

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 250 of 1997(R)

(Against the judgment of conviction dated 20.09.1997 and order of sentence dated 22.09.1997, passed by learned Additional District and Sessions Judge, Bokaro, in Sessions Trial No.443 of 1994)

1. Madhab Chandra Dey alias Madhu, Son of Panchanan Dey, resident of Vivekanand Road, P.O. & P.S. Chas, District-Bokaro

... **Appellant**

Versus

The State of Bihar (Now Jharkhand)

... **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

.....

For the Appellant : Mr. Pradyot Chattterjee, Advocate

For the State : Mrs. Nehala Sharmin, SPP

.....

C.A.V. on 19/12/2025 Pronounced on 21/01/2026

Per Sujit Narayan Prasad, J.:

1. The instant appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment of conviction dated 20.09.1997 and order of sentence dated 22.09.1997 passed by learned Additional District and Sessions Judge, Bokaro, in Sessions Trial No.443 of 1994 whereby and whereunder the appellanthasbeen convicted under sections302/34 and section 394 of IPC and sentenced to undergo life imprisonment each under sections 302/34 IPC and 394 IPC. Both the sentences were ordered to run concurrently.
2. At the outset it needs to refer herein that it is evident from the order dated 05.02.2025 passed by the co-ordinate Bench of this Court that one of the appellant Ludka Kanduk

alias Bhagwan Das, Son of Late Gopal Kandu has died during the pendency of the instant appeal, hence, the instant appeal has already abated against him.

Prosecution Case:

3. The prosecution case, in brief, as per the fardbeyan dated 15.12.1993, of the informant Nand Lal Dey(P.W.-1), is that on 15.12.1993, in the morning at 6.30 A.M., informant along with other family members had gone to Rajrappa for marriage of his niece (*bhagni*) Shanti Dutta. Informant further stated that before going to Rajrappa, entire room of the house was locked and his old *fuaa*(father's sister) Khenubala Dasi, was left to look after the house.
4. Informant further stated that in Rajrappa, marriage was performed and they left for Chas at about 4.30 P.M., in the evening and they reached their house at about 7.30 P.M. and at the time of entering the house, the electricity in the entire market was cut. He entered into the house in dark and called his *fuaa*(father's sister), but, she did not answer. Then, he told his son-in-law(*damad*) Ranjan Dutta to bring candle and in the light of the candle they entered into the house and found the lock of the door of the room situated on the way from *baramada* was broken. On entering inside the room, they found lock of the rooms and boxes were broken and articles kept inside the boxes were scattered. They became nervous and started searching *fuaa*(father's sister) and found her lying, in pool of blood, on the floor of

the stair case room. It has further been stated that neck of *fuaa* (father's sister) was found cut with a sharp cutting weapon and she was dead.

5. Informanthas further alleged that the room situated on the first floor was also opened and ornaments of gold and silver and other articles were missing from the box. Informant suspected hand of Gopi Dey, Suvash Ghosal, Ludka Kanduk, Genda Dhibar and Jaideo Dhiber in the alleged commission of crime as Jaideo Dhiber wanted to marry his niece Shanti Dutta and had threatened to kidnap her.
6. On the basis of *fardbeyan* of the informant, F.I.R being Chas P.S. case no. 216/1993 dated 15.12.1993 was registered under section 302 and 382 of IPC against the against Gopi Dey, Suvash Ghosal, Ludka Kanduk, Genda Dhibarand Jaideo Dhiber. After investigation, charge sheet was submitted against the accused persons and the cognizance of the offense were takenand the case was committed to the court of sessions.
7. Charges under Sections 302/34 of the I.P.C. were framed against the appellant Madhab Chandra Dey and also against Ludka Kanduk (since dead) including the accused Rajesh Kumar Dutta. Separate charges were framed against the appellant Madhab Chandra Dey and Ludka Kanduk under section 412 of IPC.Charges wereexplained to themto which they pleaded not guilty and claimed to be tried. The accused persons along the appellant herein, were

examined u/s 313 Cr.P.C. wherein they denied all the allegations.

8. The prosecution in order to prove the case has examined altogether fifteen witnesses including the informant Nand Lal Dey (P.W.-1), Doctor P.W.-13 and Investigating Officer P.W.-14.
9. The learned trial Court, after recording the evidence of witnesses, examination-in-chief and cross-examination, recorded the statement of the accused persons, and found the accused persons guilty under Section 302/34 and 394 IPC and accordingly sentenced them, in the manner as stated hereinabove.
10. Against the aforesaid order of conviction and sentence the present appeal has been preferred.

Submission on behalf of the appellant:

11. Learned counsel for the appellant has assailed the impugned judgment of conviction and order of sentence on the following grounds:
 - I. The prosecution has miserably failed to establish the charge, beyond all reasonable doubt, in establishing the charge said to be committed by the accused appellant under sections 302 and 394 of the IPC.
 - II. Seizure list witnesses P.W.-11 and P.W.-12, in context of the recovery of money from Ludka Kandu (since dead), were declared hostile and also the seizure list witnesses P.W.-8 and P.W.-10, who had witnessed the

recovery of money from appellant Madhab Chandra Dey, did not support the prosecution case.

III. Further another Seizure list witness P.W.-6 who stated to be the witness of the recovery of knife also did not support the prosecution case and has been declared hostile. Further another seizure list witness P.W.-7 related to the recovery of knife also did not support the prosecution case.

IV. Learned court below failed to take into consideration that there is no iota of evidence regarding the conversion of alleged robbed ornaments into money.

12. Learned counsel for the appellant, in the backdrop of aforesaid grounds, has submitted that the impugned judgment of conviction and order of sentence since is not based upon cogent evidence and as such it cannot be said that the prosecution has been able to prove the charge beyond all reasonable doubt.

Submission of the learned APP for the State:

13. *Per Contra*, learned counsel appearing on behalf of State has defended the impugned judgment of conviction and order of sentence taking the ground that the impugned judgment has been passed based upon the testimony of witnesses who have supported the prosecution version.

14. It has been submitted that the informant P.W.-1 Nand Lal Dey and informant's brother P.W.-3 Anath Chandra Dey,

have remain consistent in their evidence in examination-in-chief as well as in their cross-examination also.

15. Further, there is strong circumstantial evidence available on record in order to substantiate the culpability of the present appellant in the alleged commission of crime i.e.in the murder of the deceased Khenubala Dasi.
16. It has been submitted that during post-mortem examination a sharp cutting injury on the neck of the deceased was found by the doctor which suggest that death of the deceased was homicidal and caused by the sharp weapon like Knife and thus this fact has also corroborated the prosecution story wherein it has come on record that knife was recovered.
17. Therefore, submission has been made that the prosecution version has not only been supported by the testimonies of the witnesses but the prosecution version has also been supported by the medical evidence.
18. Learned State counsel based upon the aforesaid grounds has submitted that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt.

Analysis:

19. We have heard learned counsel for the parties, perused the documents and the testimony of witnesses as also the finding recorded by learned trial Court in the impugned order.

20. It is evident from the record that in order to substantiate the case, the prosecution had altogether examined fifteen witnesses out of whom PW-1 Nand Lal Dey is the maternal uncle of the deceased and informant of the case; P.W.-2 Gopal Pal, is witness of an inquest report; P.W.-3 Anath Chandra Dey, is the brother of the informant; P.W.-4 is Bishwanath Ghoshal @ Bishtu Ghosal; P.W.-5 Sadhan Acharya; P.W.-6 Arun Chatterjee, is a seizure list witness and he was declared hostile; P.W.-7 Gour Datta, P.W.-8 is Duja Pad Dey; P.W.-10 Shaligram Dutta and P.W.-11 Ganesh Dutta and P.W.-12 Rajen Dutta, are seizure list witnesses. P.W.-13 is Dr. Chandra Bhusan Prasad Singh and he had conducted post-mortem examination; P.W.-14 is Officer-in-charge Rajendra Prasad and he is the investigating officer of the case.

21. This Court, before appreciating the argument advanced on behalf of the parties as also the legality and propriety of the impugned judgment, deems it fit and proper to refer the testimonies of the prosecution witnesses. For ready reference, the relevant portion of their testimonies is referred as under:

22. PW-1 Nand Lal Dey is the maternal uncle of the deceased. In his examination-in-chief, he has stated that on 15.12.1993, in morning at 7.30 A.M., he along with Anath Dey, Shambhu Dutta and Rajan Dutta and other family members had gone to Rajrappa for marriage of his niece.

After marriage they proceeded for home at 4.30P.M., and reached their home at about 7.30P.M., in the evening and at that time electricity of the market was cut. Informant further stated that he entered into the house and called his *fuaa*(father's sister) and told his son-in-law(*damad*) to bring candle and in the light of the candle they saw that lock of the outside door was broken and lock of the door inside the room was also broken. Three boxes and one leather bag were opened and articles and ornaments of gold and silver were missing. He had further deposed that he started weeping and hearing that several persons from market came to his house. They searched *fuaa*(father's sister) and found her body inside the stair case room in pool of blood. In the light of candle, they saw the neck of his *fuaa*(father's sister) was cut. This witness had further suspected that Gopi Dey, Suvash Ghosal, Ludka Kandhu, Genda Dhibar and Jaideo Dhiber was involved in the commission of crime. Informant has identified his signature on the fardbeyan, which was marked as Ext.-1 and fardbeyan was marked as Ext.-2. Informant had further stated that police had recovered Rs. 18,000/- from accused Ludka Kandhu and Rs. 30,000/- from accused/appellant Madhab Chandra Dey. Informant further stated that in the market he heard that crime was committed by the accused Madhab Chandra Dey and he informed to the D.S.P. about it. He had further

stated that Rajesh Dutta is his niece and he used to come to his house.

In his cross-examination informant has stated that he did not know that in Rajrappa Temple, committee gives receipt of Rs. 11/- on marriage and he does not know whether they got the receipt of or not. He had stated to the police that accused Jaideo Dhiber wanted to marry his niece(*bhagni*) Shanti Dutta, but, they did not want to marry with him. Jaideo used to pressurize his niece(*bhagini*) and used to threatened to kidnap her.

23. P.W.-2 Gopal Pal, is witness of the inquest report. He had stated in his evidence that Nand Lal Dey(informant) had returned home at about 7.30P.M., from Rajrappa after marriage of his *bhagni* Shanti Dutta and after returning home he raised halla that his *fuaa*(father's sister) had been killed. On hearing halla he had gone to the house of the informant and saw body of deceased in pool of blood and her neck was cut and the body of deceased was found inside the stair case room. He had signed on the inquest report.

24. P.W.-3 Anath Chandra Dey, is the brother of the informant. P.W.-3 has stated in his evidence that on the day of occurrence on 15.12.1993, in morning at 7.30 A.M., he along with other family members had gone to Rajrappa for marriage of his niece and had left his *fuaa*(father's sister) to look after the house. They had locked the front side of the

house. After marriage they proceeded for Chas at 4.30 P.M., and reached their home at about 7.30 P.M., in the evening and when they reached their home electricity of the market was cut and they entered the house in dark itself and called deceased i.e. *fuaaje* (father's sister), but, she did not reply. He had further deposed that he told his son-in-law (*damad*) to bring candle and in the light of the candle they saw that lock of the outside door was broken and when they went inside the room, they found articles of three boxes and one leather bag were scattered and ornaments of gold and silver were missing. They raised halla and family members came there and other persons from market also assembled, hearing on halla. P.W.-3 further stated that they had entered the house taking candle and found the body of his *fuaa* (father's sister) in the stair case room in pool of blood and neck was cut. P.W.-3 suspected hand of Gopi Dey, Suvash Ghosal, Ludka Kandhu, Genda Dhibar, Jaideo Dhibar, Rajesh Dutta and Madhab Chandra Dey in the commission of crime as they used to commit crime. P.W.-3 further stated that later on he came to know that ornaments were sold at goldsmith shop at Bankur to Mathur Chandra Dey.

25. P.W.4 Bishwanath Ghoshal @ Bishtu Ghosal has stated in his evidence that on 15.12.1993 at about 7-8 P.M., there was halla that Khenubala Dasi (deceased) had been murdered and he saw that several persons were going to the

house of the informant. He also went to the house of the informant and saw the body of Khenubala Dasi in the stair case room. In his cross-examination P.W.-4 stated that on the day of occurrence informant Nand Lal had gone to Rajrappa in marriage.

26. P.W.-5 Sadhan Acharya had stated in his evidence that on 15.12.1993, on hearing halla he had gone to the house of informant Nand Lal, at about 8-8.30P.M. and saw body of Khenubala Dasi in the stair case room and her neck was cut.

27. P.W.-6 Arun Chaterjee, is seizure list witness. P.W.-6 has stated in his evidence that incidence occurred on 15.12.1993 and informant had gone to Chinmistika temple in the marriage of his *bhagni* and thereafter, they returned home at about 8 P.M., in the night. P.W.-6 had further stated that he had gone to the informant's house and saw body of Khenubala Dasi. Box was broken and articles were scattered. P.W.-6 further stated that accused Rajesh Kumar Dutta had told nothing and he further stated that when police came then informant raised suspicion on some persons. This witness has been declared hostile by the prosecution.

In his cross-examination P.W.-6 stated that he had not stated before the police that accused Rajesh Dutta had told him that in the occurrence of theft and murder, which took place on 15.12.1993, accused Madhab Chandra Dey and

Ludka Kanduk were involved. P.W.-6 denied that on 23.12.1993, on saying of the accused Rajesh Kumar Dutta, police had seized spring knife from pond, behind Chandrakantmarket.

- 28.** P.W.-7 Gour Datta is another seizure list witness and he had stated in his evidence that in this case police had recovered a knife and the said knife was kept on the table of *daroga je*. P.W.-7 further stated that *daroga je* told him to become witness and he had consented for same.

In his cross-examination P.W.-7 stated that he was called in the police station and was asked to sign on the paper but he did not see, who had brought the said knife and from which place it has been brought. P.W.-7 further stated that seeing the crowd, he had gone to the police station and there *daroga je* had called him.

- 29.** P.W.-8 Duja Pad Dey is *samdhi* of the informant and seizure list witness. P.W.-8 has stated in his evidence that incident occurred on 15.12.1993. They had gone to Rajrappa for marriage of his son Baidnath Dey with Shanti Devi and marriage was solemnized there. *Pandajee* had given receipt of marriage and the receipt was marked as 'X' for identification. They proceeded for house from Rajrappa at 5-5.30 P.M and reached Chas at 7-7.30 P.M., and as soon as they reached their house his son told him to go to the house of *samdhi* (informant) and when he entered the house, he saw the body of Khenubala Dasi (deceased) in the stair case

room and her neck was cut. The lock of the door was broken and four- five boxes were also broken and articles were scattered. His *samdhi* told him that money and ornaments were missing from the box. Police had made seizure list and P.W.-8 had identified his signature on the seizure list, which was marked as Ext.-1/5.

P.W.-8 in his cross-examination had stated that he had seen the money in police station itself and *daroga jee* had told to signed, so, he had signed on the paper and he does not know what was written in the paper.

30. P.W.-10 is Shaligram Dutta and he is also seizure list witness. P.W.-10 has stated in his evidence that when accused Madhu, Ludka and Rajesh were arrested, then, police had called him in the police station and there Ludka and Rajesh had told him that they had sold the ornament of Khenubala Dasi at Bankura for a sum of Rs. 55,000/. P.W.-10 further stated that police had shown him Rs. 30,000/- and Rs. 20,000/- at the police station and police told him that Rs. 30,000/- was recovered from accused Madhu and Rs. 20,000/- was recovered from accused Ludka. P.W.-10 had identified his signature on the seizure list, which was marked as Ext.-1/6.

In his cross-examination P.W.-10 stated that informant Nand Lal Dey is his son-in-law (*damad*). He did not know what was written in paper on which he had signed. P.W.-10

further stated that police had come to his house and police had taken him from his house.

31. P.W.-11 Ganesh Duta, is also seizure list witness. P.W.-11 has stated in his evidence that police had shown him Rs.18,000/-and told him that money was recovered from the house of Ludka Kanduk and police told him to become witness and at the police station he signed on the seizure list. P.W.-11 has identified his signature on the seizure list which was marked as Ext.-1/6A.

P.W.-11 was cross-examined by the prosecution under section 154 of the Indian Evidence Act wherein P.W.-11 had stated that it is not true that Ludka Kanduk had admitted before him that on the date of occurrence Ludka Kanduk, Madhab Chandra Dutta and Rajesh Kumar Dutta had committed theft in the house of the informant and they had killed Khenubala Dasi. P.W.-11 further stated that it is not true that money was recovered in his presence from the house of Ludka Kanduk, instead, money had already been recovered and the said money was shown to him and was told that money was recovered from the house of Ludka Kanduk and money was kept on the table in the police station and he had counted the money.

32. P.W.-12 Rajesh Dutta, is another seizure list witness and he had been declared hostile. P.W.-12 has stated in his evidence that he was shown Rs. 18,000/- recovered from

accused Ludka, at the police station and was told to put his signature on the seizure list and he put his signature on it.

P.W.-12 in his cross-examination had stated that it is not true that police had recovered Rs.18,000/- from the house of Ludka, in his presence.

- 33.** P.W.-13 is Dr. Chandra Bhusan Prasad Singh and he had conducted post-mortem examination on the dead body of Khenubala Dasi. Doctor had stated in his evidence that on 16.12.93, he was posted as Medical Officer in Sub-Divisional Hospital, Chas and on that day, he had conducted post mortem examination on the dead body of Khenubala. Doctor had found following ante-mortem injuries: -

External appearance-body was found structured with dry blood here and there. An incised wound was present on the neck which was 6" x 3/2" x into cervical vertebrae deep. All the soft tissues (wind pipe, cartoried arteries and jugallor vein bilaterally etc. closed of the neck extending from skin interial to 3rd cervical vertebrae. Lungs, liver, spleen were pale. Bruise and its membrane were pale.

Rigor mortis present in upper and lower extremities. In mouth there is no teeth. In stomach and small intestine digested food material and faecal present.

- 34.** Doctor opined that the cause of death was due to incised wound of the neck leading to severe hemorrhage and shock and neck were found to be severed. Time elapsed since death till post mortem examination done-within 24 to 36 hours. Doctor stated that the post mortem examination report was in his pen and hand writing and bears his signature. Post mortem examination report was marked as Ext.-3.

35. P.W.-14 is Officer-in-charge Rajendra Prasad and he the investigating officer of the case. Investigating officer had stated in his evidence that on 15.12.1993, he was posted as additional officer-in-charge of Chas police station. He had recorded the fardbeyan of the informant. Investigating officer stated that place of occurrence is the two storied, north facing house of the informant and the dead body of Khenubala Dasi was found in the stair case room and her neck was cut and blood was found in the stair case room. The lock of the suitcase was found broken and articles were found scattered. Inquest report of the deceased Khenubala Dasi was prepared on his direction by A.S.I. Madhu Sudhan Singh and the inquest report was marked as Ext.-4.

36. The Investigating officer had further stated that on 21.12.1993, during evening patrolling, he received secret information that named accused Madhab Chandra Dey was absconding from the date of occurrence and he was seen with the accused Ludka Kandhu, at about 1.00P.M., on the place of occurrence. Accused Madhab Chandra Dey was arrested from Bankura and he confessed his guilt and told that looted ornaments were sold to Mathur Chandra Paul at Bankura for a sum of Rs.55,000/- and he gave Rs.20,000/- to Ludka Kandhu. Madhab Chandra Dey also told that he kept the remaining money with him and hide the money at the backside of his *bari*. Investigating officer further stated that he along with Bankura Officer-in-charge raided the

jewelry shop of Mathur Chandra Paul, but he was not present and shop was sealed in presence of two witnesses.

37. This witness had further stated that as per information given by the accused Madhab Chandra Dey, Rs. 30,000/- was recovered in presence of two witnesses from his *bari*, which was kept in polythene. Shaligram Dutta (P.W.-10) and Duja Pad Dey (P.W.-8) were witnesses of recovery of seizure of money. Investigating officer has proved the seizure list of recovery of money from accused Madhab Chandra Dey, which in his writing and signature and was marked as Ext.-5. P.W.-14 investigating officer further stated that on 23.12.1993, Rs.18,000/- was recovered in presence of witnesses Ganesh Duta (P.W.-11) and Rajen Dutta (P.W.-12), from the ventilation of the house of accused Ludka Kandhu. He has proved the seizure list which was marked as Ext.-5/1.

38. P.W.-14 investigating officer further stated that accused Rajesh Kumar Dutta was arrested and on his information, spring knife was recovered and the seized knife was produced before him in the police station. The seizure list of the recovered knife was prepared by A.S.I. Suresh Prasad Singh. The seizure list of the recovered knife was marked as Ext.-5/2. P.W.-14 investigating officer further stated seal of the shop of Mathur Chandra Paul was opened and ornaments found in locker was verified, but, no suspected ornament was found.

39. P.W.-15 is Dilip Kumar Dey and he is also seizure list witness. P.W.-15 had stated in his evidence that police had seized ornament box and ornaments of gold and silver from the ornament shop of Mathur Chandra Paul on 27.01.1994. Seizure was made in his presence and in presence of Sanatan Dey. P.W.-15 has identified his signature and signature of Sanatan Dey, on the seizure list, which was marked as Ext.-1/8 and Ext.-1/9.

40. In the backdrop of the aforesaid factual aspect and on the basis of documents available on record as exhibited and testimony of the witnesses, this Court has to see as to whether there is sufficient material available on record in order to substantiate the alleged offence under sections 302/34 and section 394 of IPC against the appellant.

41. Learned counsel for the appellant has emphasized that there are vital discrepancies in the testimonies of the witnesses and all the seizure list witnesses have either turned hostile or have not supported the prosecution case and no chain of circumstance is complete, therefore the conviction of the present appellant under Sections 302/34 and 394 IPC is not sustainable in the eye of law.

42. *Per contra*, the learned Special public prosecutor for the State has contended that chain of circumstance is completed and the discrepancies so pointed out by learned counsel for the appellant are not enough to disbelieve the prosecution story.

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

- (I) Whether seizure list witnesses P.W.-6 and P.W.-7, who were claimed by the prosecution as witness of the recovery of weapon (knife) used in alleged commission of crime, had not supported the prosecution case, is enough to disbelieve the case of the prosecution.
- (II) Whether seizure list witnesses P.W.-8, P.W.-10, P.W.-11 and P.W.-12, as to recovery of money, alleged to be robbed during the commission of crime, not supporting the prosecution case, is enough to disbelieve the case of the prosecution.
- (III) Whether on the basis of the testimony of witnesses, the present case based on circumstantial evidence, the chain is being completed or not?

Re: Issue No.(I) and Issue No. (II)

44. Before delving into the instant issue, it would be purposeful to mention herein that informant in his fardbeyan had suspected hand of Gopi Dey, Suvash Ghosal, Ludka Kandu,

Genda Dhibar and JaideoDhiber in the commission of crime.

- 45.** Charges under Sections 302/34 of the I.P.C. were framed against the appellant Madhab Chandra Dey and Ludka Kandu (since dead) including the accused Rajesh Kumar Dutta. Separate charges were framed against the appellants Madhab Chandra Dey and Ludka Kandu under section 412 of IPC.
- 46.** In its confessional statement, though not exhibited, accused Rajesh Kumar Dutta, had stated that accused Ludka Kandu had given the knife used in the murder of the deceased and he had thrown the knife in bushes situated to the north of pond behind the Chandrakant Market.
- 47.** The trial court had acquitted the accused Rajesh Kumar Dutta on the ground that recovery of knife on his disclosure from the place pointed out by him has not been proved beyond the shadow of all reasonable doubt.
- 48.** Appellants Madhab Chandra Dey and Ludka Kandu were acquitted by the learned trial court for the charge under section 412 of IPC.
- 49.** The learned trial court had convicted appellant Madhab Chandra Dey, inter alia on the on the ground that Rs. 30,000/- was recovered by the police from backyard of the house of the appellant.
- 50.** Reverting to the instant issues, we find that in present case there are three sets of seizure list:

- i. Seizure list Ext.-5/2 as to recovery of kniferecovered from bushes situated to the north of pond situated behind the Chandrakant Market.
- ii. Seizure list Ext.-5 as to recovery of money of Rs.30,000/- recovered from the backyard of *bariof* the appellant Madhab Chandra Dey.
- iii. Seizure list Ext.-5/1as to recovery of money of Rs.18,000/-recovered from the room of the appellant Ludka Kandhu.

51. On going through the seizure list Ext.-5/2 as to recovery of knife, P.W.-6 Arun Chaterjee and P.W.-7 Gour Datta are seizure list witnesses to the recovery of the said knife.

52. But, P.W.-6 Arun Chaterjee, did not support the prosecution case and was examined under section 154 of the Indian Evidence Act.In his cross-examination he had denied that on 23.12.1993 on saying of the accused Rajesh Kumar Dutta, police had recovered knife from bushes situated to the north of pond situated behind the Chandrakant Market.

53. P.W.-7 Gour Datta also did not support the prosecution case as he in his examination-in-chief had deposed that on the saying of *darogjee* he had signed on the seizure list and *darogjee* had brought the knife from pond and the aforesaid knife was kept on the table of *darogjee*. In his cross-

examination, P.W.-7 Gour Datta, had stated that he had signed on the seizure list at the police station.

54. Hence, alleged knife said to be used in the commission of murder of the deceased was not recovered in the presence of, P.W.-7 Gour Datta, from the bushes situated to the north of pond situated behind the Chandrakant Market. Therefore, from the depositions of P.W.-6 Arun Chatterjee and P.W.-7 Gour Datta, who are seizure list witnesses to the recovery of knife, have not supported the prosecution case and hence, the case of the prosecution becomes doubtful.

55. Further, ongoing through the seizure list Ext.-5, as to alleged recovery of money of Rs.30,000/- recovered from the backyard of *bari* of the appellant Madhab Chandra Dey and P.W.-8 Duja Pad Dey and P.W.-10 Shaligram Dutta are seizure list witnesses to the recovery of money from appellant Madhab Chandra Dey.

56. But P.W.-8 Duja Pad Dey at paragraph-23 of his cross-examination had stated that he had seen the money at the police station itself. Hence, from the deposition of P.W.-8 Duja Pad Dey, it is apparent that the alleged money was not recovered in his presence from the backyard of *bari* of the accused/appellant Madhab Chandra Dey.

57. Again, from the evidence of P.W.-10 Shaligram Dutta, it appears that he was called at the police station and he had signed on the seizure list at the police Station. Hence, from the deposition of P.W.-8 is Duja Pad Dey and P.W.-10 are

Shaligram Dutta, this Court finds that the prosecution has not been able to prove the recovery of Rs. 30,000/-from theappellant Madhab Chandra Dey, beyond reasonable doubt.

58. On going through the seizure list Ext.-5/1, as to recovery of money of Rs.18,000/-, recovered from the room of the Ludka Kandu (since dead),we find that P.W.-11 Ganesh Duta and P.W.-12 Rajesh Dutta, both are seizure list witness to the recovery of money from appellant Ludka Kandubut both of the said witnesses had been declared hostile.

59. At this juncture it would be pertinent to see the judgments rendered by the Hon'ble Apex Court on the issue of hostile witness. The law is well settled that merely because the witness is declared as hostile, whole of his evidence is not liable to be thrown away.

60. In case of ***Attar Singh v. State of Maharashtra, (2013) 11 SCC 719***, Hon'ble Apex Court held that merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused.The Hon'ble Apex Court further held that testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the court to consider the evidence and

there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused. Paragraph-14 to 17 of this judgment is quoted herein below-

“14. *We have meticulously considered the arguments advanced on this vital aspect of the matter on which the conviction and sentence imposed on the appellant is based. This compels us to consider as to whether the conviction and sentence recorded on the basis of the testimony of the witness who has been declared hostile could be relied upon for recording conviction of the appellant-accused. But it was difficult to overlook the relevance and value of the evidence of even a hostile witness while considering as to what extent their evidence could be allowed to be relied upon and used by the prosecution. It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well settled by a catena of decisions that the court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by this Court in Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59] whereby the learned Judges of the Supreme Court reversed the judgment of the Karnataka High Court which had discarded the evidence of a hostile witness in its entirety.*

15. *Similarly, other High Courts in Gulshan Kumar v. State [1993 Cri LJ 1525 (Del)] as also Kunwar v. State of U.P. [1993 Cri LJ 3421 (All)] as also Haneefa v. State [1993 Cri LJ 2125 (Ker)] have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in State of U.P. v. Chet Ram [(1989) 2 SCC 425 :*

1989 SCC (Cri) 388 : AIR 1989 SC 1543 : 1989 Cri LJ 1785] , it was held that if some portion of the statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in *Shatrughan v. State of M.P.* [1993 Cri LJ 120 (MP)] that hostile witness is not necessarily a false witness. Granting of a permission by the court to cross-examine his own witness does not amount to adjudication by the court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in *Sat Paul v. Delhi Admn.* [(1976) 1 SCC 727 : 1976 SCC (Cri) 160 : AIR 1976 SC 294]

16. Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.

17. While examining the instant matter on the anvil of the aforesaid legal position laid down by this Court in several pronouncements, we have noticed that the support rendered by the daughter Mangibai approving the incident should be accepted as reliable part of evidence in spite of she being a hostile witness. The witness Mangibai's evidence pushes the accused with his bag to the wall and the accused is obliged to explain because her evidence shows that the accused was the only person in the company of the deceased soon before the death. The defence of the accused that Nagibai's injury was a result of fall is ruled out by medical evidence and the details available of the location in the panchnama of offence. The courts below thus have rightly drawn some support from the reports of the

chemical analysis since all the articles of the victims and clothes of the accused are found having bloodstains of human Blood Group A. This was in view of the fact that the results of the analysis for determination of the blood group of the victim and accused were conclusive when blood sent in phial was analysed. Thus, the evidence of the daughter of the deceased coupled with other material as also evidence of other witnesses i.e. Ramesh, Khandu, Bhatu and Makhan, provided a complete chain and the prosecution successfully proved that the incident occurred in the manner and the place which was alleged.”

61. Again, in case of ***Neeraj Dutta v. State (NCT of Delhi)***,

(2023) 4 SCC 731 Hon’ble Apex Court held that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. Relevant paragraph of this judgment is quoted herein below-

“87. Therefore, this Court cautioned that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared “hostile” does not result in an automatic rejection of his evidence. Even, the evidence of a “hostile

witness” if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence.”

62. Again, Hon’ble Apex Court in the case of **C. Muniappan and Ors v. State of T. N**, **(2010) 9 SCC 567**, reiterated that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. Paragraph 81 to 83 of this judgment is quoted herein below-

“81. *It is settled legal proposition that:*

“6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.”

(Vide Bhagwan Singh v. State of Haryana⁴³, Rabindra Kumar Dey v. State of Orissa⁴⁴, Syad Akbar v. State of Karnataka⁴⁵ and Khujji v. State of M.P.⁴⁶, SCC p. 635, para 6.)

82. *In State of U.P. v. Ramesh Prasad Misra⁴⁷ this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the*

evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra⁴⁸, Gagan Kanojia v. State of Punjab⁴⁹, Radha Mohan Singh v. State of U.P.⁵⁰, Sarvesh Narain Shukla v. Daroga Singh⁵¹ and Subbu Singh v. State⁵².

83. *Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.”*

63. Reverting back to the instant case, we find that out of the six witnesses who were seizure list witnesses either to the recovery of knife (P.W.-6 and P.W.-7) or recovery of money from the appellant (P.W.-8, P.W.-10, P.W.-11 and P.W.-12), none of the aforesaid witnesses have supported the alleged recovery of knife from bushes or money from the appellant. These seizure list witnesses were either declared hostile or did not support the prosecution case, as discussed in the preceding paragraphs.

64. Hence, it is considered view of this Court that the prosecution has failed to prove its case beyond reasonable doubt as same has not been supported by the prosecution witnesses on the point of alleged seizure of knife from the bushes and money from the appellant.

65. Accordingly, the Issue No.(I) and Issue No. (II), has been answered.

Re: Issue No. (III)

66. The learned trial court had convicted the appellants for murder of Khenubala Dasi, on the basis of circumstantial evidence.

67. Before we analyze and appreciate the circumstances that have weighed with the trial court for convicting the appellant on the basis of circumstantial evidence, we think it apposite to refer to certain authorities pertaining to delineation of cases that hinge on circumstantial evidence.

68. There is no quarrel with the settled position of law that in the case of circumstantial evidence, the chain should be complete then only there will be conviction of the concerned accused person, as has been laid down by the Hon'ble Apex Court in the case of ***Hanumant son of Govind Nargundlar vs. State of Madhya Pradesh, AIR 1952 SC 343*** wherein it has been held that "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other

words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

69. The same view has been taken by the Hon'ble Apex Court in ***Bakhshish Singh vs. State of Punjab, (1971) 3 SCC 182*** wherein the Hon'ble Apex Court has observed that the principle in a case resting on circumstantial evidence is well settled that the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. These circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

70. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a

conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

- 71.** This Court, after referring the impugned judgment and advertent to the testimony of the witnesses referred hereinabove in the preceding paragraphs has found that Prosecution has completely failed to establish the factum of alleged recovery of weapon used in the said commission of crime, as the seizure list witnesses P.W.-6 and P.W.-7, as to recovery to knife, did not support the prosecution case, as has already been dealt in Issue No. (I) and Issue No. (II).
- 72.** Further, prosecution has completely failed to establish the recovery of money alleged to be robbed because the seizure list witnesses P.W.-8, P.W.-10, P.W.-11 and P.W.-12, either turned hostile or did not support the prosecution case and the aforesaid fact has also been taken note by this Court while answering the Issue No. (I) and Issue No. (II).
- 73.** Again, the ornaments of gold and silver, alleged to be robbed during the commission of crime has not been recovered. In the evidence it has come that ornaments were sold by the appellant in the shop of Mathur Chandra Paul at Bankura, but, P.W.-14 investigating officer in his evidence has specifically stated that seal of the shop of Mathur Chandra Paul was opened and ornaments found in locker were verified, but, no suspected ornaments were found.

74. On the basis of discussion made hereinabove this Court is of the considered view that the learned trial court has not taken the aforesaid aspect while convicting the appellant on the basis of circumstantial evidences as chain of circumstances are not established herein to prove the guilt of appellant due to failure of the prosecution in establishing the recovery of knife and recovery of money and ornaments, beyond reasonable doubt.

75. Accordingly, the Issue No. (III) is answered.

76. This Court, in view of aforesaid discussion and taking into consideration the settled position of law that the prosecution has to prove the charge beyond all reasonable doubt, is of the view that the prosecution has not been able to prove the charges said to be proved beyond reasonable doubt.

77. The Hon'ble Apex Court in catena of decision has propounded the proposition that in the criminal trial, there cannot be any conviction if the charge is not being proved beyond all reasonable doubts, as has been held in the case of ***Rang Bahadur Singh & Ors. Vrs. State of U.P.***, reported in ***(2000) 3 SCC 454***, wherein, at paragraph-22, it has been held as under:-

"22. The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all

concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime."

78. Likewise, the Hon'ble Apex Court in the case of ***Krishnegowda & Ors. Vrs. State of Karnataka***, (supra), has held at paragraph-26 as under:-

"26. Having gone through the evidence of the prosecution witnesses and the findings recorded by the High Court we feel that the High Court has failed to understand the fact that the guilt of the accused has to be proved beyond reasonable doubt and this is a classic case where at each and every stage of the trial, there were lapses on the part of the investigating agency and the evidence of the witnesses is not trustworthy which can never be a basis for conviction. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt."

79. Further, it needs to refer herein the principle of 'benefit of doubt' belongs exclusively to criminal jurisprudence. The pristine doctrine of 'benefit of doubt' can be invoked when

there is reasonable doubt regarding the guilt of the accused, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of **State of Haryana Vrs. Bhagirath & Ors.**, reported in **(1999) 5 SCC 96**, wherein, it has been held at paragraph-7 as under: -

"7. The High Court had failed to *consider the implication of the evidence of the two eyewitnesses on the complicity of Bhagirath particularly when the High Court found their evidence reliable. The benefit of doubt was given to Bhagirath "as a matter of abundant caution". Unfortunately, the High Court did not point out the area where there is such a doubt. Any restraint by way of abundant caution need not be entangled with the concept of the benefit of doubt. Abundant caution is always desirable in all spheres of human activity. But the principle of benefit of doubt belongs exclusively to criminal jurisprudence. The pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords the benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused.*"

80. It needs to refer herein that the Hon'ble Apex Court, in the case of **Allarakha K. Mansuri v. State of Gujarat** reported in **(2002) 3 SCC 57** has laid down the principle that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted, for ready reference, paragraph 6 thereof requires to be referred herein which reads hereunder as :-

"6. -----The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. ---"

81. It needs to refer herein before laying down the aforesaid view, the Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116** has already laid down the same view at paragraph 163 which is required to be referred which read hereunder as

"163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. ---"

82. This Court, after having discussed the factual aspect and legal position as discussed hereinabove is of the view that

the prosecution has miserably failed to prove the charges under sections 302/34 and section 394 of IPC against the appellant beyond all reasonable doubt as such the impugned judgment of conviction and order of sentence requires interference by this Court.

83. Accordingly, the impugned judgment of conviction dated 20.09.1997 and order of sentence dated 22.09.1997 passed by learned Additional District and Sessions Judge, Bokaro, in Sessions Trial No.443 of 1994, is hereby quashed and set aside.

84. In consequence thereof, the instant appeal stands allowed and the appellant is hereby acquitted from his criminal liability and discharged from the liability of bail bonds.

85. Pending Interlocutory Applications, if any, stand disposed of.

86. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.

I Agree

(Sujit Narayan Prasad, J.)

(Gautam Kumar Choudhary, J.)

(Gautam Kumar Choudhary, J.)

21st January , 2026

Jharkhand High Court, Ranchi

Sudhir / **A.F.R.**

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