

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr. Appeal (DB) No.37 of 1994 (R)**

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(Against the Judgment of conviction dated 28.02.1994 and Order of sentence dated 02.03.1994 passed by the 3<sup>rd</sup> Additional Sessions Judge, Hazaribag in Sessions Trial No.13/1988)

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1. Bhim Singh son of Late Janki Singh
2. Jattu Singh son of Ramjit Singh
3. Doman Karmali @ Ganpat @ Doman son of Biglal Karmali
4. Dambar Singh @ Ram Prasad Singh son of Late Jhari Singh
5. Pavitra Singh son of Dubraj Singh
6. Mahendra Singh son of Kabiraj Singh
7. Ashok Singh son of Matuk Singh

All resident of village-Hehal, P.S. Patrattu (Barkakana) District-Hazaribagh

..... **Appellants**

**Versus**

The State of Bihar (now Jharkhand)                      ..... **Respondent**

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

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| For the Appellants | : Mr. A.N. Deo, Advocate   |
| For the State      | : Mrs. Vandana Bharti, APP |

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**C.A.V. on 18.01.2023**

**Pronounced on 31.01.2023**

**Per Sujit Narayan Prasad, J.**

The instant appeal is against the Judgment of conviction dated 28.02.1994 and Order of sentence dated 02.03.1994 passed by the 3<sup>rd</sup> Additional Sessions Judge, Hazaribag in Sessions Trial No.13/1988, whereby and whereunder, the appellants have been convicted for the offence under Section 302/34 and Section 148 of the Indian Penal Code and directed to undergo imprisonment for life for the commission of offence under Section 302/34 of the Indian Penal Code and further to undergo rigorous imprisonment for two years under

Section 148 of the Indian Penal Code and both the sentences have been directed to run concurrently.

2. The prosecution story in brief as per the fardbeyan of one Janardan Kumar Thakur, the informant (P.W.10) is that on 25.11.1986 at about 5:30 p.m., the informant along with his brother Birendra Kumar Thakur (deceased) was coming back having watching a football match from Barkakana Football Ground to his house in village Hehal. In the way, villagers Mathura Singh, P.W.3 and Dewana Kumhar @ Deo Nandan Prajapati, P.W.1 also happened to be with them. It has been stated that at about 6:30 p.m., they reached near Nala of Naiya Ghutuwa Village. The informant was having a torch with two cells in his hand and his brother Birendra Kumar Thakur (deceased) had a torch with three cells and both were coming flashing torch light. It has further been stated that they went a bit ahead of the Nala, the informant found the accused persons, namely, Bhim Singh, Mahendra Singh, Umar Singh, Pavitra Singh, Ashok Singh, Jattu Singh and Doman Karmali and two more persons, namely, Lal Mohan Singh and Pawan Singh were sitting and hiding themselves in the ditch nearby.

It has been stated that as soon as the informant and his brother went ahead to the said accused persons, all of a sudden accused persons armed with bombs, pistol and chhura (dagger) surrounded Birendra Kumar Thakur, the deceased and started attacking him. It has further stated that being attacked with bombs, pistol and chhura, the deceased being injured fell down on the earth and died.

It is in this pretext, the allegation has been levelled that accused Jattu Singh, Ashok Singh and Doman Karmali were assaulting the informant's brother with bomb and Bhim Singh, Umar Singh and

Pavitra Singh were assaulting the deceased with chhura, while the accused Mahendra Singh, Lalmohan Singh (since dead) and Pawan Singh were attacking him with pistol.

It is further stated that the informant was flashing light with his torch and started making the noise and after hearing the alarm, the villagers rushed to the place of occurrence and saw the dead body.

It is further alleged that the informant recognized all the accused persons in the light of his torch and the Devana Kumhar and Mathura Singh who were accompanying had fled away after hearing the noise of bomb.

The informant on such occurrence has reported the same before the Police which was instituted as regular police case by instituting the case under Sections 147, 148, 149, 341, 302 and 120B of the Indian Penal Code and thereafter, investigation was started.

The investigation after having been completed, the charge-sheet was submitted under Section 302/34 of the Indian Penal Code and after cognizance having been taken, the case was committed to the Court of Sessions. The case was transferred from the Court of Sessions for disposal and accordingly, the concerned Court has started trial and after examining all together 13 witnesses and on due consideration of the exhibits, the judgment of conviction has been passed, which is the subject matter of the instant appeal.

**3.** Mr. A.N. Deo, learned counsel appearing for the appellants has raised the following grounds in assailing the judgment of conviction and order of sentence:-

**(i)** The Investigating Officer has not been examined.

(ii) No case has been instituted under the Explosive Substance Act and the Arms Act, even though, there is specific allegation of explosion of bomb and assault by the pistol by giving bullet injury.

(iii) No seizure of torch in the hand of the informant.

(iv) Not a single eye witness has been examined.

(v) The date of dispatch of FIR has not been mentioned.

(vi) The Chief Judicial Magistrate had seen the FIR after two days but without any explanation.

(vii) Why the informant held up for whole night, there is no explanation to that effect.

(viii) No material exhibit is available on record and even in absence thereof, the judgment of conviction/sentence has been passed.

(ix) No reference of enmity/motive to conduct crime.

(x) Accused persons were in the house and as such, it is beyond imagination that the accused after committing crime of murder will remain in his house which disbelieves the prosecution story.

4. Learned Addl. P.P. for the State on the other hand has defended the impugned judgment on the ground that:-

(i) The witnesses have disclosed the culpability of the appellants by disclosing their names having with the arms/bomb/pistol.

(ii) The Investigating Officer although has not been examined in this case but since it is a case of eye witness and as such, even the non-examination of the Investigating Officer will not vitiate the prosecution story as per the settled position of law that when the charge is being proved on the basis of the testimony of eye witness, even though, the Investigating Officer has not been examined, the trial will not vitiate.

(iii) The testimony of eye witnesses had been found corroborated from the inquest report, wherein, it has been referred about the explosion of the bomb and recovery of the bomb articles like thread, iron pellets and the broken glass, it goes to justify that accused persons were having with the bomb and the bomb was exploded and as such, the charge which has been levelled against the appellants of assaulting the deceased by bomb and other ammunitions corroborated from the seizure memo where the incriminating articles have been recovered and basis upon which, the judgment of conviction/sentence has been passed and as such, it cannot be said that there is no infirmity in the impugned order.

5. It has been submitted that the ground which has been taken on behalf of the appellants that since no case was instituted against the Explosive and Substance Act or the Arms Act, the same will not vitiate the charge, taking into consideration the fact that there is testimony of the independent witnesses who have corroborated the prosecution story by affirming the death caused due to assault given by the accused persons.

6. It has further been submitted that it is incorrect on the part of the appellants to take the ground that there is no eye witness having been examined, while it would be evident from the testimony of the informant, namely, Janardhan Kumar Thakur P.W.10, who had heard the sound of two bombs explosion and thereafter, he rushed to the place of occurrence and found there the dead body of Birendra Kumar Thakur (deceased). The testimony of P.W.10, the informant has been corroborated by P.W.6, namely, Rameshwar Thakur, the father of the deceased and the same was supported by the version of the P.W.5 and

P.W.7, namely, Ashok Kumar Sharma and Kanhai Sharma respectively and as such, it is incorrect on the part of the appellants to take the ground that testimony of P.W.10, P.W.5, P.W.6 and P.W.7 since cannot be treated to be an eye witness but the same if taken together with the injury sustained by the deceased and the recovery of the bomb articles as available in the inquest report, the circumstances are there to prove the culpability of the appellants and taking together the said circumstances, the judgment of conviction/sentence, cannot be said to suffer from an error.

7. It has been contended that merely because the Chief Judicial Magistrate had seen the F.I.R. after two days without any explanation or the date of dispatch of F.I.R. has not been mentioned, the entire prosecution story cannot be allowed to be vitiated.

8. The issue of no material exhibit cannot be fit to be accepted as has been agitated on behalf of the appellants that since the inquest report, postmortem report and the F.I.R. have been marked as exhibits and considering the same to be material exhibits, the judgment of conviction/sentence was passed and as such, it is incorrect on the part of the appellants to take the ground that there is no material exhibit.

9. Learned counsel for the appellants on the aforesaid ground has submitted that judgment of conviction requires no interference.

10. We have heard learned counsel for the parties, perused the finding recorded by the learned trial Court and gone through the testimony of witnesses as available in the lower court record.

11. This Court, before appreciating the argument advance on behalf of the parties and before considering the legality and propriety of the finding recorded by the learned trial Court, deems it fit proper to

consider the ground which has been taken on behalf of the appellants as referred hereinabove by discussing the testimony of the witnesses in order to consider the legality and propriety of the finding to assess as to whether the charge which has been levelled against the appellants have been found to be proved beyond all reasonable doubt by the prosecution.

P.W.1, namely, Dewnandan Prajapati who has also disclosed as Dewana Kumhar has stated that while he was going from the garage of one Janardhan Mistry towards his residence, he saw Birendra Thakur and Mathura Singh near Ghutuwa Mouza and met with them.

At about 7:00 to 7:30 p.m., Janardhan Thakur, one of the accused had come from behind and has stated that they had gone to their residence.

P.W.1 has been declared to be hostile. However, he has been cross-examined and has corroborated his statement that Janardhan Thakur had come from behind and in the morning of the following day, he came to know that Birendra Thakur (deceased) was killed.

Bhogan Kumar has been examined as P.W.2 and he was the witness to the seizure of torch and blood stained soil.

Mathura Singh has been examined as P.W.3. He has also been declared to be hostile.

Basudeo Thakur has been examined as P.W.4. He has stated that he had seen the dead body of Birendra Thakur full with blood. He has also stated that the Janardhan Thakur had disclosed to him that Pawan Singh, Jattu Singh, Janardhan Singh, Lalmohan Singh, Pavitra Singh, Mahendra Singh, Doman Karmali, Bhim Singh and Ram Prasad Sinha had surrounded him along with the deceased but he fled away and

Birendra Thakur (deceased) was caught. He has stated that he had put his signature in the seizure memo.

P.W.5, namely, Ashok Kumar Sharma is the formal witness.

Rameshwar Thakur has been examined as P.W.6 and has corroborated about surrounding of the deceased as was said by Janardan. He has stated that he rushed to the place of occurrence after hearing alarm and hence, he is hearsay witness.

Kanhai Sharma has been examined as P.W.7 and has stated about the disclosure of the occurrence by Janardhan Thakur. He is also hearsay witness having reached after hearing sound of bomb blast and saw there the body of the deceased having found hair burnt and there was injury given by the knife blow on neck and chest.

P.W.8 and P.W.9, namely, Gauri Shankar Thakur and Bhagwanti Devi respectively are also formal witnesses.

P.W.10, namely, Janardan Kumar Thakur, the informant, is the eye witness and has corroborated the prosecution story. He has stated that Doman Singh had assaulted Birendra Thakur by bomb and Bhim Singh had given knife blow. Pawan Singh had also assaulted the deceased. He, due to fear had fled away from the place of occurrence and stood to a place at some distance. He has stated that before assaulting, all the accused persons had surrounded the informant and his brother. He has also stated that Ashok Singh, Doman Karmali and Jattu Singh were having with bomb in their hand. He has also stated that Bhim Singh, Doman Singh and Ishwar Singh were having with knife (chhura). He has further stated that the Mahendra Singh, Pawan Singh and Lalmohan Singh were having with the pistol. He, thereafter, has stated that when he rushed to the place of occurrence then he has

found that Birendra Thakur was dead. He has stated that the deceased, namely, Birendra Thakur was the accused in the case of murder of Jagat Narayan Singh but he was not an accused in the aforesaid case.

He has corroborated the fact about explosion of the bomb. He has also corroborated the fact that bomb was assaulted upon the deceased which hit in the back of the deceased Birendra Thakur due to which he fell down while the deceased had sustained injury by third bomb. He has also stated that Bhim Singh had given knife blow on the neck of the deceased. He has also stated by giving description of the place where he was standing and watching the occurrence which was at nearby distance from his place.

Bimla Devi has been examined as P.W. 11 and she is the formal witness.

P.W.13, the Doctor, namely, Dr. Hari Nandan Prasad has stated in his testimony that he had conducted postmortem of the dead body of Birendra Kumar Thakur and found the following injuries:-

“(i) Incised wounds over face of right cheek 1/2" x 1/2" x bone deep & 1" x 1" x bone deep, incised wounds.

(ii) Incised wounds (a) 1/2" x 1/2" x depth up to trachea (b) 1/2" x 1/2" x muscle deep right side (c) 1/2" x 1/2" x muscle deep right side.

(iii) Incised wound over the occipital bone 2" x 1/2" x bone deep.

(iv) Multiple incised wounds over the chest (a) 1/2" x 1/4" x muscle deep. (b) 1/2" x 1/4" x muscle deep. (c) 1/2" x 1/4" x muscle deep. (d) 1/2" x 1/4" x muscle deep. (e) 1/2" x 1/4" x muscle deep. (f) 1/4" x 1/4" x muscle deep. (g) 1/2" x 1/4" x muscle deep. (h) 1/2" x 1/4" x muscle deep.

(v) Incised wound over back 1/2" x 1/4" x bone deep.

(vi) Incised wound over the right forearm laterally 2" x 1/2" x muscle deep.....”

He has also stated that time elapsed since death was within 24 hours. The cause of death was due to Shock & Hemorrhage, due to above injuries caused by sharp cutting weapon may be Chhura.

In his cross-examination at paragraph-7, he has stated that there is no sign of injury caused by bomb blast or pistol.

**12.** The learned trial Court has considered the testimony of P.W.10, the informant, who while accompanying the deceased had seen the appellants, namely, Jattu Singh, Ashok Singh and Doman Karmali having with the bomb in their hand. Bhim Singh, Doman Singh and Ishwar Singh were having with the chhura in their hand and Mahendra Singh, Lalmohan Singh and Pawan Singh were having pistol in their hand. He, however, has stated that immediately after explosion of bomb, he fled away and witnessed the occurrence from nearby distance and seen the accused persons assaulting the deceased. He has also stated in his testimony that Bhim Singh had given knife blow. It has stated in specific term by him that bomb was exploded there and there was three explosion, one at the neck and another at the chest of the deceased and thereafter the area was full with smoke and subsequently when he rushed to the place of occurrence, he had found the dead body of the deceased.

The aforesaid version of P.W.10, the informant has been corroborated by the doctor by giving its opinion that the cause of death was due to shock and hemorrhage caused by sharp cutting weapon may be chhura.

The inquest report and seizure memo, i.e., ext.3 and ext.2 respectively bear the content of the bomb, since, there is reference in the aforesaid exhibits about blood stained soil, iron pellets, pieces of glass, thread (suthli) and the pieces of paper.

The learned trial Court has considered the testimony of P.W.10 to be acceptable testimony after being corroborated with the testimony of the doctor, the inquest report and seizure memo, wherein, the reference of the particles of the bomb had been found having been seized by the Investigating Officer. The torch having three cells had also been seized as mentioned in the seizure memo, i.e., ext.2.

The testimony of P.W.10 has been agitated to be discarded by making a submission on behalf of the appellants that he cannot be said to be an eye witness since he had not seen the commission of crime, reason being that it was his deposition that immediately after explosion of bomb, he fled away from the place due to fear and as such, he cannot be said to be an eye witness. But the said argument, according to our considered view, cannot be said to be acceptable in view of the reason that the testimony of P.W.10 regarding accompanying the deceased has no-where been challenged on behalf of the defence by putting any suggestion to that effect and as such, his presence along with the deceased is being un-rebutted.

**13.** The issue of explosion of bomb due to which injury sustained by the deceased has also not been rebutted since, there is no suggestion to that effect having been made by the defence.

The issue of explosion of bomb is being corroborated with the seizure of content of the bomb as mentioned in the seizure memo and inquest report and as such, the testimony of P.W.10 cannot be

discarded merely because he due to fear of explosion of bomb had fled away from the place of occurrence and remained in a place at nearby distance from where he had deposed that he had seen the occurrence.

The evidence of doctor goes to suggest that injuries were there having been given by sharp cutting weapon (chhura). However, the doctor had given its opinion that he had not found any assault given by the bomb or pistol but if the aforesaid testimony will be considered by taking together, the recovery of the bomb articles having been seized by the Investigating Officer as would appear from the seizure memo (ext.2) and inquest report (ext.3), the issue of explosion of bomb cannot be said to have no substance.

The presence of all the accused persons is also not in dispute if the testimony of P.W.10 will be considered along with the testimonies of other witnesses, i.e., P.W.1 and P.W.3, however, they had been declared to be hostile but some of the facts of the prosecution as appeared in the fardbeyan have also been supported by these two hostile witnesses.

P.W.3 in his examination-in-chief has stated that he met Birendra Thakur (deceased) and P.W.1 Deo Nandan Prajapati in the way. As such, P.W.1 and P.W.3 have also stated about explosion of bomb and also presence of the informant, P.W.10 near the place of occurrence.

**14.** The issue of consideration of testimony of hostile witnesses is no-where in dispute that the testimony given by the hostile witnesses in support of the prosecution story cannot be discarded, as has been settled by the Hon'ble Apex Court in the case of *Mrinal Das Vrs. State*

*of Tripura*, reported in (2011) 9 SCC 479, wherein at paragraph-67, it has been held as under:-

*“67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.”*

15. The learned trial Court has considered the testimony of P.W.10 with the testimony of other witnesses about presence of the informant along with the deceased and the story of occurrence coupled with the medical evidence and came to the conclusive finding about proving of charge beyond all reasonable doubt.

Admittedly in this case, the Investigating Officer has not been examined but non-examination of the Investigating Officer always not

prejudice the prosecution story, as has been held by the Hon'ble Apex Court in the case of ***Raj Kishore Jha Vrs. State of Bihar & Ors.***, reported in **(2003) 11 SCC 519**, wherein, at paragraph-11, it has been held as under:-

*“11. Mere non-examination of the Investigating Officer does not in every case cause prejudice to the accused or affects the creditability of the prosecution version. In Ram Dev v. State of U.P. [1995 Supp (1) SCC 547 : 1995 SCC (Cri) 402 (2)] it was noted that non-examination of the Investigating Officer does not in any way create any dent in the prosecution case, much less affect the credibility of otherwise trustworthy testimony of the eyewitnesses. It was, however, indicated that it is always desirable for the prosecution to examine the Investigating Officer. In the present case after examination-in-chief and partial cross-examination, the Investigating Officer had died. Therefore, this cannot be a case which can be stated to have caused any prejudice to the accused on account of the Investigating Officer's non-examination. The prosecution cannot be attributed with any lapse or ulterior motive in such circumstances. In Behari Prasad v. State of Bihar [(1996) 2 SCC 317 : 1996 SCC (Cri) 271] it was held that a case of prejudice likely to be suffered mostly depends upon facts of each case and no universal straitjacket formula should be laid down that non-examination of the Investigating Officer per se vitiates the criminal trial. The said view has been found echoed in Ambika Prasad v. State (Delhi Admn.) [(2000) 2 SCC 646 : 2000 SCC (Cri) 522] , Bahadur Naik v. State of Bihar [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186] and Ram Gulam Chaudhary v. State of Bihar [(2001) 8 SCC 311 : 2001 SCC (Cri) 1546 : JT (2001) 8 SC 110].”*

Likewise, the Hon'ble Apex Court in the case of **Dinesh Yadav Vrs. State of Jharkhand**, reported in (2017) 5 SCC 764, wherein, at paragraph-11, it has been held as under:-

*“11. Injury 1 (grievous injury) corresponds to the overt act of the appellant. Since the evidence of eyewitnesses coupled with the evidence of the doctor proves the case of the prosecution against the appellant and as nothing was brought out in the cross-examination of these witnesses so as to discard their evidence, the trial court as well as the High Court are justified in relying upon the evidence of these witnesses for coming to the conclusion. Since the evidence of these witnesses has remained unimpeached, and as there are no major contradictions or omissions in the evidence of these witnesses, the non-examination of the investigating officer by the prosecution may not tilt the balance in favour of the defence. It has not been shown what prejudice has been caused to the appellant by such non-examination. Similar view is taken by this Court as back as in the year 2000 in Bahadur Naik v. State of Bihar [Bahadur Naik v. State of Bihar, (2000) 9 SCC 153 : 2000 SCC (Cri) 1186 : AIR 2000 SC 1582] wherein it is observed thus: (SCC pp. 154-55, para 2)*

*“2. The appellant has not been able to shake the credibility of the eyewitnesses. No material contradiction in the case of the prosecution has been shown to us. Under these facts and circumstances, the non-examination of the investigating officer as a witness is of no consequence. It has not been shown what prejudice has been caused to the appellant by such non-examination.”*

*As mentioned supra, the injured had expired prior to commencement of the trial of sessions case. Hence, he could not be examined.”*

16. The issue of causing prejudice due to non-examination of Investigating Officer is to be tested depending upon the facts and circumstances of the case and more particularly if the other testimonies are there to establish the charge beyond all shadow of doubt.

Herein, the P.W.10, the informant, namely, Janardan Kumar Thakur in specific terms had deposed about the culpability of the appellants and as such, the same cannot be discarded merely because the Investigating Officer has not been examined. Further, the inquest report contains the reference of the seized articles so as also the seizure memo has been proved, wherein, the particles of the bomb has been found mentioned.

17. This Court, on the basis of the entirety of the facts and circumstances of the case as discussed hereinabove is of the view that since the testimony of P.W.10 has been found to be trustworthy evidence and as such, merely because the Investigating Officer has not been examined or no case under Explosive Substance Act or the Arms Act have been instituted or the torch had not been seized and non-reference of dispatch of F.I.R. and the perusal of the F.I.R. by the Chief Judicial Magistrate after delay of two days without any explanation, it cannot be said that the prosecution case will be allowed to be vitiated.

This Court is further of the view on the basis of the discussion made hereinabove that it is incorrect on the part of the appellants to raise the issue that there is no material exhibits, since, the exhibits are

there, i.e., inquest report and the seizure memo, wherein, reference of articles having been seized found mentioned.

Further ground to the effect that no reference of enmity/motive to conduct crime has been disclosed but the fact which came in surface on the basis of testimony of P.W.10 coupled with the statement of other witnesses and corroborated by testimony of doctor, namely Dr. Harinandan Prasad who had conducted the postmortem, the said ground cannot be said to vitiate the entire prosecution story.

**18.** The defence has taken apart from the aforesaid ground that chhura causes penetrating wound but the medical officer found incised wounds on the person of the deceased and as such, the prosecution case is not supported by the medical evidence but while with the same, the learned trial Court has discarded the said submission on the ground that chhura may cause penetrating wounds and the P.W. 13, the doctor has stated that multiple incised wounds had been found but according to his opinion, the injuries found were caused by chhura and in his evidence, he has clearly mentioned that the injuries were caused by sharp cutting weapon which may be chhura.

The learned trial Court has considered the deposition given by him in the cross-examination, wherein, no question appears to have been asked by the defence on this point as to how incised injuries were caused by chhura.

**19.** This Court has considered the aforesaid finding and considering the fact that even by chhura the incised injuries can be caused, since a cut or incised wound is produced by a sharp edge and usually longer than it is deep. Because of sharp force mechanism of injury, incised wounds lack tissue, breezing and often display, very clean sharp wound

edges. Knives, box cutters, glass, metal typically caused incised wounds.

This Court after considering the same and taking together the nature of injury as reported by the doctor in his examination has found therefrom the following injuries, i.e., (i) Incised wounds over face of right cheek 1/2" x 1/2" x bone deep & 1" x 1" x bone deep.

(ii) Incised wounds (a) 1/2" x 1/2" x depth up to trachea (b) 1/2" x 1/2" x muscle deep right side (c) 1/2" x 1/2" x muscle deep right side.

(iii) Incised wound over the occipital bone 2" x 1/2" x bone deep.

(iv) Multiple incised wounds over the chest (a) 1/2" x 1/4" x muscle deep. (b) 1/2" x 1/4" x muscle deep. (c) 1/2" x 1/4" x muscle deep. (d) 1/2" x 1/4" x muscle deep. (e) 1/2" x 1/4" x muscle deep. (f) 1/4" x 1/4" x muscle deep. (g) 1/2" x 1/4" x muscle deep. (h) 1/2" x 1/4" x muscle deep.

(v) Incised wound over back 1/2" x 1/4" x bone deep.

(vi) Incised wound over the right forearm laterally 2" x 1/2" x muscle deep etc. and therefore, if the conclusion had been arrived at by the doctor that such injuries had been caused by the sharp cutting weapon which may be chhura and accepting the same, if the trial Court has discarded the ground raised on behalf of the appellants that chhura can only cause penetrating wounds and not the incised wounds, the same suffers from no error.

**20.** The defence has also raised the issue of some contradiction and infirmities in the evidence but merely because there is some contradiction and discrepancies in the testimonies, the same cannot be alone to vitiate the prosecution story, as has been held by the Hon'ble

Apex Court in the case of ***Mukesh Kumar Vrs. State (NCT of Delhi)***, reported in ***(2015) 17 SCC 694***, wherein, at paragraph-8, it has been held as under:-

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

Likewise, the Hon'ble Apex Court in the case of ***Shyamal Ghosh Vrs. State of West Bengal***, reported in ***(2012) 7 SCC 646***, wherein, at paragraphs-46 & 49, it has been held as under:-

*“46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. It is true that there is some variation in the timing given by*

*PW 8, PW 17 and PW 19. Similarly, there is some variation in the statement of PW 7, PW 9 and PW 11. Certain variations are also pointed out in the statements of PW 2, PW 4 and PW 6 as to the motive of the accused for commission of the crime. Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.*

*49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused.”*

21. The learned trial Court on the basis of the aforesaid principle if discarded the aforesaid submission, which according to our considered view, cannot be said to suffer from an error.

22. The defence has also raised the ground of putting reliance upon the interested witnesses, the same although has been discarded, which according to our considered view, cannot be said to suffer from an error because of the established principle of law that the evidence of a related witnesses cannot be discarded only on the ground of relationship.

The Hon’ble Apex Court in the case of ***Rupinder Singh Sandhu Vrs. State of Punjab & Ors.***, reported in ***(2018) 16 SCC 475*** has held at paragraph-50 which reads as under:-

*“50. The fact that PWs 3 and 4 are related to the deceased Gurnam Singh is not in dispute. The existence of such relationship by itself does not render the evidence of PWs 3 and 4 untrustworthy. This Court has repeatedly held so and also held that the related witnesses are less likely to implicate innocent persons*

*exonerating the real culprits. [ See Rizan v. State of Chhattisgarh, (2003) 2 SCC 661, p. 667, para 6 : 2003 SCC (Cri) 664“6. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.”Also see, Dalip Singh v. State of Punjab, AIR 1953 SC 364, p. 366, para 26 : 1953 Cri LJ 1465“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”]*

The Hon'ble Apex Court in the case of ***Shamim Vrs. State (Government of NCT of Delhi)***, reported in ***(2018) 10 SCC 509*** has held at paragraph-9 which reads as under:-

*“9. In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit. We see no reason why the same principle cannot be applied when such a witness deposes against a closely related accused. According to normal human behaviour and conduct, a witness would tend to shield and protect a closely related accused. It would*

*require great courage of conviction and moral strength for a daughter to depose against her own mother who is an accused. There is no reason why the same reverse weightage shall not be given to the credibility of such a witness. PW 4 is the daughter of the appellant. She has deposed that two days prior to the occurrence the appellant had threatened the witness to leave PW 1 else she would get his family members killed. Soon after the occurrence having reached the house of her in-laws she stepped out on the verandah. The appellant who was standing on her own verandah told the witness that she had got the deceased killed because the witness did not listen to her and that her husband would be killed next. In cross-examination she reiterated the same. The statement, in our opinion, can be considered as a corroborative evidence being a voluntary extra-judicial confession, considering the nature of relationship between the witness and the appellant.”*

The Hon’ble Apex Court again in the case of ***Rizan & Anr. Vrs. State of Chattishgarh***, reported in ***(2003) 2 SCC 661*** has held at paragraph-6 which reads as under:-

*“6. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.”*

The Hon’ble Apex Court in the case of ***Dalip Singh & Ors. Vrs. State of Punjab***, reported in ***1954 S.C.R. 145***, it has been laid down at paragraph-26 as under:-

*“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him*

*falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”*

The Hon’ble Apex Court in the case of ***Masalti Vrs. State of U.P.***, reported in ***AIR 1965 SC 202***, wherein, it has been held that the evidence given by witnesses should not be discarded only on the ground that it is evidence of partisan or interested witnesses. ....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably would lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

The Hon’ble Apex Court in the case of ***State of Punjab Vrs. Jagir Singh & Ors.***, reported in ***(1974) 3 SCC 277*** and ***Lehna Vrs. State of Haryana***, reported in ***(2002) 3 SCC 76***, has dealt with “the credibility of the related witnesses and the interested witnesses.”

It has been held that interested witness is a witness who is vitally interested in conviction of a person due to enmity.

The “interested witness” has been defined by the Hon’ble Apex Court in the case of ***Mohd. Rojali Ali & Ors. Vrs. State of Assam***,

**Ministry of Home Affairs through Secretary**, reported in (2019) 19

**SCC 567**, wherein, it has been held at paragraph-13 and 14 which reads as under:-

*“13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] ; Amit v. State of U.P. [Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] ; and Gangabhavani v. Rayapati Venkat Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182] ). Recently, this difference was reiterated in Ganapathiv. State of T.N. [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , in the following terms, by referring to the three-Judge Bench decision in State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] : (Ganapathi case [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , SCC p. 555, para 14)*

*“14. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be “interested.”*

*14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, 1954 SCR 145 : AIR*

*1953 SC 364 : 1953 Cri LJ 1465] , wherein this Court observed: (AIR p. 366, para 26)*

*“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person.”*

23. This Court, on the basis of the aforesaid position of law is of the view that the mechanical rejection of testimony of witness even if P.W.10, the informant of the given case is the brother of the deceased, cannot be fit to be disallowed and if thoughtful consideration has been given with respect to testimony of P.W.10, the informant by the learned trial Court, the same according to our considered view, cannot be said to suffer from an error.

24. It requires to refer herein the well settled principle of law that the entire evidence is to be read as a whole.

The Hon'ble Apex Court in the case of ***Shyamal Ghosh Vrs. State of West Bengal***, reported in **(2012) 7 SCC 646** has held at paragraph-69, which reads as under:-

*“69. Another settled rule of appreciation of evidence as already indicated is that the court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without advertting to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety.”*

The Hon'ble Apex Court in the case of ***Bhagwan Jagannath Markad & Ors. Vrs. State of Maharashtra***, reported in (2016) 10 SCC 537 had held at paragraph-19 & 20 as under:-

*“19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a “partisan” or “interested” witness may lead to failure of justice. It is well known that principle “falsus in uno, falsus*

*in omnibus” has no general acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.*

*20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]”*

The Hon’ble Apex Court yet in the case of ***State of Himachal Pradesh Vrs. Raj Kumar***, reported in ***(2018) 2 SCC 69*** has held at paragraph-16 as under:-

*“16. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to be truthful in the given circumstances of the case. Once that impression is formed, it is necessary for the court to scrutinise the evidence more particularly keeping in view the drawbacks and infirmities pointed out in the evidence and evaluate them to find out whether it is against the general tenor of the prosecution case. Jeewan Lal (PW 1) is the son of the deceased Meena Devi residing with her and the accused in the same house, and a natural witness to speak about the occurrence. Evidence of PW 1 is cogent and natural and is consistent with the prosecution case. The High Court was not right in doubting the evidence of PW 1 on the ground of alleged*

*improvements made by Jeewan Lal (PW 1) and rejecting his evidence on the premise that there were certain improvements.”*

The Hon'ble Apex Court, again in the case of ***State of Karnataka Vrs. Suvarnamma & Anr., reported in (2015) 1 SCC 323*** has held that a criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

It is, thus, evident from the position of law as has been referred hereinabove that if the evidence of the witness is read as a whole, then from the co-joint reading of evidence of all the witnesses if it is clear, then the charge as has been levelled is being proved, the minor discrepancy is to be ignored.

**25.** This Court, therefore, is of the view that on the basis of the discussion made hereinabove and considering the testimony of P.W.10, the informant coupled with the testimony of the doctor, if the learned trial Court has come to the conclusion that the prosecution has been able to prove the charge beyond all shadow of doubt, which according

to our considered view, cannot be said to suffer from an error, therefore, the instant appeal deserves to be dismissed.

26. This Court, after having passed the order as aforesaid has considered the sentence and found therefrom that the order of sentence to undergo rigorous imprisonment for the offence committed under Section 302 read with Section 34 of the Indian Penal Code suffers from infirmity, reason being that Section 302 provides that along with the sentence of rigorous imprisonment, the fine is also mandatory to be inflicted as would appear from Section 302 of the Indian Penal Code, which reads as under:-

*“302. Punishment for murder.-Whoever commits murder shall be punished with death, or [imprisonment for life], and shall also be liable to fine.”*

27. The trial Court while imposing the sentence has not considered the mandatory provision as contained under Section 302 of the Indian Penal Code and passed the order of sentence without inflicting any fine, therefore, the order of sentence is modified to the extent that apart from the sentence to undergo rigorous imprisonment for life, a fine of **Rs.5,000/- (Rupees Five Thousand)** to each of the appellants, is hereby imposed.

28. With the aforesaid modification in the order of sentence, the instant appeal stands dismissed.

29. Consequent upon dismissal of the appeal preferred by the appellants, since the appellants who are enjoying suspension of sentence after the order being passed by this Court directed to release them during pendency of the appeal, their bail bonds are cancelled and

they are directed to surrender before the learned trial Court who would send them jail to serve out their remaining sentence.

**30.** Needless to say that if the appellants will not surrender, the trial Court will take endeavours for securing custody to serve out their remaining sentence and further secure that they deposit the amount of fine so imposed by this Court.

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

**(Sujit Narayan Prasad, J.)**

**I agree**

**(Subhash Chand, J.)**

**(Subhash Chand, J.)**

**Jharkhand High Court, Ranchi**

Dated, the 31<sup>st</sup> January, 2023.

Rohit/-**A.F.R.**