were acquitted extending benefit of doubt.

6. Assailing the impugned judgment of conviction and order of sentence of the appellants, learned senior counsel for the appellants has strenuously argued that in this case altogether 12 witnesses were examined by the prosecution and also adduced following documentary evidence i.e.

Exhibit-1 : Fardbeyan.

Exhibit-2 : Signature of informant (P.W.-3) on fardbeyan

Exhibit-3 : Carbon copy of Inquest Report.

Exhibit 4 : P.M. Report.

Exhibit-5 : Certified copies of order sheet, FIR, Charge-sheet and depositions of S.T. No. 290/1998.

7. The defence has also examined one witness and marked documentary evidence i.e.

Exhibit-A : Signature of Nisafuddin on duty register.

Exhibit-A/1 : Signature of Saryu Sardar and others on duty register

Exhibit-B : Leave Register.

Exhibit-C : Order-sheet and Complaint Petition of Complaint Case No. 253/1997.

Exhibit-D : Order-sheet, F.I.R. and Charge-sheet of G.R. No. 819/1996.

8. It is further submitted that P.W.-12 has been examined as independent eye-witness, who has stated totally contradictory story as regards manner of occurrence, which is not set up by the prosecution, surprisingly, this witness has not been declared hostile by the prosecution and the learned trial court has not properly considered his evidence controverting with the evidence of other eye-witnesses. It is further submitted that due to non-examination of the Investigating Officer, the defence could not be able to get explained the glaring contradictions appearing in the evidence of witnesses, which seriously prejudiced the accused persons in their effective defence. The place of occurrence was also not proved with proper verification by the Investigating Officer. The witnesses have also given colourable evidence regarding actual place of occurrence. Blood stained cloths of deceased were also not produced as material exhibit. The bicycle of deceased and the informant has also not been seized and nothing has been whispered in this regard.

9. It is further submitted that the prosecution story as depicted by the witnesses is absolutely contradictory to the medical examination report of the deceased as regards weapon used for commission of murder. The post mortem report also suggest that time elapsed

since death is 6-36 hours is absolutely vague, rather the other symptoms on dissection mentioned by the concerned doctor clearly suggest that the death was within 18-36 hours, which falsifies the actual time of occurrence, as stated by the witnesses, rather, it was committed in the night in between 8-10 P.M. and the appellants have been falsely implicated due to previous enmity. The learned trial court has based its finding only on the basis of evidence of highly interested and inimical witnesses, ignoring the evidence of independent eye-witnesses. It is further submitted that the learned trial court has travelled beyond the evidence available on record, while concluding about existence of conspiracy in between all the three appellants for committing murder of deceased, but without recording any factual aspects drawing inference about conspiracy, only appellant Bara Sarfuddin has been held guilty for the offence under Section 302 read with Section 120B of the I.P.C. It is very strange as to how alone an accused can enter into conspiracy with himself. On the other hand, Nazamuddin Ansari and Mazamuddin Ansari have been held guilty for the offence under Section 302 read with Section 34 of the I.P.C. In this connection also, the ingredient of Section 34 of the I.P.C. has not been proved and it is also not proved

that both these appellants have acted in concerted manner by inflicting blow by sharp cutting weapon. The manner of occurrence as alleged in the FIR and deposed by the witnesses as well as place of occurrence is self-contradictory and real picture has not been reproduced by the witnesses to place any reliance upon their testimony. The presence and participation of the appellants in the alleged occurrence is absolutely doubtful as per the evidences of prosecution witnesses themselves. Learned trial court has acquitted 08 accused persons and during investigation also several accused persons were not sent up for trial. The witnesses have also stated about role of all other accused persons, therefore, granting premium of acquittal to most of the accused and convicting the present appellants on different footing is absolutely unwarranted under law. As such, the judgment passed by the learned trial court suffers from serious error of law and requires interference by this Court in both the appeals by setting aside the impugned judgment of conviction and sentence. The appellants deserve acquittal from the charges leveled against them.

10. Learned counsel for the appellants has relied upon the judgments of reported in **(2010) 3 SCC 538 (Para-11 to 24), (2011) 9 SCC 561 (Para-15 to 22), (2004)**

3 Crimes 115 (SC) and **(1991) 2 PLJR 463**.

11. On the other hand, learned Spl.P.P. for the State defending the impugned judgment and order and controverting the points of argument as mentioned above by the learned counsel for the appellants, has submitted that the motive behind the occurrence has been firmly proved by the prosecution against the present appellants, who have earlier occasion also attempted to murder the deceased by giving sharp cut blow on his neck and proceeding of that case is also pending. The appellants have in a pre-planned way armed with deadly weapon like pistol, knife, dagger etc. intercepted the deceased in the way and have given fatal blow on his neck. The prosecution witnesses have proved the prosecution story beyond all reasonable doubt which finds corroboration from Post-mortem Report of the deceased. Merely non-examination of I.O. and non-production of blood stained cloths or any other incriminating article is not sufficient to disbelieve the prosecution case, when testimony of oral / ocular witness appears reliable and corroborated from other unimpeachable evidence. There is no legal bar in recording conviction. The defence has not been able to rebut the testimony of prosecution witnesses and no satisfactory evidence has been adduced to displace the prosecution case in

its entirety. The learned trial court has very wisely and aptly analyzed, appreciated and evaluated the evidence available on record and rightly held the appellants guilty and sentenced them for the offence of murder. There is no illegality or infirmity in the impugned judgment and order, calling for any interference by way of these appeals, which is fit to be dismissed.

12. We have gone through the record of the case along with impugned judgment in the light of contentions raised on behalf of both side.

13. The only point for consideration in both the appeals is "as to whether the judgment of conviction and sentence of the appellants passed by the learned trial court suffer from any serious error of law, calling for any interference in these appeals?"

14. Before adverting to impart our verdict on the above point, it is desirable to appraise with the evidence adduced by the parties.

15. Out of 12 witnesses examined by prosecution, **P.W.-1 Bajuddin Ansari** is the cousin brother of deceased Chhota Sarfuddin. According to his evidence on 28.07.1998 at about 7:45 A.M., he was present in village – Sanbariya. He returned to his home at about 8:30 A.M., then heard hulla in the village that Chhota Sarfuddin has been murdered. He saw the dead body

of Chhota Sarfuddin sustaining injury on neck, face and other parts of the body under pool of blood. He also claims to have seen some accused persons, who were fleeing away, but could not identify them. This witness has further disclosed that prior to this occurrence, the deceased Chhota Sarfuddin had lodged a case against Bara Sarfuddin. This witness has been declared hostile by the prosecution only on the point that in his statement under Section 161 of Cr.P.C., he has disclosed the name of accused persons, who were fleeing away after assaulting the deceased.

In his cross-examination by defence, he admits that the place of occurrence is situated at a distance of 500 yards from the house of deceased.

16. **P.W.-2 Aalim Seikh** is the nephew of deceased. He saw the dead body of his uncle lying near field of Salim Mian in Village Mahuram. The neck was almost slitted. Police also arrived at place of occurrence at about 8:30 A.M., then inquest report was prepared. He has disclosed nothing else.

17. **P.W.-4 Jalaluddin Ansari** has also claimed that he was going to Meral on the date of occurrence at about 7:45 A.M., when he reached about 100 yards towards south from his house then heard hulla coming from Village – Mahuram. He rushed towards place of

occurrence, then he heard noise of fire arm. He continued running and reached at Mahuram then saw that Bada Sarfuddin armed with farsa, Nazamuddin bearing gadasa, Mazamuddin Ansari having knife, Naseem Ansari and Karim Ansari having pistol, Jalil Ansari, Khalil Ansari, Rashid Ansari, Khurshid Ansari, Nabir Ansari, Tabir Ansari and Tauhid Ansari were coming towards Mahuram raising alarm that they have killed Chhota Sarfuddin by completely cutting his neck. Upon this Bara Sarfuddin asked as to they have completely slit neck, which was affirmed by accused persons. Thereafter, he went to place of occurrence and saw Chhota Sarfuddin was lying dead and his neck was completely severed from the body. He also saw there Immamuddin and Fakaruddin were present.

In his cross-examination, he states that he proceeded from his house at 7:40 A.M. and heard sound of firing at 7:45 A.M. in the way coming from Mahuram, which is situated at a distance of 400-450 yards, where he was standing. Again, he states that he heard sound of twice firing, but he can't say who has fired because he was standing at a distance. He further admits that his village is infested with naxallite activities and prior to this occurrence, 2-3 murder have been committed by the terrorists. **He**

also admits that when he reached the place of occurrence, none of the accused persons were present, rather Immamuddin Ansari (P.W.-3) and Fakaruddin Ansari were present. He further admits that the accused persons were fleeing at a distance of 10 steps from this witness towards north side. The dead body of Chhota Sarfuddin was lying on south side from where Fakaruddin was standing and cycle was lying at a corner of road. He stayed at the place of occurrence till the arrival of police. He also admits that deceased was his own uncle.

He has denied the suggestion of defence that being the nephew of the deceased, he has given false evidence and has not seen the occurrence.

18. **P.W.-5 Fakaruddin Ansari** is also nephew of the deceased. He saw the dead body of his uncle Chhota Sarfuddin was lying in Village Mahuram near the field of Salim Mian. Police also arrived at the place of occurrence and inquest report was prepared over which he has also put his signature. This witness has further deposed that the occurrence took place at about 7:45 A.M. when Chhota Sarfuddin was going to Meral by his cycle. This witness along with Immamuddin Ansari (P.W.-3) (Informant) also proceeded to Meral on another cycle and when they reached at Mahuram, then saw that Nazamuddin

Ansari armed with gadasa came from behind and gave gadasa blow on neck of the deceased. Chhota Sarfuddin sustaining injuries thrown away from the cycle. In the meantime, Mazamuddin Ansari, Bada Sarfuddin armed with farsa, Karim Ansari and Naseem Ansari armed with pistol arrived there. In the meantime, Naseem and Karim caught hold of hands of Chhota Sarfuddin and Nazamuddin and Bara Sarfuddin caught hold of legs then Mazamuddin Ansari completely severed the neck of the Chhota Sarfuddin by knife due to which, he died on the spot. He further states that he along with other rushed to save Chhota Sarfuddin then one of the miscreants have shot one fire and all the accused persons fled away. He has further deposed that apart from above named accused persons, there were other miscreants namely, Jalil Ansari, Khalil Ansari, Nabir Sheikh, Putun Sheikh, Tauhid Ansari. He has claimed to have identified all the accused persons.

In his cross-examination, he admits that he along with P.W.-3 Immamuddin Ansari were at a distance of 20 steps from Chhota Sarfuddin on their cycle. They saw the accused persons were standing at a distance of 500 steps, then this witness along with Immamuddin stopped there and do not try to flee away. He further reiterates that Bada Sarfuddin was

armed with farsa, Nazamuddin assaulted Chhota Sarfuddin on neck by gadasa. At the time, Nazamuddin inflicted gadasa blow on Chhota Sarfuddin, he was riding on his cycle and his face was towards south. Gadasa blow was given from behind i.e. from north side by Nazamuddin. He further states that due to injury sustained by gadasa on neck, Chhota Sarfuddin was thrown from his cycle and fell down at a distance of 5 yards towards east in the field of Salim Mian. Just after felling on field, knife blow was given to Chhota Sarfuddin slitting the neck by Mazamuddin Ansari.

Attention of this witness has been drawn towards statement under Section 161 of Cr.P.C., where he has denied to state before the police that the neck of the deceased was slitted by gadasa blow caused by Nazamuddin Ansari. He further states that at the time of first blow by gadasa, they did not raise alarm, but alarm was raised when neck was slitted by knife, then accused persons fled away towards east and some of the accused towards west. He along with P.W.-3 went near the deceased when all the accused persons fled away. He further states that he saw the occurrence from 500 steps when injury was inflicted by gadasa and neck was slitted by knife. At the time of firing towards them also they did not flee away. He further

admits that fire arm was opened upon them from a distance of 10 deg (steps) towards east side.

He has denied the suggestion of defence that he has not stated before the police the specific overt acts of the accused persons as stated for the first time before the court and due to previous enmity being nephew of the deceased, he has given false evidence.

19. **P.W.-6 Maimun Bibi** is the wife of deceased and admittedly not an eye-witness of the occurrence. She has stated the name of accused persons namely, Nazamuddin, Mazamuddin, Bada Sarfuddin, Naseem and Kisafuddin Ansari and others, total 13 accused persons and other rest 08 accused persons were also present near the place of occurrence. She has stated in general terms that all the accused persons assaulted to her husband by knife, farsa and gadasa and slit the neck. She has also stated about previous enmity with the accused persons in respect of thekedari (Contractorship). On previous occasion also, her husband was assaulted by knife on his neck by the accused persons, but he was saved due to prompt treatment at Ranchi.

In her cross-examination, she admits that she is not an eye-witness of the occurrence, rather she was present in her house. After two days of occurrence, her statement was recorded by police. She has also

disclosed before police that there was previous enmity between her husband and accused persons on the issue of contractorship.

She has denied the suggestion of defence that due to previous enmity she has given false evidence.

20. **P.W.-7 Md. Jabbar Khan** is an Advocate Clerk, who has only proved the carbon copy of inquest report as Exhibit-3.

21. **P.W.-8 Biku Ram** has simply stated that Chhota Sarfuddin was murdered by 12-13 accused persons on 28.07.1998 in the morning at about 8:30 A.M. He disclosed nothing else and declared hostile by the prosecution and his attention has been drawn towards his statement under Section 161 of the Cr.P.C. recorded by the police.

22. **P.W.-9 Lakhan Sao** has also been declared hostile and expressed no knowledge about the occurrence. His attention has also been drawn towards his statement under Section 161 of the Cr.P.C., which he has denied.

23. **P.W.-10 Dinesh Kumar Tiwari** is bodyguard of S.P., who has simply proved the signature of the then O.C. of Meral P.S. Sri. S.S. Baidyanathan on first information report, which is marked Exhibit-3.

24. **P.W.-11 Dr. Mahesh Prasad Singh** has conducted the autopsy on the dead body of Chhota Sarfuddin Ansari

on 28.07.1998 at 3:30 P.M. and found following:-

Incised wound cutting through upper level of neck – just at lower part of occipital bone – cutting skin of back of neck, lower part of occipital bone muscle, upper level of 1st cervical bone, spinal cord, cutting through cheek, skin and muscles of both sides, lower part of both ear, upper part of posterior ramai of both mandibular bone and passing just above tongue. Whole chopped off head attached with lower part by a 1½" wide flap of skin at left angle of mouth and cheek. Brain matter also exposed in posterior part of brain cavity.

This witness has opined that death occurred due to shock and haemorrhage caused by the above injuries. The injuries have been caused by sharp weapon like gadasa. Time elapsed 6-36 hours since post-mortem. He has also proved post-mortem report as Exhibit-4.

In his cross-examination, this witness admits that injuries were within 6-36 hours, it cannot be go beyond 36 hours and before 6 hours. The sharp weapon may be carved or straight. The injuries were caused by a single blade.

25. **P.W.-12 Laxman Singh**. In his examination-in-chief, has simply stated that on the date of occurrence at about 8:00 A.M. he was going to Meral market. He has

also stated that Chhota Sarfuddin and Fakaruddin were also going to Meral market along with others and identified Bada Sarfuddin and Putul Sheikh present behind the dock.

In his cross-examination, this witness has taken a drastic u-turn and stated that when Chhota Sarfuddin was proceeding by his cycle, he gave lift to this witness and he also sat on the carrier of the cycle driven by Chhota Sarfuddin. He further proceeded about 150 feet meanwhile a person armed with tangi gave a tangi blow then he jumped from the cycle and fled away due to fear. He could not identify the person who inflicted the tangi blow. He has stated nothing as to what happended with Chhota Sarfuddin.

26. The sterling prosecution witness is **Immamuddin Ansari**, who is informant of the case and claims to be eye-witness examined as **P.W.-3.** Therefore, his evidence deserves to be discussed at length.

According to his evidence, on 28.07.1998 at about 7:30 A.M., his elder brother Chhota Sarfuddin was going to Garhwa in connection with contract work. This witness along with his nephew Fakaruddin also proceeded on another cycle to see off his brother. He further states that his brother Chhota Sarfuddin was proceeding ahead and he along with Fakaruddin was just behind from him. When his brother reached near

Tola Mahuram, then Nazamuddin Ansari bearing a gadasa came out behind the Mahuwa tree and inflicted gadasa blow, which resulted in half cut on neck due to which Chhota Sarfuddin Ansari fell down. Thereafter, Mazamuddin Ansari whipped out a knife and slit the neck completely. He has further stated that Bada Sarfuddin was having farsa, Naseem and Karim were armed with pistol. Again, Naseem and Karim caught hold of leg and Bada Sarfuddin and Mazamuddin caught hold of hand and Mazamuddin slitted the neck. He has further deposed that Naseem and Karim opened fire arm pointing towards this witness and his nephew Fakaruddin, which did not hit them. Thereafter, all the accused persons fled away. He has further deposed that after retreat of the accused persons from place of occurrence, he went near his injured brother and saw that his neck was completely severed from the body and he was lying dead. Upon raising alarm, several villagers namely, Sadique Sheikh, Aalim Sheikh, Wajuddin Ansari, Sahabuddin Ansari and others arrived at the place of occurrence. He has proved his fardbeyan as Exhibit-1 and signature on fardbeyan as Exhibit-2. He has further stated that on previous occasion also Bada Sarfuddin, Ali Hussain and Amin Ansari had attempted to kill his brother Chhota Sarfuddin about

one year prior to this occurrence. There was enmity between the deceased and accused persons on the issue of contractorship.

In his cross-examination, this witness admits that he is five brothers including Chhota Sarfuddin (deceased), Nisafuddin, Najibuddin and Sahabuddin. Nisafuddin is also accused in this case. His son is Naseem. He further says that witness Fakaruddin (P.W.-5) is son of Sahabuddin. Other accused persons are not belonging to his family. He also admits that accused Nisafuddin is constable and at the time of alleged occurrence, he was on duty at Barwadih. He further states that the dispute about contractorship for road construction was in between the deceased and the accused Bada Sarfuddin and his sons Nazamuddin and Mazamuddin, but he can't tell when the scuffle took place regarding contractorship between the parties. He further admits that Mahuram is situated from his village at a distance of 500 yards. He was behind 20 steps in the way from Chhota Sarfuddin. No other persons were present at that time and no public men were going. He further admits that from his village to Mahuram road is at direction towards south. Both deceased and he on cycle were seeing towards south side. Both side of road there is field. He further admits that when he was proceeding

from his cycle, he can't see the accused persons because they were hiding behind mahuwa tree. He further admits that mahuwa tree was standing towards western side of the road. There were 10-15 mahuwa tree at a distance of 50-100 yards. He further admits that behind the mahuwa tree only two persons, Nazamuddin and Mazamuddin were hiding. When Chhota Sarfuddin fell down then other three accused persons namely, Naseem, Bara Sarfuddin and Karim came out from the mahuwa tree situated towards east side, who threatened this witness by showing pistol. He saw the occurrence from 20 steps and due to fear did not raise alarm and alarm was raised when the accused persons fled away. **This witness has given serious jolt to his earlier statement in his fardbeyan by stating that the gadasa blow was given at the neck of deceased from front side causing injury on mouth also**, then deceased fell down. Blood stains were also present on the road itself. Thereafter, wriggling under pain, his brother crossing the road fell down in the field. Blood stains were present on the field also, which was collected by Police. The bicycle of the deceased was also taken by police, but it was returned after 04 days. He has further stated that he did not notice the blood stains on the clothes of accused persons while

cutting neck of the deceased. The whole occurrence was executed within 30 seconds. He also admits that other seven accused persons were not present at the spot, but they were threatening to kill the deceased. **He further states that both gadasa and knife were used in assaulting the deceased**. The gadasa was not rusted, but was shining, which was in length about 1¼ ft. The knife was also having one side edge, which was opening and fitted with wooden handle or iron handle, he can't see. He further states that the neck of the deceased was not slitted and severed from body, rather it was joined with some skin part. He disclosed about the manner of occurrence only to his brother and none of the other villagers, who approached after the occurrence. His brother Sahabuddin also went to police station for giving information about the occurrence. Police arrived at the place of occurrence after two hours. He has denied the suggestion of defence that he has not seen any occurrence and he has given evidence only on account of previous enmity with the accused persons. He has also denied that his brother has been killed by extremists. He also admits that on previous occasion also some extremists have killed some contractors.

He has denied the suggestion of defence that he approached the place of occurrence after murder of

the deceased by extremists and falsely implicated the accused persons due to previous enmity and taking vengeance.

27. On the other hand, defence witness D.W.-1 Komal Pandey was examined for proving the plea of alibi of one co-accused Nisafuddin Ansari, who has been acquitted by learned trial court. It was proved that on the date and time of occurrence, Nisafuddin is on duty in JAP, Jamshedpur. No other oral or documentary evidence has been adduced by the defence. The case of defence is of false implication due to previous enmity. The deceased himself was under inimical terms with several persons and he might have been killed under extremist activity.

28. This is a case of day light murder which allegedly happened at about 8:00 A.M. in the morning. As we have discussed above, the only eye witnesses of the case are P.W.-3, own brother of the deceased and who is also informant of the case and P.W.-5 Fakaruddin Ansari. The other witnesses have admittedly arrived at the place of occurrence after hearing hulla, in the meantime, the deceased was lying dead on the spot. Both P.W.-3 and P.W.-5 are brother and nephew of the deceased. The Investigating Officer of this case has not been examined during trial. Therefore, contradictions appearing in the evidence of ocular

witnesses could not get explained by the defence.

29. As per the prosecution story, the motive behind the occurrence is dispute of contract work between deceased and appellants and on previous occasion also the appellants have attempted to kill the deceased by inflicting knife blow. A serious objection has been raised on behalf of learned senior counsel for the appellants that both the above witnesses are not only close relative of the deceased, but also inimical to the appellants. They have also made his own brother as accused namely, Nisafuddin Ansari, who has been acquitted from the charges because it was proved beyond doubt that he was not present at the place of occurrence, rather he was on duty in JAP, Jamshedpur. It is also pointed out by the learned senior counsel for the appellants that there are material contradictions and discrepancies as regards the manner of occurrence, inflicting knife or gadasa blow on the deceased and involvement of several accused persons in the alleged murder, although the testimony of witnesses cannot be discarded merely on the ground of interestedness, but it is cardinal principle of law that the testimony of such type of witnesses must be scrutinized sparingly and with great caution, so that no innocent person could suffer simply on ground of retaliation.

30. In above context, we have taken close scrutiny of P.W.-3 and P.W.-5 as to how far their testimony is reliable and fit for basis of conviction of the appellants. P.W.-3 Immamuddin is informant of this case and his fardbeyan was recorded by ASI S. Badiyanathan, Officer-in-Charge, Meral P.S. on 28.07.1998 at about 10:30 A.M. at the place of occurrence Village Mahuram near the dead body of the deceased. In the FIR, it is alleged that when deceased proceeded from his house then this witness along with his one nephew boarding on his cycle and his brother boarding on another cycle also went to see off the deceased at Meral Railway Station, but he has not disclosed the name of his nephew, who was accompanied with him on his bicycle. He has also stated that the deceased was only about 20 steps ahead of them till the commission of the crime. According to him, only they have crossed 100 yards from their village and reached near Mahuwa tree then saw several accused persons were talking something against the informant. It is specifically alleged that at about 8:00 A.M. when informant along with his brother and nephew reached at Village Mahuram about 500 yards away from his village then saw Bara Sarfuddin Ansari armed with farsa standing about 50 yards away from road. In the meantime, from western

side of road, Nazamuddin Ansari and Mazamuddin Ansari, both sons of Bara Sarfuddin Ansari armed with gadasa and knife respectively came from behind the mahuwa tree and Nazamuddin Ansari gave a gadasa blow from behind on the neck of his brother Sarfuddin and throat was half cut then injured Chota Sarfuddin fell down from cycle and thrown about 5 feet east in the field of Salim Mian. Thereafter, Naseem Ansari and Karim Ansari appeared with pistol along with Bara Sarfuddin. Bara Sarfuddin and Nazamuddin caught hold the legs of Chota Sarfuddin. Karim and Naseem caught hold of his hands and pressed him on earth then Mazamuddin slit the neck completely of Chota Sarfuddin, due to which, he died on the spot. Thereafter, Jalil Ansari, Khalil Ansari, Rashid Ansari, Khurshid Ansari, Nabir Ansari, Tabir Ansari and Tauhid Ansari etc. also raised alarm to ascertain whether Chota Sarfuddin has been died or not? On the basis of fardbeyan of the informant, FIR was registered against 14 named accused persons including the present appellants.

31. In course of trial, the informant Immamuddin was examined as P.W.-3, wherein he has admitted that he was following his brother Chhota Sarfuddin and was at a distance of 20 steps along with his brother and nephew and when reached near Tola Mahuram,

Chhota Sarfuddin was attacked by Nazamuddin Ansari by gadasa on his neck, due to which he fell down in the field. Thereafter, Mazamuddin Ansari slit the neck by a big knife. Bara Sarfuddin was armed with farsa, Naseem and Karim were armed with pistol. He has further stated that Naseem and Karim caught hold of legs and Bara Sarfuddin and Mazamuddin caught hold of hands of Chhota Sarfuddin, then Mazamuddin slit the neck, resulting in instantaneous death of his brother. Nassem and Karim fired upon him, but which did not hit them. Thereafter, all the accused persons fled away. Admittedly this witness reached near the deceased when the accused persons fled away from the spot and saw his brother was dead. His brother Sahabuddin went to police station. Thereafter, police arrived at the place of occurrence. This witness has also admitted in his cross-examination that accused Nisafuddin Ansari is his own brother, who is constable in JAP, Jamshedpur and also admitted that at the time and date of occurrence, he was on duty at Barwadih. This witness again confirms in his cross-examination that gadasa was given to Sarfuddin (deceased) from front side causing cut injuries on mouth also. Thereafter, he fell down on earth. He also admits that at the time of occurrence, no other persons were going, rather it was

lonely place and except this witness, his nephew and brother, no one has seen the occurrence. In his evidence also, he has not disclosed the name of his nephew, who was boarding on the career of his cycle.

32. Another eye-witness P.W.-5 Fakruddin Ansari, Son of Sahabuddin Ansari has stated that Nazamuddin Ansari gave gadasa blow on neck from behind of the deceased while he was driving cycle. Thereafter, Mazamuddin Ansari, Bara Sarfuddin, Karim Ansari and Naseem Ansari also arrived, they caught hold of the deceased, then Mazamuddin Ansari slitted the neck of Chhota Sarfuddin causing his instantaneous death. He was also present at the distance of 20 steps along with his uncle P.W.-3. According to him, when first blow was given to the deceased by Sarfuddin, they did not raise any alarm and when neck was slitted by knife then they raised alarm and accused persons fled away. When accused persons fled away then he along with uncle (P.W.-3) went near the deceased. He again has given contradictory statement in his cross-examination that both gadasa blow and knife blow was seen by them from a distance of 500 steps. Although, both of these witnesses claim that they were just behind the deceased on different cycle at a distance of 20 steps throughout the incident. This witness has stated in his statement under Section

161 Cr.P.C. that Naseem and Karim caught hold of hand and Nazamuddin and Bara Sarfuddin caught hold of his legs, then Mazamuddin slitted the neck by knife of the deceased. P.W.-4 Jalaluddin Ansari reached at the place of occurrence just after the incident and saw the deceased, his neck was completely cut. He has also admitted that his village is naxal infested area and several persons have been murdered by the people of Naxalite organization, which fact is also admitted by P.W.-3.

33. As per evidence of P.W.-3 and P.W.-5, who were all along at a distance of about 20 steps behind from the deceased have given completely different story from each other. According to P.W.-3, gadasa blow was given by Nazamuddin from front side causing injury on mouth also to the deceased. According to P.W.-5 one gadasa blow was given from behind on the neck to the deceased. Both the witnesses have consistently stated that second blow was given by knife by Mazamuddin slitting the neck then other co-accused persons were holding both hands and both legs of the deceased. Sahabuddin Ansari, who according to informant went to police station to inform about the incident, has not been examined in this case.

34. The evidence of P.W.-3 and P.W.-5 could not be reconciliated with the evidence of P.W.-11 Dr. Mahesh

Prasad Singh, who has specifically opined that the injuries was caused by single blade might be use of gadasa and no injury on mouth and face was noticed during post-mortem of the deceased.

35. The learned trial court has tried to differ with the opinion of the doctor without recording any special reasons for such disagreement as observed in Para-14, 15, 16 & 17 of the judgment as under:-

> *"14. On close scrutiny, I find that cut injury of lower part of ear shows that the blow of sharp edged weapon (Gadasa) was inflicted from back side.*
>
> *15. This court slightly differs from the opinion of Medical Expert on only the point i.e. injuries were caused by a single blow of Gadasa, due to scientific reasons.*
>
> > *(i) Chhota Sarfuddin (deceased) was in inertia of motion and single blow inflicted by accused from the back side cannot create so much resistance against neck to cause such type of injury because both Garasa and Sarfuddin (deceased) were moving in same direction. (In case if Garasa and cyclist are moving with same speed in same direction, no injury will be caused).*
> >
> > *(ii) Injury mentioned in P.M. report i.e. "Whole chopped head attached with lower part by 1 ½" wide flap of skin" can never be caused by inflicting SINGLE BLOW OF GARASA (heavy) UNLESS there must be FIXED AND HARD SUPPORT on the other side of neck to create high resistance and I am also of view that above mentioned injury can never be caused by inflicting a single blow of Tangi due to its shape,*

size and above mentioned conditions.

16. But I have to see what are the compelling circumstances before doctor for such opinion and what are the consequences of such opinion.

Medical Experts finding that the A.M. injuries mentioned in P.M. report were caused by SINGLE BLOW shows another aspect that he found only one injury of chopping, it also excludes second blow of Gadasa but above scientific reason suggests that there must be second cut injury by sharp edged weapon (dagger) in the hole of first cut injury made by Gadasa. Thus both injuries were caused by sharp edged (as explained by P.W.-3 in para-38/39 of cross-examination) in overlapping form, creates difficulty before Medical Expert (who is not witness of fact) for his opinion (i.e. injuries were caused by single blow) without knowing the facts and circumstances of this case.

17. On above discussion, I irresistibly opine that injuries mentioned in P.M. report, Expert opinion and scientific reasons confirm two things (i) Use of at least one more sharp edged weapon (dagger) (ii) Involvement of at least two accused persons.

36. Above reasons recorded by the learned trial court does not find support from any reference of medical jurisprudence, more over it is simply a guess work and imagination of the learned trial court, although the Evidence Act has equipped with wide powers to the court to ask any question from any witness including the Expert Witness in order to know the truth. Surprisingly at the time of cross-examination of P.W.-11 Dr. Mahesh Prasad Singh, the learned trial

court having no different opinion has not got explained by the Expert witness i.e. Doctor with a view to remove his confusion. In the factual aspect also both P.W.-3 and P.W.-5 have differed in material particulars as regards inflicting gadasa blow either from behind or from front side to the deceased. The second episode of catching hold of the deceased by four persons and slitting the neck by knife is also not corroborated by medical evidence.

37. Apart from material contradictions regarding manner of infliction of injuries and weapons used by the accused persons, the prosecution has not been able to prove any inimical terms between the present appellants and deceased or any previous attempt of murder of the deceased and pendency of any case rather the defence vide Exhibit-C & Exhibit-D has been able to prove that the witnesses P.W.-3 and P.W.-5 were in inimical terms with other co-accused persons, who were falsely implicated in this case. The learned trial court itself has not believed the version of firing by pistol upon the witnesses and acquitted those accused persons. The presence of P.W.-3 and P.W.-5, who are sole eye-witnesses of occurrence, at a distance of 20 steps from the place of occurrence and thereafter deviation from it, as noted above, also creates doubt on their presence. As per FIR, brother of

the informant Sahabuddin went to police station for giving information about the occurrence, but he has not been examined in this case reason best known to the prosecution. The most crucial thing is that the learned trial court has held guilty and convicted the Bara Sarfuddin (appellant in Cr.A. (DB) No. 358/2003) for the charge under Sections 302/120B of the I.P.C., but in the entire judgment, there is no whisper as to with whom he conspired and there is no evidence that Bara Sarfuddin has inflicted any blow to the deceased even by farsa alleged to be borne by him. No separate sentence has been awarded for offence under Section 120B of the I.P.C. Similarly, as regards conviction of appellants Nazamuddin Ansari and Mazamuddin Ansari for the offence under Section 302 read with Section 34 of the I.P.C. has also not been dealt with as to how they have acted in concerted manner in furtherance of their common intention. It appears that the learned trial court has picked and choose different versions of the witnesses and interpreted the same without evaluating the material contradictions and infirmities appearing in the cross-examination of the witnesses, which are mutually contradictory of each other. We further find that the learned trial court has committed serious illegality while recording findings that the main eye-witnesses

P.W.-3 & P.W.-5 have given consistent version of the occurrence, which finds corroboration from P.M. Report of the deceased in nicety. Therefore, we are of the firm view that the learned trial court has committed serious illegality while appreciating the ocular testimony of witnesses (P.W.-3 & P.W.-5) without considering the material contradictions appearing in their evidence completely disbelieving their truthfullness and reliability and also does not find any corroboration from the P.M. Report of the deceased. The learned trial court has also failed to appreciate that the prosecution was lodged by informant against his own brother who was under inimical terms and criminal cases are also pending wherein informant was accused. Several innocent persons were dragged in this case and acquitted after trial.

38. In view of above discussion and reasons, we are constrained to set aside the impugned judgment of conviction and order of sentence passed by the learned trial court. Appellants are acquitted from the charges levelled against them. Accordingly, both the appeals are **allowed**.

39. The appellants are on bail. As such, they are discharged from the liability of bail bonds and sureties shall also be discharged.

40. Pending I.A., if any, stand disposed of.

41. Let a copy of this judgment along with trial court record be sent back to the court concerned immediately for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi
Dated, the 15th April, 2026.
Sunil /**N.A.F.R.**
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