

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.372 of 2004

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Brahmdeo Thakur Son of Sukhadeo Thakur, Resident of village- Janakpur,
Ward No.15, P.S. Janakpur, District- Dhanuksha (Nepal)

... .. Appellant/S

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Jha, Adv.

Mr. Sumit Jha, Adv.

For the Respondent/s : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

Date : 26-09-2025

Heard Mr. Sumit Jha, learned counsel for the
appellant and Mrs. Anita Kumari Singh, learned APP for the
State.

2. By this appeal, appellant/convicted accused,
Brahmdeo Thakur, is challenging the judgment of conviction
and order of sentence dated 19.04.2004 passed by Sri Ram
Pravesh Sharma, 1st Additional Sessions Judge, Sitamarhi, in
Sessions Trial No.86 of 2002/ 25 of 2002 (arising out of
Sitamarhi Sadar P.S. Case No.284 of 2001, by which the
appellant has been convicted and sentenced to undergo rigorous
imprisonment for 7 years under Section 307 of the Indian Penal
Code and further to undergo rigorous imprisonment for 4 years
under sections 3 and 4 of the Explosive Substances Act



separately.

3. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

“The informant, namely, Nagendra Chaudhary (PW-5) has stated that on 07.11.2001 at about 8:30 PM, one person came to his toddy shop for taking toddy and had taken three bottles of toddy and after consuming the toddy, he asked the person to pay the amount, but he gave some amount less than the price then he demanded more amount and had followed the accused for rest amount and then came to ring road where altercation took place. Meanwhile, the said person threw the bomb with a view to kill him. Fortunately, he managed to escape and the bomb fell in the nearby pond. Upon raising alarm, several persons came who over powered the said man (appellant) and caught him and after search, one live bomb was recovered from his bag and disclosed his name as Brahmdeo Thakur (appellant) and in the meantime, the police arrived and taken him into custody.

4. On the basis of the fardbeyan of Nagendra Chaudhary (PW-5), Sitamarhi Sadar P.S. Case No.284 of 2001 dated 08.11.2001 was registered under Sections 307 of the



Indian Penal Code against the sole accused.

5. After investigation, charge-sheet has been submitted under section 307 of the IPC read with section 3 /4 of the Explosive Substance Act and thereafter cognizance has also been taken under the same sections and then committed to the court of sessions for trial.

6. At the trial, charges, under sections 307 of the IPC and under sections 3 /4 of the Explosive Substances Act were framed on 07.09.2002 against sole accused on which he pleaded no guilty.

7. In support of his case, the prosecution has examined altogether 7 witnesses, namely, Shyam Narain Prasad (PW-1), neighbour, Lalbabu Sah (PW-2), seizure list witness, Mahesh Choudhary (PW-3), his shop is adjacent to the shop of informant, Yogal Mahto (PW-4), neighbour, Nagendra Chaudhary, informant (PW-5), shop owner, Chulhai Chaudhary (PW-6), informant's father, Bachhi Devi (PW-7), Informant's mother. Out of 7 witnesses, PWs-5, 6 and 7 have been declared hostile. The accused during his examination under section 313(1)(b) of the Cr.P.C. denied the allegation and on his behalf, he has not examined any witness. The statement of the all 7 prosecution witnesses are as follows:-



8. PW-1, neighbour of the informant stated that occurrence took place on 08.11.2001 at 1 AM in the night while he was sleeping in his house. Upon bomb explosion, he went there and came to know that at toddy shop of informant, some persons were taking toddy. When he demanded the price of toddy, then they started quarrelling on ring bandh. Then Brahmadeo Thakur (appellant) took out bomb from his jhola and threw at the informant. By chance, bomb fell into water, but he was apprehended by the villagers. Then one bomb was recovered also from his jhola. Subsequently, police arrived and took him into custody and prepared seizure list of bomb. He also put out a signature on the seizure list. The witness has identified his signature which has been marked as Ext.-1. Witness also identified accused as the person who has apprehended on the date of occurrence. During cross examination also, witness has supported the prosecution case and defence has not been able to dismantle his evidence. In para 5 of his deposition, as he has stated that bomb was recovered by the villagers in course of search of the accused. Witness has also stated that prior to the date of occurrence, he has not seen the accused. That was the first day when he saw the accused.

9. PW-2, seizure list witness has stated that



occurrence is of 07.11.2001 of 8:30 PM in the night, he was in his shop near ring bandh. Upon the sound of explosion, he went on the bandh. The person who exploded bomb had been overpowered. One bomb was also recovered from his jhola. The witness identified the accused as the person who was apprehended on the date of occurrence. The police prepared seizure list on which he also put his signature. The witness has identified his signature which has been marked as Ext.1/1. During cross examination also, the witness has supported the prosecution case and defence counsel has not been able to impeach his evidence.

10. PW-3, neighbour, whose shop is adjacent to the informant's shop, has stated that the occurrence is of 07.11.2001 at 8:30 PM that time he was in his toddy shop. Accused who was taking toddy in shop of informant, had started quarrelling for demand of price. Accused went on bandh. He took bomb from his jhola and threw on the informant. Both bomb fell into water and did not explode. Persons collected assaulted the accused and recovered one bomb also from his jhola. Police arrived and took out in custody. Witness has identified the accused in the dock. During cross examination, witness stated that the police arrived at 1 AM. Before that the



persons collected had assaulted the accused and he has become unconscious. Police recovered one bomb from his possession and another bomb was recovered from Kumbhi on the next date.

11. PW-4, neighbour, has stated that occurrence is of 07.11.2001 at 8:30 PM in the night. At that time, he was sleeping in his house after taking meal. He heard hulla of bomb explosion, then he went there. There he found that there had been quarrel for price of toddy. He has further stated that accused standing in dock had thrown bomb. Police had taken bomb from his custody and prepared seizure list. He also put his LTI on the seizure list. During cross examination, the witness had stated that he did not see anybody throwing bomb. He also did not see assaulting the accused. He also did not see the occurrence taking place.

12. PW-5, informant of this case, has stated that in his examination chief, he has stated that occurrence took place 17 months earlier in the night of 8:30 PM. At that time, he was selling toddy in his shop. One person came at his shop and consumed three bottles of toddy. When he demanded price of toddy. The said flee away. Then quarrel took place for the price of toddy. The said person took out bomb from his jhola and threw at him with a view to kill, but the bomb fell in the nearby



pond. On hulla persons collected and they caught the accused. Thereafter, one person informed the police telephonically. Then police arrived and he took person in custody. Police also recovered one live bomb from jhola of the said person. He has stated that police recorded his statement and he put his LTI. In para 3 of his deposition, this witness has stated that the person who is present in the dock, is not the person who consumed toddy and threw bomb at him. The said person was on fair colour. The witness has been declared hostile and he has been cross examined by the State counsel. During cross examination by the State, in para-4, this witness has stated that before the police, he had stated that the person arrested disclosed his name as Brahmadeo Thakur S/o Surajdeo Thakur, resident of Village- Janakpur, Ward No.15, P.S.- Janakpur, District- Dhanukha (Nepal). During cross examination by the defence, the witness has stated that he was not present at the time when the police asked the name of the person arrested.

13. PW-6, father of the informant, has stated that occurrence took place 17 months ago at 8 PM in the night. At that time, he was at his house. On hulla, he went in his toddy shop. There his son, the informant told that one person consumed 3 bottles of toddy and did not pay the price and with



a view to kill, threw bomb at him. This witness has also declined to identify the person in dock as accused. This witness was declared hostile and cross examined by the State. During cross examination by the State counsel, this witness has stated that before police, he had stated that on query, the person arrested disclosed his name as Brahmdeo Thakur, resident of Nepal. During cross examination by defence, this witness has stated that at the time when he arrived in the shop, the person arrested, had already been taken in custody by the police to police station.

14. PW-7, informant's mother, has stated that at the time of occurrence, she was at his maik and she did not make her statement before the police. This witness has also been declared hostile and has been cross -examined by the State counsel. During cross-examination by the State also, this witness has repeated the same story and declined to make any statement before the police. During cross examination by the defence, the witness has stated that she has got no concern with toddy shop. She is living in the house.

15. The trial Court found the appellant, namely, Brahmdeo Thakur found guilty of the charges under section 307 of the IPC read with Section 3 /4 of the Explosive Substances



Act. Following his conviction, sentence has been passed against the convicted accused/appellant as mentioned above.

16. Being aggrieved and dissatisfied by his judgment of conviction and order of sentence dated 19.04.2004 passed by 1st Additional Sessions Judge, Sitamarhi, the convicted accused/appellant has preferred this appeal.

17. Mr. Sumit Jha, learned counsel for the appellant submits that PW-5 (informant), PW-6 (informant's father) and PW-7 (informant's mother) have turned hostile. They have categorically stated before the court that the accused in dock was not present who threw bomb. He further submits that PW-1 (neighbour) has categorically stated the time of occurrence at 1 AM in the night of 08.11.2001, but other witnesses have stated that the time of occurrence is 8:30 PM. He further submits that the I.O. has not been examined in the present case due to which the place of occurrence has not been identified and due to lack of evidence of I.O., there is a great prejudice caused to the defence.

18. Counsel further submits that the allegation is that the accused/appellant has thrown one bomb on the informant and one bomb was recovered from his bag, but due to lack of examination of I.O., bomb which is alleged to be



explosive, has not been exhibited and hence, the prosecution has failed to substantiate the charges levelled against the sole accused. As such, the present case is fit case for acquittal.

19. Learned APP appearing on behalf of the State on the other hand submits that the trial court upon considering the entire evidences and exhibit, has convicted the sole accused and upon consideration of the entire evidences, he has convicted the accused under section 307 of the IPC read with section 3 /4 of the Explosive Substances Act.

20. Upon consideration of the evidences in which total 7 prosecution witnesses, Exhibit-1 /1, signature on the seizure list and Exhibit-2 which is FIR, it transpires to this Court that the informant (PW-5), the toddy shop owner and PW-6, informant's father and PW-7, informant's mother who are alleged to be the eye witness of the occurrence as the discussion took place between the informant and the accused/ appellant in his shop, become hostile and they have refused to identify the accused person, who was present in the court room.

21. In the cross-examination, the informant (PW-5) has categorically adduced that the appellant was not present at the time when police asked the name of person to arrest. It is important to mention here that in the present appeal, even the



informant becomes hostile and with the permission of the court, cross examination took place in which the informant stated that he was not present at the time when police asked the name of person to arrest. Similarly, PW-6 and 7 both were declared hostile, but with the permission of the court, cross-examination has been taken by the State and other witnesses have been denied that they have made any statement before the police.

22. It also transpires from the record that I.O. has not been examined in the present case. In result, the bomb which was alleged to be hand over to the I.O. and the report that whether the said recovered material was actually bomb or otherwise, could not be identified in this case.

23. It also transpires to this court that the prosecution on the seizure list has taken signature of the witness and marked as Exhibit-1 /1. The said witnesses during his cross-examination has exhibited his signature and stated that the alleged bomb was recovered by the villagers and one bomb was fell in water, but no report has come that whether the alleged article is really a bomb or otherwise. It further transpires that the time of occurrence is also in contradiction as one witness stated that occurrence took place at 1 AM at night whereas other witnesses stated that it has been taken place at 8:30 PM. For



proper appreciation, it is necessary to go through the section 307 of the IPC and section 3 /4 of the Explosive Substances Act states as follows:-

307. Attempt to murder. -Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts. -[When any person offending under this section is under sentence of '[imprisonment for life]', he may, if hurt is caused, be punished with death.]

3. Punishment for causing explosion likely to endanger life or property. -Any person who unlawfully and maliciously causes by-

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;



(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property. -Any person who unlawfully and maliciously -

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India,

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished, -

(i) in the case of any explosive



substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

the ingredient of those offences are well explained under the respective sections. Here in the present case, the alleged article which was said to be the bomb, neither exhibited nor report of FSL has come and when the explosive substance is not in existence, then this Court finds that there is no offence made out under section 3 /4 of the Explosive Substances Act. Similarly, the best witness is the informant who has been attacked by the accused with a view to kill, but he himself denied the same and becomes hostile and even in cross-examination, not supported the prosecution case.

24. As such, with a view to decide that whether the witness who becomes hostile and cross-examined, shall be relevant for deciding the case or not. This issue has already been decided by Hon'ble Supreme Court of India in case of **K.P. Tamilmaran v. State by Deputy Superintendent of Police** reported in **2025 SCC OnLine SC 958**. In this case, the



Hon'ble Supreme Court of India has laid down important principles regarding the evidentiary value of a so-called hostile witness. The relevant paragraphs are as follows:-

**Delay in Trial and evidentiary value
of so-called "hostile witness"**

15. The long and inordinate delay which has been caused in this case, right from the lodging of the FIR, speaks volumes about the gross inefficiency at the hands of the prosecution on the one hand and dilatory tactics employed by the defence on the other hand, which together led to a slow trial.

16. The second and more crucial aspect is that many of the prosecution witnesses in this case have turned, what has come to be known as 'hostile'; a fact which has been strongly pressed by the defence in their favour. The defence would also argue that the Trial Court and High Court have mainly relied on the testimonies of the family members of Murugesan, who are interested witnesses.

17. In our opinion, there is no force in these arguments and as will be seen, there was enough material placed by the prosecution before the Trial Court, which was sufficient to prove the guilt of the accused, beyond a reasonable doubt.

18. When a witness, produced on behalf of prosecution, deposes against the prosecution version and goes against his/her own



previously recorded statements, the prosecution can request the Court to declare such a witness as hostile and seek permission from the Court to cross-examine its own witness. This is the procedure followed in a Trial, as we all know. In the present case, there are as many as fifty- one prosecution witnesses and it is also a fact that many of them have turned hostile by turning against their earlier statements made before the police under section 161 CrPC, and even before the Magistrate under section 164 CrPC, in some cases. This phenomenon is not new, in fact it is sadly a common occurrence in our criminal Courts today, much to the despair and frustration of the prosecution. This case, therefore, is no exception. Despite this, however, there are witnesses in the present case, especially PW-1, PW-2, PW-3, PW-15 and PW-49, whose evidence, in the form of their testimonies before the Court, is more than sufficient to convict the present appellants. A word here about the evidentiary value of a so-called hostile witness.

19. The Indian Evidence Act, 1872 (hereinafter 'Evidence Act') allows a party, with the leave of the Court, to cross-examine its own witness. Section 154 of the Evidence Act originally read as follows:

"154. Question by party to his own witness *The Court may, in its discretion, permit the person who calls a*



witness to put any questions to him which might be put in cross-examination by the adverse party."

20. *The Calcutta High Court, in Khijiruddin Sonar v. Emperor, 1925 SCC OnLine Cal 259, while interpreting Section 154 of the Evidence Act, held that "When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of Section 154 of the Evidence Act, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony".*

21. *But this judgment in Khijiruddin was overruled by a five-Judge bench of the Calcutta High Court in Praphullakumar Sarkar v. Emperor, 1931 SCC OnLine Cal 7. The High Court was answering a reference from a Division Bench regarding the specific question of whether the testimony of a witness, who was cross-examined by the party which produced him/her, should be discarded totally, partially, or not discarded at all. Chief Justice Rankin, speaking for three other Judges and himself, answered the reference in the following terms:*

"24. In my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that Section he is "cross-examined" to credit, in no way warrants a direction to the jury that



they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is, moreover, no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say.

Of the seven questions stated by the Division Bench I propose that we should answer four, viz.-

(3) whether the evidence of a witness treated as "hostile" must be rejected in whole or in part;

(4) whether it must be rejected so far as it is in favour of the party calling the witness;

(5) whether it must be rejected so far as it is in favour of the opposite party.

These three questions I would answer in the negative.

(6) Whether the whole of the evidence so far as it affects both parties favourably or unfavourably, must go to the jury for what it is worth.

25. To this question, I would be content to answer "yes", ...

22. Justice Buckland, in the above case, in his concurring opinion holds that there is



no law which states that the evidence of a witness, who has been cross-examined by its party, should be entirely rejected. In his opinion, it is for the jury (or the Judge) to form an opinion regarding the value of the testimony of such a witness.

23. All the same, later this Court in Jagir Singh v. State (Delhi), (1975) 3 SCC 562 held to the contrary and approved the decision of the Calcutta High Court in Khijiruddin. This is what was said in Jagir Singh by Justice Bhagwati:

"7. Now, it is apparent from the judgment of the High Court that the conviction of the appellant rested entirely on the evidence of Pritam Singh (P.W. 10) and Sajjan Singh (P.W. 13). Swaran Singh (P.W. 11) was also examined on behalf of the prosecution but his evidence is of no help to the prosecution because he went back on the story of the prosecution and was permitted to be cross-examined on behalf of the prosecution. It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony. See Khijiruddin v. Emperor...."

24. However, it is to be noted that Jagir Singh does not refer to the five-Judge Bench



decision of the Calcutta High Court in Praphullakumar Sarkar.

25. But then in a subsequent decision (of which Justice Bhagwati was also a part) i.e., Sat Paul v. Delhi Administration, (1976) 1 SCC 727, it was held differently. Justice Sarkaria, speaking for the Bench, clarified the earlier judgment in Jagir Singh, and held that what has been held in Jagir Singh would only be applicable where a witness through cross-examination by the party which calls it, is totally discredited. It is only in such a situation that the Court, as matter of prudence, discards his/her evidence in its entirety.

26. As a general rule, the testimony of a witness who has been cross -examined by the party which produced him/her will not stand totally discredited, and it is for the Court to consider what value should be attached to this testimony. After referring to a series of judgments on this point, the Court in Sat Paul held as follows:

"52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness



stands thoroughly discredited or can still be believed in regard to a part of his testimony.

If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.

53. It was in the context of such a case, where, as a result of the cross-examination by the Public, Prosecutor, the prosecution witness concerned stood discredited altogether, that this Court in Jagir Singh v. State (Delhi Admn.) with the aforesaid rule of caution - which is not to be treated as a rule of law in mind, said that the evidence of such a witness is to be rejected en bloc."

(Emphasis Provided)

27. An examination of the cases referred above shows that there can be no doubt about the fact that the evidence of a witness, who has been cross-examined by the side which



produced him/her, cannot be totally discarded [Also see: Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731].

28. It may also be worthwhile to mention here that by the Criminal Law Amendment Act of 2005, sub-section 2 was added to section 154 of the Evidence Act. The amended section 154 of the Evidence Act now reads as under:

154. Question by party to his own witness. - (1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

(Emphasis Provided)

29. By way of the above amendment, the position which had been reiterated by this Court has now come in the statute itself.

30. The word 'hostile' or 'hostile witness' has not been used anywhere in the Evidence Act. The logic behind this exclusion seems to be that the declaration of witness as 'hostile witness' carries a specific significance under the English law, from where this term has been derived, where liberty is only granted to a side to cross-examine its own witness when such



declaration of 'hostility' is made. The position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of 'hostility'. This has been explained by this Court in Sat Paul:

"38. To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath v. Prasannamoyi, [AIR 1922 PC 409: 72 IC 286]). The discretion conferred by Section 154 on the court is unqualified and untrammelled and is apart from any question



of "hostility". It is to be liberally exercised whenever the court from the witnesses demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring misleading legacy of confusion, and conflict that had so long vexed the English Courts."

(Emphasis Provided)

31. The phrase 'hostile witness' is commonly, used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the



meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of 'hostility' or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

32. This can be understood from another aspect. We shall now refer to the definition of the term 'evidence' given under Section 3 of the Evidence Act. It reads as follows:

"Evidence" - *"Evidence" means and includes-*

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry: such statements are called



oral evidence:

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence."

(Emphasis Provided)

33. The statements made by a witness in Court, including in cross-examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of 'evidence' under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. Moreover, there is no specific bar under the Evidence Act which mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to determine what value has to be given to that piece of evidence or how such evidence has to be used in a given case.

34. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [See: *Paulmeli v. State of T.N.*, (2014) 13 SCC



90, *Ramesh Harijan v. State of U.P.*, (2012) 5 SCC 777]. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

35. Here, we may also take note of Section 155 of the Evidence Act which allows a party, with permission of the Court, to impeach the credibility of its own witness as per the procedure laid down therein.

36. It is though trite and much overstated but the maxim "*falsus in uno, falsus in omnibus*", is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This Court in *Bhajju v. State of Madhya Pradesh*, (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial



and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence..."

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given.

37. One of the many reasons for witnesses turning hostile is the long delay usually caused in a trial. This is again unfortunate but true in our country. The present case is no exception. Here, the incident occurred in the year 2003, the case was committed to Sessions in the year 2010 and charges were framed as late as in the year 2017, and the judgment was finally pronounced by the Trial Court on 24.09.2021. It took eighteen years!



38. The role played here by the accused in delaying the trial cannot be discounted, as already stated. The records also reveal that the depositions of most of the prosecution witnesses were recorded only towards the end of the year 2017. Moreover, CBI in this case had filed its charge-sheet, inter alia, against two persons belonging to Dalit community. Although, these two (A-4 and A-9) were finally acquitted by Trial Court as there was absolutely nothing against them, but in the process, prosecution had to declare many of its witnesses belonging to the Dalit community as hostile simply because these witnesses did not depose against A-4 and A-9. It is also clear now, in any case, that these two were wrongly made accused by the prosecution. All the same, the benefit of such witnesses turning hostile cannot be given to other accused who were found involved in the offence, on the overwhelming weight of other evidence.

25. In light of the judgment passed by the Hon'ble Supreme Court of India referenced above in which it has categorically held that the cross-examination of a hostile has been taken with a permission of the court, shall be a relevant fact and since denial has come in the cross examination of the hostile witness who is not someone else, but informant, this Court finds that section 307 of the IPC has also not made out.



26. Hence, this Court is of the view that the judgment of conviction and order of sentence dated 19.04.2004 passed by 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No.86 of 2002/ 25 of 2002 (arising out of Sitamarhi Sadar P.S. Case No.284 of 2001, is hereby set aside. The present criminal appeal is hereby allowed. The appellant is acquitted of the charge under Sections 307 of the IPC read with sections 3 /4 of the Explosive Substances Act.

27. The appellant, namely, Brahmdeo Thakur, of Cr. Appeal (SJ) No.372 of 2004, is already on bail, and having been acquitted under Section 307 of the IPC read with sections 3 /4 of the Explosive Substances Act, let him be discharged from the liabilities of bail bonds and sureties, if any.

28. Let a copy of this judgment be sent to the concerned Court below along with the LCR.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	23.09.2025
Uploading Date	
Transmission Date	N/A

