IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B) No. 261 of 1998

(Against the judgement of conviction and the order of sentence both dated 31.08.1998 passed by the learned Judicial Commissioner, Ranchi in Sessions Trial No. 537 of 1993)

1. Komal Khalkho, s/o Johan Khalkho,
2. John Minz, S/o Josef Minz,
   both residents of Burhakhukhra, P.S-Mandar, District-Ranchi.

..... … Appellants

Versus

The State of Bihar **… … Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellants : Ms. Sonali Bhattacharjee, Advocate
Mr. Sachin Kr. Verma, Advocate
For the State : Mr. Pankaj Kumar, PP

C.A.V On 13.08.2026 **Pronounced on 15/09/2026**

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 and the order of sentence both dated 31.08.1998 passed by the learned Judicial Commissioner, Ranchi in S.T. No. 537 of 1993 whereby and whereunder the appellants, above-named, have been convicted under sections 302/34 of the Indian Penal Code and sentenced to undergo RI for life each.

Factual Matrix

2. The *fardbeyan* of the informant Baldeo Thakur (P.W.-6) was recorded by the S.I of Mandar P.S. on 12.04.1993 at 12:15 Noon.

3. The prosecution story, in brief, as per the *fardbayan* of the informant is that the informant Baldeo Thakur who is father of the deceased Baleshwar

Thakur has a hair cutting saloon. Deceased Baleshwar Thakur son of the informant Baldeo Thakur was working as barber in that saloon for about one and half years since before the occurrence. The deceased used to leave his house every day at about 8.00 A.M. for going to the saloon and he used to return back from his work at about 6.00 P.M. On 11.4.1993 the deceased Baleshwar Thakur had not gone to the shop (Saloon) and he had left his house at about 11.00 A.M. after taking his meal. The deceased Baleshwar Thakur did not return home in the evening and when the informant returned from the market at about 6.00 P.M. his wife Punu Devi told him that Baleshwar had not returned yet and she went in search of her son to the Saloon and she found that the shop was closed and she returned back home. She told the informant that the shop was closed and Baleshwar was not there. The informant thought that Baleshwar might have gone and slept somewhere. In the morning of 12.4.1993 the informant had gone to plough his field and at about 11.00 A.M. Shankar Thakur the nephew of the informant came to the field of the informant and told him that someone had murdered Baleshwar Thakur by putting rope around his neck and thrown his dead body in the field of Samel Khalkho.

4. On getting information. the informant went to his house and thereafter went to the place of occurrence with Choukidar Nanhu Oraon, nephew Shankar Thakur, and Vijay Thakur and saw that someone had murdered his son Baleshwar Thakur by putting rope around his neck and thrown his dead body.

5. The informant was sent to the police station and the *Daroga* came to the place of occurrence and recorded the fardbeyan of the informant Baldeo Thakur at 12.15 P.M. on 12.04.1993 at the place of occurrence.

6. On the basis of the *fardbeyan* of the informant, the formal F.I.R.(Ext.3) being Mandar P.S Case No.33 of 1993 was registered against unknown persons.

7. After investigation the police submitted charge sheet against both the accused John Minz and Komal Khalkho under section 302/34 I.P.C. and after cognizance, the case was committed to the Court of Sessions.

8. Charges were framed against the accused persons/appellants under section 302/34 of the IPC to which the accused/appellants pleaded not guilty and claimed to be tried.

9. Trial commenced and the statements of the accused persons were recorded under Section 313 of Cr.P.C. At the conclusion of trial, the accused/appellants herein were convicted and sentenced as aforesaid by the learned trial Court.

10. The aforesaid order of conviction and sentence is under challenge in the instant appeal.

Submission of the learned counsel for the appellants:

11. Learned counsel appearing for the appellants have 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 charge said to be proved beyond all reasonable doubt.

(ii) The further ground has been taken that the conviction is under sections 302 /34 of the Indian Penal Code but no any evidence in order to substantiate the common intention among the appellants to cause murder of the deceased has been laid by the prosecution, as such, there cannot be any conviction against the appellants, in absence of any

specific overt act said to be committed by these appellants even if the entire prosecution version will be taken into consideration in entirety.

(iii) It has been contended that Investigating Officer of the case has not been examined in this case due to which it is difficult to find out who had committed murder of the deceased and, as such, the benefit of doubt may be given to the appellants herein.

(iv) It has been stated that the informant of the case is not the eye witness and he has recorded his *fardbeyan,* based upon that the FIR was instituted against these appellants, only on the suspicion and, as such, the impugned judgment of conviction is bad in law.

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

(vi) It has been contended that the prosecution has failed to establish the intention or motive behind the crime as alleged in the FIR.

(vii) It has been contended that the FIR was lodged against some unknown persons and these appellants were not named in the FIR but later on they were implicated in this case falsely as PW1 and PW2, who are said to be the eye witnesses have admitted in their cross-examination that the police had forced them to give statement before the Panchayat that these appellants had committed murder of the deceased, therefore, the prosecution case is not reliable in the eyes of law.

(viii) It has further been urged that inasmuch as the alleged eyewitnesses, namely PW-1 and PW-2, resiled from their statements recorded under Section 164 of the Code of Criminal Procedure during

their examination-in-chief and were consequently declared hostile by the prosecution, the learned Trial Court committed manifest error in placing reliance upon such statements while recording conviction against the appellant/accused. On this ground also, it is contended that the judgment of conviction rendered by the learned Trial Court is unsustainable in law.

12. The learned counsel for the appellants, based upon the aforesaid grounds, has submitted that the judgment of conviction passed by the learned trial Court convicting the appellants under section 302/34 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:

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

(i) The conviction under section 302/34 of the Indian Penal Code against these appellants does not suffer from an error, since, ample evidence has been produced by the prosecution.

(ii) It has been contended that the informant PW6 has supported the prosecution story and as per his *fardbeyan* the deceased was killed by having a rope tied around his neck which fact has been corroborated by medical evidence and, as such, the impugned judgment does not require any interference.

(iii) It has been contended that the prosecution has adduced evidence to show that these appellants were involved in committing murder of the deceased which they admitted before the

Panchayat also and, as such, the learned trial Judge has rightly held them guilty for the offence under section 302/34 of the I.P.C.

14. The learned State counsel, based upon the aforesaid premise, has submitted that the impugned judgment so far as these appellants are concerned, does not suffer from any error and does not require any interference under section 302/34 of the Indian Penal Code, hence, the instant appeal is fit to be dismissed.

Analysis

15. 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.

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

17. Learned trial Court, based upon the testimonies of witnesses, has passed the judgment of conviction and has convicted the appellants under Section 302/34 of the Indian Penal Code and sentenced them as referred hereinabove.

18. 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.

19. It is evident from the record that in order to substantiate the case, the prosecution has altogether examined ten witnesses out of whom P.W.-1 Bandhna Oroan, P.W.-2 Etwa Oraon, P.W.3- Dr. Ram Sewak Sharma, who conducted postmortem over the dead body of the deceased, P.W.-4-Mahavir Kewat, P.W.-5 Poonam Devi is the mother of the deceased, P.W.-6 Baldeo Thakur (the informant) is the father of the deceased, P.W.-7- Sushila Devi, PW8-Khunwa Uraon, P.W.-9-Shankar Thakur and P.W.10-Ashok Kumar is

the police officer who submitted charge sheet on 06.08.1993 in the present case.

20. Apart from oral testimony of witnesses, following documentary evidences have also been produced which have been marked as exhibits:

(i) Ext-1 – Postmortem report;
(ii) Ext-2 - Signature of PW8 on seizure list;
(iii) Ext-3 – Formal FIR;
(iv) Ext-4 – Fardbeyan;
(v) Ext.5 – Inquest report; and
(vi) Ext.6 –Statement of PW1 u/s 164 Cr.PC;
(vii) Ext.6/1-Statement of PW2 u/s 164 Cr.PC.

21. P.W.-1 Bandhna Oraon is said to be an eyewitness to the incident. His statement was recorded by the learned Magistrate under section 164 Cr.P.C which has been exhibited as Ext.6. He has stated that he does not know anything about the case. He has further stated that his statement was recorded before the Magistrate and the police had also recorded his statement. He has stated that *Daroga* had forcibly asked him to give statement before the Magistrate. This witness has been declared hostile.

During his cross-examination, PW1 has denied the suggestion that in his statement recorded under section 164 Cr.P.C he has stated that on 11.04.1993 he had gone to watch T.V at 7 O'Clock in the evening in the house of Putras Khalkho with Etwa Oraon and while returning after watching T.V. when he reached the house of Jubela Khalkho, there was noise. When he reached the door of the house, Baleshwar (the deceased) was coming out of the house of Jubela Khalkho then John Minz assaulted Baleshwar due to which he fell down. He has admitted that he had not said that the name of another man was Komal Khalko, who accompanied with John Minz, also assaulted Baleshwar with leg and on seeing, PW1 had fled away due to fear. He has also stated that *Daroga* threatened him by saying that if he would not

give the statement before the Magistrate as per his wish, he would implicate him falsely in a murder case and due to that reason, he had given statement before the Magistrate which was recorded under section 164 Cr.P.C.

22. In his statement recorded under section 164 Cr.P.C, PW1 has stated that the occurrence is of 11.04.1993 and at that time he had gone to the house of Pitrus Khalko at 7 O'clock in the evening to watch T.V with Etwa Oraon. When he was returning after watching T.V. and reached the house of Jubela Khalkho, there was a noise and when he reached at the door of that house Baleshwar (the deceased) came out of the house of Jubela Khalkho and as soon as he came out, John Minz gave him one fist blow due to which he fell down and thereafter another man who was with John Minz, namely, Komal Khalkho started assaulting Baleshwar with leg. On seeing that, PW1 fled away due to fear.

PW1 was further recalled by the prosecution for his cross-examination in which he has stated that whatever he had stated before the Magistrate, he had narrated the same thing before the Panchayat.

23. P.W.-2 Etwa Oroan has stated that he had been brought in the Court by *Daroga*. He has stated that *Daroga* had asked him to give statement as per his wish before the Magistrate alleging that the appellants, namely, John and Komal had murdered Baleshwar Thakur. He has further stated that *Daroga* had threatened him that if he would not give statement as per his wish, he would send him to jail and due to fear he had given statement as per wish of Daroga. He has stated that he had not seen anyone assaulting the deceased. This witness has also been declared hostile by the prosecution.

In his cross-examination, PW2 has denied the suggestion that he had given correct statement without asking by any one that he had seen Komal, Baleshwar (deceased) and John Minz consuming local liquor (*Handiya)* in

the house of Juwel and when Baleshwar came out, he had caught John. Thereafter John assaulted Baleshwar Thakur with fist due to which he fell down on the ground and Komal assaulted him with leg. PW2 has also been declared hostile.

During his cross-examination, PW2 has denied the suggestion that he had seen the occurrence in which John and Komal had assaulted Baldeo Thakur due to which he died. He has further stated that out of fear, he was coerced by the *Daroga* to give a statement before the Magistrate implicating John and Komal. The Daroga threatened that if he did not comply, he would falsely implicate him in the case and send him to jail.

24. In his statement under section 164 Cr.P.C, PW2 has stated that he had gone to watch television with Bandhna Oraon (PW1) at the house of Pitras Khalkho and when they were returning, he saw that Baleshwar (the deceased) was consuming local liquor (*Handia*) with Komal and John (the appellants herein) in the house of Juwel. He has further stated that while coming out Baleshwar caught John on which John assaulted Baleshwar with fist due to which he fell down on the ground and thereafter Komal assaulted Baleshwar with leg. PW2 has stated that on seeing the occurrence he fled away from there due to fear of implication.

25. P.W.-3 Dr. Rama Sewak Sharma is the doctor who has conducted postmortem over the dead body of Baleshwar (the deceased). PW3 has stated that on 12.04.1993 at about 4:30 PM he was posted as Medical Officer in Department of Forensic Medicine in the RMCH (now RIMS) and he had conducted the postmortem over the dead body of the deceased Baleshwar Thakur son of Baldeo Thakur and found the following injuries on his person:

<u>Abrasion:</u>

(i) ½ x ½ cm left elbow back

(ii) ½ x ¼ cm right knee front

(iii) 2 x 2 cm left elbow medial side

(iv) 2 x 2 cm right elbow medial side

(v) *Drag mark 35 x 20 cm on the back of chest and abdomen.*

Ligature Mark:

1 to 2 ¼ cm in width over right side of neck. It starts from front part of the neck running across right lateral neck and ended over back of neck right side. There was contusion of soft tissue underneath.

PW3 has stated that in his opinion the injuries were ante-mortem and abrasions were caused by hard and blunt substance. The doctor has opined that death was caused due to asphyxia as a result of the pressure on the neck. The postmortem report has been exhibited and marked as Ext.1.

During his cross-examination, he has stated that the nature of injury is not mentioned in the report and all the injuries taken together could not be possible by fall.

26. P.W.-4-Mahabir Kewat has stated that he knew Baleshwar Thakur (the deceased). He has stated that the police had taken the dead body after inquiry and paper was also prepared and he put his left thumb impression on the said paper.

During his cross-examination, he has admitted that he had put his thumb impression on the report of police from where the dead body had been taken by the police.

27. P.W.5- Poonam Devi is the mother of the deceased. She has stated that Baldeo was his son. She has stated that at the time of occurrence it was Sunday of the month of Baisakh. She has stated that her son was going to saloon to open it but John and Komal stopped him to open the saloon. She has stated that there was a Panchayat to the occurrence and Etwa (PW1) and Bandhna (PW2) had accepted in the Panchayat that they had seen them

assaulting the deceased. She has stated that John and Komal had confessed before the Panchayat that they had committed murder of her son (the deceased).

During her cross-examination, PW5 has stated that police had recorded her statement. She has stated that no quarrel had taken place and she does not remember as to who had informed her about it. She has admitted that she had not seen anyone assaulting her son (the deceased).

28. **P.W6-Baldeo Thakur** is the father (the informant) of the deceased. He has stated that it was the month of Chaitra when the incident took place. He was not at his house at that time. When he returned to the home at evening, he came to know that his son Baleshwar was traceless thereafter he went to search him out. He went to saloon but it was locked. Thereafter he returned to his home as no whereabouts was found. On the next date at about 10 AM when he went on work, he received information that his son had been murdered and his dead body was thrown in a field. He has stated that he saw the dead body and rope was tied around his neck. PW6 has stated that he gave statement before the police and he had put his thumb impression on it which has been marked as Ext.4.

29. PW.6 has stated that there was a Panchayati in the village about the occurrence in which Bandhna Oraon (PW1) and Etwa Oraon (PW2) had stated that they had seen the occurrence. He has stated that a paper was prepared in the said Panchayati a copy thereof had been given to *Daroga jee* and the Government advocate.

30. During his cross-examination, PW6 has stated that there were many people in the Panchayati but he did not remember the name of all. He has stated that Khunnu Oraon, Lakhan Thakur, Majid Mian, Islam Mian and others were present in the Panchayati. He has admitted that he had not seen

anyone assaulting his son (the deceased). He has admitted that he told the police that his son used to consume local liquor (*Handia*). He has admitted in his cross examination that he did not inform the police about the missing of his son on that very day.

31. P.W.7-Sushila Devi has been tendered by prosecution.

32. PW8-Khunna Oraon has stated that the police had taken the dead body of Baleshwar in his presence and prepared inquest report on which he had put his signature which has been marked as Ext.2.

During his cross examination, PW8 had admitted that the paper was not read over to him.

33. PW9-Shankar Thakur has stated that he knew Baleshwar Thakur (the deceased). He has stated that he had seen the dead body with the villagers lying in the south of the village.

During his cross examination, PW9 has stated that in relation Baleshwar was his brother. He has admitted that the police had not inquired from him about the occurrence and he had signed on the paper.

34. P.W.10- Ashok Kumar is the police officer who was posted as sub-inspector on 01.08.1993. He had submitted charge sheet in the case. He has proved Ext.3, the formal FIR in the writing and the signature of Bhola Ram Dougat, the then officer-in-charge of Mandar PS. He has also proved Ext.4, the *fardbeyan* of the informant in the writing and signature of Shiv Prasad Singh, the then Sub-Inspector of Police of Mandar PS. He has also proved Ext.5, the carbon copy of the inquest report in the writing and signature of Shiv Prasad Singh, Sub-Inspector of police with objection.

In his cross examination, he has stated that he did not remember as to on which date had had joined at Mandar P.S. and on which date he had been transferred from Mandar P.S.

35. 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.

36. The main limb of argument of the appellants is that since the alleged eyewitnesses, namely PW 1 and PW 2, resiled from their statements recorded under Section 164 of the Code of Criminal Procedure during their examination in chief and they were consequently declared hostile by the prosecution, the learned Trial Court committed manifest error in placing reliance upon such statements while recording conviction against the appellants/accused persons.

37. It has further been contended that the FIR was lodged against some unknown persons and these appellants were not named in the FIR but later on they were implicated in this case falsely as PW1 and PW2, who are said to be the eye witnesses have admitted in their cross-examination that the police had forced them to give statement before the Panchayat that these appellants had committed murder of the deceased, therefore, the prosecution case is not reliable in the eyes of law.

38. *Per contra,* the learned counsel for State has contended that the prosecution has adduced evidence to show that these appellants were involved in committing murder of the deceased which they admitted before the Panchayat also and, as such, the learned trial Judge has rightly held them guilty for the offence under section 302/34 of the I.P.C.

39. Before entering into the merit of the appeal, it would be apt to mention herein the admitted fact of the case:

(i) The post-mortem report coupled with the testimony of P.W.-3, the doctor who conducted the examination, establishes that the death of the deceased was homicidal in nature.

(ii) The appellants/accused were not named by the informant (father of the deceased) in the *fardbeyan*.

(iii) The father of the deceased, who is informant of the case, has stated in his examination-in-chief that he has not witnessed the occurrence.

(iv) P.W.-1 and P.W.-2, alleged eyewitnesses, whose statements under Section 164 Cr.P.C. (now Section 183 BNSS) before concerned Magistrate were marked as Exhibits-6 and 6/1, were declared hostile by the prosecution, having completely retracted during their examination-in-chief from the statements earlier made before the Magistrate.

(v) The Investigating Officer has not been examined rather the officer who has been submitted charge-sheet has been examined.

40. In view of the aforesaid factual matrix and the submissions advanced by the learned counsel for the parties, the following issue now arises for consideration before this Court:

(i) *Whether the statements of witnesses (P.W.-1 and P.W.-2) recorded under Section 164 of the Code of Criminal Procedure, 1973 (now Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023), can be treated as substantive evidence when such witnesses subsequently turn hostile during their examination-in-chief before the Trial Court.*

(ii) *Whether, in the absence of direct evidence, a conviction can lawfully be sustained against the appellants solely on the basis of the statements of witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 (now Section 183 of the Bharatiya Nagarik*

Suraksha Sanhita, 2023), particularly when such witnesses (P.W.1 and P.W.2) have resiled from their earlier statements during their examination-in-chief before the Trial Court.

(iii) *Whether, in the absence of direct evidence, the instant case can be treated as one resting upon circumstantial evidence, and if so, whether the chain of circumstances relied upon by the prosecution can be said to be complete so as to unerringly point to the guilt of the appellants.*

Re: Issue No.(i) and (ii)

41. Both these issues pertain to the legal question as to what evidentiary value attaches to the statements of witnesses (P.W.-1 and P.W.-2) recorded under Section 164 of the Code of Criminal Procedure, 1973), (corresponding to Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023) when such witnesses are subsequently declared hostile during trial, and whether such statements can, by themselves, constitute a valid basis for sustaining the conviction of the appellants/accused.

42. It needs to refer herein that a statement recorded under Section 164 Cr.PC/183 BNSS is for corroborating or contradicting the maker of the statement, as provided under Section 157 and Section 145 of the Indian Evidence Act, 1872 (now Sections 155 and 153 of the BNSS 2023). The hostile witness can be confronted with their previous Section 164 statement to contradict their testimony in Court, thereby challenging their credibility.

43. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.PC can be relied upon for the purpose of corroborating statements made by witnesses in the committal Court or even to contradict the same.

44. It is a settled principle of law that the statement recorded under Section 164 of Cr.P.C. can never be used as substantive evidence of truth of the facts and the same may be used only for contradiction and corroboration of a

witness who makes it. Reference in this regard be made to the judgment rendered by the Supreme Court in the case of ***Utpal Das and another versus State of West Bengal, reported in (2010) 6 SCC 493.***

45. The Hon'ble Supreme Court of India in ***Ram Kishan Singh v. Harmit Kaur [AIR 1972 SC 468]***, has held the following: -

> *8. A statement under Section 164 of the CrPC is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness....."*

46. The Hon'ble Supreme Court in ***Baij Nath Sah V State of Bihar, (2010) 6 SCC 736*** has observed that that a statement under Section 164 of the Code is not substantive evidence and can be utilized only to corroborate or contradict the witness vis-à- vis statement made in court. In other words, it can be utilized only as a previous statement and nothing more.

47. The most significant use of Section 164 Cr.P.C./183 BNSS statement from a hostile witness is to contradict their testimony in court. As per Section 153 of the Bharatiya Sakshya Adhiniyam, 2023 (which corresponds to Section 145 of the Indian Evidence Act, 1872), a witness can be cross-examined regarding previous statements made by them in writing. The parts of the Section 164 Cr.P.C./183 BNSS statement that are inconsistent with the witness's deposition in court can be used by the prosecution to impeach the witness's credibility and show that they are not telling the truth in Court. While not substantive evidence on its own, if certain portions of the hostile witness's Section 183 statement are corroborated by other independent and reliable evidence presented by the prosecution, those corroborated portions may be considered by the court. The court may take such corroborated parts into account, but only in conjunction with the other supporting evidence. It cannot be the sole basis for establishing a fact.

48. On perusal and consideration of the law above extracted, it becomes evident that statement of a witness recorded under Section 164 Cr. P.C is not substantive evidence. It can be used to corroborate the statement of the witness. It can be used to contradict the witness. Such statement would either be elevated to the status of evidence under Section 32 of the Evidence Act if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. Therefore, in case after recording of statement under Section 164 Cr. P.C, the witness dies before his or her statement can be taken as a prosecution witness in the course of trial, Section 32 of the Indian Evidence Act would be attracted.

49. It is settled connotation of law that where a witness does not support the prosecution story in the Court, then only the statement recorded under Section 164 Cr. P.C cannot be used as substantive piece of evidence to record conviction of the accused. The basis of laying down this law is that the statement of a witness is recorded in the absence of the accused. At the time of giving statement by the witness, the accused has not had the occasion to cross examine the witness. Thus, so as to convert a statement under Section 164 Cr. P.C into substantive piece of evidence, it should be duly tendered before the trial court and then the witness should be produced by the prosecution for cross examination.

50. The objects of recording of statement of a witness under section 164 of the Code is to deter witnesses from changing their versions subsequently and to get over the immunity from the prosecution in regard to information given by the witnesses under section 162 of the code. If a person makes and signs a statement then chances of his turning hostile will be reduced. The evidence of witness whose statement is recorded under section 164 of the Code must be approached with caution. The statement recorded under section 164 of the

Code cannot be treated as substantive evidence when the maker does not depose of such facts on oath during trial. The recording of statements under section 164 of the Code plays a pivotal role in criminal trial. The purpose of contradiction between evidence of a witness before the court and the statement recorded under section 164 of the Code is primarily to shake credit of the witness and to put the court on guard to scrutinize the evidence with great care.

51. The fact that Section 164 statement is recorded by a Magistrate under oath (for non-confessional statements) and after due warnings lends it a higher degree of solemnity compared to statements recorded by the police. However, this solemnity does not elevate it to substantive evidence when the witness turns hostile, unless it is used for contradiction or corroboration with other evidence, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***R. Shaji v. State of Kerala, (2013) 14 SCC 266.***

52. In ***Ram V State, AIR1968 SC 1270*** it was held by the Hon'ble Apex Court that unless witnesses resile from their statements recorded under Section 164 those statements cannot be deemed doubtful.

53. Thus, a statement given by a witness under section 164 of the Code is like a 'previous statement' given during investigation under section 161 of the Code. It is not 'substantive evidence' adduced before the Trial Judge because it was not recorded in the presence of the accused. It has some higher value than the statement recorded under Section 161 of the Code by the police since it was recorded by a Magistrate.

54. This Court in ***Yugal Prajapati V State of Jharkhand, Criminal (Jail) Appeal (DB) No 207/2007*** decided on 24th October, 2018 observed that the

statement witness recorded under section 164 of the Code does not in any way help the prosecution in proving the guilt of the appellants (accused).

55. In ***T. Diwakara V State of Karnataka, 2006 Crl.L.J.4813***, during investigation witness gave statement before a Magistrate under Section 164 of the Code but during the sessions trial, he turned hostile. The Karnataka High Court held that the trial court grossly erred in placing reliance on the statement recorded under Section 164 of the Code as substantive evidence.

56. Thus, on the basis of discussion made hereinabove, it is considered view of this Court that Statements recorded under Section 164 of the Code of Criminal Procedure, 1973 (CrPC), now corresponding to Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), are not considered substantive evidence. Their primary purpose is to corroborate or contradict the maker of the statement. When a witness turns hostile, the evidentiary value of such a statement is primarily for contradiction or to challenge the credibility of the witness and it cannot be sole basis in conviction of the accused/appellant.

57. Further, this Court is of the view that when a witness who has made a statement under Section 183 BNSS (or Section 164 CrPC) is subsequently declared hostile in court, the statement cannot be treated as substantive evidence of the facts stated therein. This means that the court cannot rely solely on the contents of such a statement to convict an accused, as the witness has not supported those facts in their court testimony.

58. Thus, a statement recorded under Section 183 BNSS by a witness who later turns hostile cannot be treated as substantive evidence of the facts contained within it. This means that the court cannot base a conviction solely on the contents of such a statement, as the witness has not supported those

facts during their testimony in court. The purpose of recording such statements is to preserve evidence and prevent subsequent retraction, but if a retraction occurs in court, the original statement does not automatically become proof of the facts.

59. In light of the aforesaid settled principles of law, this Court now proceeds to advert to the factual aspects of the case.

60. It is evident from material on record that in his statement recorded under Section 164 of the Code of Criminal Procedure, P.W.-1 stated that the occurrence took place on 11.04.1993. At about 7:00 p.m., he had gone to the house of Pitrus Khalko along with Etwa Oraon (PW2) to watch television. While returning after watching television and upon reaching near the house of Jubela Khalkho, he heard a noise. As he approached the door of that house, Baleshwar came out, and immediately thereafter John Minz (appellant no.2) gave him a fist blow, causing him to fall down. Subsequently, another person accompanying John Minz, namely Komal Khalkho (appellant no.1), started assaulting Baleshwar with kicks. On witnessing the incident, P.W.-1 fled away from the place out of fear.

61. But in contrary to the said statement recorded under Section 164 Cr.P.C., P.W.1 in his examination-in-chief before the learned trial Court had categorically stated that he has stated that he does not know anything about the case. He has further stated that his statement was recorded before the Magistrate and *Daroga* had forcibly asked him to give statement before the Magistrate. This witness has been declared hostile by the prosecution.

62. During his cross-examination, PW1 has specifically denied the suggestion that in his statement recorded under section 164 Cr.P.C he has stated on 11.04.1993 he had gone to watch T.V at 7 O'Clock in the evening in the house of Putras Khalkho with Etwa Oraon and while returning after

watching T.V. when he reached the house of Jubela Khalkho, there was noise. When he reached the door of the house, Baleshwar (the deceased) was coming out of the house of Jubela Khalkho then John Minz (appellant no.2) assaulted Baleshwar due to which he fell down.

63. In cross-examination, he had further stated that *Daroga* threatened him by saying that if he would not give the statement before the Magistrate as per his wish, he would implicate him falsely in a murder case and due to that reason, he had given statement before the Magistrate.

64. It is further evident from material on record that in his examination-in-chief **P.W.-2 Etwa Oraon** stated that he had been brought to Court by the *Daroga*. He further deposed that the *Daroga* had instructed him to give a statement before the Magistrate alleging that the appellants, namely John and Komal, had murdered Baleshwar Thakur. He added that the *Daroga* threatened him with imprisonment if he failed to depose as directed, and out of fear he gave the statement in accordance with the instructions of *Daroga*. He categorically asserted that he had not seen anyone assaulting the deceased. This witness was accordingly declared hostile by the prosecution.

65. In his cross-examination, P.W.-2 denied the suggestion that he had voluntarily given a correct statement before the Magistrate without any prompting, wherein he allegedly stated that he had seen Komal, Baleshwar (deceased), and John Minz consuming local liquor (*Handiya*) in the house of Juwel. He further denied the suggestion that, upon Baleshwar coming out of the house, he had caught hold of John, whereafter John assaulted Baleshwar Thakur with a fist blow causing him to fall to the ground, and Komal assaulted him with kicks.

66. Further, during his cross-examination, PW2 has categorically denied the suggestion that he had seen the occurrence in which John and Komal had

assaulted Baldeo Thakur (deceased) due to which he died. He has further stated that out of fear, he was coerced by the *Daroga* to give a statement before the Magistrate implicating John and Komal. *Daroga* threatened that if he did not comply, he would falsely implicate him in the case and send him to jail.

67. From the foregoing depositions and cross-examinations, it becomes evident that both P.W.-1 and P.W.-2, who were projected as eyewitnesses by the prosecution, have categorically retracted from their earlier statements recorded under Section 164 Cr.P.C. They have consistently asserted before the Trial Court that they had not witnessed the occurrence and that their earlier statements were made under coercion and threat by the *Daroga*. Their hostility and categorical denial of having seen the incident substantially weaken the prosecution's case, as the very foundation of direct eyewitness testimony stands eroded.

68. Further, the cross-examination of both these witnesses reinforces this position. P.W.-1 denied the suggestion that he had voluntarily narrated the incident implicating appellants namely John Minz and Komal Khalkho, while P.W.-2 similarly denied having seen the deceased consuming liquor with the accused or witnessing the alleged assault. Both witnesses attributed their earlier statements to fear and coercion, thereby rendering those statements unreliable. The prosecution's reliance on such coerced and subsequently retracted testimony cannot, in law, form the sole basis of conviction.

69. From the evidence available, it is manifest that the informant himself was not an eyewitness to the occurrence, and the alleged eyewitnesses, P.W.-1 and P.W.-2, have resiled from their earlier statements recorded under Section 164 Cr.P.C., asserting that such statements were made under

coercion. Their hostility and categorical denial of witnessing the incident substantially diminish the probative value of those statements, therefore the statements of P.W.1 and P.W.2 recorded under Section 164 Cr.P.C. cannot be treated as substantive evidence sufficient to sustain conviction.

70. Accordingly, the reliance placed by the learned Trial Court upon the statements of P.W.-1 and P.W.-2 recorded under Section 164 Cr.P.C. for convicting the appellants is not in consonance with law or the material available on record.

71. Accordingly, both the issues stand answered hereinabove.

Re: Issue No.(iii)

72. The issue no.(iii) pertains to that whether, in the absence of direct evidence, the instant case can be treated as one resting upon circumstantial evidence, and if so, whether the chain of circumstances relied upon by the prosecution can be said to be complete so as to unerringly point to the guilt of the appellants.

73. Admittedly, upon perusal of the factual matrix, it is evident that P.W.-1 and P.W.-2, who were alleged to be eyewitnesses, have been declared hostile. This Court, while answering Issue Nos. (i) and (ii) in the preceding paragraphs, has already held that the statements of P.W.-1 and P.W.-2 recorded under Section 164 Cr.P.C. have lost their evidentiary value, inasmuch as they resiled from those statements during their examination-in-chief before the Trial Court. In view of the absence of direct evidence, it thus becomes incumbent upon this Court to determine whether the case rests upon circumstantial evidence, and if so, whether the chain of circumstances is complete and sufficient to warrant conviction of the appellants.

74. At this juncture this Court think it apposite to refer to certain authorities pertaining to delineation of cases that hinge on circumstantial evidence.

75. 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."

76. 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.

77. 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."*

78. 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.

79. 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 panch-sheel 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 2025:JHHC:13669-DB 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."

80. 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."

81. 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."*

82. 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.

83. Re-adverting to the factual aspect of the present case. Since, this Court, while answering Issue Nos. (i) and (ii) in the preceding paragraphs, has already held that the statements of P.W.-1 and P.W.-2 recorded under Section 164 Cr.P.C. have lost their evidentiary value, inasmuch as they resiled from those statements during their examination-in-chief before the Trial Court, therefore it would be apt to discuss herein the testimony of P.W.6 informant (father of deceased).

84. **P.W6-Baldeo Thakur** has supported the case of the prosecution and had stated that when he came to know that his son Baleshwar was traceless thereafter, he went to search him out. On the next date at about 10 AM when he went on work, he received information that his son had been murdered and his dead body was thrown in a field. He has stated that he saw the dead body and rope was tied around his neck.

85. PW.6 had further stated that there was a Panchayati in the village about the occurrence in which ***Bandhna Oraon (PW1) and Etwa Oraon (PW2***) had stated that they had seen John and Komal assaulting the deceased. He

has stated that a paper was prepared in the said Panchayati a copy thereof had been given to *Daroga jee* and the Government advocate.

86. It is pertinent to note that during his cross-examination, P.W.-6 stated that several persons were present in the Panchayati, though he could not recall all their names. He mentioned Khunnu Oraon, Lakhan Thakur, Majid Mian, Islam Mian and others as being present. He candidly admitted, however, that he had not himself seen anyone assaulting his son, the deceased.

87. This Court has carefully examined the impugned judgment and the record of the case, but not found any Panchayati paper which has been exhibited or marked in evidence. The list of exhibits appended to the judgment also makes no mention of any such document.

88. Although P.W.-6 reiterated that many persons were present in the Panchayati, including Khunnu Oraon, Lakhan Thakur, Majid Mian, and Islam Mian, but the prosecution failed to examine most of them.

89. Though Khunnu Oraon, who was examined before the Trial Court as PW8, but, he did not depose about the alleged Panchayati, and the other named persons were not examined at all. Thus, the prosecution has failed to substantiate the factum of Panchayati through credible evidence.

90. On the basis of the foregoing discussion, it is evident that the alleged Panchayati has not been proved beyond suspicion.

91. Further from testimony of P.W.5, who is the mother of the deceased, it is evident that she has supported the prosecution case but, in her testimony, she had stated that no quarrel had taken place and she does not remember as to who had informed her about it. She has admitted that she had not seen anyone assaulting her son (the deceased).

92. Furthermore, the Investigating Officer was not examined in the present case. Had he been examined, there might have been a possibility of corroborating the alleged Panchayati. The non-examination of the Investigating Officer has, therefore, eroded the prosecution's case and left a significant gap in the evidentiary chain.

93. Thus, From the testimony of P.W.-6 and the materials available on record, it is evident that he was not an eyewitness to the occurrence and his evidence is purely hearsay in nature. His assertion regarding a Panchayati held in the village, wherein P.W.-1 and P.W.-2 allegedly implicated the appellants, is unsupported by any documentary proof, as no Panchayati paper has been exhibited or marked in evidence.

94. Further, although P.W.-6 named several persons as having been present in the Panchayati, the prosecution either did not examine them or, in the case of Khunnu Oraon (PW8), failed to elicit any statement corroborating the alleged Panchayati. This omission, coupled with the absence of any exhibited Panchayati document, renders the factum of Panchayati unproved and shrouded in suspicion.

95. Moreover, the non-examination of the Investigating Officer has further eroded the prosecution's case, as his testimony could have provided necessary corroboration regarding the alleged Panchayati and the investigation thereof.

96. In these circumstances, the prosecution has failed to establish the factum of Panchayati beyond reasonable doubt, and the evidentiary foundation sought to be built upon it cannot be sustained in law.

97. Thus, on the basis of the discussion hereinabove, it is evident that the chain of circumstances has not been established in its entirety. Accordingly,

even if the present case is treated as one resting upon circumstantial evidence, the conviction cannot be withdrawn against these appellants.

98. Accordingly issue no(iii) answered herein.

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

> *"22. The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime.*

100. Likewise, the Hon'ble Apex Court in the case of ***Krishnegowda & Ors. Vrs. State of Karnataka, 2017 (13) SCC 98,*** has held at paragraph-26 as under:

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

101. Further, it needs to refer herein the principle of 'benefit of doubt' belongs exclusively to criminal jurisprudence. The pristine doctrine of 'benefit of doubt' can be invoked when there is reasonable doubt regarding the guilt of the accused, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of ***State of Haryana Vrs. Bhagirath & Ors.,*** reported in ***(1999) 5 SCC 96,*** wherein, it has been held at paragraph-7 as under: -

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

102. It needs to refer herein that the Hon'ble Apex Court, in the case of ***Allarakha K. Mansuri v. State of Gujarat*** reported in ***(2002) 3 SCC 57*** has laid down the principle that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on

the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted, for ready reference, paragraph 6 thereof requires to be referred herein which reads hereunder as :-

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

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

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

104. From the foregoing analysis, it is evident that the prosecution has failed to establish a complete chain of circumstances. The alleged Panchayati remains unproved and the testimony of P.W.-6 informant is hearsay in nature, lacking direct evidentiary value.

105. In the absence of credible direct evidence with the circumstantial chain left incomplete, the prosecution has not discharged its burden of proving the case beyond reasonable doubt. The statements of P.W.-1 and P.W.-2 recorded under Section 164 Cr.P.C., having lost their evidentiary value upon their hostility, cannot form the sole basis of conviction.

106. This Court, after having discussed the factual aspect and legal position as discussed hereinabove, is of the view that since the prosecution has

miserably failed to prove the charges against these appellants beyond all reasonable doubt, as such, the impugned judgment of conviction and order of sentence requires interference by this Court.

107. Accordingly, impugned judgment of conviction and order of sentence both dated 31.08.1998 passed by the learned Judicial Commissioner, Ranchi in Sessions Trial No. 537 of 1993, are hereby quashed and set aside.

108. The appellants, named above, are acquitted from the charges under section 302/34 of the Indian Penal Code.

109. Since, as per record, the appellants, namely, Komal Khalkho and John Minz are on bail and, as such, they shall be discharged of the liability of the bail bonds.

110. In the result, the instant criminal appeal stands allowed and disposed of.

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

112. 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.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Sudhir
Jharkhand High Court,
Dated:15/09/2026
AFR

Uploaded on 16/09/2026.