IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 1612 of 2003

[Against the Judgment of conviction and order of sentence dated 29.09.2003 passed by learned 9th Additional Sessions Judge, Hazaribagh in in Sessions Trial No.444 of 1999]

Sukhdeo Thakur son of Sri Ashirbad Thakur resident of village Uperbarga, Police Station-Gola, District-Hazaribagh. **... ... Appellant**

Versus

The State of Jharkhand **... ... Respondent**

with

Criminal Appeal (DB) No. 1642 of 2003

1.Pushu Thakur, son of Late Kokil Thakur
2.Naryaan Thakur, son of Shri Surendra Thakur
all resident of Uper Barga, PS Gawa, District-Hazaribagh. **... ... Appellants**

Versus

The State of Jharkhand **... ... Respondent**

P R E S E N T
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE AKHIL KUMAR

.....

For the Appellants : Ms. Diksha Dwivedi, Advocate
[Cr. Appeal (DB) No.1612/03]
Mr. Avilash Kumar, Advocate
Mr. Siddhant Singh, Advocate
[Cr. Appeal (DB) No.1642/03]
For the Respondent : Mrs. Priya Shrestha, Spl. P.P.
[Cr. Appeal (DB) No. 1612/03]
Mr. Abhay Kumar Tiwari, APP
[Cr. Appeal (DB) No. 1642/03]
For the Informant : Ms. Supriya Dayal, Advocate
[In both cases]

.....

C.A.V. on 23/09/2026 ***Pronounced on 05_/11/2026***
Per Sujit Narayan Prasad, J.:

1. Since both the appeals arise out of the common Judgment of conviction and order of sentence dated 29.09.2003 passed by learned 9th Additional Sessions

Judge, Hazaribagh in Sessions Trial No.444 of 1999, as such they have been tagged together and taken up together for analogous hearing and are being disposed of by this common order.

2. It is pertinent to mention that appellant Golak Thakur in Criminal Appeal (DB) No. 1642 of 2003 died during the pendency of the instant appeal and, as such, the appeal qua Golak Thakur was abated vide order dated 26.03.2026, by Co-ordinate Bench of this Court.

Prayer

3. The instant appeals are directed against the Judgment of conviction and order of sentence dated 29.09.2003 passed by learned 9th Additional Sessions Judge, Hazaribagh in in Sessions Trial No.444 of 1999, whereby and whereunder the all the appellants have been found guilty and convicted for the offence punishment under Sections 147/148/447 and 304/149 of the Indian Penal Code whereas appellant Pushu Thakur has been convicted under section 302/149 of IPC along with 147/148/447 of IPC. All the appellants were sentenced to undergo rigorous imprisonment for 6 months under Section 147 IPC; one year under Section 148 IPC; one month under Section 447 IPC. Appellant Pushu Thakur has been sentenced to undergo life imprisonment for

offence punishable under Section 302/149 of IPC with a fine of Rs. 500/-each and in default of payment of fine, RI for 3 months was imposed. Appellants Naryaan Thakur and Sukhdeo Thakur were sentenced to 8 years for offence under Section 304/149 IPC and fine of Rs.500/- each and in default of payment of fine, rigorous imprisonment for three months was imposed. However, all the sentences have been ordered to run concurrently.

Prosecution Case:

4. Prosecution case, as per fardbeyan of informant Laxman Thakur (PW-8), in short is that on 25.06.1998, in the morning at about 9 am, the informant's elder brother Gaur Thakur (deceased) was giving fodder to the cattle in his granary. In the meantime, his *pattidar* [co-sharer], Pusu Thakur and Sukhdeo Thakur armed with *sabal (*Crowbar), Narayan Thakur armed with *lathi* and Rangtu Thakur and Golak (since dead) came there. Rangatu Thakur pulled the neck of the Gour Thakur [deceased] abusing him as to why he had sowed paddy crops in field. Golak Thakur instigated to murder the deceased, to which Pusu Thakur, gave two-three *sabal* blows on the head of the Gour Thakur [deceased] due to which he fell down on the ground and then Sukhdeo Thakur gave two sabal blows near the waist of Gour Thakur [deceased]. Thereafter, Rangtu Thakur gave 2-3 stick blows on the

back of Gour Thakur [deceased], upon which his brother began to cry out and after few time, he became calm and quiet. However, when the informant and others rushed with *lathi*, the accused persons fled away.

5. The reason for assault has been assigned of previous land dispute between the parties and in this connection a panchayati was also held on 24.06.1998, in which it was settled that the disputed land would be measured in the month of *'Magh'* [December-January], till then the informant party would cultivate the land. In pursuance to the aforesaid settlement, the informant and informant's brother Gour Thakur [deceased] had sown the seed of paddy over the 60 decimals of land at about 6 am and due to this reason out of anger the accused persons had murdered his elder brother.

6. On the basis of aforesaid fardbeyan of informant Gola P.S. Case No.52 of 1998 dated 25.06.1998, was registered under Sections 147, 148, 149, 302 and 447 IPC against the appellants.

7. After investigation police filed charge-sheet against the accused persons/appellants and cognizance of the offences was taken and the case was committed to the court of Sessions.

8. Accordingly, charges were framed against the accused persons/appellants under Section 302,147,

148,149 and 447 of IPC which was read over and explained to accused persons to which they pleaded not guilty and claimed trial.

9. The prosecution has altogether examined nine witnesses out of whom P.W.-8 Laxman Thakur, is the informant of the case and brother of the deceased; P.W.-1 Sidam Thakuar and P.W.-2 Panchanand Thakur, are the sons of the deceased; P.W.-3 Kinker Thakur, is the nephew of the deceased; P.W.-4 is Sudhir Thakur; P.W.-5 Dasrath Thakur, was declared hostile; P.W.-6 Haripad Mahto; P.W.-7 Jyotilal Thakur, has also been declared hostile and P.W.-9 Nidhish Sharan, is the Medical Officer.

10. Three Court Witnesses have been examined- C.W.-1 Harinarayan, is the formal witness, who had proved the formal FIR; C.W.-2 Devendra Prasad, is the second Investigating Officer of the case and C.W. 3-Jyoti Prakash is also the Investigating Officer of the case.

11. The learned trial court, on appreciation of the evidences produced on behalf of the prosecution and defence, found the allegation proved against the appellants and accordingly, passed the impugned judgment of conviction and order of sentence as referred herein above, which is under challenge in the present appeals.

Argument on behalf of appellants

12. Learned counsel for the appellants have taken the following grounds, in assailing the impugned judgment of conviction and order of sentence, as under: -

I. The prosecution has miserably failed to establish the charge said to be proved, beyond all reasonable doubt, in establishing the charge said to be committed by the appellants.

II. Submission has been made that in the case at hand though some independent witnesses have been examined but none of them have supported the case of the prosecution and the witnesses who have supported the case of the prosecution are highly interested witnesses.

III. Further submission has been made that P.W. 2 and P.W. 8 are claimed to be eye witness to the occurrence, but both have made inconsistent and contrary statement with respect to assault being made by the accused persons.

IV. Submission has been made that statement of the informant, P.W 8, as has been made in the FIR is also different to what he deposed before the Court in his examination-in-chief.

V. Even the medical evidence is inconsistent to the ocular evidence since as per the statement/testimony of the informant, the deceased

had sustained 15-20 fatal injuries but as per the post mortem report, only 2 injuries were found over the dead body of the deceased.

VI. Submission has been made that the informant in unequivocal term has stated in the FIR that the appellant assaulted the deceased near the waist whereas the doctor, who conducted postmortem over the dead body of the deceased, has not found any injury on or near the waist of the deceased, as such the statement of the eye witness [P.W8] itself falsifies the allegation against the appellant.

VII. Learned counsel for the appellant has further submitted that from the FIR and testimonies of the witnesses, it is evident that the deceased was providing *bichali* to his cattle and in the meantime, the accused persons came armed with sabal and lathi and assaulted the deceased due to which he received several injuries and died but the investigating officer [CW 3] has stated that the place of occurrence was examined but no blood and *bichali* was found at the place of occurrence, as such there is grave doubt on the prosecution case.

VIII. In defense, taking aid of testimony of independent witness, submission has been made that while the deceased was climbing up *machan* in order to take

bichali from *machan*, he fell down and sustained injuries and died. P.W. 5 has supported the factum of falling of the deceased as also P.W. 6 has stated that Laxman Thakur told him that while the deceased was taking straw from the Machan he fell down and died, as also P.W. 7 has supported this version. But the learned trial court did not consider the version of these independent witnesses as also the ground of previous enmity, which is admitted one, and passed the impugned judgment of conviction and order of sentence.

IX. The learned counsel for the appellants, based upon the aforesaid ground, has submitted that the impugned judgment suffers from illegality, hence not sustainable in the eyes of law.

Argument on behalf of the State

13. While on the other hand, learned State counsel, defending the impugned judgment of conviction has raised the following arguments in response to the grounds taken by learned counsel for the appellants, as referred hereinabove: -

I. There is no error in the judgment of conviction and order of sentence since culpable homicide is there and admittedly all the witnesses have deposed about the assault given by appellants, which ultimately

resulted into death of the deceased, which finds support from the medical evidence.

II. Further submission has been made that from the testimony of the informant, who is the eye witness of the case, time place and manner of occurrence is established which is further corroborated by the testimony of other witnesses.

III. In this case motive is also established that since there was previous enmity between the parties due to land dispute, as such they committed murder.

IV. So far, the discrepancies, as pointed out by the appellants, are concerned they are minor in nature and in any way are not affecting the case of the prosecution.

14. Learned counsel appearing for the State based upon the aforesaid premise has submitted that the impugned judgment does not suffer from any error 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 learned trial in the impugned judgment as also gone through the testimonies of the witnesses as available in the Trial Court record as also the exhibits.

16. This Court, before appreciating the argument advanced on behalf of the parties as also the legality and propriety of the impugned judgment, deems it fit and proper to refer the testimonies of the prosecution witnesses.

Testimony of witnesses:

17. **P.W. 8-Laxman Thakur**, is the informant in this case and brother of Gour Thakur [deceased]. He has stated in his evidence that occurrence took place on 25.06.98 at 9.00 am, when the deceased Gour Thakur was giving fodder to the cattles (bullock) in his granary. In the meantime, Pusu Thakur, Sukhdeo Thakur, Narayan Thakur, Rangtu Thakur and Golak Thakur came armed with *sabal* and *lathi* and murdered him. The deceased had sustained injuries on his head and other part of body. Accused Pusu, Sukhdeo and Naryan had assaulted Gour Thakur by crowbar [sabal], on his head. Naryan and Rangtu had assaulted by *lathi*, Golak had instigated to kill Gour, saying that they will face the consequences.

18. He further stated that he tried to rescue, then the accused persons attacked him. In the meantime, Panchanan Thakur; Ekar Thakuir; Sudhir Thakur and Sidam Thakur came there, whereupon the accused persons fled away. The cause of incidence was previous land dispute.

19. In cross-examination, he has stated that Panchanan, Sidam, Inkar, and Sudhir are all members of his family. Dashrath, Surendra, Jyoti, and Budu are all from defendant's family. Informant further stated that they went to the field at 6:15 am and they stayed there for a total of two hours, Gaur was also there for that time. They all returned home at 8:30 am. At the time of the incident, he had gone out to wash his hands after eating. Gaur Thakur lived in a separate house from him. When he was at home, he didn't hear any commotion. There were women in their house, Inkar Thakur, and Ranjit Thakur. When he went outside, he saw accused persons were surrounding and beating Gaur Thakur and this assault lasted for 5-10 minutes. When he raised an alarm, all the boys came to the *barn*. No one from the village came at that time. After 15-20 minutes, the villagers came to see what had happened, to whom he told them. Gaur Thakur was beaten countless times. He was beaten all over his body. There were wounds at about 15-20 places but there was no bleeding from anywhere. Blood spilled on the ground. He arrived at the police station at 12 noon with Haripad, Jaleshwar, and others. He gave his statement to the police there. The police did not take their signatures at the police station.

20. **P.W. 1-Sidam Thakur**, is the son of the deceased. He had deposed that on the date of incidence at 9 am in the morning, his father was feeding straw to the bulls in the barn. In the meantime, Pusu Thakur, Sukhdev Thakur, Narayan Thakur, Rengdu Thakur and Golak Thakur came and assaulted his father, injuring him, resulting in his death at the same spot. He has further deposed that the accused persons belong to their clan [Gotiya]. A land dispute case was already ongoing with them before this incident and due to this reason accused persons had murdered his father.

21. In his cross-examination, he stated that his statement was taken by the police three days after the incident. He further deposed that a land dispute with their *gotiya* was ongoing for approximately 10-12 years. The dispute was over a share of the land. There has been no division of the land. At the time of the incident, he, his father, his uncle Laxman Thakur, his cousin Sikandar Thakur, and his brother Panchanan Thakur were present at the scene. The villagers have barns on the adjacent land, but there were no people in those barns.

22. P.W. 2 Panchanand Thakur, another son of the deceased. He had stated in his evidence that the incident occurred on June 25, 1998, at 9 a.m., when his father was feeding the bullocks. In the meantime, Kusu Thakur,

Sukhdev Thakur, Narayan Thakur, Golak Thakur and Rangtu Thakur arrived and murdered his father. His father was also facing a case under Section 307 of the IPC, with the accused persons, which was related to a land dispute. He had signed on the fardbeyan, which was identified and his signature on the fardbeyan was marked as Ext.-1.

23. In cross-examination, PW-2 stated that they went to the Gola police station and reported the incident. The station is 19 km from their village. They gave a statement to the police about the incident. They gave their statement verbally, which the inspector wrote down. The inspector took this statement at 3:30 p.m. He told the police that he was present at the scene of the incident and deposed that at the time of the incident, he, his uncle Laxman, his brother Kinkar, Haripad, and others were present. Pusu Thakur hit his father with two sticks on the head, Sukhdev Thakur hit him with two sticks around the waist. Narayan Thakur hit him on the back with a stick. Regtu Thakur was pulling his neck and abusing him. Galak Thakur was ordering to kill the bastard and also hit him with a stick. The accused were already at the spot. They beat him indiscriminately for five minutes and killed him. They started shouting, they were going to save him but the accused persons threatened to kill them. On hearing

the shout Tandalu, Yogeshwar, Tandalu, Kameshwar, Haripad, Jyoti Thakur etc., from the village came. There was no blood spilled at the scene.

24. **P.W. 3-Kinker Thakur,** is the nephew of the deceased. He had stated in his examination-in-chief that the incident occurred on June 25, 1998, at 9 am. Gaur Thakur was slaying a bull in the joint barn. Then, Pusu Thakur, Sukhdev Thakur, Narayan Thakur, Regtu Thakur and Golak Thakur entered the barn and began assaulting his uncle Gaur Thakur. Pusu and Sukhdev Thakur assaulted him with *sabal*, injuring his forehead. Sukhdev Thakur assaulted Gaur Thakur with *sabal* on his waist. Reku Thakur was dragging him pressing his neck, Narayan Thakur assaulted him with a stick and Golak Thakur was exhorting to kill him. PW-3 further stated that Gaur Thakur, died at the place of occurrence.

25. In his cross-examination, he stated that many years ago, Dashrath Thakur had filed a case of assault against him. Pusu Thakur is Dashrath's own uncle. At the time of the incident, he was in the barn. Gaur's and his barn are joint. He has partition of land and house with Gaur. There was straw in the barn. The straw heap was kept on the western side of the barn. The incident occurred adjacent to the straw on the western side. Before the incident, he, Panchanan, Laxman, and Haripad and Sudhir were with

Gaur Thakur and they all of them were sitting in the barn. They had been there since 8.30 am. The accused entered the barn from the west and he had seen the accused persons approaching from a distance of 10-15 feet. Accused persons came and surrounded Gaur Thakur and began assaulting him. The fight lasted for about 2-3 minutes and thereafter, after assaulting accused fled away and then, many villagers arrived at the scene. There was no wound on Gaur's forehead. He had seen two bleeding wounds on Gaur's forehead. There was slight blood on the cloth and the ground. He had not seen any other bleeding wound on Gaur's body. He had told the police that Pusu and Sukhdev Thakur had assaulted Gaur Thakur, with *sabal* on his head and injuring him, Sukhdev assaulting him with sabal on waist and Narayan Thakur had assaulted with a stick and Golak Thakur was exhorting to kill.

26. P.W. 4.-Sudhir Thakur, is also the nephew of the deceased. He had stated in his evidence that incident occurred on June 25, 1998 and he was at home. He came to know that accused Sukhdev Thakur, Kusu Thakur, Narayan Thakur, Regtu Thakur and Golak Thakur had beaten Gaur Thakur to death with a stick. There was a property dispute between the two parties. He gave a statement to the police. Gauri Thakur had injuries on his

head and waist. He saw Gauri Thakur dead in the barn. That barn belonged to Gauri Thakur and him.

27. In his cross-examination, he stated that before this incident, a case was filed by Dashrath Thakur and Surendra Thakur against his father and Gaur Thakur etc. He didn't immediately go to the barn after hearing the noise. He came to know about the incident at 10 o'clock. The incident occurred at 9 o'clock and he went to the barn at 10 o'clock.

28. **P.W. 6-Haripado Mahto**, has stated in his evidence that he does not know about the incident. Gaur Thakur was murdered four years ago. The accused in this case are Pushu Thakur, Narayan Thakur, Golak Thakur, and Sukhdev Thakur and all of them are his villagers. He does not know the cause of Gaur Thakur's death.

29. In cross-examination, he has stated that Laxman Thakur had told that Gaur Thakur had climbed the scaffolding to give straw to the cow and had fallen from the scaffolding and died.

30. **P.W. 9 Dr. Nidhish Saran,** has stated that on 26 June 1998, he was posted at Sadar Hospital, Hazaribagh as CAS and on that day, he did post mortem examination over the dead body of Gaurh Thakur aged about 66 years. He found - both eyes closed, mouth partially open, blood pinched discharge from the left nostril and undigested

food particles from the mouth. Rigor mortis present in both upper and lower limbs.

Injury: Black bruise with underlying haematoma over right side of back extending from lower costal margin up to lumbosacral region about 18" x 18" in size.

2. Black bruise over occipital region about 3" x 1" in size with depressed fractured under lying bone. Subdural haematoma with laceration of brain matter.

3. Hyoid bone intact both lungs intact pale. Heart- right chamber empty, left-blood clots. Liver, spleen, kidneys intact pale. Stomach undigested food particles about two ounce. Urinary bladder- empty.

He has opined that the cause of death was hemorrhage and shock produced by head and extensive injury over the body.

Time elapsed since death- within 36 hours.

The report was made in the carbon process with original in the same process by me. It was marked Ext. 2.

31. Three court witnesses have also been examined.

32. C.W.-1 Heernarayan, is an advocate clerk and a formal witness. He has stated that the fardbeyan is in the handwriting and signature of Sub-Inspector Jyoti Prakash and he recognize it and, on his identification, fardbeyan was marked as Ext.-3. He further deposed that formal FIR was also in his handwriting and it was marked as Ext.-4.

The carbon copy of the inquest report, the original of which is also in the handwriting and signature of Sub-Inspector Jyoti Prakash and inquest report was marked as Ext.-5.

33. C.W.-2 Devendra Prasad, is the second investigating officer of the case. He further deposed had stated that he assumed charge of this case from Sub-Inspector Jyoti Prakash, on 1 July 1998. Sub-Inspector Jyoti Prakash conducted the investigation up to paragraph 16. He recorded the statements of witnesses Sudhir Thakur, Kinkar Thakur, Panchanan Thakur, Jyoti Lal Thakur, Dashrath Thakur, Rajan Mandal, and Lakhan Thakur. The place of occurrence of the incident, as recorded by the previous investigator in paragraph 4 of the case diary is Laxman Thakur's barn, located in the village of Uparvarga, on the western edge of which the deceased's body was found. Jyoti Prakash's signature on this formal FIR, as Station House Officer, was previously marked as Ext.-4. The fardbeyan, in the handwriting and signature of Sub-Inspector Jyoti Prakash, was previously marked as marked as Ext.-3. The carbon copy of the inquest report, also in the handwriting and signature of Sub-Inspector Jyoti Prakash, and it was previously marked as Ext.-5.

34. **C.W.-3 Jyoti Prakash** is the investigating officer of the case. He has stated that on 25.06.1998, he was posted and working as a Sub-Inspector at the Gola Police Station. On 25.06.98, at 13:30 hrs., a rumoured report of a murder was received and to verify the information, he along with ASI Riyazuddin Khan, Fayaz Khan and other armed forces, proceeded to verify and take necessary action. He entered FIR No. 532 in the formal FIR and based on this, he set out for verification. He reached Laxman Thakur's house, where he found Laxman Thakur at the door and recorded his statement there.

35. He deposed that he had written the fardbeyan which is in his handwriting and signature, which was previously as Ext.-3, is marked as Ext.-3/1. The formal FIR is in his handwriting and signature and it has already been marked as Exhibit-4. The carbon copy of the inquest report, the original of which bears his handwriting and signature, has already been marked Ext.-5. He inspected the place of occurrence in the presence of witnesses Laxman Thakur, Yogeshwar Thanedar and Haripad Mahato. The place of occurrence is in Uparvarga. Laxman Thakur's barn is located here and in the said baran, the deceased's body was found on the western side of this barn.

36. In his cross-examination he stated that he found no blood at the scene. The blood was on head of deceased. He did not even find straw at the scene of the incident. Haripada Mahato did not state about the weapons held by the accused persons.

37. 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 testimony of P.W.1, P.W.2, P.W.3 and P.W.8 (informant), claimed to be eyewitnesses to the occurrence, are trustworthy and reliable witnesses, to sustain the conviction of the appellants?*

II. *Whether the judgment of conviction and order of sentence passed by the learned Trial Court against the appellants suffer from any illegality, and infirmity warranting interference by this Court?*

38. Since, both these issue issues are inextricably interlinked, the same are being discussed and decided hereinbelow together.

39. The learned trial court had convicted the appellants relying on the testimony of PW-1, PW-2, PW-3 and PW-8 (informant). Learned Trial Court found that PW-1, PW-2,

PW-3 and PW-8 were the eye witnesses to the occurrence of murder of Gour Thakur (deceased), which was supported by the inquest report and the medical evidence of the Doctor (PW-9). Learned trial court had also found that land dispute between the parties was the motive behind the commission of crime.

40. Learned Counsel appearing for the informant submitted that murder of Gour Thakur was committed by the accused persons/appellants due to land dispute. The murder of the dispute is proved from the ocular evidence of PW-1, PW-2, PW-3 and PW-8 and motive behind the occurrence is proved from Ext.-A, B, C and Ext.-3.

41. On the other hand, learned Counsel for the appellants have submitted that PW-1, PW-2, PW-3 and PW-8 are claimed to be eye witness to the occurrence but there are vital discrepancies and contradiction in the testimony of these prosecution witnesses.

42. At this juncture, it would be apposite to refer to certain judicial authorities concerning the evidentiary value of discrepancies and contradictions in the testimony of witnesses.

43. The law in this regard is well settled by Hon'ble Apex Court in case of ***Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381*** and ***Bhargavan v. State of Kerala, (2004) 12 SCC 414,*** wherein it has been laid down that

material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. Paragraph-15 of judgment of ***Gangadhar Behera v. State of Orissa, (supra),*** is quoted herein below-

> *"15.To the same effect is the decision in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] and Lehna v. State of Haryana [(2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of "falsus in uno, falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno, falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The maxim "falsus in uno, falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Ali v. State of U.P. [AIR 1957 SC 366 : 1957 Cri LJ 550]) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far*

as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : 1956 Cri LJ 827]). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and Ugar Ahir v. State of Bihar [AIR 1965 SC 277 : (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and Balaka Singh v. State of Punjab [(1975) 4 SCC 511 : 1975 SCC (Cri) 601 : AIR 1975 SC 1962] .) As observed by this Court in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593 : AIR 1981 SC 1390] normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the

> *category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar [(2002) 6 SCC 81 : 2002 SCC (Cri) 1220 : JT (2002) 4 SC 186] . Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned."*
>
> *(emphasis supplied)*

44. Again, in case of ***Mohd. Jabbar Ali v. State of Assam*, (2023) 19 SCC 672,** Hon'ble Apex court reiterated the same, as to discrepancy of witnesses and laid down that material discrepancies corrode the credibility of the prosecution's case while insignificant discrepancies do not do so. Paragraph-53 of the judgment is quoted herein below-

> *"53. Further as already stated above, all the witnesses have given contradictory versions as to who gave the fatal blow to deceased Ekkabar Ali and the same amounts to material contradictions. It is reiterated that the testimony of PW 6 is inconsistent with the testimonies of PW 1, PW 2 and PW 5. This Court in State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] , distinguished between the normal discrepancies and material discrepancies. This Court held that the Courts have to label as to which category a discrepancy can be categorised. The material discrepancies corrode the credibility of the prosecution's case while insignificant discrepancies do not do so."*
>
> *(emphasis suppled)*

45. Hence, in view of the aforesaid proposition of law concerning discrepancies in the testimony of material

witnesses, this Court now proceeds to examine the evidence of the witnesses.

46. Firstly, this Court has examined the testimony of the informant Laxman Thakur (PW-8), who is the brother of the deceased Gour Thakur. In his deposition, PW-8 stated that the accused persons/appellants had assaulted Gour Thakur with a *sabal* and *lathi*. He further deposed that when he attempted to rescue the deceased, the accused persons/appellants also attacked him. However, this material fact regarding the alleged assault upon PW-8 by the accused persons/appellants does not find mention in his fardbeyan. The omission of such a vital circumstance from the earliest version of the prosecution case assumes significance while assessing the credibility and reliability of his testimony.

47. Further, this Court has also carefully examined the fardbeyan of the informant. Although the informant has given a detailed account of the alleged assault upon the deceased, a close reading of his initial statement reveals that he did not categorically state that he was present at the place of occurrence at the time of the assault or that he had witnessed the accused persons assaulting the deceased with a *sabal* and *lathi*. Rather, the informant stated in the fardbeyan that upon hearing the *halla* raised by his brother (the deceased), he and others rushed to the

place of occurrence. This statement prima facie suggests that the informant reached the place of occurrence only after hearing the alarm and was not present when the assault commenced. If that be so, a serious question arises as to how the informant could claim to have witnessed the entire occurrence in the manner subsequently described by him.

48. This apparent inconsistency between the version disclosed in the fardbeyan and the testimony of the informant assumes significance and casts a doubt on the reliability of his claim of being an eyewitness to the occurrence.

49. Further, Sidam Thakur (PW-1), Panchanand Thakur (PW-2) and Kinker Thakur (PW-3) have also been projected as eye-witnesses to the occurrence. These witnesses have specifically deposed that they were present at the place of occurrence and had witnessed the assault upon the deceased Gour Thakur. However, the presence of Sidam Thakur (PW-1), Panchanand Thakur (PW-2) and Kinker Thakur (PW-3) at the place of occurrence was not disclosed by the informant Laxman Thakur (PW-8), in his fardbeyan. Significantly, for the first time in his examination-in-chief, Informant (PW-8) stated that when he attempted to rescue the deceased, the accused persons/appellants assaulted him, whereupon Panchanand Thakur (PW-2), Kinker

Thakur (PW-3), Sudhir Thakur and Sidam Thakur (PW-1) came out of their houses and proceeded towards the place of occurrence. Thus, neither the presence of these alleged eye witnesses nor their witnessing of the occurrence finds mention in the earliest version of the prosecution case as contained in the fardbeyan.

50. Further, in his cross-examination, Kinker Thakur (PW-3), who is the nephew of the deceased, stated that prior to the occurrence he, along with Panchanand Thakur (PW-2), Laxman Thakur (PW-8), Haripad Mahto (PW-6) and Sudhir Thakur (PW-4), were accompanying Gour Thakur (deceased). However, the informant Laxman Thakur (PW-8), in his cross-examination, deposed that upon witnessing the assault, he raised a *halla* (alarm), whereupon boys and other persons arrived at the place of occurrence.

51. Thus, according to the testimony of the informant (PW-8), he first witnessed the assault on Gour Thakur (deceased) and only thereafter did other persons assemble at the place of occurrence. This version is wholly inconsistent with the deposition of Kinker Thakur (PW-3), who categorically stated that he, along with Panchanand Thakur (PW-2), Laxman Thakur (PW-8), Haripad Mahto (PW-6) and Sudhir Thakur (PW-4), was already accompanying the deceased before the alleged assault took place.

52. This material contradiction goes to the root of the prosecution case. If the witnesses named by PW-3 were already present with the deceased before the occurrence, the statement of the informant that other persons arrived only after he raised an alarm becomes inherently doubtful. Such inconsistency creates a serious dent in the prosecution version and casts substantial doubt on the credibility, reliability and trustworthiness of both PW-3 and PW-8, thereby rendering their evidence unsafe to be relied upon without independent corroboration.

53. Again, Sidam Thakur (PW-1), in his cross-examination, categorically deposed that blood had fallen at the place of occurrence and that the same was shown to the *Daroga Je* during the investigation. However, the informant Laxman Thakur (PW-8), in his cross-examination, stated that no blood had fallen on the ground. This constitutes another material inter-se contradiction in the prosecution evidence.

54. Further, Kinker Thakur (PW-3), in his cross-examination, deposed that he had noticed two injuries on the head of the deceased and that blood was oozing from those injuries. However, the informant Laxman Thakur (PW-8), contrary to the testimony of PW-3, stated in his cross-examination that no blood had come out from any

part of the body of the deceased. This constitutes a material contradiction in the evidence of PW-3 and PW-8.

55. Again, Kinker Thakur (PW-3), who has been projected by the prosecution as an eye-witness to the occurrence, deposed in his cross-examination that he had seen two injuries on the head of the deceased from which blood was oozing out. However, the post-mortem report proved by the Doctor (PW-9) shows that only one injury was present on the head of the deceased. This discrepancy goes to the root of the prosecution case. The testimony of PW-3, being inconsistent with the medical evidence, loses much of its evidentiary value. It is well settled that where the ocular testimony is in direct conflict with the medical evidence on a material aspect, the Court must scrutinize such testimony with greater caution. Therefore, the statement of PW-3 regarding the injuries found on the deceased creates a serious dent in the prosecution version and renders his presence at the place of occurrence doubtful.

56. Hence, from the foregoing discussions, this Court is of the considered view that there are several contradictions *inter-se* in the testimonies of PW-1, PW-2, PW-3 and the informant (PW-8). The contradictions noticed are not minor discrepancies rather, they are material contradictions touching upon vital aspects of the prosecution case,

including the presence of witnesses at the place of occurrence, the existence of blood at the scene, and the nature and extent of injuries sustained by the deceased.

57. These inconsistencies render the prosecution version doubtful and create serious uncertainty regarding the truthfulness and reliability of the witnesses. The evidence of PW-1, PW-2, PW-3 and PW-8, when read as a whole, does not present a consistent and coherent account of the occurrence. Consequently, the material contradictions appearing in their testimonies substantially impair their credibility and raise a reasonable doubt with respect to the prosecution case.

58. Hence, upon an overall assessment of the testimony of PW-1, PW-2, PW-3 and PW-8 (informant), coupled with the material contradictions, inconsistencies and omissions noticed in their evidence, this Court is constrained to hold that the prosecution has failed to establish a trustworthy and coherent version of the occurrence. The evidence adduced by the prosecution does not furnish a sufficiently reliable, cogent and complete foundation for sustaining the conviction of the appellants.

59. In absence of credible and unimpeachable evidence connecting the appellants with the alleged offence, it would be unsafe to uphold their conviction merely on the basis of such doubtful testimony.

60. It is a fundamental principle of criminal jurisprudence that the prosecution must establish the guilt of the accused beyond reasonable doubt. The burden remains upon the prosecution throughout the trial, and the accused is entitled to the benefit of a reasonable doubt arising from the evidence on record.

61. 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."*

62. 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."*

63. 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."

64. 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. —"*

65. 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.---"*

66. Thus, on the basis of discussion made hereinabove, material contradictions and inconsistencies are noticeable in the testimonies of the alleged eye-witnesses. While the prosecution case in the fardbeyan attributes specific overt acts to each accused/appellants, the witnesses have given varying versions regarding the nature of assault, the weapons used and the injuries inflicted upon the deceased. P.W.-8 in his cross-examination stated that the deceased had sustained injuries at about 15-20 places on the body and that the assault was indiscriminate. However, the post-mortem report reveals only two external injuries. Such

a material discrepancy strikes at the root of the prosecution case.

67. Another circumstance which renders the prosecution case doubtful is the evidence of the Investigating Officer (C.W.-3). He has categorically stated that during inspection of the place of occurrence he did not find any blood at the spot. He further admitted that no straw (bichali) was found at the alleged place of occurrence. This assumes significance because the consistent prosecution case is that the deceased was feeding straw to cattle in the barn when the assault took place. Had the occurrence taken place in the manner alleged, the presence of straw and signs of blood at the spot would have been natural. The absence thereof creates doubt regarding the prosecution story and the place of occurrence itself.

68. This Court further notices that independent witnesses have not supported the prosecution case. P.W.-5 was declared hostile, while P.W.-6 and P.W.-7 did not support the prosecution version of murderous assault, rather evidence has come on record through these witnesses that the deceased had fallen from a machan while taking straw and sustained injuries. Although such defence version may not be required to be proved beyond reasonable doubt, it nevertheless constitutes a

circumstance which probabilizes the defence case and further weakens the prosecution evidence.

69. It is a settled principle of criminal jurisprudence as discussed in the preceding paragraphs that suspicion, however strong, cannot take the place of proof. The prosecution is required to establish its case beyond all reasonable doubt and the benefit of every reasonable doubt must necessarily enure to the accused.

70. In the present case, the inconsistencies between the ocular and medical evidence, non-support by independent witnesses, absence of blood and straw at the place of occurrence, admitted previous enmity and the alternative version emerging from the defence evidence cumulatively create serious doubt regarding the prosecution case.

71. This Court, after having discussed the factual aspect and legal position as discussed hereinabove is of the view that the prosecution has failed to prove the charge against the appellants beyond all reasonable doubt as such the impugned judgment of conviction and order of sentence requires interference by this Court.

72. Accordingly, the impugned judgment of conviction and order of sentence both dated 29.09.2003 passed by learned 9th Additional Sessions Judge, Hazaribagh in

Sessions Trial No.444 of 1999, against the appellants cannot sustain and are hereby, set aside.

73. Accordingly, the both the appeals stand allowed.

74. The appellants Sukhdeo Thakur, Pushu Thakur and Naryan Thakur, who are on bail, are discharged from the liabilities of his bail bonds.

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

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

I Agree **(Sujit Narayan Prasad, J.)**

(Akhil Kumar, J.) **(Akhil Kumar, J.)**

05/11/2026
Jharkhand High Court, Ranchi
Alankar /**A.F.R.**
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