

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.210 of 1999

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Against the judgment of conviction, dated 18.05.1999 and the order of sentence, dated 19.05.1999, passed, by Shri R. L. Sharma, Additional Sessions Judge-V, Nalanda, in Sessions Trial No. 392 of 1988, arising out of Chandi Police Station Case No. 134 of 1986

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1. BIPIN SINGH S/O Late Baleshwar Singh R/O Vill.- Rampur, P.s.- Chandi, Dist.- Nalanda.
2. Naresh Singh (**Abated vide Hon'ble Court order dated 17-06-2026**) S/O Late Yadu Singh R/O Vill.- Rampur, P.S.- Chandi, Dist.- Nalanda.
3. Umesh Singh (**Abated vide Hon'ble Court order dated 17-06-2026**) S/O Sri Ram Lagan Singh R/O Vill.- Rampur, P.s.- Chandi, Dist.- Nalanda.
4. Ambika Singh @ Amerika Singh (**Abated vide Hon'ble Court order dated 17-06-2026**) S/O Late Saryug Singh R/O Vill.- Rampur, P.S.- Chandi, Dist.- Nalanda.
5. Bhola Singh S/O Late Babu Lal Singh R/O Vill.- Rampur, P.S.- Chandi, Dist.- Nalanda.
6. Umesh Mahto S/O Late Keshwar Mahto R/O Vill.- Akair, P.S.- Chandi, Dist.- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur Mr. Imteyaz Ahmad Mr. Purushottam Kumar Mr. Pranshu Mr. Shivam Ms. Sushmita Mishra Mr. Sujit Kumar Singh
For the State	:	Mr. Sujit Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE ALOK KUMAR

JUDGMENT AND ORDER
C.A.V.

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 17-07-2026



The present appeal has been preferred against the judgment of conviction, dated 18.05.1999, and the order of sentence, dated 19.05.1999, passed by learned Additional Sessions Judge-V, Nalanda, in Sessions Trial No. 392 of 1988, arising out of Chandi Police Station Case No. 134 of 1986, whereby the appellants, namely, Bipin Singh and Umesh Singh, were convicted under Sections 302 and 148 of the Indian Penal Code; whereas the appellant, Bhola Singh, was convicted under Sections 302 read with Section 149, Section 147 and Section 342 of the Indian Penal Code.

2. For the conviction under Section 302 of the Indian Penal Code, the appellants, Bipin Singh and Umesh Singh, were sentenced for life imprisonment and for the conviction under Section 148 of the Indian Penal Code, they were sentenced to undergo rigorous imprisonment for six months.

3. For the conviction under Section 302 read with Section 149 of the Indian Penal Code, the appellant Bhola Singh was sentenced for life imprisonment, for the charge under Section 147 of the Indian Penal Code, he has been sentenced to undergo rigorous imprisonment for three months and for the charge under Section 342 of the Indian Penal Code, he has been sentenced to undergo rigorous imprisonment for one month.



4. All the sentence were, however, directed to run concurrently.

5. The prosecution case, as unfolded in the written report of the informant, Kamlesh Kumar (PW 5), is that in the last night, the brother of the informant, Sudhir Kumar was sleeping in his cabin. Since it was very hot, the informant slept in the nearby cabin of Anil Prasad. Some unknown persons injured the brother of the informant, Sudhir Kumar, by knife blows with intention to kill him. When alarm was raised, the informant and many of his co-villagers gathered and found his brother in injured and unconscious condition. The informant claimed that they neither saw anybody assaulting nor identified and when they reached, all the persons had fled away. Some villagers took the injured on a tractor for his treatment to the Patna hospital.

6. On the basis of the aforesaid written report, Chandi Police Station Case No. 134 of 1986, dated 12.05.1986, was registered against the unknown accused persons for the offences punishable under Sections 307/324 of the Indian Penal Code.

7. Upon completion of investigation, the police submitted police report on 26.05.1992, finding the case untrue against the appellants. However, differing with the police report, learned Magistrate took cognizance for the offences punishable



under Section 147/148/302/149 of Indian Penal Code, against the accused persons on 09.11.1987. The case was committed to the Court of Sessions on 10.08.1988.

8. Charges under Sections 148 and 302 of the Indian Penal Code were framed against the appellants, Bipin Singh and Umesh Mahto and charges 147, 302 read with 149 and 342 of the Indian penal Code were framed against the appellant, Bhola Singh. Charges were read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried.

9. The prosecution, in order to substantiate its case, has examined eight witnesses and also exhibited some documents on its behalf. List of prosecution witnesses and exhibits are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses :

Prosecution witness no.	Name of witness	Description
1.	Anil kumar	Villager
2.	Ayodhya Prasad	Villager
3.	Bhageran Mahto	Villager
4.	Ram Briksh Mahto	Father of the informant
5.	Kamlesh Kumar	Informant
6.	Surendra Kumar Singh	I.O
7.	Dr. Ram Krishna Pd. Singh	Doctor, who conducted Post mortem
8.	Raja Ram Prasad	Formal witness



List of Exhibits on behalf of the prosecution :

Exhibit No.	Description of the Exhibit	Date/attested by
1	Signature of PW4 on the objection petition	27.08.1993
2	Signature of Informant on the petition	18.09.1993
2/1	Signature of Informant on the objection petition	18.09.1993
3.	Signature of Informant on the affidavit	18.09.1993
4.	Inquest report	21.02.1995
5	Session trial 392/1988, case diary from para 8 to 163	21.02.1995
6.	Post Mortem report	29.07.1995
7.	Signature on written report	07.02.1998
8.	Formal F.I.R	07.02.1998

10. After closure of the prosecution evidence, the statement of the appellants were recorded under Section 313 of the Code of Criminal Procedure on 23.03.1998. The appellants denied all the incriminating circumstances against them and claimed to be tried.

11. The defence has also examined Manohar Singh, one of the Investigating Officers of this case in support of their case.

12. Mr. Ajay Kumar Thakur, learned Counsel appearing on behalf of the appellants, has, at the outset, submitted that the basis of conviction of the appellants is based merely on



presumption of guilt. The prosecution has failed to prove its case beyond reasonable doubt inasmuch as the testimonies of the prosecution witnesses not only suffer from material contradictions and inconsistencies, but is also against the First Information Report.

13. Learned Counsel has submitted that in the written report of the informant (PW 5), the informant has stated that he had neither witnessed the actual occurrence nor identified any of the accused persons since before he, along with others, reached the place of occurrence, the persons, who had assaulted his brother, had fled away and as such, the First Information Report was registered against unknown, though the appellants were known to the informant from before. The names of the appellants and others surfaced after ten to twelve days of the occurrence inasmuch as only after 10–12 days of the occurrence, the father of the informant (PW 4) emerged as the eye-witness to the alleged occurrence, who claimed to have identified the assailants in the light of a torch. Such belated claim of identification constitutes a material improvement over the prosecution's earliest version and seriously undermines the credibility and reliability of the prosecution case. There is nothing



on record to show the earliest version of PW 4, i.e. father of the informant.

14. Learned Counsel next submits that the persons whose cabins or lands were situated adjacent to the place of occurrence have not been examined during the trial. The non-examination of such material witnesses also gives rise to adverse inference against the prosecution case emerges during the trial. He further submits that Investigating Officer has disclosed that no one has claimed to identify the accused persons in the light of torch before him and the torch was also not produced before him.

15. The doctor (PW7), who conducted the postmortem has deposed that the cause of death is due to infection. The doctor, who initially treated the brother of the informant (PW 5) has not been examined during the trial.

16. Learned Counsel lastly submits that the manner, source of identification and the place of occurrence has not been established by the prosecution.

17. In view of the aforesaid facts and circumstances, learned Counsel has submitted that the impugned judgment of conviction and order of sentence are fit to be set aside as the prosecution has miserably failed to prove its case beyond reasonable doubts.



18. In support of his submission, learned Counsel for the appellants has placed reliance on the decisions of the Supreme Court, in the cases of *Durbal v. State of Uttar Pradesh*, reported in **(2011) 2 SCC 676**, *Kapildeo Mandal v. State of Bihar*, reported in **(2008) 16 SCC 99**, *Balakrushna Swain v. State of Orissa*, reported in **(1971) 3 SCC 192**, *Jagjit Singh v. State of Punjab*, reported in **(2005) 3 SCC 689**, *Ganesh Bhavan Patel v. State of Maharashtra*, reported in **(1978) 4 SCC 371**, *Munuwa v. State of Uttar Pradesh*, reported in **(2023) 1 SCC 714**, *Ram Narain Singh v. State of Punjab* **(1975) 4 SCC 497**, *Punimati v. State of Chattisgarh*, reported in **(2025) SCC OnLine SC 2866** and *Vinobhai v. State of Kerala*, reported in **(2025) SCC OnLine SC 178**.

19. On the other hand, learned Additional Public Prosecutor has submitted that the learned Trial Court, after considering the evidence of the prosecution witnesses, defence witness and exhibits available on record, has rightly convicted the appellant inasmuch as during the course of investigation, the names of appellants came up and the prosecution witnesses examined during trial have duly supported the prosecution case, and as such the impugned judgment of conviction and order of sentence do not suffer from any legal infirmity or irregularity,



warranting interference of this Court, the appeal, being devoid of any merit, is fit to be dismissed.

20. I have heard learned Counsel for the parties concerned and have perused the materials available on record, including the Lower Court's Record.

21. It would be apposite to discuss the oral/documentary evidence as available on record to re-appreciate the evidence for coming to just and proper decision.

22. PW 1, Anil Kumar, a co-villager of the informant, in his examination-in-chief, has deposed that on 11.05.1986 between 10 and 11 PM, while he was sleeping in his cabin along with the informant (PW 5), on hearing their shouting of Ram Briksh Mahto (PW 4) that "*jan mar raha hai, jan mar raha hai*", this witness ran towards his cabin and in the light of torch, saw Bipin Singh, Naresh Singh, Umesh Singh, Rajendra Singh, Amerika Singh, Bhola Singh, Keshwar Mahto and Umesh Mahto, variously armed inside the cabin and were assaulting Sudhir. By that time, Bhola Singh, Ayodhya Prasad, Indrajeet Mahto, Bhageran Mahto and many people came there and the accused persons fled away towards south-west.

23. This witness (PW 1) claimed to identify all the accused persons, out of which, Bipin Singh, Rajendra Singh,



Bhola Singh, Naresh Singh and Amerika Singh, were present in the Court in the dock.

24. In his cross examination, PW 1 has stated that he did not know that his grandfather, father and uncle were accused in a case related to murder of Aitwari Mahto of his village and they were convicted in that case. He further deposed that he did not know that Bhola Singh, Rajendra Singh and Amerika Singh were witnesses in that case. This witness has further deposed that his cabin is located at the north-west corner and there was no electricity in his cabin as the electricity connection was cut off for the last many months.

25. This witness (PW 1) has deposed that the informant (PW 5) is not related to him but he used to stay at his cabin since they were friends and on the date of occurrence, they were in the cabin from 7 PM and woke up on the shouting of Ram Briksh and in the mean time, neither any one had come in his cabin nor he went in the cabin of Ram Briksh. He went on hearing the shouting. This witness has deposed that he did not show the police the place of his sleeping and he had told the police that Kamlesh was sleeping with him but when he woke up on hearing the shouting, Kamlesh was not there.



26. According to this witness, the cabin of Ram Briksh is towards east-south of his cabin at a distance of about 75 Gaj and the door of the cabin of Ram Briksh is towards east. He further deposed that he did not see anyone fleeing away nor did he see anyone in the south as well as south-west direction.

27. This witness further deposed that he saw Sudhir in unconscious condition and blood was oozing out of his mouth and chest. After 5-7 minutes, Ram Chandra Mahto, Bhola Mahto, Bhageran Mahto, Thakur Mahto etc. came, with whom he had no talk.

28. This witness (PW 1) has deposed that he did not know in how many cases, Sudhir had gone to jail and he also did not know that Sudhir was caught with arms and ammunition in Daniyawar. He further stated that he gave his statement to police on 25.11.1986 and he said to police that around 10-11 PM in the night, he was sleeping in his cabin. He does not remember as to whether he told the police about existence of Kamlesh (PW5) with him. This witness further deposed that he could not remember whether he had told the police or not that when he reached near the cabin of Ram Briksh, he saw inside the cabin after flashing the torch. He told the police about *kaakut* and also told the police that



when Bhola Mahto, Bhageran, Ayodhya Mahto and Indrajeet and few other people came, the accused persons fled away.

29. This witness (PW 1) has denied the suggestion advanced on behalf of the defence that due to enmity, he has falsely implicated the accused persons and has falsely deposed.

30. PW 2, Ayodhya Prasad, a co-villager of the informant, in his examination-in-chief, has deposed that on 11.5.86, at 10-11 PM, he, along with his father, was sleeping in his cabin. They woke up on hearing the shouting of Ram Briksh Mahto and reached near Ram Briksh Mahto, who was standing in the field of Sukhu Mahto. In the light of torch, this witness saw America Singh and Bhola Singh inside the cabin holding Sudhir by his hands and legs and Bipin Singh with a *kakut*, Naresh Singh with a *knife*, Umesh Singh with a *bhujali*, Rajendra Singh armed with a *fasuli*, and Umesh Mahto with a *katta* were assaulting Sudhir and Keshwar Mahto was standing there with a lathi, and blood was oozing out of mouth and chest of Sudhir. He further deposed that about one month prior to the occurrence, certain equipment belonging to Bipin had been stolen, due to which there was tension between Bipin and Sudhir and Ram Briksh Mahto, father of Sudhir Singh, had removed Umesh Mahto from his job, due to which also, Umesh Mahto had a grudge. This witness



claimed that he knew all the accused persons, out of whom America Singh, Bhola Singh, Naresh Singh, Umesh Mahto and Rajendra Singh, were present in the dock of the court.

31. In the cross examination, this witness (PW 2) has deposed that the entrance of the cabin of Ram Briksh was on the eastern side. There was a well on the west side of the cabin. His cabin is situated at a distance of 100-150 Gaj towards west-south in the direction of South west from the cabin of Ram Briksh. He further deposed that out of the eight accused persons of this case, except Umesh Mahto and Keshwar Mahto, rest are of his village. He further deposed that the houses of the accused persons are near to his house. He further deposed that he did not know that any case was going on between his father and accused Bhola Singh for the passage. This witness has further deposed that he knew his co-villager, Swarth Singh, but he did not know that his father is a witness of a theft case of Swarth Singh, in which Naresh Singh was an accused.

32. This witness (PW 2) has deposed that the police had recorded his statement, in which he told the police that in the night, at 10-11 PM, Ram Briksh Mahto raising an alarm and ran to the place where Ram Briksh Mahto was standing. He also told the police that Bhola Singh and America Singh were holding the



hands and legs of Sudhir Singh. When this witness came out of his cabin, he could see the west side of the cabin of Ram Briksh Mahto and after flashing torch, he did not see anyone on the west or south side of Ram Briksh Mahto's cabin. Ram Briksh Mahto was shouting, "*Thief is assaulting Sudhir*" and "*The thief is killing Sudhir.*"

33. This witness (PW 2) has further deposed that when he reached in the field of Sukhu Mahto, he also began raising alarm and remained there and shouted for one minute. During that time, he saw some people running towards west and others running towards the south. No one ran in the direction where this witness was standing. This witness (PW 2) found Sudhir lying unconscious and drenched in blood. This witness has claimed that he identified the persons who were fleeing and they were the accused persons. Both, this witness and Ram Briksh Mahto flashed their torches. Inside the room, he noticed blood stains beneath the cot and there was no source of light, i.e. lantern etc. in the room.

34. This witness (PW 2) has further deposed that he did not know for how many years Umesh Mahto was working, but two months prior to the occurrence, he was removed. This witness did not know as to when the articles of Bipin Singh was stolen and



whether any case was lodged for that theft, but Bipin had suspicion upon Sudhir, due to which hot exchange of words had taken place between them.

35. This witness has further deposed that it is not correct that such incident had not taken place. He denied the suggestion that accused persons had not assaulted Sudhir in the cabin. It is also wrong that Ram Briksh Mahto was not present at the place of occurrence at the time of incident. This witness has also deposed that he did not know that Kamlesh had informed the police about the occurrence against unknown.

36. PW 3, Bhageran Mahto, another co-villager of the informant, in his examination-in-chief, has deposed that the occurrence took place at about 9–10 PM, about seven years ago. This witness was at his cabin when he heard shouting of Ram Briksh and went to his cabin. He went to the field of Sukhu Mahto and saw persons inside the cabin of Ram Briksh. Naresh Singh, Bipin Singh, Amerika Singh, Bhola Singh, Rajendra Singh and Umesh Singh were inside. He could not see what they were doing. Keshwar Mahto and Umesh Mahto were outside the cabin. This witness claimed to identify all the persons, out of whom Amerika Singh, Naresh Singh, Rajendra Singh, Bhola Singh and Umesh Mahto were present in the dock of the Court. This witness also



claimed to identify the six persons inside the cabin in the light of torch.

37. In the cross-examination, this witness (PW 3) has deposed that since he had gone to Patna with Sudhir, he could not say after how many days of the occurrence, police had come in the village. This witness had not told the police that the occurrence took place in the night at 9-10 PM. He did not told the police that he went to the cabin of Ram Briksh on his shouting. This witness also did not recollect whether he had told that he entered into the field of Sukhu Mahto and saw the accused persons inside the cabin. This witness also did not recollect whether he had told that he had seen Umesh Mahto and Keshwar Mahto outside the cabin. This witness also did not remember as to whether he had told that he was having a torch and he identified them in the torch light.

38. This witness (PW 3) was alone in his cabin, which is situated south to the cabin of Ram Briksh. An alarm was raised that "*he is being assaulted.*" This witness went with a torch to the east of cabin but he did not meet anyone on the way. This witness did not see anyone entering into the cabin of Ram Briksh. After this witness, many villagers arrived, whose names he did not remember. They reached five to ten minutes after his arrival. He



remained in Sukhu Mahto's field for about half an hour. After half an hour, he entered the cabin of Ram Briksh. This witness has denied the suggestion of the defence that he did not see anybody inside the cabin.

39. PW 4, father of the deceased, Ram Briksh Mahto, is the witness, on whose testimony the entire prosecution case revolves around. This witness (PW 4) has deposed, in his examination-in-chief, that on 11.05.1986, at 10:30 PM, he was in his cabin along with his son (deceased) Sudhir. They were irrigating their paddy field using a diesel engine. Sudhir slept inside the cabin. This witness took a torch and went to see the field. While this witness was in the field, he heard Sudhir shouting that 'Bipin Singh and Umesh Mahto were assaulting'. When came near the cabin, this witness, in the light of torch, saw America Singh and Bhola Singh holding the hands and legs of Sudhir and Naresh Singh, by means of knife, Bipin Singh, by means of *garasi*, Rajendra Singh, by means of *fasuli* and Umesh Singh, by means of *bhujali*, were assaulting him. Umesh Mahto and Keshwar Mahto were armed with lathis. The persons of nearby cabins also arrived there. On hearing hulla, villagers also reached there, and they witnessed the occurrence in the torch light. The accused persons fled away from there.



40. This witness (PW 4) took injured Sudhir to Patna Medical College and Hospital for treatment, and the treatment continued for 7 to 8 days, and then Sudhir died. This witness returned to village when his another son, Kamlesh (the informant) told him that Ram Snehi Singh, Dafadar, took him and lodged a case against unknown. Kamlesh further told him that Ram Snehi Singh did not allow him to mention the names of any of the accused in the report and told him that if he would name them, they would kill him also. This witness further disclosed that Ram Snehi Singh is related to the accused persons by caste and is their *gotiya* also, due to which he had done so.

41. This witness has further deposed that he had filed a protest petition in the Hilsa court. This witness (PW 4) proved his signature on the protest petition, marked as Exhibit 1. The police was also in collusion with the accused persons, due to which he had filed the protest petition.

42. This witness (PW 4) has also deposed that the police had gone to Patna Medical College and Hospital and recorded his statement. The statement was recorded by the Daroga of Pirbahore Police Station. This witness has disclosed the names of the persons whom he had named before the Court and had also named those persons in the protest petition.



43. This witness (PW 4) has deposed that about one month prior to the incident, some machinery parts were stolen and Bipin Singh was accusing Sudhir for this theft for which, a dispute arose between them and also had physical altercation. On that occasion, Bipin Singh threatened Sudhir to kill him. This witness (PW 4) had engaged Umesh Mahto for working in his field, but before 6-7 days of the occurrence, Umesh Singh tried to grab his land, due to which removed Umesh Mahto. Umesh Mahto threatened Sudhir.

44. This witness has claimed that he identified the accused persons. Rajendra Singh, Naresh Singh, Umesh Singh, Bhola Singh, Bipin Singh and Keshwar Mahto are present.

45. In the cross-examination, this witness (PW 4) has deposed that prior to the occurrence, he did not had any personal knowledge of any case against the accused persons. This witness (PW 4) has deposed that he could not say whether any of his witnesses had any case with the accused or not. In the protest petition or in his statement before the police, he had mentioned that there was enmity between him and the accused persons. This witness had filed the protest petition on 20.08.1986. At that time, members of his family were with him in Patna. From 12.05.1986, Arvind Mahto, Bhola Mahto, Ayodhya Mahto, Arjun Mahto and



Anil Mahto were also with him at Patna. And all these persons accompanied this witness while this witness had taken Sudhir to Patna and lived there till Sudhir died. All these persons are witnesses of this case.

46. This witness (PW 4) has further deposed that before leaving for Patna, he had no discussion with the witnesses about the occurrence. The statement of this witness (PW 4) was recorded by the Daroga of Pirbahore Police Station and before that, he had no discussion from witnesses about the occurrence. This witness (PW 4) did not return to village till Sudhir was alive. Kamlesh had come to Patna Hospital to see Sudhir one day after he had reached there, but he had no discussion with him in Patna about the occurrence. Kamlesh did not inform him in Patna that he had lodged any case for the alleged occurrence. Kamlesh had returned to the village one day before the death of Sudhir; whereas this witness (PW 4), along with others, returned to village after cremating the body of Sudhir.

47. On returning after cremation, this witness (PW 4), along with Kamlesh at his home that very day. Thereafter, he and Kamlesh were went together to the Hilsa Court to file the protest petition and on that very date, he had seen the written report for the first time.



48. This witness (PW 4) has further deposed that the field of Sukhu Mahto was situated in the east of the cabin. He had gone in his field which was situated towards north-east of cabin and when he was alone at the north-weest corner of his field, he heard the sound of his son, Sudhir. When this witness (PW 4) was going to his field, he saw no one near the cabin. It was only after he reached the south-west corner of the field, he heard the shouting and from there, the cabin was not visible since it was a dark night. On hearing Sudhir's cries, he looked towards the cabin but did not see anyone in the hut and within one or two minutes, people came. When he reached in the field of Sukhdeo Mahto, he still did not see anyone either in the shed near the cabin or towards its east, north or south. He saw people running from the cabin. They fled firstly towards south. There was no light inside the cabin or outside in the shed. Though about 50 persons came there, no one chased the persons. When he entered into the cabin, he found Sudhir lying unconscious on the cot, seriously injured and covered in blood. The door of the cabin was open. This witness (PW 4) has further deposed that the persons who fled away towards west-south direction, he did not see their faces, only their back was visible.



49. When this witness (PW 4) was in the field of Sukhdeo Mahto, he was carrying a torch and he had disclosed this fact to the Pirbahore Police as well as in the protest petition. This witness (PW 4) has claimed to identified the accused in the light of his own torch. He further told the police that Anil Mahto, Bhola Mahto, Ayodhya Mahto, Bhageran Mahto and others had also arrived carrying torches and saw the accused persons in the light of their torches.

50. This witness (PW 4) has further deposed that the villagers saw eight persons inside the cabin. As soon as the torches were switched on, all of them ran out of the cabin and fled away. This witness (PW 4) did not remember whether the blood was found on the cot, beneath the cot, or in both places inside the cabin.

51. This witness (PW 4) has also deposed that before the occurrence, Sudhir was not an accused in Daniyawan Police Station Case No. 277 of 1985 and had not gone to jail. There is no other person in the village by the name of Sudhir, son of Ram Briksh Mahto. No daughter-in-law of this witness (PW 4) has died after consuming poison and he as well as Sudhir is not accused in such case. This witness (PW 4) has deposed that he did not know that Sudhir harassed the wife of Mahendra Paswan of Aker. He



further deposed that it is not correct that due to illicit relation with the daughter of Bhola, people had assaulted Sudhir and due to the bad behaviour of Sudhir, Nazir Krishna Mohan Prasad had shifted his daughters from the village and the son of Nazir had assaulted Sudhir for his act of harassing them. This witness (PW 4) further deposed that for the theft of the motor part of Bipin, Bipin held Sudhir responsible for that. This witness (PW 4) has further deposed that it is not correct that he had falsely implicated the accused persons in connivance with the witnesses, he was not in the cabin on that date, no one had saw the occurrence of assault, due to which Kamlesh had registered a case against unknown and during investigation, the case was found untrue and the accused persons had not committed any offence.

52. PW 5, Kamlesh Kumar, is the informant of this case. He, in his examination-in-chief, has deposed that on 11.05.1986, at 10:30 PM, he was at the cabin of Anil (PW 1) and saw 7–8 persons going towards his cabin. He immediately ran to the orchard and raised alarm that 7–8 persons had entered into his cabin. From the orchard, he ran to the village. When he returned to the cabin, his father (PW 4) informed him that Bhola Singh, Umesh Singh, Rajendra Singh, America Singh, Naresh Singh, Bipin Singh, Keshwar Mahto, and Umesh Mahto had assaulting



Sudhir and saw his younger brother Sudhir lying unconscious in injured condition, who was taken to the hospital. On the following morning, Ram Snehi Singh, Dafadar, forcibly took him to Chandi Police Station and told him to sign on a blank paper and when this witness tried to overlook, he took his signature on a blank paper after threatening him. This witness (PW 5) had identified his signature, which was marked as Exhibit 2.

53. This witness (PW 5) had filed a protest petition in the Hilsa Court and he identified his protest petition and his signature over it, the signature of this witness (PW 5) on the protest petition had been marked as Exhibit 2/1. Along with the protest petition, he had also filed an affidavit, which bears his signature, which he identified and was marked as Exhibit 3.

54. This witness (PW 5) has deposed that Ram Snehi Singh is the gotia of accused Bipin, Bhola and Naresh Singh. He identified the accused persons, namely, Umesh Singh, Bhola Singh, America Singh, Rajendra Singh, Bipin Singh and Keshwar Mahto, who were present in Court.

55. In the cross-examination, this witness (PW 5) has deposed that the cabin of Anil is north to his cabin and in that cabin, only Anil and he was present. His own pump set was working till 7 PM and after closing the pump set, this witness



went to the pump set of Anil. This witness (PW 5) has further deposed that he saw some persons going from west to east towards his pump set from south of the pump set of Anil. He woke up sometime ago but Anil was sleeping and he went to the village through the orchard leaving Anil. On the way, he met Munna Mahto, Sunil Kumar, and Veer Mani near his house and told them that he had seen some people going towards his pump set. Thereafter, all three of them accompanied him to the cabin where he met with his father (PW 4) outside the cabin, in the field of Sukhu Mahto and near his father, about 5-10 persons were there, and he identified Nunu Mahto and Bhola Mahto among them. This witness (PW 5), along with others, entered into the cabin and found Sudhir unconscious drenched in blood. This witness (PW 5) had a talk with his father in presence of the witnesses. This witness (PW 5) had admitted that in the protest petition and the affidavit, he had stated that after raising alarm, he went to the village through the orchard and on returning to the cabin, his father informed him the names of the accused and told him that they were assaulting Sudhir Mahto. However, this particular fact was not mentioned by him (PW 5) in the protest petition and the affidavit.



56. This witness (PW 5) has deposed that in the night of the occurrence, he remained at his house and he did not meet Ram Snehi Singh in the night and on the following morning, Ram Snehi Singh met with him (PW 5) at about 8 AM. He cannot say from where he came to meet me. He told Ram Snehi Singh that Sudhir had been assaulted in the night, though he had not witnessed the assault himself, but his father had witnessed it. Ram Snehi Singh took him to the police station. He (PW 5) got the protest petition prepared only after seeing the written report. In the written report, it is mentioned that he had not witnessed the occurrence and had also not identified any one. He (PW 5) does not remember whether he wrote the entire written report by himself or merely obtained his signature on it. It is not correct that he had written the written report on his own accord and signed over it. It is true that the written report is in his own handwriting using the same pen and the same ink and bears his signature, and that it was written by him.

57. This witness (PW 5) has further deposed that he met with his father in Patna on 13.05.1986, but he did not remember whether he told him (PW 4) that Ram Snehi Singh had got the written report submitted at the police station. He did not discuss this matter with anyone. He does not remember when his



father returned from Patna and whether, before filing the protest petition, he had informed his father that the written report had already been submitted at the police station. His father (PW 4) had also filed a protest petition but he did not say as to when the protest petition was filed. There was no enmity with the accused persons from before the occurrence. It is not true that on the date of occurrence, he, along with his father, was not present in the cabin.

58. This witness (PW 5) has further deposed that on 12.05.1986, on the basis of his written report, the police came to the village but did not visit his cabin. Later on, he deposed that the police did not come on 12.05.1986 and he did not remember when the police came.

59. This witness (PW 5) has further deposed that it is not true that on 12.05.1986, the police came to the village, to whom he showed the place of occurrence. He did not remember whether the police questioned him after registration of the case or not.

60. This witness (PW 5) has further deposed that Senior Police Officials had come to the village for investigation and they found the case filed by them as true and also found the statement of his father to be true.



61. This witness (PW 5) has denied the suggestion of the defence that the police had found the statement of his father as untrue and filed final form. He again denied that he, in connivance with the witnesses, had lodged a false case.

62. PW 6, Surendra Kumar Singh, is the second Investigating Officer of this case. He, in his examination-in-chief, has deposed that he took charge of investigation of this case on 18.05.1986. The inquest report of injured Sudhir Kumar was received from Pirbahore Police Station, which revealed that Sudhir Kumar died in the Patna Medical College and Hospital, Patna itself. The inquest report was written and signed by A.S.I. Bachcha Upadhyay of Pirbahore Police Station and the same was marked as Exhibit 4. He went to the place of occurrence, recorded the statements of witnesses and when he returned to the police station, he came to know that Ram Snehi Singh, Dafadar, had accompanied the informant, Kamlesh Kumar to the police station and the informant Kamlesh Kumar wrote the written report. He obtained the post-mortem report of the deceased and during the investigation, he found sufficient evidence against the accused persons. Due to his transfer, he handed over the further investigation of the case to Manohar Singh (DW 1).



63. This witness (PW 6) has deposed that paragraph 1 to 12 of the case diary is in the handwriting and signature of A.S.I. Lakshman Dubey (first investigation officer of the case). Paragraph 13 to 76 of the case diary is in his handwriting and signature. Paragraph 76 to 150 is in the handwriting and signature of A.S.I. Manohar Singh (DW 1). Paragraph 151 to 153 is in the handwriting and signature of A.S.I. Ayodhya Nath and paragraph 154 to 163 is in the handwriting and signature of A.S.I. Nand Kishore Rai. He recognized all the handwriting. Paragraph 1 to 163 of the case diary has been marked as Exhibit 5.

64. In the cross-examination, this witness (PW 6) has deposed that the police report was filed in which the occurrence was found to be true, but the accusation was found to be false. The case was supervised by the senior officer, Deputy Superintendent of Police and the Superintendent of Police.

65. This witness (PW 6) has deposed that before he took charge of the case on 18.05.1986, the place of occurrence was already inspected and restatement of the informant was also recorded, but in investigation was conducted from 15.05.1986 to 17.05.1986. This witness got information of the death of Sudhir Kumar on 24.05.1986 and before 24.05.1986, no accused had been named before him by anyone and on 24.05.1986 itself, he got



the fardbayan of the father of the deceased from Pirbahore Police Station. On 25.05.1986, witnesses Anil Kumar, Bhola Mahto, Ayodhya Prasad, Bhagiran Mahto and Indrajeet Mahto appeared before him along with Ram Briksh Mahto, and their statements were recorded by him on that date.

66. This witness (PW 6) has deposed that he did not obtain any information regarding litigation between the parties. On 13.10.1986, upon completion of investigation on all aspects, the Deputy Superintendent of Police recommended submission of Final Report treating the allegation against the accused as false. Subsequently, the Final Report was filed showing the allegation as false.

67. This witness (PW 6) has further deposed that he did not inspect the places where the witnesses claimed to be present in the night of alleged occurrence. Anil Kumar (PW 1) had also not shown him the place where he was sleeping Anil Kumar (PW 1) did not told him that Kamlesh (PW 5) was sleeping with him. He stated that he slept in his cabin that night. PW 1 also did not disclose before him that when he came to the cabin of Ram Briksh, he looked inside by flashing the torch. PW 1 had also not mentioned about *Kkakut* and upon the arrival of Bhola Mahto, Bhageran, Ayodhya, Indrajeet and others, the accused fled away.



68. This witness (PW 6) has further deposed that PW 2 did not show his cabin to him. PW 2 did not told him that he rushed upon hearing hulla raised by Ram Briksh Mahto and reached near the place where he was standing. PW 2 also did not told him that Rambriksh was standing in the field of Sukhu Mahto and Bhola Singh and America Singh were holding Sudhir by his hands and legs. PW 2 did not told him that Umesh Mahto was armed with a Katta; rather, he had told that Umesh Mahto was carrying a lathi.

69. This witness (PW 6) has deposed that Bhageran Mahto (PW 3) had not told that upon hearing hulla raised by Ram Briksh, he went to the cabin and saw the accused persons from there and he saw Umesh and Keshwar Mahto outside the cabin. PW 3 had also not told that he was carrying torch, in which light, he identified.

70. This witness (PW 6) has deposed that Ram Briksh Mahto had told before him that he had dispute with the accused, however, he later mentioned only about Umesh, with whom he had land dispute. PW 4 had not told him that he had a torch in his hand and Anil, Bhola, Ayodhya and Bhageran arrived flashing torches, in which light, identified the accused persons.



71. At this juncture, I would like to mention here that the prosecution has not produced the doctor, who had firstly examined the deceased, as a witness, in order to come to a finding with regard to the weapon used and the intensity of the assault. The prosecution has only examined the doctor who has conducted the post mortem examination on the body of the deceased.

72. PW 7, Dr Shyam Krishna Prasad Singh, is the doctor who conducted the post mortem examination on the dead body of Sudhir on 18.05.1986 at 10 AM. PW 7 found following ante mortem injuries:-

“1. Stitched wound of size 2" x 1 1/2" x nasal cartilage cut was found placed horizontally on the middle of the nose.

2. Stitched wound of size 4"x1 1/2"x mandible cut (completely) was found on the middle of chin.

3. Stitched wound of size 1"x1 1/2"x muscle deep was found on the anterior aspect of the right shoulder.

4. Stitched wound of size 2 1/2" x 1 1/2" x bone deep was found on the right clavicular region of the chest placed horizontally.

5. Stitched wound of size 2 1/2" x 1 1/2" x muscle deep was found placed horizontally on the middle of upper part of the chest.



6. Linear Stitched wound of size $\frac{1}{2}$ " x $\frac{1}{2}$ " communicating to the wind pipe was found on the front of neck. It was a surgical wound for treatment.”

73. PW 7 has also found both the lungs congested, liver enlarged and congested, spleen grossly enlarged and congested and all the viscera were congested.

74. PW 7 has opined that the cause of death was due to infection caused by above mentioned injuries. PW 7 has further deposed that the opinion regarding the nature of weapon used cannot be given due to surgical interference.

75. PW 8, Raja Ram Prasad, is a formal witness, who has identified the endorsement on the written report in the writing and signature of Sri L. Dubey (Laxman Dubey), which was marked as Exhibit 7. This witness further identified the handwriting and signature of the aforesaid Sri Laxman Dubey, A.S.I., on the formal First Information Report, which was marked as Exhibit 8.

76. In the present case, there were five investigating officers, out of which the second investigating officer, Surendra Kumar Singh, who had written the case diary from paragraph 13 to 76, was examined on behalf of the prosecution as PW 6. The third investigating officer, Manohar Singh, who had written the



case diary from paragraph 76 to 150, was examined on behalf of the defence as DW 1.

77. DW1, in his examination in chief, has deposed that on 21.07.1986, he took the charge of investigation of the present case after transfer of the then Officer-in-Charge of the police station, Sri Surendra Kumar Singh, who handed over to him the case diary, the supervision note of the Deputy Superintendent of Police, the First Information Report, the progress report submitted to the Superintendent of Police, the post-mortem report and other records relating to the case. This witness had gone through the supervision note of the senior officers and had followed his instructions.

78. This witness (DW 1) inspected the place of occurrence and took statements of independent witnesses, namely, Yogendra Prasad, Anil Kumar, Dilip Kumar, Narayan Mahto and Saryu Mistri. This witness had perused the record of old enmity, Chandi Police Station Case No. 4 (3) 75, in which he took the statements of the witnesses, Siddheswar etc. and the accused of this case, namely, Bhola Singh, Rajendra Singh, who show him the records of T.S. No. 46 of 82, Siddheswar Mahto v. Kesho Ram, in which the accused persons of this case were the witnesses on behalf of Kesho Ram.



79. This witness (DW 1) had also visited Daniyawan Police Station and saw the records of Daniyawan Police Station Case No. 287 of 1985, in which the deceased was named accused person. This witness also visited the house of Keshwar Mahto and found that he was suffering from paralysis and he could not identify any person since his eye vision was bad.

80. This witness (DW 1) also took the statement of Rajendra Singh and Rajendra Singh produced the documents related to enmity and this old person was also found suffering from paralysis and was stammering. This witness also met with America Singh and found that he has lost his eye vision. This witness conducted the investigation in accordance with the directions/instructions of the Deputy Superintendent of Police and found the allegation against the accused persons to be false. The Deputy Superintendent of Police had directed that a final report be submitted in the case. And after verification of the materials, the Deputy Superintendent of Police again supervised the investigation on 13.10.1986 and found the allegations to be false. This witness has deposed that the entries in the case diary, from paragraphs 76 to 150, are in his handwriting and after 24.10.1986, he handed over the charge of investigation to Ram Pravesh Singh, Officer-in-charge, Chandi Police Station.



81. In the cross-examination, this witness (DW 1) has deposed that he peruse the records of a case after taking investigation of any case and perused the documents/records of this case also and from perusal of the case records, he did not find reliable evidence in support of the allegation levelled against the accused persons. This witness further denied the suggestion that it is not true that he is deposing falsely. After taking over the investigation of this case, he did not go to the Court for examining the record because he did not consider it necessary. He further denied that it is not true that protest petition were filed against this investigating officer (DW 1) and the Investigating Officer of this case after DW 1. He further denied that he perused the papers/documents and recorded the statement of the witnesses at the instance of the accused persons. He further denied that the investigation is faulty and in support of the accused persons.

82. This is a unique case in which the informant (PW 5) himself has given a complete go-bye to his earlier version of occurrence, turned towards a different angle and has deposed in consonance with his father, Ram Briksh Mahto (PW 4), who was no where mentioned in the First Information Report. In the deposition, the informant (PW 5) has deposed that Ram Snehi Singh, being the gotia of some of the accused persons, had taken



his signature on a blank paper forcefully, but from the First Information Report, it is crystal clear that not only the signature, but the entire contents of the written report was written by the informant, PW 5. The First Information Report was registered on the following day of the occurrence in which he has stated that his brother (deceased) was assaulted by unknown persons and he did not identify any accused persons. In his deposition, PW 5, the informant, has stated that when he reached near the cabin, his father (PW 4) disclosed that Bhola Singh, Umesh Singh, Rajendra Singh, America Singh, Naresh Singh, Bipin Singh, Keshwar Mahto and Umesh Mahto had assaulting Sudhir; whereas PW 4, father of PW 5, in his deposition, has stated, in paragraph 11, that he had no talk with any of the witnesses with regard to the alleged occurrence. PW 5 has further deposed that after closing the pump set at 7 PM, he went near the pump set of Anil (PW 1); whereas PW 4, father of this witness, has deposed in paragraph 18, that he, after closing the pump set, went to his field. PW 5, in paragraph 8, has deposed that he saw some persons going towards his pump set, but instead of going to his cabin, he chose to go to his village home and after returning from home, he met his father (PW 4) who was standing in the field of Sukhu Mahto along with some other persons. PW 5, in paragraph 13, has deposed that he had a



talk with his father in presence of witnesses and his father had disclosed the name of the accused persons, but this fact has already been denied by his father (PW 4). PW 5 has deposed, in paragraph 18, that he went to Patna on 13.05.1986 and stayed for only one day in Patna; whereas PW 4, his father, has deposed, in paragraph 12, that PW 5 return to village one day before the death of Sudhir.

83. It is also relevant to mention here that in the present case, two protest petitions were filed; one by the informant of this case (04.06.1986) and another by the father of the informant (20.08.1986).

84. Now, coming to the deposition of PW 1, Anil Kumar, with whom the informant (PW 5) was sleeping in the fateful night. This witness has deposed in paragraph 9 that the distance between his cabin and the cabin of the informant was 75 Gaj and on hearing hulla, he woke up and rushed towards the place of occurrence which is 75 Gaj away and till he reached the place of occurrence, he did not see anyone fleeing and when he was 10 feet away from the cabin of the informant, he saw PW 4 shouting. When this witness (PW 1) saw inside the cabin, in the light of torch, Bipin Singh, Naresh Singh, Umesh Singh, Rajendra Singh, Amerika Singh, Bhola Singh, Keshwar Mahto and Umesh



Mahto, variously armed and were assaulting Sudhir. By that time, Bhola Singh, Ayodhya Prasad, Indrajeet Mahto, Bhageran Mahto and many people came there and the accused persons fled away towards south-west. The accused persons were inside the cabin and there was only one door for their exit, though no one tried to save the deceased, when there were many persons, according to PW 1 and other witnesses, and the accused persons were the co-villagers, is also not trustworthy.

85. PW 2, in his deposition, has stated that on hearing the shouting of Ram Briksh Mahto, he reached near Ram Briksh Mahto, and in torch light, he saw America Singh and Bhola Singh inside the cabin holding Sudhir by his hands and legs and Bipin Singh, Naresh Singh, Umesh Singh, Rajendra Singh and Umesh Mahto were assaulting Sudhir and Keshwar Mahto was standing there with a lathi, and blood was oozing out of mouth and chest of Sudhir. The cabin of this witness was about 150 Gaj away from the cabin of the informant and still when this witness reached the place of occurrence, he saw the accused persons inside the cabin. It is the case of the father of the informant that he was the first person who reached the place of occurrence and on seeing him, the accused persons fled away, though this witness (PW 2) after covering 150 Gaj by foot, still witnessed the accused



persons inside the cabin is also not trustworthy and that too, when the accused persons, who were well known to this witnesses, were fleeing towards his cabin.

86. PW 3 has deposed that accused Keshwar Mahto and Umesh Mahto were present outside the cabin; whereas PW 2 (alleged eye-witness) has stated that accused Umesh Mahto was assaulting Sudhir and Keshwar Mahto was standing there with a lathi, PW 1, PW 5 (informant) have stated that accused Keshwar Mahto and Umesh Mahto were assaulting the deceased.

87. From a careful scrutiny of the depositions of prosecution witnesses, there appears to be grave material inconsistencies and omissions which are not merely minor discrepancies casting a serious doubt on the credibility and reliability of their testimony.

88. The evidence of PW 6, the Investigating Officer, assumes considerable significance in this context. PW 6 categorically deposed that until 24.05.1986, no witness had turn up and named any of the accused before him. He further stated that Anil Kumar (PW 1), Bhola Mahto, Ayodhya Prasad (PW 2), Bhageran Mahto (PW 3) and Indrajeet Mahto appeared before him for the first time on 25.05.1986, when their statements were



recorded. Prior thereto, none of them had disclosed any information regarding the occurrence.

89. PW 6 further proved several omissions in the previous statements of PW 4. According to him, PW 4 had not stated during investigation that he was carrying a torch, Anil Mahto, Bhola Mahto, Ayodhya Mahto and Bhageran Mahto had arrived carrying torches, and they identified the accused in the torch light. Likewise, PW 4 had not stated before the Investigating Officer that Bhola Singh and America Singh were holding the hands and legs of Sudhir; while the remaining accused assaulted him. These omissions relate to the manner in which the accused were allegedly identified and to the specific roles attributed to each of them. They concern the substratum of the prosecution case and cannot be characterized as minor discrepancies arising from lapse of memory.

90. PW 6 also stated that the prosecution witnesses Anil Kumar, Ayodhya Prasad and Bhageran Mahto had not made several statements before him which they subsequently introduced during their depositions before the Court, including their alleged presence at the place of occurrence, the use of torchlight for identification and the specific participation of the accused. These



omissions lend support to the defence contention that material improvements were made during trial.

91. It is well settled that every omission or contradiction is not sufficient to discard the testimony of a witness. However, omissions touching the identity of the assailants, the source of identification, the attribution of individual overt acts, and the very foundation of the prosecution case assume a different character. In the present case, the omissions proved through the Investigating Officer are not confined to peripheral matters but relate to the core features of the prosecution version. These omissions, read together with the admissions made by PW 4 and PW 5 in cross-examination, require the ocular testimony to be evaluated with considerable caution.

92. In the face of the evidence of prosecution witnesses, discussed above, there can be no escape from the conclusion that the description of the occurrence, given by them are not safe to place reliance upon inasmuch as the evidence of these witnesses are nothing, but ad-mixture of half-truth and untruth. This apart, the half-truth and untruth are so inextricably mixed with each other that it is impossible to disengage the truth from falsehood.



93. From going through the testimony of the DW 1, who was the third Investigating Officer of this case, it is admitted position that both the parties were on litigation terms. The deposition of this witness cannot be brushed aside only because he is the defence witness.

94. Considering the fact that there was, admittedly, enmity between the parties. Enmity is a double-edged weapon, which cuts both ways. While enmity may be a reason for committing an offence, such as, present one, enmity may also be a reason for either falsely implicating an enemy as an accused or roping in an enemy, who may be innocent.

95. In the circumstances indicated above, it was impossible to place implicit reliance on the evidence of the prosecution evidence. In the absence of any other evidence, supporting the description of the occurrence given by the eye witnesses, one has no option, but to hold that none of these witnesses can be treated or held to be wholly reliable, and their evidence would fall in the category of wholly unreliable.

96. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If the witness is wholly reliable, his evidence can be implicitly



relied upon and such a witness's testimony can be made basis for conviction of an accused. Similarly, when a witness is found to be wholly unreliable, no reliance can at all be placed on his evidence and his evidence has to be rejected outright. When, however, a witness is found to be neither wholly reliable, nor wholly unreliable, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

97. In the facts and attending circumstances of the present case, I am of the view that the prosecution has failed, in the light of the discussion of the evidence on record, to bring home the charges against the appellants beyond all reasonable doubt.

98. In the result and for the foregoing reasons, this appeal is allowed. The impugned conviction of the appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The appellants are held not guilty of the offence, which they stand convicted of.

99. Since the appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.



100. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(Anil Kumar Sinha, J.)

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

1. I am in respectful agreement with all the conclusions reached by the learned senior brother Anil Kumar Sinha, J. This concurring note is to express my view that our criminal justice system is designed not only to punish the guilty, but equally to ensure that individuals against whom a case is not proven ‘beyond reasonable doubt’ are not convicted based on conjecture, suspicion, or incomplete evidence. In criminal law, there is no room for the ‘preponderance of probabilities’. In this context, it is important to discuss some of the judgments which are relevant for the purpose of understanding our criminal justice system.

2. Among these, one of the most celebrated landmark judgments on the “benefit of doubt” and the “presumption of innocence” in Indian legal history is that of a three-Judge Bench of the Hon’ble Apex Court in *Kali Ram vs. State of Himachal Pradesh (1972) 2 SCC 808*, wherein, in para 25, the Apex Court held that:



*“Another golden thread which runs through the web of the administration of justice in criminal cases 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. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of **State of Punjab v. Jagir Singh 1974 3 SCC 227** a criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and phantasy. It concerns itself with the question as to whether the*



accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures”.

(Emphasis Supplied)

3. Another important judgment in this regard is that of ***Anand Ramachandra Chougule v. Sidarai Laxman Chougule*** (2019) 8 SCC 50, wherein, in para 10, the Hon’ble Supreme Court held that:

“The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such



defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.”

(Emphasis Supplied)

4. Further, in para 11, it was held that:

*“The fact that a defence may not have been taken by an accused under Section 313, Cr.P.C. again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In **Sunil Kundu v. State of Jharkhand**, (2013) 4 SCC 422, this Court observed:*

“28...When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabalise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt.”

(Emphasis Supplied)

5. Lastly, in a recent judgment, namely, **Goverdhan & Anr. V/s State of Chhattisgarh 2025 INSC 47**, the Hon’ble



Supreme Court has reiterated that reasonable doubt must not be an abstract or speculative doubt, but one based on reason, logic, and the totality of the evidence on record. The relevant portion of the aforementioned judgment is reproduced below:

“21. It will be relevant to discuss, at this juncture, what is meant by "reasonable doubt". It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense as observed in Ramakant Rai v. Madan Rai, (2003) 12 SCC 395 wherein it was observed as under :

“24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overly emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common



sense. It must grow out of the evidence in the case.”

(Emphasis Supplied)

6. In view of the above, I must conclude that the prosecution has failed, in the present case, to bring home the charge against the appellants beyond reasonable doubt.

(Alok Kumar, J.)

Prabhakar Anand/-

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