

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No.275 of 2011

Yugal Mundari @ Jugal Mundari, son of late Pandu Mundari, resident of Village Bandgaon, P.O. & P.S. Bandgaon, District Singhbhum (W).

..... Appellant

Versus

The State of Jharkhand

..... Respondent

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant : Mr. Rajendra Prasad Gupta, Advocate
Mr. Kunal Kishore, Advocate

For the Respondent : Mrs. Vandana Bharti, APP

C.A.V. on: 12/09/2023

Pronounced on:06/ 10/2023

1. This Criminal Appeal has been preferred against the judgment of conviction dated 15.02.2011 and the order of sentence dated 22.02.2011 passed by the learned Additional Sessions Judge, F.T.C.-V, West Singhbhum in Sessions Trial No. 182 of 2007, whereby the learned trial Court has convicted the appellant under Sections 304 Part-II and 324 of the Indian Penal Code and sentenced him to undergo RI for seven years for the offence under Sections 304 Part-II of the Indian Penal Code. There was no separate sentence under Section 324 of the Indian Penal Code.

2. The brief facts of the prosecution case leading to this Criminal Appeal are that Sanjay Soy and Lakhindra Sawasi both being the student of Class-X were studying at Laxmi Narayan High School, Murhu. Both were residing in the hostel of their school. It is alleged that on 02.05.2007, both left their village at 11:00 O'clock of day time to go their school by their bicycle. At about 02:00 pm, they reached at Bandgaon market, where they met their classmate Binod Soy (victim-deceased). Binod Soy insisted them to stay with him in the night at village Bandgaon under Taladih Tola to the house of

his beloved Palo Mundari. The FIR reveals that there was intimate relationship visiting terms and love affairs between Binod Soy and Palo Mundari. On being insisted by Binod Soy, his friends Sanjay Soy and Lakhindra Sawasi also followed him and reached at Talidih Tola of village Bandgaon. On reaching there, Binod Soy alone went to the house of Palo Mundari; while his two friends Sanjay Soy and Lakhindra Sawasi both stayed at the western side of *kaccha* road. Binod Soy brought two bedsheets and towels in order to sleep. About 08:30 O'clock at night, Palo Mundari came there and insisted all of them to go to her house. In the meantime, one Singi Mundari, who was the friend of Palo Mundari along with grandmother of Palo Mundari, namely, Mela Mundari came there. Thereafter, Binod Soy and Singi Mundari both proceeded near the bushes and indulged in conversation to each other at the lonely place of agricultural field. In the meantime, Palo Mundari went along with his grandmother, namely, Mela Mundari to her house to bring dinner for them. It was 11:00 O'clock of night. After half an hour at 11:30 pm, one Bishram Budding, son of Singi Mundari's elder sister came there and having seen Singi Mundari sitting with Binod Soy, he reported the same to her brother Yugal Mundari. Yugal Mundari came there along with Bishram Budding within no time. Yugal Mundari armed with knife in his hand asked his sister Singi Mundari why she was sitting with Binod Soy at isolated place. On being dissatisfied with the explanation given by his sister Singi Mundari & Binod Soy, Yugal Mundari became infuriated and he inflicted a knife blow on the chest of Binod Soy; while Bishram Budding also assaulted him with elbow and fist. Yugal Mundari also inflicted injury to his sister Singi Mundari and he forcibly took her back to his house. This fardbeyan was given by Sanjay

Soy, the informant. The informant and his friend Lakhindra Sawasi both took Binod Soy for treatment to the local doctor, who was not found available. Ultimately, they took Binod Soy by a Jeep to his house in village Kochang. On reaching to the house of injured in the morning at 03:00 am, within half an hour thereof Binod Soy succumbed to the injuries, hence the FIR was lodged.

3. On this written information, FIR No.20 of 2007 was registered against the accused Yugal Mundari and Bishram Budding for the offence under Section 302 read with Section 34 of the Indian Penal Code with the police station concerned.

4. The Investigating Officer after having concluded the investigation, filed charge-sheet against the accused Yugal Mundari and Bishram Budding under Sections 302 and 324 read with Section 34 of the Indian Penal Code.

5. The co-accused Bishram Budding was the child and he was declared juvenile.

6. The Magistrate concerned took cognizance on the charge sheet against Yugal Mundari and committed the case for trial to the Court of Sessions Judge.

7. The trial Court framed the charge against Yugal Mundari for the offence under Sections 302 and 324 read with Section 34 of the Indian Penal Code. The same was read over and explained to him, he denied the charge and claimed to face the trial.

8. On behalf of the prosecution to prove the charge against the accused in **oral evidence** examined altogether eleven witnesses i.e. **P.W.-1, Sanjay Soi; P.W.-2, Lakhinder Swashi; P.W.-3, Sanika Soi; P.W.-4, Sukh Ram Soi; P.W.-5, Dr. Ashok Kumar Mishra; P.W.-6, Somal Mundari; P.W.-7**

Pandu Mundari; P.W.-8, Dr. Arvind Kumar Rajak; P.W.-9, Palo Mundari; P.W.-10, Singi Mundari and; P.W.-11, Smt. Mela Mundari and in documentary evidence the prosecution has filed Exhibit-1, Signature of Sanjay Soy in bayan; Exhibit-1/1, Signature of Lakhindra Sawasi in bayan; Exhibit-2, Signature of Lakhindra Sawasi in Seizure list; Exhibit-3, Signature of Sanika Soy in inquest report; Exhibit-4, postmortem report; Exhibit-5, Signature of Somal Mundari in seizure list; Exhibit-5/1, Signature of Pandu Mundari in seizure list and; Exhibit-6, Injury report.

9. The statement of the accused was recorded under Section 313 of Code of Criminal Procedure, in which, he denied the incriminating circumstances in evidence against him and stated himself to be innocent. No defence evidence was adduced on behalf of the accused.

10. The learned trial Court after hearing the rival submissions of the learned counsel for the accused and learned counsel for the State, passed the impugned judgment of conviction dated 15.02.2011 and the order of sentence dated 22.02.2011 holding the accused guilty for the offence under Section 304 Part-II and 324 of the Indian Penal Code and sentenced as stated hereinabove.

11. Aggrieved from the impugned judgment of conviction dated 15.02.2011 and the order of sentence dated 22.02.2011, this Criminal Appeal has been preferred on behalf of the appellant/convict, namely, Yugal Mundari on the ground that the impugned judgment of conviction and the order of sentence passed by the learned Court below is bad in the eyes of law. The learned Court below has not appreciated the evidence in proper perspective, while passing the impugned judgment of conviction and the

order of sentence. The conviction of the appellant is based on the testimony of his two friends, who had falsely implicated to the appellant. In view of the facts and circumstances of this case and the evidence on record prayed to allow this Criminal Appeal and set aside the impugned judgment of conviction and the order of sentence and acquit the appellant/ convict from the charges levelled against him.

12. Heard the rival submissions of the learned counsel for the appellant and learned APP on behalf of the State and perused the materials available on record.

13. In order to decide the legality and propriety of the impugned judgment of conviction and the order of sentence, this Court avert to the evidences on record, which are reproduced hereinbelow:

13.1 P.W.-1, Sanjay Soi, who is the informant of this case, in his examination-in-chief, says that the occurrence is of 02.05.2007 of Wednesday. He along with his friend Lakhinder Sawasi were going to his school Laxmi Narayan High School, Murhu. At Bandgaon Bazar, they met to Binod Soy, who was his classmate. At the insistence of Binod Soy, he and Lakhinder Sawasi both stayed in the night at Bandgaon. On the very night at 07:00 O'clock Binod Soy asked him and his friend Lakhinder Sawasi to accompany him to the house of Palo Mundari, who was the girlfriend of Binod Soy. He asked Sanjay Soi and Lakhinder Sawasi to stay near Mahua tree and he went to the house of Palo Mundari to bring bedsheets for them. In the night at 11:00 O'clock Yugal Mundari and Bishram Budding both came there. Prior to their arrival, Palo Mundari went to her house to bring dinner for them. Bishram Budding saw Singi Mundari sitting with Binod Soy and went back and again came along with Yugal Mundari. Yugal

Mundari asked Binod Soi why he was sitting there along with his sister Singi Mundari, on which, Yugal Mundari gave a knife blow to Binod Soy. Yugal Mundari and Bishram Budding both had dragged Singi Mundari with them to their house. Binod Soy was taken in injured condition by them to his village in the night, wherein Binod Soy died. He had given the **written information** to the Bandgaon Police Station, which is signed by him and marked as **Exhibit-1**. During investigation, the police had also taken in custody the bloodstained soil, one shirt of Binod Soy, *gamcha* and cap, which were seized and also stated that the cloth was bloodstained. He identified both the accused Yugal Mundari and Bishram Budding in dock during trial. In cross-examination, this witness says that Binod Soy was his childhood friend. Palo Mundari was the girlfriend of Binod Soy. He and Lakhinder Sawasi went to the house of Palo Mundari at the behest of Binod Soy. The house of Palo Mundari was at the distance of 50 yards from Bandgaon. The place of occurrence where the knife blow was given was under *mahua* tree 100 paces to the western side. The house of Palo was 150 paces north from *mahua* tree. The place of occurrence was the agricultural field and the *basti* was at a distance of 50 ft. from the agricultural field. The place of occurrence at the agricultural field was isolated place. The house of Palo Mundari was aloof from the *basti*. On the night of occurrence at 10:30 they were talking at the agricultural field. He did not go to the house of Palo Mundari. Singi Mundari was exchanging talk with Binod Soy, she was not beloved of Binod Soy. There was no enmity between Yugal Mundari and Binod Soy. Singi Mundari was the younger sister of Yugal Mundari. The seizure memo bears signature of him and Lakhinder Sawasi as well. The bloodstained soil was taken by the police from the place of occurrence in his

presence and Lakhinder Sawasi. It is wrong to say that Yugal Mundari had not given knife blow rather he and his friend Lakhinder Sawasi had given knife blow to Binod Soy. It is also wrong to say that Yugal Mundari was innocent.

13.2 P.W.-2, Lakhinder Sawasi, in his examination-in-chief, says that the occurrence is of 02.05.2007. Sanjay Soy and he both were left their village to the School and met with Binod Soy at Bandgaon. He and Sanjay Soy both accompanied Binod Soy, who went to the house of Palo Mundari. Palo Mundari was the girlfriend of Binod Soy. He and Sanjay both stayed near the *mahua* Tree. Binod Soy alone went to the house of his girlfriend. Thereafter, Binod Soy brought the bedsheets for them to sleep under the *mahua* Tree. Palo Mundari and her grandmother, namely, Mela Mundari and Singi Mundari also came there. In the meantime, the grandmother of Palo Mundari left the place and went to the house. Palo Mundari also went to her house to bring dinner for them. In the meantime, he, Sanjay Soy, Binod Soy and Singi Mundari were at the agricultural field. It was 11:00 O'clock of night. Yugal Mundari and Bishram Budding both came there and asked Binod Soy why he was sitting with his sister there and he gave a knife blow in the chest of Binod Soy. He also dragged his sister Singi Mundari to his house. The injured Binod Soy was taken by them to his village at 01:30 in night and at the house of Binod Soy he succumbed to injuries. Next day, the FIR was lodged by the informant with the police station concerned, on which, he put his signature, which is marked as Exhibit-1/1. Police had also taken in custody the bloodstained soil, shirt, *gamcha* and cap of Binod Soy. The **seizure memo** of the same was prepared, on which, he and Sanjay Soy both put their signature, which is marked as **Exhibit-2**. He identified the

accused Yugal Mundari in the dock during trial. In cross-examination, this witness says that nothing was predetermined between him, his friend Sanjay Soy and Binod Soy to go to the house of Palo Mundari. The *mahua* tree was at a distance of 150 ft. from Bandgaon Bazar. The *mahua* tree was isolated place away from the village. Singi Mundari was about 18-19 years old. Singi Mundari was the younger sister of Yugal Mundari. The accused armed with knife having seen Singi Mundari, who was friend of Palo talking with Binod Soy gave a knife blow. At the time of occurrence, Palo Mundari was not there.

13.3 P.W.-3, Sanika Soi, in his examination-in-chief, says that the murder of Binod Soy was caused on 02.05.2007. She put her signature on the **inquest report** and identified the same, which is marked as **Exhibit-3**. There was wound in the abdomen of the dead body.

13.4 P.W.-4, Sukh Ram Soi, in his examination-in-chief, says that he was the witness of the **inquest report** of deceased, put his signature and identified the same, which is marked as **Exhibit-3/1**.

13.5 P.W.-5, Dr. Ashok Kumar Mishra, in his examination-in-chief, says that on 04.05.2007 at 10:30 am, he conducted the autopsy of dead body of Binod Soy, aged about 16 years old, son of Sukh Ram Soy, resident of village Kochang, P.S. Araki, Ranchi. The body was brought and identified by the Havildar, Suresh Paswan of Bandgaon Police Station. In examination, he found the following injuries on the dead body of Binod Soy: **“incised wound medially to right nipple 1”x1/2” x deep to thorax cavity with the blood coming out from the wound”**. The **cause of death was due to haemorrhage and shock on account of ante-mortem injuries**. He prepared **autopsy report** of deceased in his handwriting and signed, which

is marked as **Exhibit-4**. In cross-examination, this witness says that he cannot say how the injuries were done.

13.6 P.W.-6, Somal Mundari, in his examination-in-chief, says that the police had taken his signature on a blank paper. He identified his signature on the recovery memo of the knife dated 03.05.2007. In cross-examination, this witness says that he signed on the recovery memo of knife at the behest of police.

13.7 P.W.-7, Pandu Mundari, in his examination-in-chief, says that on the seizure memo of the knife he put his signature and identified the same, which is marked as Exhibit-5/4. In cross-examination, this witness says that the knife was not recovered in his presence. He put his signature on the recovery memo of the same at the behest of police.

13.8 P.W.-8, Dr. Arvind Kumar Rajak, in his examination-in-chief, says that on 03.05.2007, he was posted at Primary Health Center, Bandgaon and at 04:00 pm, he examined **Singi Mundari**, daughter of late Pandu Mundari aged about 18 years and found following injuries: **(1) Left arm near elbow area lacerated wound approx. length 3 inches and breath ½ cm approx. (2) Right ear area lacerated wound approx. length 1 inch & breath 1mm approx. Both the injuries were caused by sharp instrument like nail.** The injury report is in his handwriting and signature, which is marked as **Exhibit-6**.

13.9 P.W.-9, Palo Mundari, in her examination-in-chief, says that she is not aware in regard to the occurrence. She is not acquainted with Binod Soy, how he was murdered, she is not aware. Police did not record her statement. This witness was **declared hostile** by the prosecution and was cross-examined. In her cross-examination, this witness denied her statement given

to the Investigating Officer under Section 161 of the Code of Criminal Procedure. In cross-examination by the defence, this witness says that the deceased Binod Soy was not known to her.

13.10 P.W.-10, Singi Mundari, in her examination-in-chief, says that the occurrence was of two years ago. She is not aware that Yugal Mundari had committed murder of Binod Soy. Police has not recorded her statement. She is not familiar with Binod Soy. This witness was also **declared hostile** and cross-examined by the prosecution. In her cross-examination, she denied the statement given by her to the Investigating Officer under Section 161 of the Code of Criminal Procedure. In cross-examination by the defence, this witness says that the accused is his real brother.

13.11 P.W.-11, Smt. Mela Mundari, in her examination-in-chief, says that she has no knowledge of occurrence. She is not acquainted with Binod Soy. Police did not record her statement. This witness was also **declared hostile** by the prosecution and cross-examined. This witness denied her statement given to the Investigating Officer under Section 161 of the Code of Criminal Procedure. In cross-examination by the defence, this witness says how Binod Soy was murdered, she is not aware.

14. For disposal of this Criminal Appeal following point of determination is being framed:

“Whether the impugned judgment of conviction and the order of sentence is sustainable in the eyes of law?”

15. To decide the aforesaid point of determination, this Court avers to scrutinize the oral as well as documentary evidence adduced on behalf of the prosecution.

16. The prosecution case is based on the direct evidence. The

eyewitnesses of the occurrence are **P.W.-1, Sanjay Soy; P.W.-2, Lakhinder Sawasi** and; **P.W.-10, Singi Mundari**; but P.W.-10, Singi Mundari has turned hostile during trial.

17. The FIR of this case was lodged by **P.W.-1, Sanjay Soi**. This witness proved the contents of the written information, which is marked as **Exhibit-1. P.W.-1, Sanjay Soi**, in his statement, has stated that on 02.05.2007, he along with his aide Lakhinder Sawasi left their house to go Laxmi Narayan High School, Murhu and reached at Bandgaon Bazar. Their batch-mate Binod Soy met them. Binod Soy asked them to stay at Bandgaon in night. Binod Soy also asked them to accompany as he was to go to the house of Palo Mundari, his girlfriend. He and Lakhinder Sawasi were asked by Binod Soy to stay near *mahua* tree. He alone went to the house of Palo Mundari, from there, he brought the bedsheets for them. Singi Mundari, who is the friend of Palo Mundari, grandmother of Palo Mundari, namely, Mela Mundari and Palo Mundari herself also came at the agricultural field isolate place away from the house of Palo Mundari. Thereafter, Palo Mundari and her grandmother Mela Mundari both left the agricultural field and went to bring dinner for them. Singi Mundari remained seated there and was exchanging talk with Binod Soy behind the bush at the isolate place. He and his friend Lakhinder Sawasi both were also sitting nearby them at some distance, at the same time, Bishram Budding came there having seen Singi Mundari sitting along with Binod Soy, he went back to his house and told Yugal Mundari. Thereafter, Yugal Mundari and Bishram Budding both came back. Yugal Mundari was armed with knife and he asked Binod Soy why he was sitting along with his sister at the isolated place and talking with her, having got no satisfactory explanation, he got infuriated and gave a knife

blow to Binod Soy on his chest. He also dragged away his sister Singi Mundari from there. He and his friend Lakhinder both took to injured Binod Soy to the nearby doctor, but the doctor was not found available, thereafter, took to his village, where Binod Soy succumbed to injuries.

18. The same kind of statement is given by **P.W.-2, Lakhinder Sawasi**, who is also the eyewitness of the occurrence.

19. Both these eyewitness during their examination stated that the police had also taken the bloodstained soil, bloodstained cloth, shirt, *gamcha* and cap as well. Both these witnesses also stated the place of occurrence was away from *basti* and also away from the house of Palo Mundari at the distance of 150 paces. **Therefore, the testimony of these two witnesses i.e. P.W.-1, Sanjay Soy and P.W.-2, Lakhinder Sawasi is to be evaluated in the light of other prosecution witnesses, who were examined during trial.**

20. **P.W.-3, Sanika Soi and P.W.-4, Sukh Ram Soi** both are the witnesses of inquest report and both identified their signature on the inquest report of the deceased Binod Soy.

21. **P.W.-5, Dr. Ashok Kumar Mishra**, who conducted the postmortem of deceased Binod Soy. While conducting the post mortem of the deceased, he found **incised wound medially to right nipple 1"x1/2" x deep to thorax cavity with the blood coming out from the wound. The cause of death opined by him is shock and haemorrhage due to abovementioned injuries caused by sharp cutting substance. He proved the autopsy report of deceased, which is marked as Exhibit-4.**

22. **Therefore, from the testimony of P.W.-3, Sanika Soi and P.W.-4, Sukh Ram Soi, who proved the inquest report of deceased, which is**

marked as Exhibit-3 also stated that there was wound caused to the deceased and P.W.-5, Dr. Ashok Kumar Mishra, who proved the autopsy report, which is marked as Exhibit-4 also stated that the deceased died on account of sustaining ante-mortem injury, which he found one incise wound medially to the right nipple 1"x1/2" x deep to thorax cavity with blood coming out from the wound. He also opined that this wound was caused by sharp cutting weapon, as such, from the medical evidence, the ocular evidence P.W.-1, Sanjay Soi and P.W.2, Lakhinder Sawasi is also corroborated.

23. So far as the recovery of knife is concerned, the seizure memo of the knife is marked as Exhibit-5 on the seizure memo of the knife, the witness P.W-4, Somal Mundari and P.W.-7, Pandu Mundari both admitted their signature on the seizure memo of the knife. Both have stated that they put their signature at the behest of police and stated that the knife was not recovered in their presence.

24. P.W.-9, Palo Mundari, P.W.-10, Singi Mundari and P.W.-11, Mela Mundari all these three are also the witness of the fact; but all these witnesses have turned hostile during examination and all these three witnesses have stated that they are not aware in regard to the occurrence. They were not acquainted with the deceased Binod Soy and had shown their unawareness in regard to the occurrence.

25. So far as the testimony of P.W.-1, Sanjay Soy and P.W.-2, Lakhinder Sawasi both are the eyewitnesses is concerned, the same is corroborated with the medical evidence of P.W.-5, Dr. Ashok Kumar Mishra. Merely, being the friend of deceased, their testimony cannot be discredited. More so, their presence on the place of occurrence has not been

questioned at all, neither in cross-examination of the prosecution witnesses nor in statement of the accused under Section 313 of the Code of Criminal Procedure and even no defence evidence has been adduced to that effect on behalf of the accused.

25.1 The Hon'ble Apex Court in the case of *Bheru Lal & Ors. Vs. State of Rajasthan*, reported in (2009) 9 SCC 997 held that in criminal trial the evidence of an interested witness cannot be thrown merely because the witness is interested witness if the ring of truth is found in version of the witness.

25.2 The Hon'ble Apex Court in the case of *Gangabhavani Vs. Rayapati Venkat Reddy & Ors.* reported in (2013) 15 SCC 298 held that the evidence of an interested witness cannot be disbelieved merely because they are related to each other or to the deceased.

25.3 The Hon'ble Apex Court in the case of *Satish Narayan Sawant Vs. State of Goa*, reported in (2009) 17 SCC 724 held that in criminal trial the eyewitness although related to the deceased yet consistent about the principal act of the appellant in stabbing the deceased. The discrepancies minor in nature are immaterial.

26. Learned counsel for the appellant has also contended that in this case neither the knife, which is alleged to be used in commission of the offence has not been produced nor the same has been sent to SFSL. Even the Investigating Officer has not been examined, who is alleged to have taken in custody the bloodstained cloth of the deceased and blood soil from the place of occurrence.

27. In this case in hand, the knife, with which, the appellant had given stab blow to the deceased was taken in custody by the Investigating Officer

and the seizure memo of the same was also prepared. On the seizure memo, P.W.-4, Somal Mundari and P.W.-5, Pandu Mundari though both have admitted their signature; yet they have stated that the knife was not recovered in their presence.

28. Admittedly, the bloodstained cloth and bloodstained soil was not sent to the SFSL by the Investigating Officer. Even the Investigating Officer was neither examined during trial to prove the bloodstained cloth of deceased and bloodstained soil as well, nor the knife was produced reason being that the Investigating Officer was not examined.

29. Non-examination of the Investigating Officer, non-production of the weapon and not sending the bloodstained soil and bloodstained cloth to the SFSL, cannot be said to be fatal to the prosecution case because the prosecution case is based on direct evidence. The eyewitnesses account, which is corroborated with the medical evidence shows that the appellant had given knife blow to the deceased. In cross-examination of both the eyewitnesses i.e. P.W.-1, Sanjay Soy and P.W.-2, Lakhinder Sawasi, no contrary conclusion could be drawn to shake the veracity of the testimony of these witnesses.

29.1 The Hon'ble Apex Court in the case of *Md. Zamiludin Nasir Vs. State of West Bengal*, reported in *AIR 2014 SC 2587* held that non-production of a weapon used in attack by the accused is neither fatal to the prosecution case nor an adverse inference can be drawn, if the case is based on the witness account.

29.2 The Hon'ble Apex Court in the case of *State of Punjab Vs. Hakam Singh*, reported in *(2005) 7 SCC 408* held that non sending of the weapon of assault or cartridge to the ballistic expert for examination would not be fatal

to the prosecution case if the same is based on ocular testimony, which is found credible and cogent.

30. So far as the non-examination of the Investigating Officer is concerned, certainly the testimony of Investigating Officer is required for the purpose of contradiction or corroboration of the prosecution witnesses. **Herein, during cross-examination of P.W.-1, Sanjay Soy and P.W.-2, Lakhinder Sawasi, no contradiction was drawn in the testimony of these witnesses in regard to their statement recorded by Investigating Officer under Section 161 of the Code of Criminal Procedure and their testimony given before the trial Court. In the case in hand, the Investigating Officer even if was not examined; but the same does not corrode the testimony of the eyewitness, which is well corroborated with the medical evidence.**

30.1 The Hon'ble Apex Court in the case of *Bihari Rai Vs. State of Bihar (Now Jharkhand)*, reported in *(2009) 3 SCC (Cr) 1209* held that non-examination of the Investigating Officer, who had only conducted the inquest report, which was also exhibited without any objection and there was no challenge to the correctness of report, held non-examination of Investigation Officer did not corrode the credibility of prosecution version.

31. Though the prosecution witness P.W.-9, Palo Mundari; P.W.-10, Singi Mundari and; P.W.-11, Mela Mundari all three witnesses have declared hostile, but on account of their being hostile, on this ground, the testimony of other eyewitnesses cannot be doubted.

31.1 The Hon'ble Apex Court in the case of *Gurunath Donkappa Keri & Ors. Vs. State of Karnataka*, reported in *(2009) 13 SCC 34* held that in criminal trial merely because the other witnesses turned hostile, the evidence of remaining witness cannot be doubted on the very ground.

32. So far as the ocular evidence of P.W.-1, Sanjay Soy and P.W.-2, Lakhinder Sawasi, which is corroborated with the medical evidence of P.W.-5, Dr. Ashok Kumar Mishra, it is proved that the appellant-convict had given stab wound in the chest of deceased Binod Soy because he went to the place of occurrence and saw his sister sitting along with Binod Soy alone at the agricultural field at 11:00 O'clock of night, on which, he asked Binod Soy why he was sitting at the isolated place with his sister, having got no satisfactory answer, he got provoked and gave one stab wound in his chest of Binod Soy, which ultimately resulted in death of Binod Soy. **Herein the grave and sudden provocation is proved, on which, the appellant-convict Yugal Mundari got provoked. Though he had no intention to cause death of Binod Soy; yet he had knowledge that his act of giving stab wound was likely to cause death or such bodily injury is likely to cause death. Therefore, the act of appellant-convict falls within Section 304 Part-II of the Indian Penal Code.**

32.1 The Hon'ble Apex Court in the case of *Kailash Vs. State of M.P.*, reported in *(2006) 11 SCC 420* held that the offence under Section 304 Part-II of the Indian Penal Code, merely because, the blow given with axe on the head of the victim who later died, was only one, held not by itself a ground to hold that the injury was not sufficient to cause death. In such a case an entire attending circumstances must be taken into consideration for the purpose of finding out the nature of the actual offence committed.

Paragraph No.23 of the aforesaid judgment reads as under:

“23. The possibility of the deceased, thus, having been hit by a hard and blunt weapon cannot be totally ruled out. PW 11 in his statement opined that such an injury is also possible to be caused when a person falls on a solid object. The fact that there had been a quarrel between the parties is not in dispute. The dispute between the parties was over the

construction of a wall. If PW 2 is to be believed, quarrel in regard thereto had been going on for about a week. According to the prosecution witnesses, labourers were engaged to construct the wall. Both the deceased and PW 3 were helping the labourers in regard thereto. If the construction of the wall was being carried out at the time of or just before the incident and the construction had reached up to a height of four feet, the same must have been started early in the morning. It is only thereafter the accused persons came and protested. Abuses had been hurled by both sides. Babulal, as noticed hereinbefore, had suffered injury. The genesis of the occurrence, thus, cannot be said to have been proved. All prosecution witnesses attributed specific overt acts on Babulal as well as Prakash. Except PW 3 nobody supported the prosecution case in regard to the alleged overt act on the part of Prakash. The trial Judge did not also find Babulal to be guilty of commission of offence. Although the courts below relied upon the evidence of Savitri, injuries on her person had not been proved. All the accused persons have been acquitted of the charge of causing an injury on her. Evidently, there was no premeditation on the part of the appellant or his associates. The quarrel must have erupted suddenly. Only one blow was given. It might be with the blunt side of the axe. It may be true that only because one blow was hurled, the same by itself may not be a ground to arrive at a conclusion that the injury inflicted was not sufficient to cause death but in a case of this nature the entire attending circumstances must be taken into consideration for the purpose of finding out the nature of the actual offence committed.”

32.2 The Hon’ble Apex Court in the case of ***Ramesh Vithalrao Thakre Vs. State of Maharashtra***, reported in **(2009) 17 SCC 438** held that for offence under Section 304 Part-II of the Indian Penal Code single knife injury on the chest of deceased inflicted by the accused when deceased intervene to save her brother from being assaulted. No other injury inflicted by the accused the offence falls under Section 304 Part-II of the Indian Penal Code.

33. Herein, the case in hand, taking into consideration the attending circumstances **as the appellant-convict having seen his younger sister sitting along with the deceased at isolated place in *jungle* at about 11:00 O’clock of night, he lost his temper and on account of grave and sudden provocation he gave a stab wound to the deceased. This stab wound was**

only single wound, as such, taking into consideration the attending circumstances and the evidence on record, which is supported with the evidence on record the offence under Section 304 Part-II of the Indian Penal Code is made out against the appellant-convict.

34. So far as the offence under Section 324 of the Indian Penal Code is concerned, the same was on the ground that the appellant-accused has also inflicted injury to his sister while dragging her from the place of occurrence to his house. Though the injuries of his sister are proved by P.W.-8, Dr. Arvind Kumar Rajak; yet the same is not corroborated with the testimony of P.W.-10, Singi Mundari, wherein she stated that the appellant-convict has not inflicted any injury to her and she did not get examined by any doctor in any hospital, as such, the offence under Section 324 of the Indian Penal Code is not made out against the appellant.

35. Learned counsel for the appellant has argued on the point of quantum of the sentence, which was inflicted by the learned Court below. Learned counsel for the appellant has contended that the appellant was convicted by the learned Court below with RI of seven years. The appellant-convict has been facing enquiry, trial and appeal since 2007 and he has served out the sentence of 3 years, 10 months and 21 days, which is more than half of the sentence awarded by the learned trial Court. In view of the length of period in custody and also the appellant-convict has been facing trial, contended to modify the sentence of the appellant and release him on his custodial imprisonment, which he had served out in jail.

36. The learned APP appearing on behalf of the State opposed the contentions made by the learned counsel for the appellant.

37. In view of the submissions made by the learned counsel for the appellant and taking into the attending circumstances, in which, the alleged offence was committed and also taking into consideration the fact that the appellant has served out the sentence of 3 years, 10 months and 21 days, the ends of justice will meet, if the appellant-convict is released on custodial imprisonment, which he had served out for 3 years, 10 months and 21 days.

37.1 The Hon'ble Apex Court in the case of *Ananta Deb Singha Mahapatra & Ors. Vs. State of West Bengal*, reported in (2007) 13 SCC 374 at paragraph No.11 held as under:

“11. Coming to the question of sentence we find that 8 years' sentence has been awarded for the offence punishable under Section 304 Part II. The incident is of the year 1990. Considering this fact and the background in which the occurrence took place, custodial sentence of 6 years would meet the ends of justice.”

38. Herein in this case, the appellant-convict has been facing enquiry, trial and appeal for last 16 years, therefore, the ends of justice will meet in modifying the sentence of the appellant from 7 years to his custodial imprisonment, which he has served out i.e. 3 years, 10 months and 21 days. As such, this Criminal Appeal deserves to be partly allowed.

39. Accordingly, the impugned judgment of conviction dated 15.02.2011 passed by the learned Additional Sessions Judge, F.T.C.-V, West Singhbhum in Sessions Trial No. 182 of 2007 for charge under Section 324 of the Indian Penal Code is set aside; but the conviction of appellant for charge under Section 304 Part-II of the Indian Penal Code is upheld. The sentence as awarded by the learned Court below is modified from 7 (seven) years to 3 (three) years, 10 (ten) months and 21 (twenty-one) days, which is custodial imprisonment already served out by the appellant in jail and the appellant is released for having served out the custodial imprisonment.

40. In consequence thereof, this Criminal Appeal is stood partly allowed.

41. The appellant is on bail. Hence, his bail bond is hereby cancelled and the sureties are discharged from their liabilities.

42. Let the Lower Court Records be sent back to the learned Court below along with a copy of this judgment.

(Subhash Chand, J.)

Madhav/- A.F.R.