IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B) No. 343 of 2000 (R)

(Against the judgement of conviction dated 29.08.2000 and the order of sentence dated 31.08.2000 passed by the learned 3rd Additional Sessions Judge, Palamau in Sessions Trial No. 256 of 1988)

1. Mahagu Yadav, S/o Sri Moti Yadav
2. Ramrekha Yadav, S/o Sri Munsi Yadav
3. Bindeshwar Dusadh, S/o Sri Swarup Dusadh
4. Akhilesh Singh S/o Late Ramlagan Singh

All residents of village: Tetariya, P.S-Hazaribagh, District-Palamau.

..... … Appellants

Versus

The State of Bihar **… … Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Sankalp Goswami, Amicus Curiae
For the State : Mrs. Shailesh Kumar Sinha, APP

C.A.V on 18.08.2026 **Pronounced on 23/09/2026**

Per Sujit Narayan Prasad, J.

1. The instant criminal appeal under section 374(2) of the Code of Criminal Procedure, 1973 is directed against the judgment of conviction dated 29.08.2000 and the order of sentence dated 31.08.2000 passed by the learned 3rd Additional Sessions Judge, Palamau, in Sessions Trial No. 256 of 1988 whereby and whereunder the appellants, above-named, have been convicted under section 302/149 and section 148 of the Indian Penal Code and sentenced to undergo imprisonment for life for the offence under section 302/149 of the Indian Penal Code and further sentenced to undergo RI for two years for the offence under section 148 of the Indian Penal Code.

2. It needs to mention herein that the appellants namely, Kailash Yadav, Butan Yadav and Moti Yadav had died during pendency of the present appeal,

as such, vide order dated 18.08.2026 passed by this Court, the instant criminal appeal stands abated *qua* the appellants Kailash Yadav, Butan Yadav and Moti Yadav.

3. It also needs to mention herein that the instant criminal appeal is of the year 2000 arising out of the judgement of conviction dated 29.08.2000 and the order of sentence dated 31.08.2000 passed by the learned 3rd Additional Sessions Judge, Palamau in Sessions Trial No. 256 of 1988.

4. The instant appeal has been admitted for final hearing vide order dated 14.09.2000 by a co-ordinate Bench of this Court. Thereafter, as per roster the instant appeal has been listed before this Bench, i.e., D.B No.-II on 06.12.2025 and as per seriatim the matter has been heard on 18.08.2026 and, accordingly, the judgment has been reserved and today the judgment is being delivered.

5. It needs to mention herein that vide order dated 06.12.2025 this Court has appointed Mr. Sankalp Goswami, learned counsel as *Amicus* in this case. In addition, thereto, a notice was also issued to the appellants leaving it open to them to choose the counsel of their own choice also

6. Thereafter, the matter has come on Board on 18.08.2026 wherefrom it is evident that the present appellants had received their notice and the said notice has been shown to be received way back in the month of December, 2025 but no engagement of any counsel has been made on behalf of the present appellants. Since there is no engagement of learned counsel of the choice of the appellants and, as such, this Court has no option but to request the learned *Amicus* to assist the Court. This Court has heard the learned *Amicus* as well as the learned APP at length and, accordingly, the judgment has been reserved vide order dated 18.08.2026, for ready reference the order dated 18.08.2026 is being quoted hereunder as:

"1. Reference may be made to the order dated 06.12.2025 by which, in a situation of no representation on behalf of the appellants, this Court has appointed Mr. Sankalp Goswami, learned counsel as Amicus Curiae. In addition thereto, notice was also issued to the appellants leaving it open to the appellants to choose the counsel of their own choice also.

2. Perused the office note dated 18.08.2026 and found that the service report of the notice issued to the appellants has been received which are kept at Flag 'X'. It has been shown therein that the Appellant No.1 Kailash Yadav, Appellant No.3 Butan Yadav and Appellant No.4 Moti Yadav are dead while Appellant No.2 Mahagu Yadav, Appellant No.5 Ramrekha Yadav, Appellant No.6 Bindeshwar Dusadh and Appellant No.7 Akhilesh Singh have received their notice. The notice has been shown to be received way back in the month of December, 2025 but no engagement of any counsel has been made since there is no Vakalatnama on behalf of the surviving appellants.

3. The Appellant No.1 Kailash Yadav, Appellant No.3 Butan Yadav and Appellant No.4 Moti Yadav, since have died and there is no application on behalf of their legal heirs to sue the appeal as per the requirement of Section 394 Cr.P.C. (Section 435 B.N.S.S., 2023) and, as such, this Court is of the view that the appeal is to be abated so far as Appellant No.1 Kailash Yadav, Appellant No.3 Butan Yadav and Appellant No.4 Moti Yadav are concerned.

4. Accordingly, the appeal stands abated with respect to Appellant No.1 Kailash Yadav, Appellant No.3 Butan Yadav and Appellant No.4 Moti Yadav.

5. There is no engagement of counsel of the choice of the surviving appellants and, as such, this Court is having no option but to request Mr. Sankalp Goswami, learned Amicus to assist the Court.

6. Heard learned Amicus Curiae at length who has represented the Appellant No.2 Mahagu Yadav, Appellant No.5 Ramrekha Yadav, Appellant No.6 Bindeshwar Dusadh and Appellant No.7 Akhilesh Singh and Mr. Shailesh Kumar Sinha, learned Additional Public Prosecutor for the State.

7. Argument concluded.

8. Judgment reserved."

Factual Matrix

7. The prosecution story, in brief, as per the *fardbayan*, dated 29.08.1986, of the informant Parmeshwar Dusadh (PW-7) is that on 28.08.1986 at 8:00 P.M., one Yogender Singh and 20 to 25 unknown Naxalites came at the house of his nephew Rambilash Dusadh(deceased), at village Pipra and kidnapped and murdered him. Accused Yogender Singh used to come at the house of deceased) and was compelling him to become member of the Naxlite

party and also compelling the villagers to be the members of that very party, but the deceased had refused.

8. Informant further stated that on the day of occurrence on 28.08.1986, at about 7 A.M., in the morning, accused Yogendra Singh, had come to the house of the deceased and had a talk with Rambilash Dusadh(deceased), and the deceased served him bread, salt and chilli for breakfast and went to see off Yogendra Singh. Again, in the night of 28.08.1986, at about 8P.M., the said Yogender Singh along with other Naxalites, armed with gun and pistols, came to the house of Rambilash Dusadh (deceased), and asked Rambilash to come out from the house as they wanted to talk with him. Thereafter, Yogendra Singh and members of Naxalites party, took away Rambilash towards south of the village. Bindeshwar Paswan and the informant followed them but the Naxalites Yogender Singh sent back the informant whereas Bindeshwar Paswan accompanied with them.

9. Thereafter, the informant along with others set out night search for the Rambilash (deceased), but could not find him. When they went out to search for the Rambilash, again in the next morning, they found the dead body of Rambilash lying near a tree, his hands were tied and plenty of blood was there.

10. On the basis of the *fardbeyan* of the informant Hariharganj P.S. case no. 43/1986 dated 29.08.1986 was registered against the accused Yogender Singh and 60-70 Naxalites under sections 147/148/149/302 of I.P.C.

11. After investigation charge sheet was submitted against the 25 accused persons out of which 4 accused persons, namely, Yogendra Singh Yadav, Kameshwar Bhuiyan, Rupan Bhuiyan and Kameshwar Dusadh were shown absconding. After cognizance, the case was committed to the Court of Sessions.

12. Charges were framed against the accused persons including the appellants under sections 302/149 and 148 of the IPC to which they pleaded not guilty and claimed to be tried.

13. Trial commenced and the statements of the accused persons were recorded under Section 313 of Cr.P.C.

14. At the conclusion of trial, appellants were convicted under section 302/149 and section 148 of the Indian Penal Code and sentenced as aforesaid by the learned trial Court.

15. The aforesaid order of conviction and sentence is under challenge in this appeal.

Submission of the learned counsel for the appellants:

16. Learned counsel appearing for the appellants has taken the following grounds for interfering with the finding recorded by the learned trial Court in the impugned judgment:

(i) The prosecution has miserably failed to establish the charges said to be proved beyond all reasonable doubt.

(ii) It has been contended that the informant himself has admitted in the *fardbeyan* that the deceased already knew the accused and had served him bread, salt and chilli on the day of occurrence and in the night, they took away the deceased with him to recruit him into their Naxalite group and later on, his dead body was recovered. But the FIR was lodged against some unknown persons and the appellants have been falsely implicated in the case due to ulterior motive and, as such, the impugned judgment of conviction is bad in law.

(iii) It has been contended that the learned trial Court has committed a serious error while convicting the appellants under sections 302/149

IPC and under section 148 IPC without any proof of the charges levelled against them beyond reasonable doubt whereas in similar circumstances the learned trial Court has acquitted 12 other co-accused persons by giving benefit of doubt.

(iv) It has been contended that no TIP was conducted during trial due to which it is difficult to prove that who had committed the murder of the deceased as the informant (PW-7) himself has admitted in his *fardbeyan* that he had returned home after the Naxalites told him to go back and, as such, he did not see the occurrence as an eye witness.

(v) It has been contended that the prosecution witnesses are none other than the interested witnesses and there is lack of any positive evidence and, hence, conviction and sentence of the appellants are bad in law.

(vi) It has been contended that the Investigating Officer of the case has not been examined by the prosecution and, as such, prosecution has failed to establish the intention or motive behind the crime as alleged.

(vii) It has been contended that as per the *fardbeyan* of the informant, it was alleged that after the occurrence several villagers had assembled at the place of occurrence but none of them had stated to have seen the occurrence, but the learned trial Court has failed to taken into consideration the aforesaid fact.

(viii) It has been contended that the learned trial Court has committed serious error in law while considering the fact as well as law point involved in this case because none of the witnesses, i.e, P.W2, P.W3, P.W4, P.W5, P.W6 and P.W7 have fully supported the prosecution case and there is vital contradiction in the evidence of each other and they

have not stated the occurrence before the Investigating Officer, who has also not been examined during the trial.

17. The learned counsel for the appellants, based upon the aforesaid grounds, has submitted that the impugned judgment of conviction passed by the learned trial Court convicting the appellants under Sections 302/149 and 148 of the Indian Penal Code, therefore, is not sustainable in eyes of law and fit to be set aside.

Submission of the learned counsel for the State:

18. On the contrary, the learned counsel appearing for the State has defended the impugned judgment of conviction and order of sentence by taking the following grounds:

(i) The conviction under Sections 302/149 and 148 of the Indian Penal Code against the present appellants does not suffer from an error, since, ample evidence has been produced by the prosecution.

(ii) It has been contended that the informant P.W.-7 along with witnesses PW-2, PW-3, PW-4, PW-5 and PW-6 have supported the prosecution story as they are the eyewitness to the occurrence of kidnapping of the deceased and, therefore, appellants have been rightly convicted under section 302/149 and section 148 of the Indian Penal Code and, as such, the impugned judgment does not require any interference.

(iii) The argument has also been advanced that P.W.-8 (Doctor) has supported the prosecution version which has been supported by the medical evidence.

19. The learned State counsel, based upon the aforesaid premise, has submitted that the impugned judgment passed against the present appellants does not suffer from any error and same does not require any interference, hence, the present criminal appeal is fit to be dismissed.

Analysis

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

21. We have also gone through the testimonies of the witnesses as available in the Trial Court records as also the exhibits appended therewith.

22. Learned trial Court, based upon the testimonies of witnesses, has passed the impugned judgment of conviction under Section 302/149 and section 148 of the Indian Penal Code and sentenced the appellants as referred hereinabove.

23. This Court, before considering the argument advanced on behalf of the parties, is now proceeding to consider the testimonies of witnesses which have been recorded by the learned trial Court.

24. It is evident from the record that in order to substantiate the case, the prosecution has altogether examined 10 witnesses out of whom P.W.-7 Parmeshwar Ram, is the informant of the case; PW-1 Safique Khan is the formal witness; PW-2 Tapeshwari Devi; PW-3-Ramjanam Prasad; PW-4 Inderdeo Rabidas; PW-5 Ram Vinaya Pandey; PW- 6 Dhani Devi, is the wife of the deceased; PW-8 Dr. P.L. Pandey, who conducted postmortem over the dead body of the deceased; PW-9 Awadesh Mishra and PW-10 Shyamudit Paswan, both are the inquest report witnesses.

25. PW1-Safique Khan is constable no. 469, who is a formal witness. He has proved the FIR which was recorded by then then Officer-in-charge of Hariharganj PS, which has been marked as Ext.-1.

26. PW-2 Tapeshwari Devi, has stated in her evidence that on the date and time of occurrence, at about 7 PM, she was sitting at her door where deceased Rambilash and informant Parmeshwar were also sitting. In the meantime, accused Bindeshwar, Parmeshwar, Kameshwar, Moti, Mahagu and two unknown persons came and they took away deceased Rambilash. She has further stated that all the accused were armed with gun. Rambilash did not come back and he was murdered. They went to see the dead body and found neck of the deceased was cut and his both hands were tied. During her evidence, she identified accused Moti, Bindeshwar and Kameshwar and she also claimed to identify other accused, who were present on the day of occurrence. In her cross examination, PW-2 stated that the police took her statement after two days of occurrence.

27. PW-3 Ramjanam Prasad has stated in his evidence that the incident occurred two and half years ago at about 7 PM. At that time, he was sitting in the door of Ramjee Lal. He saw that 20-25 persons armed with gun came there out of whom he identified Bindeshwar, Devendra, Yogender, Dahrm Singh, Mithilesh Singh, Moti Yadav, Mahagu Yadav, Ramrekha Yadav, Kailash Yadav and Buttan Yadav. The aforesaid persons asked Rambilash to accompany them but he refused and thereafter on the order of accused Yogender, other accused persons tied his hands and legs. PW-3 further stated that seeing hands and legs of Rambilash being tied, he fled away from there due to fear. He heard about the murder of Rambilash, then the information was given to the chowkidar. The dead body of Rambilash was found in Goriyatand

which was situated at a distance of one *kosh* from the house of the deceased. The neck of the deceased was found chopped off. PW3 further deposed that he had given his statement before the Magistrate and had participated in the Test Identification Parade. He had identified all the accused persons, who belonged to Village Tetaria, where he was doing his cultivation.

28. During cross examination, PW3 has deposed that accused persons had taken away, Rambilash, in his presence and his hands and legs were tied. He fled away due to fear and informed 2-4 person about the occurrence. He has stated that he gave statement before the Magistrate under section 164 Cr.P.C and he took part in T.I Parade.

29. PW-4 Indradeo Rabidas has stated in his evidence that on the day of occurrence at 7.30 P.M., he had gone to ease himself. He saw that 10-15 persons took away Rambilash towards South of forest and out of them he identified Dharam Singh, Mithilesh Singh, Kameshwar Bhuiyan, Bihdhshwar Paswan, Moti Yadav and Rupan Bhuiyan. Later on, he came to know that the headless body of Ram Bilash was found across the river in the forest far from the village.

30. During cross-examination, PW-4 stated that police had recorded his statement after one month of the occurrence and he had stated before the police about the name of the accused persons. At para-5 of his cross examination, he stated that his statement was recorded before the Magistrate and he took part in T.I Parade and after recording of his statement, T.I Parade was conducted.

31. PW-5 Ram Vinay Pandey has stated in his evidence that on the day of occurrence, at about 7-7.30 PM, he was in his village. He saw that 10-12 persons came with torch and out of them he identified accused Yogender Yadav, Kameshwar Yadav, Rupan and Bindeshwar. The aforesaid accused

persons took away the deceased with them and on the next day he came to know that Rambilash had been murdered. He further stated that before ten days of the occurrence, accused Bindeshwar had threatened Rambilash(deceased) to kill him.

32. During his cross examination, PW-5 had stated that he had told to the police that on the day of occurrence, Bindeshwar and 10-12 accused persons arrived with torch and Bindeshwar had lit torch light.

33. PW-6 Dhani Devi is the wife of the deceased. She has stated in her evidence that her husband had been murdered 2 ½ years ago. On the day of occurrence, her husband had brought the medicine of calf and came to house at about 7 PM. Her husband was surrounded by 7-8 persons, namely, Bindeshwar Dusadh, Moti, Mahagu, Kameshwar Dusadh, Kameshwar Bhuian, Jogender, Bindeshwar Dusadh and other accused persons. They told to her husband that they wanted to have some talk with him whereupon her husband had told them that since his calf was sick, hence, he will not go with them. Thereafter, accused Jogender, Moti and Bindeshwar had order to tie her husband and all of them took away her husband. She has stated that at that time she raised alarm but Bindeshwar chided her and no villagers came there as the accused persons had threatened them. PW-6 has further stated that when her husband did not return back, she asked accused Bindeshwar about her husband then he told her that he would come back by 4 PM on the next day and thereafter, accused Bindeshwar took them to the dead body of her husband. The dead body of her husband was found lying on a place known as Goraiyatand which was at a distance of two *kosh* from her house. She has also stated both hands of her husband were tied from behind and his neck was chopped up. PW-6 had identified accused

persons, namely, Buttan, Moti and also identified the other accused persons who were present at the time of occurrence.

34. During cross examination, PW-6 has stated that police had recorded her statement and inquired about the occurrence on the very next day of occurrence when her husband had been taken away by the accused persons. Her statement was recorded before the Magistrate. She knew Moti Yadav, 10 years before the occurrence. When the accused persons took away her husband thereafter, she searched out him whole night and at that time Parmeshwar and Kailash were with her.

35. PW-7 Parmeshwar Ram, is the informant of the case. Informant had stated in his evidence that on the day of occurrence, in the morning, accused Yogendra and Kameshwar Dusadh, came at the house of Bindeshwar. Informant further stated that at 7.30 PM, accused Yogendra, Kameshwar Dusadh, and Moti came at door of Rambilash(deceased) and said Rambilash that they had to talk something, but, Rambilash (deceased), was not ready to go. Informant further stated that Yogendra Singh was a member of Naxlite party and Rambilash (deceased), refused to join the party. Accused Mahagu and Roopan also came there and he (Informant) and Bindeshwar, were also there. Informant further stated that he accompanied them up to stairs and there accused persons Dharm Singh, Mithlesh Singh and Akhilesh Singh and other persons were also there. Accused persons said the informant to return back, then, the informant returned back and gave information to others. Informant and other family members, searched for Rambilash (deceased), whole night and Bindeshwar returned back in the night at about 1 A.M., and told them that they will meet Rambilash (deceased), at about 4 P.M. Informant further stated that

aforesaid Bindeshwar showed the body of Rambilash (deceased), his neck was cut and the dead body was at Goriyatarnd.

36. Informant further stated that he gave information at the police station and *daroga* had recorded his statement and read over and explained to him, over which he had put his thumb impression. Informant had identified accused Kameshwar Dusadh, Moti Yadav but declined to identify accused Ram Parvesh Yadav. This witness has claimed to identify other accused on whose behalf representation petition was filed.

37. In his cross-examination, informant stated that he had told the name of Akhilesh Singh, to the *daroga*. Informant denied the suggestion that he did not name Yogendra. It was dark night and he had identified other accused persons apart from Yogendra. He had seen Akhilesh. He was 10 steps behind Rambilash and he was alone. Associates of accused Yogendra Singh, went away towards south and he was coming from north. Accused persons did not hide their face and accused persons were armed with gun and chopper. Later on, villagers came, then, he stated about Akhilesh to them.

38. Informant further stated that he had told the name of Kameshwar before police. He has denied the suggestion that he did not take the name of Kameshwar before the Magistrate. Informant further stated that on the day of occurrence, he had seen Kameshwar with the accused Yogender. They did not inform at the police station in night, about the kidnapping of the deceased. He had stated that after kidnapping they had followed the accused persons to some distance. At the night of the occurrence, he did not try to go to the police station rather he searched out the deceased whole night.

39. P.W.-8 Dr. P.L. Pandey, had conducted postmortem examination of the

deceased. He had stated in his evidence that on 29.08.1986 during his posting at Sadar Hospital as Medical Officer, he had performed post mortem examination of dead body of deceased, and found the following ante mortem injuries on his body:

> *(i) Incised wound 12" long extending from above the right sterno claricular joint, covering the front of the right part of the neck and whole of the back of neck leaving a tag of skin of the left and back part of the neck. This wound is in continuation of the wound 6" long covering the left side of the neck and left part of the front neck running at a level ½" above the previous wound over the left side;*
>
> *(ii) The head is attached with rest of the body by means of only a tag of skin;*
>
> *(iii) Rigor mortis was found present in the lower limbs only. Decomposition has also started in the body.*

40. Doctor opined that the death was caused due to shock and hemorrhage as a result of the aforesaid injuries caused by sharp cutting weapon. The time elapsed since the death was within 18 to 48 hours. Doctor had identified the postmortem report in his writing and signature which has been marked as Ext.-2.

41. PW-9 Awadhesh Mishra is the inquest report witness, who had witnessed the seizure of the dead body of Rambilash. He has stated that the dead body of Rambilash was seized in his presence and an inquest report was prepared in his presence over which he had put his signature and his signature on the inquest report was marked as Ext.-3.

42. PW-10 Shyam Udit Paswan is also an inquest report witness, who had signed over the inquest report and his signature on the inquest report has been marked as Ext.- Ext.3/1. In cross examination, he stated that he had gone to the place of occurrence to see the dead body and distance of his house from the place of occurrence is two miles.

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

i. *Whether the prosecution has succeeded in establishing, beyond reasonable doubt, the factum of kidnapping of Rambilash (deceased).*
ii. *Whether, upon appraisal of the evidentiary record, the case is to be adjudged as one resting upon circumstantial evidence; and if so, whether the chain of circumstances stands complete and unbroken.*
iii. *Whether the learned Trial Court, in convicting the appellant, has committed any illegality, irregularity, or perversity warranting appellate interference.*

44. Before proceeding further, it would be fruitful to recount the facts of the present case. In the present case, 19 accused persons faced trial out of which 12 accused persons were acquitted and 7 accused persons were convicted by the learned trial court.

45. The aforesaid 7 convicted accused persons had filed the present appeal out of which 3 appellants, namely, Kailash Yadav, Butan Yadav and Moti Yadav, died during pendency of this appeal, hence, there appeal stands abated by order of this Court dated 18.08.2026, as has been discussed in the preceding paragraph.

Accordingly, in the present matter, the determination of guilt or innocence of the four surviving appellants, namely, Mahagu Yadav, Ramrekha Yadav, Bindeshwar Dusadh, and Akhilesh Singh, falls for adjudication before this Court.

Re: issue no. (i)

46. This issue is whether prosecution has proved the factum of kidnapping of Rambilash (deceased).

47. To adjudicate upon the issue relating to the alleged kidnapping of Rambilash (deceased), this Court proceeds to undertake a meticulous scrutiny of the testimonies of P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, and P.W.7 (informant).

48. PW-7 Parmeshwar Ram, is the uncle of the deceased and informant of the case. Informant had stated in his evidence that on the day of occurrence, in the morning, accused Yogendra and Kameshwar Dusadh, came at the house of accused Bindeshwar. Informant further stated that at 7.30 P.M., accused Yogendra, Kameshwar Dusadh, and Moti came at door of Rambilash(deceased) and said to Rambilash that they had to talk with him, but, Rambilash (deceased), was not ready to go. Informant further stated that Yogendra Singh was a member of Naxalite party and Rambilash (deceased), refused to join the Naxalite party. Accused Mahagu and Roopan also came there and he (Informant) and Bindeshwar, were also there. Informant further stated that he accompanied them up to stairs and there accused persons Dharm Singh, Mithlesh Singh and Akhilesh Singh and other persons were also there. Accused persons said the informant to return back, then, the informant returned back and gave information to others. They, searched for Rambilash (deceased), whole night.

49. In his cross-examination, informant stated that he had told the name of Akhilesh Singh, to the *daroga*. Informant denied the suggestion that he did not name Yogendra. It was dark night and he had identified other accused persons apart from Yogendra. He had seen Akhilesh. He was 10 steps behind Rambilash (deceased) and he was alone. Associates of accused Yogendra Singh, went away towards south and he was coming from north. Accused persons did not hide their face and accused persons were armed with gun and chopper. They

did not inform at the police station in night, about the kidnapping of the deceased. He had stated that after kidnapping they had followed the accused persons to some distance.

50. PW2-Tapeshwari Devi, has stated in her evidence that on the date and time of occurrence, at about 7 PM, she was sitting at her door and Rambilash (deceased) and informant Parmeshwar were also sitting. In the meantime, accused Bindeshwar, Parmeshwar, Kameshwar, Moti, Mahagu and two unknown persons came and they took away deceased Rambilash. She has further stated that all the accused were armed with gun.

51. PW3-Ramjanam Prasad has stated in his evidence that the incident occurred two and half years ago at about 7 PM. At that time, he was sitting in the door of Ramjee Lal. He saw that 20-25 persons armed with gun came there out of whom he identified Bindeshwar, Devendra, Yogender, Dahrm Singh, Mithilesh Singh, Moti Yadav, Mahagu Yadav, Ramrekha Yadav**,** Kailash Yadav and Buttan Yadav. The aforesaid persons asked Rambilash(deceased) to accompany them but he refused and thereafter on the order of accused Yogender, other accused persons tied his hands and legs and after seeing this he fled away from there out of fear.

52. PW-4 Indradeo Rabidas has stated in his evidence that on the day of occurrence at 7.30 P.M., he had gone to ease himself. He saw that 10-15 persons taking away Rambilash towards South of a forest and out of them he identified Dharam Singh, Mithilesh Singh, Kameshwar Bhuiyan, Bihdhshwar Paswan, Moti Yadav and Rupan Bhuian.

53. PW-5 Ram Vinay Pandey had deposed that on the day of occurrence, at about 7-7.30 PM, he was in his village. He saw 10-12 persons arrived with torch and out of them he identified accused Yogender Yadav, Kameshwar Ram,

Rupan and Bindeshwar. The aforesaid accused persons took away Rambilash (deceased) with them.

54. PW-6 Dhani Devi is the wife of the deceased. She has deposed that on the day of occurrence, her husband was surrounded by 7-8 persons, namely, Bindeshwar Dusadh, Moti, Mahagu, Kameshwar Dusadh, Kameshwar Bhuian, Jogender, and other accused persons. Accused persons told her husband that they wanted to have some talk with him whereupon her husband had told them that since his calf was sick, hence, he will not go with them. Thereafter, Yogender, Moti and Bindeshwar had order to tie her husband and all of them took away her husband. She has stated that at that time she raised alarm but Bindeshwar chided her and no villagers came there as the accused persons had threatened them.

55. Hence, upon a cumulative appreciation of the testimonies of the Informant (P.W.7) along with P.W.2, P.W.3, P.W.4, P.W.5, and P.W.6, this Court finds that all these witnesses have consistently deposed that on the date of occurrence, at about 7:00–7:30 P.M., they had witnessed the incident of kidnapping of Rambilash (deceased) by the accused persons.

56. Accordingly, this Court holds that the prosecution has successfully established the factum of kidnapping of Rambilash (deceased) at the hands of the accused persons.

57. Accordingly, issue No.(i) has been answered.

Re: issue no.(ii)

58. This issue is whether, upon appraisal of the evidentiary record, the case is to be adjudged as one resting upon circumstantial evidence; and if so, whether the chain of circumstances stands complete and unbroken.

59. The learned Trial Court, in the impugned judgment, observed that P.Ws.2 to 7 were the eye-witnesses to the occurrence of the kidnapping of the deceased, and that on the following morning, subsequent to the said kidnapping, the dead body of the deceased was recovered. On the strength of such findings, the learned Trial Court proceeded to convict the appellants for the offence of murder of the deceased under Sections 302/149 and 148 of the Indian Penal Code.

60. Learned counsel for the appellants has submitted that the appellants were not named in the First Information Report, nor was any Test Identification Parade conducted to ascertain their complicity. It is further urged that the informant (P.W.7) subsequently introduced the names of the appellants, which, according to the defence, casts a serious doubt upon the veracity of the prosecution case.

61. In the present case, it is admitted fact that there is no eye witness to the murder of Rambilash (deceased).

62. Before we analyze and appreciate the circumstances that have weighed with the trial Court, we think it apposite to refer to certain authorities pertaining to delineation of cases that hinge on circumstantial evidence.

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

should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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

65. The Hon'ble Apex Court while laying down such proposition in the said case has considered the factual aspect revolving around therein and while considering the fact has only found the incriminating evidence against the appellant was his pointing the place where the dead body of the deceased had been thrown which the Hon'ble Apex Court has not considered to be circumstantial evidence though undoubtedly it raises a strong suspicion against the appellant. The Hon'ble Apex Court while coming to such conclusion has observed that even if he was not a party to the murder, the appellant could have

come to know the place where the dead body of the deceased had been thrown. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In that pretext, the law has been laid down at paragraph-9 thereof, which reads as under:

> *"9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again, those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."*

66. It is, thus, evident from the close analysis of the aforesaid judgments, the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(iii) the circumstances should be of a conclusive nature and tendency,

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of

the accused and must show that in all human probability the act must have been done by the accused.

67. The Hon'ble Apex Court has reiterated the said principle again in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116*** holding all the above five principles to be the golden principles which constitute the panchsheel of the proof of a case based on circumstantial evidence. The Hon'ble Apex Court in the said case as under paragraph-155, 156, 157, 158 and 159 has been pleased to hold that if these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. Paragraphs-155, 156, 157, 158 and 159 of the said judgment read as under:

> *"155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus: "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."*
>
> *156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".*
>
> *157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500] Lagu case [AIR 1960 SC 500] as also the principles enunciated by this Court in Hanumant case [(1952) 2 SCC 71] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases -- Tufail case [(1969) 3 SCC 198] , Ramgopal case [(1972) 4 SCC 625] , Chandrakant Nyalchand Seth v. State of Bombay [Criminal Appeal No 120 of 1957,], Dharambir Singh v. State of Punjab [Criminal Appeal No 98 of 1958,]. There are a number of other cases where although Hanumant case [(1952) 2 SCC] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem*

Ahmed v. Delhi Administration [(1974) 3 SCC 668, 670] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607,] , Shankarlal Gyarasilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405,] -- a five-Judge Bench decision.

158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: "But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. such absence of explanation or false explanation would itself be an additional link which completes the chain."

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation."

68. The foremost requirement in the case of circumstantial evidence is that the chain is to be completed. In ***Padala Veera Reddy v. State of A.P. [1989 Supp (2) SCC 706*** the Hon'ble Apex Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

"10. ... (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

69. In ***Ram Singh v. Sonia (2007) 3 SCC 1,*** while referring to the settled proof pertaining to circumstantial evidence, the Hon'ble Apex Court reiterated the principles about the caution to be kept in mind by court. It has been stated therein as follows:

> *"39. ... in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts."*

70. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

71. Re-adverting to the facts of the present case. On going through the testimony of the Informant (PW-7) along with the testimony of PW-2, PW-3, PW-4, PW-5 and PW-6, this Court finds that all these witnesses had seen the occurrence of kidnapping of the Rambilash (deceased), as has been discussed in issue no.(i).

72. This Court now proceeds to examine, on the basis of the oral testimonies as well as the medical evidence adduced, whether the death of the deceased was homicidal in nature.

73. P.W.6 and P.W.7 (informant), being the wife and uncle respectively of Rambilash (deceased), have deposed that upon seeing the body of the deceased, they found that his neck had been chopped.

74. Again, in the inquest report, it is noted that neck of the deceased was cut and, in the inquest, report it was also noted that neck was cut by a sharp weapon.

75. Further, Dr. P.L. Pandey (PW-8), who had conducted postmortem examination had found *ante-mortem* injuries on the person of Rambilash (deceased). The doctor had found incised wound 12" long extending from above the right sterno clavicular joint. In the postmortem report the doctor had also noted that head of the deceased was attached with rest of the body by means of only a tag of skin. The doctor had noted following ante mortem injuries, in the Post Mortem Report Ext.-2, on the person of the deceased-

> *i. Incised wound 12" long extending from above the right sterno clavicular joint, covering the front of the right part of the neck and whole of the back of neck leaving a tag of skin of the left and back part of the neck. This wound is in continuation of the wound 6" long covering the left side of the neck and left part of the front neck running at a level ½" above the previous wound over the left side;*
>
> *ii. The head is attached with rest of the body by means of only a tag of skin;*

76. Hence, from the testimony of the witnesses PW-6 and PW-7, inquest report and Post Mortem Report Ext.-2, it is proved that the death of Rambilash (deceased) was homicidal.

77. Since motive, in a case resting upon circumstantial evidence, constitutes a vital link in the chain of proof, this Court now proceeds to examine the motive behind the occurrence of the murder of Rambilash (deceased).

78. On going through the written report and the evidence of the PW-7 (informant), this Court finds that accused Yogendra, was related to Naxalite

Party and Yogendra, used to come at the house of Rambilash Paswan(deceased) and was compelling him to become member of the Naxalite party and also compelling the villagers to be the members of that very party. But Rambilash (deceased), had refused to join the Naxal Party. Hence, on the day of occurrence, Yogendra along with other accused persons had come to the house of Rambilash (deceased), and had taken away him and later on, his dead body was found.

79. Hence, the refusal by Rambilash (deceased) to join the Naxalite Party constituted the motive behind his kidnapping and subsequent murder at the hands of the accused persons.

80. Thus, from the aforesaid evidence, it is evident that the deceased was last seen in the captivity of the accused persons, and that after the deceased was taken away by the appellants, his dead body, with the neck found chopped, was recovered on the following morning, i.e., within hours of the alleged abduction by the accused persons.

81. In the aforesaid context, there is no dispute about the settled position of law that the conviction on the basis of last seen theory, the proper consideration is to be there by the learned trial court on the basis of principle of completion of chain and the moment the chain will break, there cannot be conviction on the basis of last seen, since, it is based upon circumstantial evidence.

82. Further, a theory of "accused last seen in the company of the deceased" is a strong circumstance against the accused while appreciating the circumstantial evidence. In such cases, unless the accused is able to explain properly the material circumstances appearing against him, he can be held guilty for commission of offence for which he is charged.

83. The Hon'ble Apex Court in the case of ***Satpal v. State of Haryana, (2018) 6 SCC 610*** has observed that when there is no eyewitness to the occurrence, but only circumstances coupled with the fact of the deceased having been last seen with the appellant, the Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence.

84. It has further been observed by the Hon'ble Apex Court in the aforesaid judgment that "last seen" may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same.

85. This Court, after referring the impugned judgment and adverting to the testimony as recorded in course of the trial of the witnesses produced on behalf of the prosecution as well as documentary evidence has found that in the present case prosecution has proved the chain of circumstances viz-

I. Rambilash (deceased), was compelled by the accused persons to join the Naxalite Party, but the deceased had refused to join the Naxalite Party and due to this reason, he was kidnapped and

murdered by the accused persons. So, Prosecution has established motive behind the murder of Rambilash (deceased).

II. Witnesses PW-2, PW-3, PW-4, PW-5, PW-6 and PW-7(Informant) had witnessed the incidence of kidnapping of Rambilash (deceased), i.e., part of the occurrence.

III. the deceased was last seen in the captivity of the accused persons, and that after the deceased was taken away by the appellants, his dead body, with the neck found chopped, was recovered on the following morning, i.e., within hours of the alleged abduction by the accused persons.

IV. After the kidnapping of Rambilash (deceased), his neck was chopped and he was murdered. Homicidal death of the deceased is supported by the postmortem report Ext.-2, wherein doctor had noted ante mortem injuries and found that neck of the deceased was cut by a sharp weapon and the head was attached with rest of the body by means of only a tag of skin.

86. Hence, from the evidence laid by the prosecution, this Court comes to the conclusion, that prosecution has proved the facts that refusal by Rambilash (deceased), to join the Naxalite Party, motivated the accused persons for his kidnapping. The occurrence of kidnapping of Rambilash (deceased), was seen by the PW-2, PW-3, PW-4, PW-5, PW-6 and PW-7(Informant) and after the kidnapping of Rambilash (deceased), his murder took place, which is supported by the medical evidence of the Doctor (PW-8), who in his postmortem report Ext.-2, had found ante mortem injuries on the body of Rambilash (deceased). Doctor had found that neck of the deceased was cut by a sharp weapon and the head was attached with rest of the body by means of only a tag of skin.

87. So, in the present case, prosecution has established the chain of circumstances, which are complete from which the conclusion of guilt may be drawn against the accused persons.

88. Accordingly, issue no.(ii) has been answered.

Re: issue no.(iii)

89. This issue is whether the learned Trial Court, in convicting the appellant, has committed any illegality, irregularity, or perversity warranting appellate interference.

90. In regard to this issue, this Court now proceeds to examine whether the four surviving appellants, namely Mahagu Yadav, Ramrekha Yadav, Bindeshwar Dusadh, and Akhilesh Singh, were duly identified by the prosecution witnesses during the occurrence of the kidnapping of Rambilash (deceased).

91. Before, proceeding further it needs to refer herein that PW-3 had deposed in his examination-in-chief that he had given his statement under Section 164 Cr.P.C., before the Magistrate and had participated in the Test Identification Parade. Likewise, PW-6 Dhani Devi had also deposed in her cross-examination that her statement was recorded before the Magistrate.

92. This Court on going through the record, finds that depositions of Tapeshwari Devi (PW-2), Ram Vinaya Pandey (PW-5), Inderdeo Rabidas (PW-4), Ramjanam Prasad (PW-3) and Parmeshwar Ram (PW-7), recorded under Section 164 of the Cr.P.C., and TIP Chart, are on record.

93. But, surprisingly both these documents i.e. statement of the witnesses under section 164 of Cr.P.C. and TIP chart, were not exhibited.

94. The fact remains that statement of the witnesses under section 164 of Cr.P.C., and TIP chart, were not formally proved and exhibited.

95. Hence, this Court after perusing the impugned judgment finds that in convicting the accused persons/appellants, the learned trial Court had rightly ignored the Test Identification Parade and based its findings only on the basis of substantive oral evidence of the prosecution witnesses.

Re: identification of appellant no.1 Mahagu Yadav

96. Regarding identification of the appellant no.1 Mahagu Yadav, this Court finds that PW-2 Tapeshwari Devi, had identified appellant no.1 Mahagu Yadav, as one of the accused involved in the kidnapping Rambilash(deceased). She had deposed that on the date and time of occurrence, at about 7 PM, when she was sitting at her door where Rambilash(deceased) and Parmeshwar (PW-7 informant) were also there, in the meantime, accused Bindeshwar, Parmeshwar, Kameshwar, Moti, Mahagu and two unknown persons came there and they took away Rambilash (deceased).

97. Further, PW-3 Ramjanam Prasad, had also identified appellant Mahagu Yadav, as one of the accused persons involved in kidnapping of Rambilash(deceased). PW3-Ramjanam Prasad had deposed that on the day of occurrence at 7 P.M., 20-25 persons armed with gun came, out of whom he identified Bindeshwar, Devendra, Yogender, Dahrm Singh, Mithilesh Singh, Moti Yadav, Mahagu Yadav, Ramrekha Yadav**,** Kailash Yadav and Buttan Yadav.

98. Again, PW-6 Dhani Devi (wife of the deceased), had also identified appellant Mahagu Yadav, as one of the accused, who had surrounded her husband. She had deposed that her husband was surrounded by 7-8 persons, namely, Bindeshwar Dusadh, Moti, Mahagu, Kameshwar Dusadh, Kameshwar Bhuian, Jogender, Bindeshwar Dusadh and other accused persons.

99. Further, Informant Parmeshwar Ram (PW-7), had also deposed about presence of appellant Mahagu Yadav, at the place of occurrence.

100. Hence, from the evidence of PW-2, PW-3, PW-6 and PW-7, it can be concluded that these witnesses had identified appellant no.1 Mahagu Yadav amongst the accused persons involved in the kidnapping of the Rambilash (deceased).

Re: identification of appellant no.3 Bindeshwar Dusadh

101. Regarding identification of the appellant no.3 Bindeshwar Dusadh, this Court finds that PW-2 had identified appellant no.3 Bindeshwar Dusadh, as one of the accused involved in the kidnapping of Rambilash (deceased). She deposed that on the date and time of occurrence, at about 7 PM, when she was sitting at her door where Rambilash(deceased) and Parmeshwar (PW-7 informant) were also there, in the meantime, accused Bindeshwar, Parmeshwar, Kameshwar, Moti, Mahagu and two unknown persons came there and they took away Rambilash (deceased).

102. Further, PW3-Ramjanam Prasad had also identified appellant no.3 Bindeshwar Dusadh, as one of the accused persons involved in kidnapping Rambilash(deceased). PW3-Ramjanam Prasad had deposed that on the day of occurrence at 7 P.M., 20-25 persons armed with gun came, out of whom he identified Bindeshwar, Devendra, Yogender, Dharm Singh, Mithilesh Singh, Moti Yadav, Mahagu Yadav, Ramrekha Yadav**,** Kailash Yadav and Buttan Yadav.

103. Then, PW-4 Indradeo Rabidas had also witnessed appellant no.3 Bindeshwar Dusadh, as one of the accused persons, who was taking away Rambilash(deceased), towards South of a forest.

104. Again, PW-6 Dhani Devi (wife of the deceased), had also identified appellant no.3 Bindeshwar Dusadh, as one of the accused, who had surrounded her husband. She had deposed that her husband was surrounded by 7-8 persons, namely, Bindeshwar Dusadh, Moti, Mahagu, Kameshwar Dusadh, Kameshwar Bhuian, Jogender, Bindeshwar Dusadh and other accused persons. PW-6 had also deposed that Bindeshwar was one of the accused persons who had ordered to tie her husband and told to take away her husband. She has stated that at that time she raised alarm but Bindeshwar chided her.

105. Further, Informant Parmeshwar Ram (PW-7), had deposed about presence of appellant no.3 Bindeshwar Dusadh, during the kidnapping of the deceased. Informant had also deposed that after the kidnapping of Rambilash (deceased), Informant and other family members, searched for Rambilash (deceased), whole night. Accused/appellant Bindeshwar returned back in the night at about 1A.M., and told them that they will meet Rambilash (deceased), at about 4 P.M. Informant further stated that aforesaid Bindeshwar showed the body of Rambilash (deceased), to the wife (PW-6) of the Rambilash (deceased).

106. Hence, on a cumulative consideration of the evidence of P.W.2, P.W.3, P.W.4, P.W.6, and P.W.7, it stands proved that these witnesses had identified appellant no.3, Bindeshwar Dusadh, as one of the accused persons involved in the kidnapping of the deceased.

Re: identification of appellant no.4 Akhilesh Singh

107. Informant Parmeshwar Ram (PW-7), had deposed about the presence of appellant no.4 Akhilesh Singh, at the night of the occurrence during kidnapping of the Rambilash (deceased). Informant had identified appellant no.4 Akhilesh Singh, which is evident from his examination-in-chief, wherein informant deposed that he (i.e. informant) accompanied up to stairs and there

accused persons, Dharm Singh, Mithlesh Singh and Akhilesh Singh and other persons were also there.

108. In his cross-examination also, the informant had deposed that he had told the name of Akhilesh Singh, to the *daroga*. Further, at Paragraph-8, informant had specifically deposed that he had seen Akhilesh and at paragraph-11, informant had deposed that when villagers came, then, he stated about Akhilesh, to them.

109. Hence, informant (PW-7), had identified appellant no.4 Akhilesh Singh, amongst the other accused persons, who was involved in the kidnapping of the Rambilash (deceased).

Re: identification of appellant no.2 Ramrekha Yadav

110. From the impugned judgment, this Court finds that learned trial court had convicted the accused/appellant Ramrekha Yadav, on the sole identification of PW-3.

111. This Court has also gone through the evidence of prosecution witnesses and finds that apart from PW-3, none of the witnesses had identified the accused/appellant Ramrekha Yadav, during the kidnapping of the deceased.

112. This Court finds that identification of appellant no.2 Ramrekha Yadav, is not so as strong as in case of the remaining other appellants, namely, Mahagu Yadav, Bindeshwar Dusadh and Akhilesh Singh, as discussed in the preceding paragraph, reason being that appellant no.1- Mahaghu Yadav and appellant no.3-Bindeshwar Dusadh, were identified by as many as four witnesses and the involvement of appellant no.4-Akhilesh Singh, during kidnapping of Rambilash (deceased), was established in the examination-in-chief and cross-examination of the informant(PW-7).

113. Hence, in the facts and circumstances of the present case, this Court finds that reliance solely upon the identification made by P.W.3, for the purpose of convicting appellant no.2- Ramrekha Yadav, would not be safe in law.

114. Summing up, this Court comes to the considered conclusion that, in the present case, appellants, namely, Mahagu Yadav, Bindeshwar Dusadh and Akhilesh Singh were sufficiently identified by the prosecution witnesses. Insofar as the identification of appellant no.2, Ramrekha Yadav, is concerned, this Court finds that such identification rests on weak and unreliable footing, and hence, he cannot be said to have been sufficiently identified.

115. Accordingly, issue No.3 has been answered.

116. Learned Counsel for the appellants has contended that no TIP was conducted during trial due to which it is difficult to prove that who had committed the murder of the deceased.

117. In this regard, this Court while answering the issue no.(iii), has noted that TIP chart is on record, but, TIP chart was not exhibited and hence, TIP chart was not formally proved.

118. But, from the deposition PW-3 this Court finds that during the trial defence had knowledge about the TIP chart as PW-3 had stated in his examination-in-chief that he had participated in the Test Identification Parade and at Paragraph-23 of his cross-examination, question was also put to him by the defence, relating to the TIP Chart.

119. Hence, when it was within the knowledge of the defence that Test Identification Parade of the accused persons were held and if defence had wished to use the TIP chart for defending their case, then, defence, could have pointed before the learned trial Court that TIP chart was not been exhibited.

120. Be that as it may, in the present case, the appellants, namely, Mahagu Yadav, Bindeshwar Dusadh and Akhilesh Singh, were sufficiently identified by the witnesses as been specifically answered by this Court in issue no(iii).

121. Hence, contention of the learned *Amicus* appearing for the appellants that no TIP was conducted during trial due to which it is difficult to prove that who had committed the murder of the deceased, is not tenable.

122. Further, non-examination of the Investigating Officer of the case has also not caused prejudice to the appellants as factum of homicidal death of the deceased is proved while dealing issue no.(ii). Again, PW-9 one of the witnesses to the inquest report had deposed that police had recovered the dead body in his presence and the other witness to the inquest report PW-10, had deposed that police had prepared the inquest report in his presence.

Conclusion:

123. From the foregoing discussion, this Court is of considered view that prosecution has proved the charges under Section 302/149 and Section 148 of the Indian Penal Code against the appellants, namely, Mahagu Yadav, Bindeshwar Dusadh and Akhilesh Singh, beyond reasonable doubt. Hence, impugned judgment of conviction and order of sentence passed against them requires no interference by this Court.

124. Accordingly, the impugned judgment of conviction dated 29.08.2000 and the order of sentence dated 31.08.2000, passed by the learned 3rd Additional Sessions Judge, Palamau in Sessions Trial No. 256 of 1988 whereby and whereunder the appellants, namely, Mahagu Yadav, Bindeshwar Dusadh and Akhilesh Singh, have been convicted under section 302/149 and section 148 of the Indian Penal Code, are hereby sustained and upheld.

125. Consequent upon dismissal of the appeal, appellants, namely, Mahagu Yadav, Bindeshwar Dusadh and Akhilesh Singh, since are enjoying the suspension of sentence after order passed by this Court directing to release them during pendency of the appeal, the bail bond of these appellants are hereby cancelled and these appellants are directed to surrender before the learned trial court for serving out the sentence passed against them.

126. Needless to say, that if the appellants will not surrender, the trial Court will take endeavors for securing custody of the appellants to serve out the sentence as inflicted by the learned trial court.

127. So, far as conviction of appellant no.2 Ramrekha Yadav, is concerned, this Court is of considered view that benefit of doubt may be given to him as his identification does not meet the required standard of quality.

128. Hence, impugned judgment of conviction and Order of sentence, passed against the appellant, namely, Ramrekha Yadav, is hereby quashed and set aside.

129. Appellant-Ramrekha Yadav who is on bail, is discharged from the liabilities of his bail bonds.

130. Accordingly, with the aforesaid observation and direction this appeal is partly allowed.

131. Before parting with this Judgment, we must record that we have been given able assistance by Mr. Sankalp Goswami, learned *Amicus Curiae* appointed by this Court for the appellants.

132. We, accordingly, direct the Secretary, High Court Legal Services Committee, Ranchi, to make the payment of the prescribed remuneration to the learned *Amicus Curiae*.

133. Let a copy of this Judgment be sent to the Secretary, High Court Legal Services Committee, Ranchi, for the needful.

134. Pending Interlocutory Application(s), if any, stands disposed of.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

Sudhir
Jharkhand High Court,
Dated:23/09/2026
AFR

Uploaded on 24/09/2026