

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.1671 of 2017

[Against the Judgment of conviction dated 09.03.2017 and order of sentence dated 20.03.2017, passed by the learned Additional Sessions Judge-II, Lohardaga, in Sessions Trial Case No. 85 of 2016,]

Kameshwar Yadav @ Kamleshwar Yadav @ Kiddu Yadav, son of
Jhumak Yadav, resident of village Pandaria, PO and PS Balumath,
District Latehar. Appellant

Versus

State of Jharkhand. ... Respondent

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

For the Appellant : Mr.Soumitra Baroi, Advocate;
Ms. Sugandha Khalkho, Advocate;
Mr. Janki Kumar Yadav, Advocate

For the Respondent : Mrs. Nehala Sharmin, S.P.P.

For the Informant : Ms. Divya, Advocate;
Ms.Isha Kaushik, Acvocate
[AC to Mr.Sameer Saurabh, Advocate]

CAV ON:10/02/2026

PRONOUNCED ON:12/03/2026

[Per Sujit Narayan Prasad, J.]

1. The present Appeal has been filed under section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 09.03.2017 and order of sentence dated 20.03.2017, passed by the learned Additional Sessions Judge-II, Lohardaga, in Sessions Trial Case No. 85 of 2016, whereby and whereunder, the learned Trial court has convicted the appellant under sections 148, 149/364, 149/379, 302 of the Indian Penal Code and u/s 27 of Arms Act and section 17(2) of C.L.A. Act and sentenced him to undergo RI for life with fine of Rs.10,000/- under section 364 r/w 149 and under section 302 of the IPC with default stipulation of RI for three months. The appellant is further sentenced to

undergo RI for three years u/s 379 r/w 149 and u/s 148 of the IPC. The appellant is further sentenced to undergo RI for three years and fine of Rs. 10,000 under section 27 Arms Act and in default he shall further undergo RI for three months and he is further sentenced to undergo RI for three years u/s 17(2) of the C.L.A. Act. All the sentences were directed to run concurrently.

Prosecution Case:

2. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence, deems it fit and proper to refer the background of institution of prosecution case.

3. The prosecution case, in brief, on the basis of *fardebayan* of the informant Lal Pradeep Nath Sahdeo (PW-7) is that on 20.3.2015 at about 05:00 p.m. the informant along with his father Lal Jai Kishore Nath Sahdeo, uncle Lal Bal Kishore Nath Sahdeo, Pramod Nath Sahdeo, Arvind Nath Sahdeo, Praveen Nath Sahdeo along with co-villager Phuddin, Ravi etc had gone to Marayan forest where they had cultivable lands. During the night they stayed in a hut in the forest and they were also armed with licensed gun. On 21.3.2015 at about 05:00 p.m. the informant along with Arvind and Praveen were strolling at a little distance from the hut whereas his father Lal Kishore Nath Sahdeo, uncle Lal Bal Kishore Nath Sahdeo and cousin Lal Pramod Nath Sahdeo were in the hut.

4. The informant further stated that he saw from a distance that MCC extremists variously armed had surrounded the hut. The informant hid himself and saw that Kameshwar Yadav of the MCC Squad was talking

with Madan Yadav on his phone. After sometime the Maoist took his father, uncle and cousin towards Sahedapat under captivity. The informant and others somehow reached their village in the late night and informed about the incident to the familymembers.

5. In the morning on 22.3.2015 a search was made after which dead bodies of Jai Kishore Nath Sahdeo, Lal Bal Kishore Nath Sahdeo and cousin Lal Pramod Nath Sahdeo were recovered in between Marayan forest and Sahedapat. All the three persons were murdered by causing fire arm injury.

6. The informant has further stated that the Maoist had stolen away two licensed rifle and 100 pieces of cartridges. Further some empty cartridges were also recovered from the place of occurrence. The dead bodies were carried to the village where the police arrived upon getting the information of the occurrence and simultaneously fardbeyan was recorded. The motive behind the occurrence is stated to be that the families of the deceased were in opposition with the extremists.

7. On the basis of the *fardbeyan* of the informant, Jobang P.S. Case No.02 of 2015 dated 22.3.2015 was registered under sections 147/ 148/ 149 /342/ 364/ 302/ 379 IPC and u/s 27 Arms Act and section 17 of C.L.A. Act.

8. On completion of investigation, charge-sheet dated 07.06.2016 was submitted against the accused/appellant and cognizance of the said offences was taken under sections 147/ 148/ 149 /342/ 364/ 302/ 379 IPC and u/s 27 Arms Act and section 17 of C.L.A. Act. Thereafter, case was committed to the court of Sessions.

9. Charges were framed against the appellant under sections 148, 149/364, 149/302, 149/379 IPC and u/s 27 Arms Act and section 17 of C.L.A. Act, the contents of which were read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

10. The prosecution, in order to prove its case, had examined altogether nine witnesses. Out of which PW-1 Lal Praveen Nath Sahdeo, PW-2 Phuddin Thakur claimed to be eye witness and PW-7 Lal Pradeep Nath Sahdeo, the informant, PW-5 Dr. Surendra Kumar Singh who conducted autopsy on dead body of the three deceased and PW-8 Arvind Kumar Manjhi are the most relevant witnesses. PW-3 Manoj Kumar Singh, PW-4 Lal Sujeet Nath Sahdeo, PW-6 Prakash Kumar Das and PW-9 Satarughan Thakur have reiterated the prosecution evidence.

11. The prosecution had also adduced following documentary evidences in support of its case:

(i) Ext.1,1/1 and 1/2 are the signature of witness Manoj Kumar Singh PW-3 who was a witness to the three inquest reports.

(ii) Ext.2 is the signature of witness Manoj Kumar Singh on production – cum-seizure list.

(iii) Ext.2/1 is the signature of Lal Sujeet Nath Sahdeo-PW-4 on the production –cum-seizure list.

(iv) Ext.3,3/1 and 3/2 are the postmortem reports of all the three deceased.

(v) Ext.4 is a certificate given by Prakash Kumar Das, in charge of technical cell in the office of superintendent of police, Lohardaga.

(vi) Ext.5 is the call detail report of Madan Yadav.

(vii) Ext.6 is photo copy of the application for grant of SIM in the name of Aneshwar Munda and Ext. 6/1 of photocopy of Aadhaar card of Aneshwar Munda.

(viii) Ext. 7 is photocopy of the application for grant of SIM in the name of Vishwanath Uranv and Ext.7/1 is the photocopy of his voter ID card.

- (ix) Ext. 8 is photocopy of the application for grant of SIM in the name of Mahesh Yadav and Ext.8/1 is the photocopy of his voter ID card.
- (x) Ext. 9 is production-cum-seizure list of a CD containing conversation in between Kameshwar Yadav and accused Madan Yadav and Ext.9/1 and 9/2 are signatures of the witnesses of the seizure list.
- (xi) Ext.10 is a certificate given by Prakash Kumar Das.
- (xii) Ext. 11 is a certificate issued by Superintendent of Police, Lohardaga.
- (xiii) Ext.12 is signature of the informant on the fardbeyan. Ext.12/1 is fardbeyan of Lal Pradeep Nath Sahdeo, Ext.12/2 and Ext. 12/3 are endorsement of the officer-in-charge on the fardbeyan.
- (xiv) Ext.13, Ext.13/1 and Ext.13/2 are carbon copy of inquest report of the deceased.
- (xv) Ext.14 is production –cum-seizure list
- (xvi) Ext.15 is the formal FIR.
- (xvii) Ext. 16 is the envelope in which the CDs were sealed.
- (xviii) Ext.17 is the letter of Superintendent of Police, Lohardaga.
- (xix) Ext.18 is the certificate issued by Superintendent of Police, Lohardaga.
- (xx)Ext. 19 is a report of state forensic science laboratory .
- (xxi) Ext.20 is certified copy of FIR of Kisko PS Case No. 48 of 2014, Ext. 20/1 is certified copy of FIR of Kisko PS Case No. 49 of 2014, Ext. 20/2 is certified copy of FIR of Kisko PS Case No. 50 of 2014.
- (xxii) Ext. 21 is photo copy of a notification of Home Department, Govt. of Jharkhand.

12. The trial Court, after recording the evidence of witnesses, examination-in-chief and cross-examination, recorded the statement of the accused, found the charges levelled against the appellant proved beyond all reasonable doubts. Accordingly, the appellant had been found guilty and convicted for the offence under sections 148, 149/364, 149/379, 302 of the Indian Penal Code and u/s 27 of Arms Act and section 17(2) of C.L.A. Act and sentenced to undergo RI for life with fine of Rs.10,000/- under section 364 r/w 149 and under section 302 of the IPC with default stipulation of RI for three months. The appellant is

further sentenced to undergo RI for three years u/s 379 r/w 149 and u/s 148 of the IPC. The appellant is further sentenced to undergo RI for three years and fine of Rs. 10,000 under section 27 Arms Act and in default he shall further undergo RI for three months and he is further sentenced to undergo RI for three years u/s 17(2) of the C.L.A. Act.

13. The aforesaid order of conviction and sentence is subject matter of instant appeal.

Submission of the learned counsel for the appellant:

14. Learned counsel for the appellant has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court cannot be sustained in the eyes of law.

15. The following grounds have been taken by the learned counsel for the appellant in assailing the impugned judgment of conviction: -

(i) The learned counsel appearing on behalf of the appellant has submitted that the learned court below failed to consider that there is vital contradiction in the evidence of the witnesses.

(ii) He has further stated that FIR was lodged after two days and also there is no sufficient cause has been shown by the prosecution. The learned court below has also failed to take into consideration that the place of occurrence has been tampered by the prosecution as the dead bodies of the deceased were removed from the place of occurrence as they

were loaded on a truck and carried away to Murmu village and this fact finds support from the evidence of PW-8.

(iii) The learned court below failed to take into consideration that P.W.1 namely Lal Praveen Nath Sahadeo has deposed in his evidence that he was far from the hut about 55-60 feet and he was along with Lal Pradip Nath Sahadeo (informant and own brother of him), Lal Arvind Nath Sahadeo, Lal Ujjain Nath Sahadeo, Lal Anil Nath Sahadeo and 1-2 villagers but except P.W.1 and P.W. 7 who are own brothers, no one named above has been examined in this case. From the evidence of P.W. 1 it appears that he has not seen any miscreants shot fire on his father, uncle and brother which clearly shows that he is not the eye witness.

(iv) He has further stated that the learned court below failed to take into consideration that from perusal of the evidence of P.W. 2 namely Phuddin Thakur it appears that when they reached in the hut then on that time sister and family of Chotu Munda were also present in the house but they have not been examined further it appears from the evidence of P.W.2 that he is unable to identify the miscreants due to evening.

(v) The learned court below failed to take into consideration that P.W. 2 who claimed to be an eye witness of the occurrence has examined by the police after 20-25 days. From perusal of the evidence of P.W.5 who is a doctor who conducted post-mortem on the dead bodies has stated in his

evidence that there is no mark of assault by danda on the dead bodies but as per the evidence of P.W.2 namely Phuddin Thakur who claimed to be an eye-witness to the occurrence, stated in his evidence that the miscreants assaulted them with danda.

(vi) The learned court below failed to take into consideration that from evidence of P.W.6 namely Prakash Kumar Das, constable-cum in charge, Technical cell, SP Office, Lohardaga stated in his cross examination that he has no special knowledge of identifying the voice on the mobile. Further he has said in his evidence that the appellant and accused Madan were not talked to each other by calling their names but inspite of that he identified their names and voice and SIM with mobile number which was used in the crime were not produced before him.

(vii) It, has further been contended that it is the case of the prosecution that the deceased and their family members stayed in the hut of Chhotu Munda situated in MarayanJungle on 20/03/2015 and 21/03/2015 but the said Chotu Munda who would have been a material witness has not been examined by the prosecution.

(viii) It has further been contended that as per the prosecution story, all the three deceased were killed by the mob of Naxalites and the present appellant being a member of the mob was instrumental in the said killing and the

prosecution in order to substantiate the said factual aspect has relied upon the deposition of P.W.2 projecting him as eyewitness but question arises herein that the why the mob of Naxalites left him and he was assaulted by shoes only and further this witness in his examination-in-chief could not properly explained this aspect, therefore entire prosecution case appears to be fishy and suspicious.

(ix) It is further stated that the learned court below failed to take into consideration that the informant stated in his evidence that he has not seen any one to kill the deceased by shot fire arm and he could not say that who has killed his father, uncle and cousin brother, therefore, the judgment of conviction and sentence passed by the learned court below is bad in law and is fit to be set aside.

16. The learned counsel for the appellant, based upon the aforesaid ground, has submitted that the trial court has not taken in to consideration of the aforesaid facts as such impugned judgment requires interference, hence not sustainable in the eyes of law.

Submission advanced by the learned counsel for the State & Informant:

17. Mrs. Nehala Sharmin, the learned counsel appearing on behalf of the State and Ms. Divya, the learned counsel appearing on behalf of the informant have submitted that the accused appellant had played leading role in commission of crime and thus has been charged u/s 147/ 148/ 149 /342/ 364/ 302/ 379 IPC and u/s 27 Arms Act and section 17 of

C.L.A. Act for causing murder of the deceased persons with intention and knowledge.

18. It is further submitted that the deceased died of fire arm injuries which is consistent with the oral evidence of prosecution. The ocular evidence of prosecution got support from the medical evidence.

19. It is further submitted that the appellant has also got seven criminal antecedents of like nature which shows that he is habitual of committing such type of offence and is a veteran criminal.

20. Therefore, learned counsel for the State submitted that learned trial court on the basis of evidence of the witnesses and documents available on record has rightly convicted the appellant under sections 148, 149/364, 149/379, 302 of the Indian Penal Code and u/s 27 of Arms Act and section 17(2) of C.L.A which requires no interference by this court.

21. Learned counsels appearing for the State, based upon the aforesaid premise, has submitted that the impugned judgment does not suffer from any error, hence the instant appeals are fit to be dismissed.

Analysis:-

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

23. We have also gone through the testimonies of the witnesses as available in the LCR as also the exhibits.

24. Learned trial court, based upon the testimonies of witnesses, has passed the judgment of conviction and sentence as indicated above in the preceding paragraphs.

25. This Court before considering the argument advanced on behalf of the parties is now proceeding to consider the deposition of witnesses, as per the testimony as recorded by learned trial Court.

26. The prosecution, in order to prove its case, had examined altogether nine witnesses. Out of which PW-1 Lal Praveen Nath Sahdeo, PW-2 Phuddin Thakur claimed to be eye witness and PW-7 Lal Pradeep Nath Sahdeo, the informant, PW-5 Dr. Surendra Kumar Singh who conducted autopsy on dead body of the three deceased. other witness is PW-8 Arvind Kumar Manjhi PW-3 Manoj Kumar Singh, PW-4 Lal Sujeet Nath Sahdeo, PW-6 Prakash Kumar Das and PW-9 Satarughan Thakur.

27. PW-1, Lal Praveen Nath Sahdeo in his examination-in-chief has deposed that on the date of occurrence he went to Marayan along with his father Lal Jai Kishor Nath Sahdeo, his uncle Lal Bal Kishor Nath Sahdeo, cousin brother Lal Pramod Nath Sahdeo and his elder brothers Lal Pradeep Nath Sahdeo, Lal Arvind Nath Sahdeo, Sal Ujjain Nath Sahdeo, Ravi, Pudhin Thakur and Lal Anil Nath Sahdeo. They went there for agricultural purposes.

On 20.03.2015 he stayed at Chotu Munda's hut in the Marayan forest. The next day, after lunch, they all were wandering in the forest. His father Lal Jai Kishore Nath Sahdeo, Lal Bal Kishore Nath Sahdeo, and Lal Pramod Nath Sahdeo stayed in the hut. At around 4:45

pm, his elder brother Lal Pradeep Nath Sahdeo received a call on his mobile phone from Lal Pramod Nath Sahdeo that Maoist armed with weapons had arrived near the hut and he was telling him to flee away from there. He saw 50-51 armed militants were present there who were taking away his father Lal Jai Kishore Nath Shahdeo, his uncle Lal Bal Kishore Nath Shahdev and cousin brother Lal Pramod Nath Sahdeo and also Pudin Thakur by tying their hands and legs and they were also assaulting them. They had also taken away his two licensing rifles and two Sim-cards. Thereafter he went to his house.

On 22.3.2015 in the morning Pudin Thakur came to his house and informed him that all the three persons were murdered by the Maoist in Sahedapat. Thereafter he along with villagers went at the place of occurrence and found dead bodies of Lal Jai Kishore Nath Shahdeo, Lal Bal Kishore Nath Shahdeo and Lal Pramod Nath Sahdeo. They were shot dead and also empty cartridges were lying near the dead bodies. With the help of the villagers, dead-bodies were loaded onto a truck and brought to the village. Thereafter the present case was lodged by his elder brother Lal Pradeep Nath Sahdev.

He has further deposed that reason of the occurrence is that for 25 years his family had been restricting the Maoist to enter into the village.

In his cross-examination he deposed that he was watching for 10-15 minutes. The Maoist went inside and brought the deceased out of the hut. He did not try to stop the Maoists. He reached his house at about 10:00 p.m. He was unable to inform the police because he could not

speak on mobile phones. He informed his family and villagers about the incident.

28. PW-2 Phuddin Thakur is the eye-witness to the occurrence and according to the prosecution case this witness was also abducted by the Maoist along with the deceased persons and taken towards SAHEDAPAT. He deposed that on the date of occurrence at about 5 p.m. he along with Lal Jai Kishore Nath Shahdeo, Lal Bal Kishore Nath Shahdeo and Lal Pramod Nath Sahdeo were in the hut. Suddenly Maoists came there and surrounded them. Pramod Lal Sahdeo informed Pradeep Lal Sahdeo on phone that Maoists had come. They were brought outside the hut. Their hands and legs were tied. They were assaulted by the Maoist. The Maoist had taken them towards Sahedapat. This witness has further deposed that the extremists again enquired about the identity of four persons and after the identity was disclosed, this witness was made to sit separately and thereafter all said three abducted persons were shot dead. On next date he informed the villagers about death of the deceased persons.

In cross-examination he deposed that no villagers had seen them when they were taken away by the Maoist. He was assaulted on his head by shoes.

29. PW-3 Manoj Kumar Singh had deposed that when he went to the place of occurrence, he saw that both hands and legs of the deceased were tied with rope and they were shot dead. From the place of occurrence seven empty cartridges were recovered. The dead bodies and recovered cartridges were brought to the village. Police came and inquest

reports were prepared upon which he has put his signature marked as Exts. 1, 1/1 and 1/ 2. He has also put his signature on production –cum-seizure list which has been marked as Ext.2.

30. PW-4 Lal Sujit Nath Sahdeo has deposed on the same line as has been deposed by PW-1 and has supported the case of prosecution.

31. PW-5 Dr. Surendra Kumar Singh in his examination-in-chief has stated that on 22.3.2015 he had conducted autopsy on the dead bodies of Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo and Lal Bal Kishroe Nath Sahdeo.

On examination of Lal Jai Kishore Nath Sahdeo, he has found following ante-mortem wound present on the body:

- i. Deep black piercing wound size 2 x 1 cm left side of chest.
- ii. Deep black entrance wound on right side of chest 1x1 cm.
- iii. One exit wound on left side back at posterior auxiliary line size 3x2 cm.
- iv. One exit wound right side mid auxiliary line 2x2 c.m., 1x1 cm bullet was inside wound extracted during postmortem and headed over to I.O.
- v. Bruise around right arm 1 cm wide.

Opinion: cause of death injury no.1.

On internal examination he has found following injuries:

- a. Lungs, Pleura, Heart, Blood Vessels of chest lacerated and full of blood.
- b. Wall of chest abdomen injured, stomach empty, fecal matter found in intestine, urinary bladder empty.

c. Liver, spleen, kidney and productive organ normal.

32. On examination of Lal Pramod Nath Sahdeo, he has found six entries wound and six exit wound present on the body which are as under:

Entry Wounds:

1. Back of left forearm near elbow;
2. Back of left forearm near wrist.
3. Left side of chest
4. Left side of abdomen.
5. Left side of abdomen.
6. Left side of chest.

Exit Wounds:

1. Front of left forearm;
2. Front of left forearm.
3. Left side of abdomen;
4. Left side of abdomen.
5. Right side of lower abdomen.
6. Left inguinal region.

On internal examination he has found following injuries:

Lung, Heart, Stomach, intestine was found lacerated and blood collected around. Fecal matter contaminated in abdominal cavity.

Cause of death- injury no.3 was fatal.

All the injuries were caused by fire arm.

33. On examination of Lal Bal Kishore Nath Sahdeo he has found following injuries:

Injury caused by fire arm:

1. Entrance wound near left side of umbilicus 1 cm x 1cm.
2. Exit wound found in back left side 3 cm x 2 cm.
3. One entrance wound over left forearm 1 cm x 1 cm.
4. Ext wound found on dorsum of left forearm 3 cm x 2 cm.

Internal Injury- Intestine, Liver lacerated by bullet.

Cause of death-injury no1.

On internal dissection-Stomach, small intestine, liver lacerated blood and feacal matter came out in abdominal cavity.

34. PW-6 Prakash Kumar Das has supported the case of prosecution.

35. PW-7 Lal Pradeep Nath Sahdeo has deposed in his examination-in-chief that on the date of occurrence he was present at the place of occurrence. He had seen that the hut was surrounded by 50-60 Maoists who were armed with deadly weapons. He was peeping from some distance. Thereafter he had received a call from his brother Pramod that Maoists had come and he was advised to flee away from there. He had seen the appellat talking to one Madan. Thereafter, they had taken the deceased persons and Phudin Thakur towards Sahedapat. Thereafter this witness returned to his house. In the morning at 05:00 a.m. Pudhin Thakur came to his house and informed that all the three persons were murdered by the Moist in Sahedapat. Thereafter he along with villagers went to the place of occurrence and found dead bodies of Lal Jai Kishore

Nath Shahdeo, Lal Bal Kishore Nath Shahdeo and Lal Pramod Nath Sahdeo. They were shot dead and also empty cartridges were lying near the dead bodies. With the help of the villagers, dead-bodies were loaded onto a truck and brought to the village.

This witness has identified the accused/appellant standing in the dock and stated that the appellant had played leading role in the incident.

36. PW-8 Arvind Kumar Manjhi is the Investigating officer. He has given vivid description of the place of occurrence. He has further deposed that he recorded the statement of Chhotu Munda who stated that on the date of occurrence he went to work as a daily wager in Latehar Police Line. He prepared inquest report of the dead-bodies and found gunshot injuries on the dead bodies. Further he deposed that he had sent the recovered empty cartridges for its examination after getting permission from the court. He has further given the details of criminal antecedents of the appellant which are as under:

(i) Kisko PS Case No. 48/14 dated 21.7.2014 under sections 147,148,149,302, 201 IPC, 27 Arms Act and 17 CLA Act.

(ii) Kisko PS Case No. 49/14 dated 21.7.2014 under sections 147,148,149,302, 201 IPC, 27 Arms Act and 17 CLA Act.

(iii) Kisko PS Case No. 50/14 dated 21.7.2014 under sections 147,148,149,302, 201 IPC, 27 Arms Act and 17 CLA Act.

(iv) Kisko PS Case No. 52/14 dated 04.08.2014 under sections 3/ 4 of Explosive Substance Act and 17 CLA Act.

(v) Kisko PS Case No. 40/15 dated 23.6.2015 under sections 147,148,149,353, 427 IPC, 3/4 of Explosive Substance Act and 17 CLA Act.

(vi) Kisko PS Case No. 51/15 dated 06.8.2015 under sections 147,148,149,353, 427 IPC, 3/4 of Explosive Substance Act and 17 CLA Act.

(vii) Bagru P.S. case No. 01/15 dated 10.11.2015 under sections 3/4 of Explosive Substance Act and 17 CLA Act.

37. PW-9 Satrudhan Thakur is constable no.2575 presently deputed at confidential cell, SP, Office, Lohardaga has supported the case of prosecution.

38. This Court, in order to appreciate the submissions advanced on behalf of the appellant with respect to the culpability of the appellant, vis-à-vis the evidences adduced on behalf of the parties, deems it fit and proper to refer certain judicial pronouncements in context of contention raised by the appellants.

39. The learned counsel has contended that the learned trial court even in absence of corroboration of the testimony of P.W.2 who is self-proclaimed sole eyewitness of the killing of the deceased had convicted the appellant which is bad in eyes of law. Further P.W. 2 who claimed to be an eye witness of the occurrence has examined by the police after 20-25 days.

40. The learned counsel has further contended that as per the prosecution case the deceased and their family members stayed in the hut of Chootu Munda situated in Marayan Forest on 20/03/2015 and 21/03/2015 but the said Chhotu Munda who was material witness has not been examined by the prosecution.

41. The Learned Counsel has further raised the issue of tampering of the place of occurrence and has submitted that the place of occurrence has been tampered by the prosecution as the dead bodies of the deceased were removed from the place of occurrence as they were loaded on a truck and carried away to Murmu village and this fact finds support from the evidence of PW-8.

42. In the backdrop of the aforesaid factual aspects and contention of the learned counsel for the appellant, this Court in the instant case is to consider following issues: -

(i) Whether the material as has come in course of trial is sufficient to attract the offence committed under Section 148, 149/364, 149/379, 302 of the Indian Penal Code?

(ii) Whether the sole testimony of an eyewitness (P.W.2) who is the witness of the second part of the occurrence i.e. murder of three deceased persons, is sufficient enough to prove the alleged charges against the appellants beyond all reasonable doubt.

(iii) Whether the non-examination of the material witness and delay lodging of the FIR is fatal to the prosecution case.

(iv) Whether the delay in recording the statement of the P.W.2 by the police raised suspicion about the veracity of the prosecution case.

(v) Whether in the case of the removal of the dead bodies of the deceased from the place of occurrence as the bodies were loaded on a truck and carried away to Murmu village

is sufficient enough to discredit the case of the prosecution even in the presence of other cogent evidence.

43. Since all the aforesaid issues are inextricably interlinked, the same are being decided herein below by considering them together.

44. In the context of aforesaid issues, it needs to refer herein that there is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony the courts will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

45. The law is well settled that the judgment of conviction can be passed also on the basis of the testimony of sole witness but the testimony of said witness should be trustworthy as per the judgment rendered by Hon'ble Apex Court in the case of ***Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91*** paragraphs 30 to 34 of the said judgment are being referred hereunder as :-

"30. Shri Bagga has also submitted that there was sole testimony of Sujit Mondal, PW 1, and the rest i.e. depositions of PW 2 to PW 8, could be treated merely as hearsay. The same cannot be relied upon for conviction.

*31. In ***Sunil Kumar v. State (Govt. of NCT of Delhi)*** this Court repelled a similar submission observing that: (SCC p. 371, para 9)*

"9. ... as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single

witness. That is the logic of Section 134 of the Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration."

In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

32. In **Namdeo v. State of Maharashtra** this Court reiterated the similar view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.

33. In **Kunju v. State of T.N.**, a similar view has been reiterated placing reliance on various earlier judgments of this Court including **Jagdish Prasad v. State of M.P.** and **Vadivelu Thevar v. State of Madras**.

34. Thus, in view of the above, the bald contention made by Shri Bagga that no conviction can be recorded in case of a solitary eyewitness has no force and is negated accordingly."

46. Likewise, the Hon'ble Apex Court in the case of **Kuriya and another vs. State of Rajasthan, (2012) 10 SCC 433** has held as under: -

" 33. ---The Court has stated the principle that, as a general rule, the Court can and may act on the testimony of a single eyewitness provided he is wholly reliable and base the conviction on the testimony of such sole eyewitness. There is no legal impediment in convicting a person on the sole testimony of a single witness."

47. The Hon'ble Apex Court in the case of **Kalu @ Amit vs. State of Haryana, (2012) 8 SCC 34** held as under:-

"11. We find no infirmity in the judgment of the High Court which has rightly affirmed the trial court's view. It is true that the accused have managed to win over the complainant PW 4 Karambir Yadav, but the evidence of PW 5 Ram Chander Yadav bears out the prosecution case. It is well settled that conviction can be based on the evidence of a sole eyewitness if his evidence inspires confidence. This witness has meticulously narrated the incident and supported the prosecution case. We find him to be a reliable witness."

48. The Hon'ble Apex Court in case of **Sheelam Ramesh v. State of A.P., (1999) 8 SCC 369** in Para -18 held as follows:-

"18. According to learned counsel for the accused appellants, though PW 3 has deposed that 10-15 persons were in the vicinity at the time of occurrence, no independent witness was examined by the prosecution. There is nothing on evidence to show that there was any other eyewitness to the occurrence. Having examined all the eyewitnesses even if other persons present nearby were not examined, the evidence of the eyewitnesses cannot be discarded. Courts are concerned with quality and not with quantity of evidence and in a criminal trial, conviction can be based on the sole evidence of a witness if it inspires confidence."

49. Thus, it is evident that in criminal trial conviction can be based on the sole evidence of a witness if it inspires confidence and as a general rule, the Court can and may act on the testimony of a single eyewitness provided he or she is wholly reliable and base the conviction on the testimony of such sole eyewitness. There is no legal impediment in convicting a person on the sole testimony of a single witness.

50. So far as the issue of non-examination of material witness is concerned, it is settled position of law that that due to non-examination of independent witnesses, the prosecution story will not vitiate in a case where the prosecution version is being corroborated by eye-witness, as the case herein. Reference in this regard be made to the relevant

paragraph of judgment rendered by the Hon'ble Apex Court in the case **Sambhu Das v. State of Assam, (2010) 10 SCC 374** which reads as under:

"38. In our opinion, it is not necessary for the prosecution to examine every other witness cited by them in the charge-sheet. Mere non-examination of some persons does not corrode the vitality of the prosecution version, particularly, the witnesses examined have withstood the cross-examination and pointed to the accused persons as perpetrators of the crime. The trial court and the High Court have come to the conclusion that the evidence of PW 1 is trustworthy and reliable. We have also carefully perused the evidence of PW 1, whose evidence is corroborated by PW 8 and the post-mortem report issued by PW 6, we are convinced that the trial court and the High Court were justified in believing the testimony of PW 1."

51. Likewise, the Hon'ble Apex Court in the judgment rendered in **Sarwan Singh v. State of Punjab, (2003) 1 SCC 240** held as under:

*"13. As regards the examination of independent persons or witnesses, we would do well to note a decision of this Court in *Ambika Prasad v. State (Delhi Admn.)* wherein this Court in para 12 observed: (SCC pp. 653-54)*

"12. It is next contended that despite the fact that 20 to 25 persons collected at the spot at the time of the incident as deposed by the prosecution witnesses, not a single independent witness has been examined and, therefore, no reliance should be placed on the evidence of PW 5 and PW 7. This submission also deserves to be rejected. It is a known fact that independent persons are reluctant to be witnesses or to assist the investigation. Reasons are not far to seek. Firstly, in cases where injured witnesses or the close relative of the deceased are under constant threat and they dare not depose the truth before the court, independent witnesses believe that their safety is not guaranteed. That belief cannot be said to be without any substance. Another reason may be the delay in recording the evidence of independent witnesses and repeated adjournments in the court. In any case, if independent persons are not willing to cooperate with the investigation, the prosecution cannot be blamed and it cannot be a

ground for rejecting the evidence of injured witnesses. Dealing with a similar contention in State of U.P. v. Anil Singh 6this Court observed: (SCC pp. 691-92, para 15) 'In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable.' "

14. The test of creditworthiness and acceptability in our view, ought to be the guiding factors and if so the requirements as above, stand answered in the affirmative, question of raising an eyebrow on reliability of witness would be futile. The test is the credibility and acceptability of the witnesses available -- if they are so, the prosecution should be able to prove the case with their assistance."

52. Further, delay in recording the statement of P.W.2 by the police has been raised herein, but it is settled position of law as settled by the Hon'ble Apex Court in the case of ***Bodh Raj @ Bodha and ors. Vs. State of J.K. AIR 2002 SC 3164*** wherein it has been observed that it cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, under section 161 Cr.P.C. the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination, is plausible and acceptable, prosecution case cannot be doubted.

53. It is further settled connotation of law that unless the Investigating Officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage there-from. It cannot be laid down as a rule of universal application that

if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the Court accepts the same as plausible, there is no reason to interfere with the conclusion, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of *Banti alias Guddu Vs. State of Madhya Pradesh* AIR 2004 SC 261 and also in the case of *State of U.P. Vs. Satish* AIR 2005 SC 1000.

54. Thus, stricto sensu, delay in recording witness statements, more so when the said delay is explained, will not aid an accused. Of course, no hard-and fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of *Firoz khan Akbarkhan versus the State of Maharashtra* 2025 LiveLaw (SC) 349. For ready reference the relevant paragraph is being quoted as under:

21. Insofar as the delay of 2/3 days in recording the statements of the eye-witnesses under Section 1615 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') is concerned, the said delay has been thoroughly explained by the witnesses, including the Investigating Officer, to the effect that there were riots in the area. On this score, the Investigating Officer was involved in maintaining law and order in the affected area. In the attendant facts and circumstances, the course of action adopted by the police cannot be termed unjustified and no adverse inference can be drawn on this count. No doubt that Court has laid down that an inordinate delay in

recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in *Ganesh Bhavan Patel v State of Maharashtra*, (1978) 4 SCC 371; however, therein, the delay in recording statements of the material witnesses was accompanied by a delay in registering of the FIR and the surrounding circumstances, which led the Court to hold that there was a 'a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.' In *Jagjit Singh v State of Punjab*, (2005) 3 SCC 689 and *State of A.P. v S Swarnalatha*, (2009) 8 SCC 383, the Court held in favour of the convict/accused, as the inordinate delays therein could not be sufficiently explained. Delay of about 27 days, in a case where communal violence had broken out, was held not fatal, in *Lal Bahadur v State (NCT of Delhi)*, (2013) 4 SCC 557. Delay of over 2 years in recording witness statements was deemed not fatal, when explained, in *Baldev Singh v State of Punjab*, (2014) 12 SCC 473. Delay in recording witness statements was held not fatal per se in *Sunil Kumar v State of Rajasthan*, (2005) 9 SCC 283 and *V K Mishra v State of Uttarakhand*, (2015) 9 SCC 588. Delay in recording statements of witnesses was held to have cast serious doubts on the prosecution version in *Shahid Khan v State of Rajasthan*, (2016) 4 SCC 96 and *Jafarudheen v State of Kerala*, (2022) 8 SCC 440. It was held, in *Goutam Joardar v State of W. B.*, (2022) 17 SCC 549, by a Coordinate Bench **that 'there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by itself cannot result in rejection of their testimonies.'** Per our understanding, *Ganesh Bhavan Patel (supra)* is not an authority to contend that delay in recording witness statements is always fatal to the prosecution's case. Thus, **stricto sensu, delay in recording witness statements, more so when the said delay is explained, will not aid an accused. Of course, no hard-and fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it. Our reading of the above shall apply on all fours to delays in the context of Section 164 of the Code.**

55. Thus, it cannot be rule of universal application that if there is any delay in examination of a particular witness the prosecution version

becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the Court accepts the same as plausible, there is no reason to interfere with the conclusion

56. Further delay in lodging FIR has also been contended herein but it is settled position of law that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the Court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of *Sahebrao and anr. Vs. State of Maharashtra AIR 2006 SC 2002*.

57. Delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. It is no doubt true that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the Court must take notice. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the Court must consider the delay in the background of the facts and circumstances of each case, reference in this regard be made to the judgment rendered by the

Hon'ble Apex Court in the case of *Ramdas and ors. Vs. State of Maharashtra AIR 2007 SC 155*.

58. Thus, it is trite that mere delay in lodging the first information report is not by itself fatal to the case of the prosecution. Nevertheless, it is a relevant factor of which the Court is obliged to take notice and examine whether any explanation for the delay has been offered and if offered, whether it is satisfactory or not. If no satisfactory explanation is forthcoming, an adverse inference may be drawn against the prosecution. However, in the event, the delay is properly and satisfactorily explained; the prosecution case cannot be thrown out merely on the ground of delay in lodging the F.I.R. Obviously, the explanation has to be considered in the light of the totality of the facts and circumstances of the case.

59. It has further been contended that place of occurrence has been tampered by the prosecution as the dead bodies of the deceased were removed from the place of occurrence as they were loaded on a truck and carried away to Murmu village.

60. In the aforesaid context it needs to refer herein that moving corpses before police inspection constitutes tampering with evidence but it cannot be always fatal to the case and it only requires strong, independent evidence to prove the original place of occurrence and the sequence of events.

61. In the backdrop of the aforesaid settled position of law this Court in order to answer the aforesaid issues is now re-adverting to the factual aspect of the case.

62. According to the prosecution case few members of the family of the deceased comprising of deceased Lal Jai Kishore Nath Sahdeo, deceased Lal Bal Kishore Nath Sahdeo and deceased Lal Pramod Nath Sahdeo, Pradeep Nath Sahdeo (PW 7), Praveen Nath Sahdeo (PW 1) alongwith villager Phuddin (PW 2), Ravi etc. had gone to Marayan Forest on 20/03/2015 to supervise their cultivation work and also enjoying picnic. In the Forest they were staying in a hut belonging to Chhotu Munda.

63. It is the case of the prosecution that on 21/03/2015 at about 05.00 p.m while Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo, Lal Bal Kishore Nath Sahdeo and Phuddin Thakur stayed in the hut, the remaining persons proceeded towards the Jungle for a walk.

64. Suddenly PW 1 Lal Praveen Nath Sahdeo and PW 7 Lal Pradeep Nath Sahdeo saw that the Maoist have surrounded the hut so they hid themselves in the Jungle. Thereafter the Maoist comprising of the accused Kameshwar Yadav and 50-60 unknown persons abducted Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo, Lal Bal Kishore Nath Sahdeo and Phuddin Thakur (P.W.2) and took them towards SAHEDAPAT. Seeing this the informant and other persons returned to their village.

65. From the aforesaid it is evident that the prosecution has made out a case that the Maoist had abducted Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo and Lal Bal Kishore Nath Sahdeo in order to commit murder.

66. Thus, it is apparent from the prosecution case that on the point of alleged occurrence, there are two set of witnesses. The first set comprise of Lal Praveen Nath Sahdeo (P.W.1) and the informant Lal Pradeep Nath Sahdeo (P.W.7) who had gone to the Marayan Forest on the fateful day with the deceased persons.

67. It is evident from para 6 of the testimony of Lal Praveen Nath Sahdeo (PW 1) that he saw the extremist abducting his father Lal Jai Kishore Nath Sahdeo (since deceased) Uncle Lal Bal Kishore Nath Sahdeo (since deceased) and cousin Lal Pramod Nath Sahdeo(since deceased) and Phuddin Thakur and taking them towards SAHEDAPAT with their hands tied, for ready reference the aforesaid part of testimony of PW.1 is being quoted as under:

“6. फिर मैं देखा उग्रवादी मेरे पिता, चाचा एवं भाई को मारते-पिटते हुए सहेदापाट कच्ची रास्ता के तरफ ले गये। इन तीनों के साथ पुदीन ठाकुर भीथा, जिसका भी हाथ बंधा हुआ था।”

68. On the similar line Lal Pradeep Nath Sahdeo (PW-7) (Informant) has stated at paragraph 6 of his testimony that he saw the extremist abducting his father Lal Pradeep Nath Sahdeo, uncle Lal Bal Kishore Nath Sahdeo, cousin Lal Pramod Nath Sahdeo and Phuddin Thakur with their hands tied behind their back and taken them towards SAHEDAPAT, for ready reference the aforesaid part of testimony of P.W.7 is being quoted as under:

“6. मैं देखा कि मेरे पिताजी, चाचा लाल बालकिशोर नाथ साहदेव, चचेरा भाई लाल प्रमोदनाथ साहदेव, फुदिन ठाकुर को हाथ पीछे बांधकर माओवादी

निकाले। माओवादियों के बीच से ही एक आवाज "कामेश्वर-मदन से बात करो"। मैं देखा कि कामेश्वर फोन से बात करने लगा और बोला कि "ठाकुर लोग पकड़ा गये हैं क्या करना है"। उधर से क्या आवाज क्या आदेश आया मैं नहीं जानता।"

69. Thus, from the testimony of the aforesaid witnesses primarily the alleged act kidnapping i.e. first part of the occurrence has fully been established.

70. The Phuddin Thakur (PW 2) is the witness of the second part of the alleged occurrence i.e. murder of all the three deceased persons, who according to the prosecution case had also been abducted by the Maoist along with the deceased persons and taken towards SAHEDAPAT. Therefore, this witness is not only a victim but also an eye witness to the occurrence. The fact of kidnapping of this witness along with deceased persons by the Maoist has fully been substantiated by the testimony prosecution witness P.W.1 and P.W.7 wherein they have categorically stated that Phuddin Tkhur had also been kidnapped by the Maoist along with the deceased persons.

71. Coming to the deposition of P.W.2, wherein he has stated that on the date of occurrence at about 05.00 p.m, he along with Jai Kishore Nath Sahdeo, Bal Kishore Nath Sahdeo and Pramod Nath Sahdeo were present in the hut of Chhotu Munda and the remaining members had gone out of the hut and at that time about 50-60 extremists surrounded the hut. Thereafter the extremist entered inside the hut and enquired about their identity. Thereafter all the four were taken out of the hut and assaulted with a stick. Thereafter all the four were taken at some distance

and made to sit near a *KACHA RASTA*. The extremists again enquired about the identity of four persons and after the identity was disclosed, this witness was made to sit separately. The relevant part of the testimony of this witness are being quoted as under:

“2. उससे एक दिन पहले दिन शुक्रवार को मैं, मेरे साथ बाल किशोरनाथ साहदेव, जय किशोरनाथ साहदेव, प्रमोद नाथ साहदेव, प्रदीप नाथ साहदेव, प्रवीण नाथ साहदेव, पप्पु लाल साहदेव, अनिल लाल साहदेव के साथ ग्राग गुरमुसे मराइन गये थे जहां जंगल एवं खेतबाड़ी है। खेत बाड़ी देखने गये थे। खेत बाड़ी उपर जिनका नाम बोला हूं उनका है।

3. शुक्रवार की रात वही छोटु गुण्डा का झोपड़ी जो भराइन जंगल में है उसमें रूका था।

4. अगले दिन शनिवार को शाम में ५.०० बजे हमलोग अपने गांव वापस आने की तैयारी कर रहे थे। उस समय झोपड़ी में मैं, जयकिशोर नाथ साहदेव उर्फ जयुनाथ साहदेव, बाल किशोरनाथ साहदेव, प्रमोद नाथ साहदेव थे। बाकि लोग बाहर की तरफ निकले हुए थे। झोपड़ी में हमलोग चार आदमी थे।

6. ५.०० बजे ५०-६० की संख्या में उग्रवादी लोग आकर घर लिये। प्रमोदलाल साहदेव ने प्रदीपलाल साहदेव को फोन किया और बोला कि उग्रवादी लोग आ गये है तुमलोग साईड हो जाओ।

7. ५.०० बजे ५०-६० की संख्या में उग्रवादी लोग आकर घर लिये। प्रमोद लाल साहदेव ने प्रदीप लाल साहदेव को फोन किया और बोला कि उग्रवादी लोग आ गये है तुमलोग साईड हो जाओ।

8. हमलोगों को झोपड़ी से निकाल दिया। वाण्डा से पारों को मारने लगा। पुरव साईड उन में से एक व्यक्ति फोन पर किसी को बोल रहा था कि ठाकुर लोगों को पकडे है और पुछ रहा था इनका क्या किया जाए।

9. हम लोगों को चोला क्लो तुमलोगों को घर पहुंचा देते हैं। दस कदम की दुरी पर एक नहर था। जयु लाल साहदेव नहीं उतर पा रहा था। वो उग्रवादियों को उतरने के लिए मदद के लिए बोला जिस पर वे लोग गाली-गलौज करने लगे

एवं मारने लगे।बाल किशोर नाथ साहदेव तुंगी पहने हुए वे जो खुल गया था।वो भी उनको लुंगी पहना ले के लिए बोले।वे लोग गाली-गलौज करने लगे।

10. हमलोग पारों को वे लोग करीब आधा किमी की दूरी पर ले गये।दो राइफल भी साथ ले गये ।हमलोगों को तीन गुठान रास्ते पर ले गया। वहां बैठा दिया। दक्षिण गुठ करके बैठा दिया। वहां नाम पुराने लगा।सभी ने अपना नाम बताया।

11. मुझे डंटा से मारकर एक तरफ अलग कर दिया। उसके बाद बाकि तीनों को गोली गार दिया। सबसे पहले जयु वालशाहदेव को गोली गाय, उसके चाद बालकिशोर नाथ साहदेव को गोली मारा और अन्त में प्रमोद लाल साहदेव को गोली मार दिया। गोली लगने से तीनों लोग मर गये।

12. हमको बोला कि लाश ले जाएगा तो तुमको भी गोली मार देंगे। वे लोग पश्चिम के तरफ फले गये।दो-तीन घंटा में जमल में ही शटक गया। डर के मारे दश गया था।

13. सुबद्ध ५०० बजे ग्राम गुरुमु आया एवं ठाकुर साहेब के यहां गये। वहा सबको घटना के बारे में बताया। फिर सभी लोग जहां लाश वा वन गये और लाश को उठा कर गांव ले आये।

14. जिस समय लाश उठा कर ला रहे थे उस समय पुलिस वहां पहुंच गई थी।

15. पटना में शामिल एक व्यक्ति जाज न्यायालय में हाजिर है उसे पहचानता हूँ। यही आदमी तीनों को गोली मारा था। फोन से भी यहीं आदमी बात कर रहा था और बाकि लोगों को मैं देखकर के नहीं पहचान सकता क्योंकि डर से मेरा हालत खराब हो

72. On careful scrutiny of the evidence of PW 1, PW 2 and PW 7 it is evident that these witnesses have been cross-examined at length but the no contradiction had been crop up in the evidence of these witnesses and taking into consideration the evidence of kidnapping, this Court is of the considered view that there is direct evidence on the point of kidnapping of the deceased person and these witnesses has categorically

stated that the accused/appellant in association of other 50-60 unknown persons abducted Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo and Lal Bal Kishore Nath Sahdeo on 21/03/2015 at 05.00 p.m., accordingly the charges against the appellant U/s 149/364 IPC has been successfully established by the prosecution.

73. Now again reverting to the testimony of the P.W.2. This witness has further stated that after separating him the extremist first shot Jai Kishore Nath Sahdeo and thereafter Bal Kishore Nath Sahdeo and lastly Pramod Nath Sahdeo.

74. Thus, it is the prosecution case that on 21/03/2015 at 05.00 p.m while Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo and Lal Bal Kishore Nath Sahdeo and Phuddin Thakur were present in the hut of Chhotu Munda and they were abducted by the Maoist and taken towards SAHEDAPAT where Phuddin Thakur (PW 2) was let to go free but before Phuddin Thakur was released Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo and Lal Bal Kishore Nath Sahdeo were shot dead by the extremists.

75. In this backdrop the only eye witness of murder is none other than Phuddin Thakur (PW 2). From perusal of the deposition of Phuddin Thakur (PW 2) as quoted hereinabove it is evident that he had stated that during the relevant time he had gone to Marayan Forest along with Bal Kishore Nath Sahdeo, Jai Kishore Nath Sahdeo, Pramod Nath Sahdeo, Praveen Nath Sahdeo, Pappu Lal Sahdeo and Anil Nath Sahdeo in order to monitor cultivation work and during their visit they stayed in

the hut of Chhotu Munda which was situated in the Marayan Forest. On the next day at about 05.00 p.m they were preparing themselves to return from the Jungle and at that time he, Jai Kishore Nath Sahdeo, Bal Kishore Nath Sahdeo and Pramod Nath Sahdeo were present in the hut whereas remaining persons had gone out in the Jungle.

76. This witness has specifically deposed that at that time 50-60 numbers of extremists surrounded the hut and after enquiring about their identity assaulted them, tied their hands and abducted all four of them and moved towards SAHEDAPAT. When they reached near about SAHEDAPAT, they were made to sit and again their identify was enquired. When all the four persons disclosed their identity then this witness was made to sit separately and in his presence the remaining three were shot dead.

77. P.W.2 has identified the accused Kameshwar Yadav who was present in the Court and further identified him as the person who had fired and shot dead the three persons.

78. From perusal of the materials available on record it is evident that PW 2 is the solitary witness so far as murder of Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo and Lal Bal Kishore Nath Sahdeo is concerned. Thus, the evidence adduced by the prosecution on this issue is testimony of PW 2 is the sole eye witness of the murder of said three persons and has emphatically stated that all the three persons had succumbed to fatal injuries sustained by them due to gunshots the evening of 21/03/2015 .

79. The Doctor PW 5 in his postmortem report as well as in his evidence has confirmed that the death of the three deceased had occurred due to multiple gunshot injury. From the evidence of Investigating Officer (PW 8) also, it is evident that the dead body of the deceased was seen by the Police Officer and had prepared the inquest report (Ext.13 series) mentioning the injuries he had observed on the dead body of the deceased.

80. Thus, from the aforesaid fact it is evident that as per the Phuddin Thakur was kidnapped by extremist mob along with the deceased persons and this fact has been corroborated from the testimony of the P.W.1 and P.W.7. The second part of alleged occurrence i.e murder of all three deceased, was witnessed by the sole witness Phuddin Thakur (P.W.2) who categorically stated that when all the four persons disclosed their identity then this witness was made to sit separately and in his presence the remaining three were shot dead and this witness further identified the present appellant being part of the extremist mob had fired and shot dead the three persons. The statement of P.W.2 has fully been substantiated by the P.W.5 doctor who had conducted autopsy on the body of the deceased persons had stated that death of the said persons was caused due to gunshot injury.

81. So far the place of occurrence is concerned, PW 1, PW 2 and PW 7 who were present in the Jungle on the date of occurrence have categorically stated that there are two places of occurrence viz. the first place of occurrence is the hut of Chhotu Munda from where all the three

deceased and Phuddin Thakur were abducted and the second place of occurrence is situated in a Jungle at a distance of five kilometers from SAHEDAPAT village where three persons were shot dead. The place of occurrence is also confirmed by the evidence of the Investigating Officer who has testified about the place of occurrence.

82. Further it is the case of the prosecution that after alleged occurrence, P.W.2 Phuddin Thakur somehow managed to reached the village Murmu at about 05.00 a.m. on 23/03/2015 where he informed about the occurrence to the family members of the deceased. This fact has been substantiated by PW 1, PW 2, PW 4 and PW 7 and after knowing about the incidence the family members of the deceased and the villagers in large number rushed towards the place of occurrence and brought the dead bodies back to village Murmu where subsequently the police arrived and inquest (Ext.13 series) was prepared in the village.

83. The Investigating officer has testified that when he saw the dead body they were laden on a Truck. This fact is also supported by PW 1, PW 4 and PW 7 who have stated that they had brought the dead bodies of the deceased on a Truck from the jungle.

84. It is evident from record that the postmortem of the dead bodies was conducted by a Board of Doctors at Sadar Hospital, Latehar and the Investigating officer obtained the post mortem reports (Ext.3 series) from Sadar Hospital, Latehar.

85. In the preceding paragraph this Court has already discussed the evidence of Phuddin Thakur (PW 2) who is solitary witness of the occurrence of murder and further the evidence of Doctor (PW 5) who found gunshot injuries on the body of the deceased which goes on to corroborate the testimony of PW 2 that he saw the accused causing gunshot injury upon the person of the deceased resulting into their death.

86. The aforesaid evidence further finds support from the fact that some empty cartridges were picked up by the witnesses and same was handed over to the police and for which production-cum-seizure list was prepared and the same was signed by Lal Sujit Nath Sahdeo (PW 4) and Manoj Kumar Singh (PW 3) who have identified their signatures on the production-cum-seizure list (Ext.2 series).

87. From testimony of the Investigating officer, it is evident that the empty cartridges were sent to State Forensic Science Laboratory for examination its report was submitted (Ext.19). It has come on record that the empty cartridges were also produced in the Court and marked as Material Exhibits II and III series and these empty cartridges are stated to be the one by which three persons were murdered.

88. At this juncture it requires to refer herein the settled position of law as discussed and referred hereinabove that there is no legal impediment in convicting a person on the sole testimony of a single witness but the testimony of said witness should be trustworthy and inspire confidence in mind of the Court. Herein since the testimony of P.W.2 has fully been corroborated by the testimony of PW.1, P.W.7 and

PW.5, further there is no deviation in the cross-examination of this witness this Court is of the view that evidence of P.W.2 is reliable and trustworthy.

89. In nutshell on the basis of discussion made hereinabove it is evident that the accused/appellant was a member of unlawful assembly and the eye witnesses have stated that they were armed with automatic weapons. There is no material or cogent evidence available on record to disbelieve their testimonies. Further from the discussions made in the preceding paragraphs it is the case of the prosecution that Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo and Lal Bal Kishore Nath Sahdeo were kidnapped firstly and thereafter murdered by the use of fire arm. This fact has been substantiated by testimony of PW 1, PW 2 and PW 7 who are eye witnesses of the occurrence.

90. This fact has further been validated by the evidence of the Doctor PW 5 and postmortem report Ext.3 series whereby the Doctor conducting the postmortem found anti-mortem gunshot injuries on the dead bodies of the deceased. Further PW 2 who is the eye witness of the incidence has stated in his evidence that the accused/appellant has committed culpable homicide of the deceased by fire arm. This fact is further corroborated from the FSL Report wherein it has come that recovered and seized empty cartridges are stated to be the one by which three persons were murdered, thus Evidence is irresistible on the fact that there was use of fire arm in commission of the said incidence. Further it is evident from Ext.18 which is letter no. 246 dated 17/01/2017 which

has been issued by the Superintendent of Police, Lohardaga through which it has been certified that according to the confidential letter no. 2535/V.Sa.(T.C) dated 27/09/2014 and letter no. 1236/V.Sa.(T.C) dated 28/05/2015 it has been declared that the accused/appellant Kameshwar Yadav is an active member of C.P.I (Marxist) which is a banned outfit.

91. Thus, on careful examination of the evidence of the witnesses particularly the testimony of PW 2 there appears no reason to disbelieve their testimony rather their testimony not only inspires confidence but also have a quality of credence and the evidence of PW 2 is direct evidence with regard to the second part of occurrence i.e. murder of the said three persons, which is most acceptable in terms of Section 60 of the Indian Evidence Act. From impugned judgment, it is evident the learned trial Court after appreciating all the evidences has also considered P.W.2 as reliable and trustworthy witness, as such the said finding of learned trial Court requires no interference.

92. Coming to the submissions made by the learned Counsel for the appellant that materials witness i.e. Chhotu Munda have not been produced and examined by the prosecution and its cast doubt upon the prosecution story.

93. This Court has already discussed the settled proposition of law enunciated by the Hon'ble Apex Court in the case of **Sambhu Das v. State of Assam**(supra) that that due to non-examination of particular witnesses, the prosecution story will not vitiate in a case where the

prosecution version is being corroborated by eye-witness, as the case herein.

94. Further it is evident from testimony of the I.O. (PW 8) who at paragraph 18 has stated that he recorded the statement of Chhotu Munda who stated that on the date of occurrence he went to work as a daily wager in Latehar Police line. For ready reference the paragraph 18 of the testimony of the investigating officer is being quoted as under:

“18. दि० 24.03.2015 को साक्षी डेडका मुण्डा, मोटु मुण्डा, विलसन टोपनो का बयान लिया। दि० 25.03.2015 को साक्षी लाल बालमुकुन्द नाथ साहदेव का बयान ग्राम मुरमू में लिया। दि० 26.03.2015 को रवि सिंह, छोटु मुण्डा, अनिता कुमारी का बयान लिया। छोटु मुण्डा ने अपने बयान में बताया कि वो घटना के दिन लातेहार पुलिस लाईन में मजदूरी का काम करने गया था। अनिता कुमारी ने अपने बयान में घटना का समर्थन किया।”

95. Thus, in the aforesaid circumstances even if Chhotu Munda would have been examined nothing material would have been extracted from his evidence. From impugned judgment it is evident that some charge-sheeted witnesses have been given up because they were fearful because of the extremists or gained by the accused persons.

96. It requires to refer herein that in series of Judgments, the Hon'ble Apex Court has rendered that the evidence should not be counted but weighed. Further it is not in dispute that ordinarily the prosecution should examine all witnesses whose names have been mentioned in the charge sheet but then the same cannot be said to be a

rule having universal application and each case has to be considered on his own facts. Further, it is not necessary for the prosecution to multiply witnesses, if it chooses to rely upon the evidence of the eye witnesses examined by it, which it considers sufficient to prove the case of the prosecution and if their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined, will not adversely affect the case of the prosecution, which is the case herein.

97. Thus, once the witnesses examined by the prosecution are relied by the Court and the Court comes to the conclusion that their evidence is trust worthy and the non-examination of other so called material witnesses will not affect the credibility of these witnesses, thus the contention of the learned counsel for the appellant that few charge sheet witnesses have not been examined caused serious dent to the prosecution case is not fit to be accepted.

98. It has also been contended herein that statement of P.W.2 has been recorded by the police belatedly therefore the veracity of the testimony of P.W.2 is doubtful.

99. In the aforesaid context it needs to refer herein that statement of the witnesses recorded before the police can only be used in order to contradict the statement of the said witnesses in examination-in-chief. Further it is settled proposition of law as discussed and referred in the preceding paragraphs that that it cannot be laid down as a rule of universal application that if there is any delay in examination of a

particular witness, under section 161 Cr.P.C. the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination, is plausible and acceptable, prosecution case cannot be doubted.

100. From the testimony of the Investigating officer it appears that this witness has not been specifically cross-examined on the issue of delay recording of the statement of P.W.2 and rather in the cross-examination at para-50 this witness has categorically stated that he has taken the statement of the Phuddin Thakur (P.W.2) along with other witnesses on 22.03.2015 i.e. next day of occurrence, for ready reference the said paragraph of testimony is being quoted herein which reads as under:

“50. पुलिस अधीक्षक महोदय द्वारा मौखिक आदेश पर एस०आई० धनेश शर्मा द्वारा लाल प्रदीपनाथ साहदेव का फर्द बयान लिया गया। मैं वहां मौजूद था। फर्द बयान मैं स्वयं ले कर थाना गया था। दि० 22.03.2015 को समय 19.00 बजे फर्द बयान थाना ले कर गया था। दि० 22.03.2015 को गवाहों का बयान जिसमें लाल प्रदीपनाथ साहदेव, फुदीन ठाकुर, प्रवीण नाथ साहदेव, लाल अरविन्दनाथ साहदेव, लाल सुजित नाथ साहदेव, बिनोद कुमार सिंह, मनोज कुमार सिंह वगैरह का बयान दि० 22.03.2015 को मुरमू गांव में लिया था। इनका बयान कांड दर्ज होने के पूर्व लिया गया था।”

101. In the instant case since P.W.2 in his examination-in-chief and in cross-examination has specifically stated about the culpability of the present appellant and the same has been substantiated by P.W.5 and P.W.7 and P.W.8 in their testimony, therefore, even the delay in recording of the statement of P.W.2 has no impact on the case of the prosecution.

102. Further the issue of tampering of the evidences of the place of occurrence has been raised by the learned counsel for the appellant. Admittedly as per the case of the prosecution the dead bodies of the deceased were removed from the place of occurrence and were loaded on a Truck and carried away to the Murmu village. This fact finds validation from the evidence of Investigating officer (PW 8) who has testified that he prepared the inquest report of the dead bodies which he found on a Truck. It is true that the dead bodies were removed from the place of occurrence but the I.O. who conducted the inquest found gunshot injuries on the dead body which is further corroborated by the testimony of Doctor PW 5 who found anti-mortem gunshot injury on the dead bodies of the deceased. Further as discussed hereinabove that the sole eye witness namely Phuddin Thakur (PW 2) has specifically stated that the accused caused death of the deceased persons with fire arm. Thus, in the presence of aforesaid clinching evidence, the entire prosecution case cannot be vitiated merely on the ground that the inquest report has been prepared other than the place of occurrence.

103. Further, it is settled position of law that the scope of inquest is limited and is confined to ascertainment of apparent cause of death. Basic purpose of holding an inquest is to report cause of death i.e. suicidal, homicidal or accidental etc. and details of the overt act need not be recorded in the inquest report.

104. Further Preparation of inquest report is a part of investigation within the meaning of procedural law and the same cannot be termed as

substantive evidence and discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance, which would warrant a benefit to the accused in the presence of other clinching evidence, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of *Munshi Prasad & others Vs. State of Bihar AIR 2001 SC 3031*.

105. In the present case, since the Investigating Officer has found gunshot injuries in the inquest report (Ext 13 series and the evidence of PW 2 has been fully substantiated by other material evidences and his evidence inspires confidence being of unimpeachable character, therefore the submission of the learned counsel for the accused/appellant that the preparation of the inquest report other than place of occurrence has eroded the credibility of the prosecution case is not fit to be accepted.

106. The learned counsel for the appellant has further contended that that the delay in lodging FIR has not been explained by the prosecution, but herein as evident from the prosecution case that it is triple murder of the members of the same Family, therefore it is natural that the family members were in a state of shock and in the state of dismay and grief and further since the murder was caused by extremist mob led by the present appellant and it might cause fear in the mind of the witnesses therefore, delay of two days in instituting the FIR is not sufficient enough to cast doubt upon the prosecution case.

107. On the basis of discussion made hereinabove, the prosecution case is based upon the evidence of solitary eye witness i.e. Phuddin

Thakur (PW 2) and he is trustworthy reliable witness and his evidence coupled with the evidence of PW 7 informant, Doctor (PW 5) and I.O. (PW 8) fully establishes the factum of the prosecution case that in the evening of 21/03/2015 the accused in furtherance of the common object of unlawful assembly abducted Lal Jai Kishore Nath Sahdeo, Lal Pramod Nath Sahdeo and Lal Bal Kishore Nath Sahdeo and committed culpable homicide of these three persons using fire arm.

108. This Court on the basis of the discussion so made hereinabove and taking into consideration the testimony of P.W-2 having been corroborated with the testimony of the other witnesses, P.W.7 and PW.5 the doctor and P.W.8 investigating officer respectively and relying upon the principle laid down by Hon'ble Apex Court in the case of *Bipin Kumar Mondal* (supra) and the ratio rendered by the Hon'ble Apex Court in other cases as referred and discussed in preceding paragraphs, is of the view that prosecution has successfully established its case against the present appellant.

109. This Court, after having discussed the factual aspect and legal position and considering the finding recorded by the learned trial Court, is of the view that the learned trial Court after giving its thoughtful consideration to the testimony of sole eye witness (P.W. 2) of the second part of the occurrence being corroborated by the testimony of doctor (P.W.5) and investigating officer (PW.8) has come to the conclusion that the prosecution has been able to prove the charge beyond all shadow of

doubt against the present appellant, therefore, requires no interference by this Court.

110. Accordingly, the instant appeals stand dismissed.

111. Pending interlocutory application(s), if any, also stands disposed of.

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

I agree

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Jharkhand High Court
Dated: 12 /03/2026
KNR/AFR

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