IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Against the Judgment of conviction dated 28.09.2018 and Order of sentence dated 05.10.2018, passed by learned Additional Sessions Judge-II-cum-Fast Track Court, Ramgarh, in Sessions Trial Case No.635 of 2013]

Criminal Appeal (D.B.) No. 1356 of 2018

Prem Ram, aged about 27 yrs., Son of Pawan Ram @ Baban Ram, resident of Mauza Sector A, Bokaro Steel City, P.S. & P.O. - Harla, District - Bokaro, Jharkhand.

... ... Appellant

Versus

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

With

Criminal Appeal (D.B.) No. 1187 of 2018

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1. Vijendra Ram, aged about 34 years, Son of Bramhadeo Ram, resident of Super Colony, Mouza-Cantonment Staff Quarter, P.S. & P.O. - Ramgarh, District - Ramgarh, Jharkhand.
2. Subhash Kumar Paswan @ Subhash Kr. Pashwan @ Subhash Paswan, aged about 29 years, Son of Sajan Paswan, resident of Mouza - Dusadh Mohalla, P.S. & P.O. - Ramgarh, District - Ramgarh, Jharkhand.

... ... Appellants

Versus

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

With

Criminal Appeal (D.B.) No. 1357 of 2018

Arun Ram @ Teniya, aged about 32 yrs. Son of Moti Ram, resident of Sector 8B, P.S. & P.O. - Harla, District - Bokaro, Jharkhand.

... ... Appellant

Versus

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

P R E S E N T

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

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[Cr. Appeal No.1356/2018]

For the Appellant : Mr. B.M.Tripathy, Sr. Advocate
: Mr. Ashwini Kr. Upadhyay, Advocate
: Ms. Nutan Sharma, Advocate

For the Respondent : Mr. Vineet Kr. Vashistha, Spl. P.P.
[Cr. Appeal No.1187/2018]
For the Appellants : Mr. Arvind Kumar, Advocate
For the Respondent : Mr. Bhola Nath Ojha, Spl. P.P.
[Cr. Appeal No.1357/2018]
For the Appellant : Mr. B.M.Tripathy, Sr. Advocate
: Mr. Ashwini Kr. Upadhyay, Advocate
: Ms. Nutan Sharma, Advocate
For the Respondent : Mrs. Priya Shestha, Spl. P.P.

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C.A.V. on 21.07.2026 **Pronounced on 01.09.2026**

Per Sujit Narayan Prasad, J.

1. These three appeals arise out of the same impugned judgment of conviction and sentence, as such, directed to be listed together for analogous hearing.

2. All the three appeals are being taken up together.

3. These appeals are directed against the Judgment of conviction dated 28.09.2018 and Order of sentence dated 05.10.2018, passed by learned Additional Sessions Judge-II-cum-Fast Track Court, Ramgarh, in Sessions Trial Case No.635 of 2013 whereby and whereunder all the aforesaid appellants have been convicted for the offence punishable under section 302 r/w Section 120B of the I.P.C and under Sections 25(1-B) a/35 and 27(1) of the Arms Act. The appellants have been sentenced to undergo imprisonment for life with a fine of Rs.5,000/- each and in default of payment of fine, further S.I. for three months for the offence 302 r/w Section 120B of the I.P.C. Further, the appellants have been sentenced to undergo R.I. for two years with a

fine of Rs.1,000/- each and in default of payment of fine, further S.I. for one month for their conviction under Section 25(1-B) a/35. They have been sentenced to undergo R.I. for five years with a fine of Rs.2,000/- each and in default of payment of fine, further S.I. for two months for their conviction under Section 27(1) of the Arms Act.

Prosecution case

4. The prosecution story in brief as per the allegation made in the First Information Report reads hereunder as :-

5. The prosecution case, as set out in the fardbeyan of informant C/87 Om Prakash Kumar (P.W.-7), recorded by S.I. Hari Prasad Sah (P.W-9) of Ramgarh P.S. dated 16.08.2013 at 20:45 hours at Appolo Hospital, Irba, Ranchi, in brief, is that the informant and constable 362 Rajesh Kumar (P.W.-2) were deputed as a bodyguard of Bablu Sonkar(deceased). On 21.04.2012 the brother of Bablu Sonkar namely, Niwas Sonkar was murdered by criminal Sushil Srivastava with the help of his shooter Reyaz Ansari, Suraj Singh and Ravi Sardar in broad daylight in front of Radhey Shyam Cloth Store in Ramgarh Gola road and in this case the said accused persons are in jail and Bablu Sonkar is the main eye witness of the case. During the course of proceeding of the aforesaid case, the members of gangster Sushil Srivastava namely, Reyaz Ansari, Suraj Singh and Ravi Sardar had threatened Bablu Sonar that

how long he would give evidence in the police protection, he will be also shot dead seeing suitable opportunity. Earlier the accused persons had sent one miscreant namely, Anand Sahni at the house of Bablu Sonar to kill him, but he was apprehended and sent to jail. Thereafter, on the direction of S.P., two bodyguards were deputed with Bablu Sonkar.

6. It is further alleged that on 12.08.2013 an indefinite protest was going on in the leadership of Bablu Sonkar at Ramgarh District Electricity Office, which used to commence every day at 10:00 a.m. and ended at 05:00 PM. On 16.08.2013, at about 03.00 PM, the then M.P. Yaswant Sinha, had came at the protest place and after conversation with the higher officials of the Electricity Department, protest came to an end at 04.00 PM. Thereafter, Bablu Sonkar along-with his two body-guards as well as Subodh Singh went to the Jaldhar Hotel for lunch where one Shiv Mahto got lunch arranged. Informant and Bablu Sonkar on one motorcycle and Subodh Singh and Rajesh Kumar were riding in another motorcycle. They took lunch in the said Jaldhar hotel and thereafter, Bablu Sonkar asked the informant to drive the motorcycle. Bablu Sonkar sat behind the informant on the motorcycle and Rajesh Kumar sat on the bullet motorcycle of Subodh Singh. Thereafter, they proceeded towards Naisarai Mor and when they had reached before about 200 yards of S.D.O. residence gate, in the

meantime, three miscreants riding on two motorcycles each came there and started firing upon Bablu Sonkar. Bablu Sonkar sustained bullet injury and he fell down from the motorcycle. The motorcycle became unbalance, but anyhow informant controlled it. After parking the motorcycle, he wanted to fire from his pistol, but some people came in front from the opposite side towards the place of occurrence, so, he could not make fire. Some of the people who gathered there were talking that shooters of Sushil Srivastava namely, Amrendra Tiwary, Mukesh Singh, Sanju Singh and other three miscreants were fleeing towards Naisarai Mor after making fire. Thereafter, the injured Bablu Sonkar was taken to Naisarai, CCL, Hospital. After the preliminary treatment at the CCL Hospital, he was referred to Appollo and was admitted in ICU in critical condition.

7. Informant claimed that notorious Sushil Srivastava, Reyaz Ansari, Suraj Singh, Ravi Sardar and Lakhan Sao, who are in jail, had conspired with Mumtaz Bangali, who was outside the jail and in a planned manner had sent shooter Amrendra Tiwary, Mukesh Singh, Sanju Singh and three others in a motorcycle with intention to kill Bablu Sonkar, and they had indiscriminately fired on as a result Bablu Sonkar was badly injured.

8. On the basis of the fardbayan of the informant, Ramgarh P.S Case No.225/2013 dated 16.08.2013 u/s

307/326/120(B) of the I.P.C. and Section 27 of the Arms Act was registered against the accused persons namely, Sushil Srivastava, Riyaz Ansari, Suraj Singh, Ravi Sardar, Lakhan Sao, Mumtaz Bangali, Amrendra Tiwary, Mukesh Singh, Sanju Singh and other three unknown miscreants. After the death of Bablu Sonkar, section 302 IPC was added in The FIR.

9. After investigation charge-sheet bearing No.331/13 dated 30.11.2013 under Sections 302/324/326/120(B) of the I.P.C. against the accused persons namely, Suraj Singh, Riyaz Ansari, Lakhan Sao, Ravi Sardar, Amrendra Tiwary, Arun Ram, Prem Ram, Vijendra Ram, Subhash Paswan and Mumtaz Bangali were submitted and after cognizance of the offence, the case was committed to the Court of Sessions.

10. It is pertinent to mention here that the case of Mumtaz Bangali was separated from the original case record and opened split up file as S.T. No.635A/13, vide order dated 10-04-15. Whereas the case record of accused namely, Suraj Singh was separated from the original case record and opened split up file as S.T. No.635B/13 vide order dated 12.08.2015 and the case of Amrendra Tiwary and Lakhan Sao was separated from the original case record and opened split up file as S.T. No.635C/13 vide order dated 05.02.2018.

11. Charges under Sections 302/120(B) of the IPC as also under Sections 25(1B)a/35, 26(1)/35 & 27 of the Arms Act were framed to which the accused persons pleaded not guilty and claimed to be tried.

12. The learned trial court, on appreciation of the evidences produced on behalf of the prosecution, has found the allegation proved beyond all reasonable doubt and accordingly, passed the judgment of conviction which is impugned in these appeals.

Argument on behalf of appellants in Cr. Appeal No.1356/2018 and Cr. Appeal No.1357/2018

13. The following grounds have been taken by the learned Senior counsel appearing for the appellants in Criminal Appeal (DB) Nos. 1356 of 2018 and 1357 of 2018 in assailing the impugned judgment of conviction: -

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

(ii) No cogent evidence is available if the testimony of entire witnesses will be taken into consideration.

(iii) The conviction is based upon the testimony of PW-2 and PW-7 but if the testimony of PW-2 and PW-7 will be taken into consideration together, then the presence of PW-2 will be found to be doubtful as per the

testimony of the PW-7, who is the informant in the present case.

(iv) It has come in the evidence of the PW-7 that he was riding the motorcycle and the deceased was the pillion rider and on another motorcycle PW-2 was going which was being driven by one Subodh Singh and, as such, it is quite impossible for PW-2 to see the entire occurrence for the purpose of identifying the accused persons.

(v) The pistol has been said to be recovered but if Ext.-4, which is seizure list of alleged pistol used in commission of crime and Ext.-9, which is the arms and ammunition report of the Sergeant Major, will be taken into consideration, then there is vital contradiction in the length of the pistol and, as such, the Ext.-9 is not reliable evidence to be accepted which has been given reliance for the purpose of passing the judgment of conviction.

(vi) The investigating officer has stated in his deposition that he has recorded the statement of the deceased but very surprisingly that part of the version has not been taken into consideration by the learned trial court.

(vii) FIR was registered on 16.08.2013 and the same was sent to the court on 18.08.2013, i.e. after two days

from the registration of the FIR and these two days delay has not been explained by the prosecution.

(viii) P.W.-7 Om Prakash Kumar and P.W. -2 Rajesh Kumar they are claiming that they are the eye witnesses of the case but neither P.W. -7 nor P.W. -2 have stated in their deposition that appellants have committed offence therefore the implication of these appellants is bad in the eye of the law.

(ix) The search cum seizure list dated 17.08.2013(Ext.-3) and search cum seizure list dated 26.08.2013(Ext.-4), have not been proved as the seizure list witnesses namely Jitendra Chawrasia and Rajkumar Sao as well as Subash Nayak and Subodh Singh have not been examined on behalf of the prosecution therefore implication of these appellants in the instant case or seizure list is bad in the eye of the law.

(x) P.W. -9 is Hari Prasad Sah who was the part investigating Officer of this case, it is evident from his testimony that on 26.08.2013 this appellants were arrested at the time of making a plan for committing Dacoity in Ramgarh P.S. case no 235/2013 and these appellants confessed their involvement in the commission of the offence of firing upon Bablu Sonkar therefore on the basis of confession, implication of

these appellants in the instant case is bad in the eye of the Law.

(xi) The impugned Judgment is totally illegal on the ground that there is no cogent and convincing evidence to show the involvement of these appellants in the alleged offence and there is no iota of evidence to connect the appellants in the alleged occurrence in any manner.

(xii) The occurrence was alleged on 16.08.2013 at about 5:30 P.M. but on that very day both witnesses i.e., P.W. -7 nor P.W. -2, who were claiming that they are the eye witness, did not identify the accused persons, but on 28.10.2013 when these appellants surrendered before the court below, then on 07.11.2013, in T.I.P. these appellants were identified by P.W. -2 and P.W. -7. Therefore, identification of these appellants in the TIP creates doubt so implication of these appellants in the instant case is bad in the eye of law.

(xiii) The Learned Trial Court had failed to appreciate that none of the independent witnesses have supported the case of the prosecution and the case was supported by only interested witnesses.

Argument on behalf of appellants in Cr. Appeal No.1187/2018

14. Learned counsel appearing for the appellants in Criminal Appeal (DB) Nos. 1187 of 2018, in addition to the

aforesaid grounds, has taken the following grounds in assailing the impugned judgment of conviction: -

(i) The pistol has been said to be recovered from the house of the appellant Vijendra Ram but save and except there is no allegation against him, even he has not been identified in the T.I.P.

(ii) The recovery of the said pistol, as has been argued by taking the plea in defence in the cases as referred hereinabove that there is contradiction in Ext.-4 and Ext.-9.

(iii) The impugned judgment passed by the Court below is bad in law as well as on facts since it suffers from improper appreciation of evidence on record hence the same liable to be set aside.

(iv) The Learned Trial Court has convicted the appellants and sentenced him without application of judicial mind and relied upon the highly improbable story.

(v) The Learned Trial Court had failed to appreciate that none of the independent witnesses have supported the case of the prosecution and the case was supported by only interested witnesses.

(vi) The Learned Trial Court had failed to appreciate that none of the witnesses had attributed any overt act upon these appellants and the allegations are general and omnibus in nature.

(vii) The Learned Trial Court had failed to appreciate that another victim of the alleged occurrence namely Lalu @Lalo Devi (P.W.-5), who was also injured, had turned hostile and did not identify any of the miscreants.

(viii) The Learned Trial Court had failed to appreciate that both these appellants were alleged to have apprehended while they were planning for commission of robbery and a separate case being Ramgarh P.S. Case No. 235/2013 was registered and the police recorded the confessional statement of these two appellants and on the basis of confessional statement both of them were made accused, but these confessions before the police have no evidentiary value in the eye of law.

(ix) The Learned Trial Court ought to have appreciated that it is alleged that on the basis of confession of appellant no. 1 Vijendra Ram, one pistol was recovered from his house, but there is no evidence to connect the recovered pistol with the crime weapon.

(x) The Learned Trial Court ought to have appreciated that none of the witnesses including the informant also have not identified these appellants to be perpetrator of the crime.

Argument on behalf of the State

15. While defending the judgment of conviction learned counsels appearing for the State have raised the following arguments in response to the grounds as referred hereinabove, -

(i) There is direct evidence based upon the testimony of the eye witness PW-7, who is the informant, who has narrated the entire prosecution version and corroborated the same in course of the trial.

(ii) The PW-2 is also an eye witness who all along has accompanied the deceased along with PW-7 and corroborated the prosecution version.

(iii) The discrepancy which has been shown in the argument advanced on behalf of the appellants, the same cannot be said to be any contradiction since the measurement which has been conducted as per the measurement referred in Ext.-4 and if matched with the ballistic report, i.e., Ext.-9, the pistol is found to be of the same length which has been used in the commission of crime.

(iv) So far as Ext.9 is concerned, the same is minor discrepancy and for which the entire prosecution version will not be vitiated if the testimony of PW-2 and PW-7 will be taken into consideration being the eye

witnesses, who have duly supported the prosecution version.

(v) 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 appeals are fit to be dismissed.

Analysis

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

17. We have also gone through the testimonies of the witnesses as available in the LCR as also the exhibits.

18. 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.

19. Prosecution had examined altogether 18 witnesses out of whom PW-7 Om Prakash Kumar, is the body guard of Bablu Sonkar (deceased) and is the informant of this case; PW-1 Police No.183 Quadir Ansari; P.W.2 Rajesh Kumar is another body-guard of deceased Bablu Sonkar; P.W.3 Gautam Gope, was declared hostile; P.W.4 Shiv Kumar;P.W.5 Lalu @ Lalo Devi, is an injured witness, was declared hostile**;** P.W.6 Sushil Sonkar, is the brother of the

deceased, was declared hostile; PW-8 is ASI Taraknath Singh; P.W.-9 Hari Prasad Sah is the part Investigating Officer of the case; PW-10 Dr. Ajit Kumar Choudhary under whose supervision postmortem examination of the deceased was conducted by Dr. Kaushal Kishor; PW-11 Dr. Ashok Giri, had firstly treated the deceased; P.W.-12 Rajendra Singh is Sergeant Major, P.W.-13 Dharmendra Kumar Singh, is the then Judicial Magistrate, 1st class, Hazaribag who conducted the T.I.P.; P.W.-14 is A.S.I. Rajesh Kumar Rai; P.W.-15 Vidyapati Ohdar and P.W.-16 Rameshwar Bhagat, are also part Investigating Officer of the case; P.W.17 Sanjay Kumar Singh No.3, is the other Judicial Magistrate, 1st Class, Hazaribag, who had conducted the T.I.P. and P.W.18 Abraham Hembram, is also one of the part Investigating Officer of the case.

20. **PW-1 Police No.183 Quadir Ansari** is the member of alleged raiding party, who had gone to the house of accused Vijendra Ram. He has stated in his evidence that occurrence is of 26.08.2013. At that time, he was posted at Ramgarh Police Station and he proceeded at 04:20 a.m. alongwith S.I. Hari Prasad Sah as well as armed force to Sweeper Colony near football ground and went to the house of accused Vijendra Ram. They themselves got searched before two independent witnesses before entering into the house, but he cannot tell the name of these two independent witnesses.

Red and blue bag was found in the house. In the said bag, one jean, shirt, one mobile of spice company and one country-made .315 pistol along-with one pocket note-book in which address and number of Prem Ram was written was recovered, which were seized and sealed by making proper seizure list in presence of two independent witnesses. Thereafter, one samsung mobile was recovered at about 06.05 hrs, from Sidhu Kanhu ground as per disclosure of accused Arun Ram, which was also seized by making a seizure list. At that time, accused Vijendra Ram, Subhash Paswan and Arun Ram were also present there and the aforesaid three accused persons confessed that the pistol which was recovered from the house of Vijendra Ram was used at the time of firing upon deceased Bablu Sonkar.

21. PW-1 in his cross-examination stated that it is not in his memory that when and on what day he left police station on 26.08.2013. He is also unable to say the name of other police force except Hari Prasad Sah and Tara Singh who were along-with him on that very day. The two independent witnesses reached at the place of occurrence after 10 minutes of reaching them. He further deposed that whether any mark was made on the alleged seized pistol and mobile phone or not is also not in his memory.

22. **P.W.2 Rajesh Kumar** is the body-guard of deceased Bablu Sonkar. He has stated in his evidence that occurrence

is of 16th August, 2013 at about 05:30 p.m. At that time, he was deputed as a body-guard of Bablu Sonkar. When Bablu Sonkar came out from the Hazaribag Court room, after giving his evidence, in murder case of his brother Sri Niwas Sonkar, then accused Suraj Singh, Riyaz Ansari and Ravi Sardar, had threatened Bablu Sonkar saying that how long he will be in the protection of police, he would be shot as they would get opportunity (kab tak police protection me rahiyega, mauka dekhkar goli se uda denge). He further deposed that before the occurrence of aforesaid threatening one miscreant namely, Anand Sahni was sent at the house of Bablu Sonkar, who was arrested by the police. Thereafter, he and Om Prkash Kumar were deputed as body-guards of Bablu Sonkar. He further deposed that from 12.08.2013 an indefinite protest was being made against the Electricity Department in the leadership of Bablu Sonkar and on 16.08.2013 the then Hon'ble M.P. Yaswant Sinha also came at 03:00 p.m. at the protest place and after making conversation with the higher officials of the Electricity Department, protest came to an end at 04.00 p.m. and after ending protest Bablu Sonkar told Subodh Singh at 04:00 pm that there was arrangement of food at Jaldhar Hotel, where they went to eat and at about 04:15 hrs reached there. Thereafter, they came out from the hotel at 05:00 p.m. and he sat on the motorcycle of Subodh Singh and

Bablu Sonkar sat behind his motorcycle and Om Prakash was riding it. When they were on the way six miscreants on two motorcycles were also coming behind them. As soon as motorcycle of Bablu Sonkar, reached near Durga Mandap, indiscriminate firing was made upon Bablu Sonkar. Bablu Sonkar sustained bullet injuries and fell down from the motorcycle along-with his body-guard Om Prakash Kumar. In the said firing one woman had also sustained bullet injury on her leg. He further deposed that the people, who gathered there were talking that shooters of Sushil Srivastava namely Mukesh Kumar Singh, Amrendra Tiwary, and Sanju Singh were involved in the said crime. Thereafter, he also reached there and took out his pistol, but seeing crowd he did not fire. Thereafter, the injured Bablu Sonkar was taken to CCL, Hospital on a Maruti Van. Bablu Sonkar had sustained bullet injuries on his *pakhura* and *panjra* (ribs). After the preliminary treatment at the CCL Hospital, he was referred to Appollo, Ranchi, where he died in course of treatment. He further deposed that he saw the six miscreants who were on the motorcycles and he identified the accused who were firing. After some days occurrence, Police had taken him and Om Prakash to the Central Jail, Hazaribag, in T.I.P. and he had identified the accused persons who was driving motorcycle at the time of firing and the accused who had fired.

23. In his cross-examination, he had stated that at the time of giving threatening at Civil Court, Hazaribag, accused persons were alongwith 4-5 police personnel, but he cannot say the names of police personnel. He also cannot tell the date and day of threatening at Civil Court, Hazaribag, but Bablu Sonkar did not inform at the court or case was lodged or sanha was given at the police station with respect to threatening. He was alone at the time of giving threatening. He further deposed that motorcycle was black coloured and he cannot say the number of the motorcycle. At the time of firing, he was standing at the distance of 25 yard from the place of firing. He cannot say on which date he was deputed as body-guard of Bablu Sonkar. He was not acquainted with the accused persons prior to the occurrence. He did not sustain any injury in the said occurrence rather one woman was injured. Om Prakash Singh did not counter fire. He further deposed that he went to Hazaribag Central Jail after 20-25 days of the occurrence for identification of the accused persons along-with Hari Prasad Sah. T.I.P. was conducted between 12 to 1 P.M., and 15-20 persons were standing for T.I.P.

24. **P.W.-3 Gautam Gope** had stated in his evidence that that occurrence is of 3-4 years ago. He had a hotel in front of IFCO, New Colony, Minjhar. On the day of occurrence Shiv Mahto came at his hotel taking 1/2 kg meat and gave

him for cooking saying that his two or three friends will come for taking meal and at about 03:00 to 03:30 p.m. four persons came there along-with Shiv Kumar. He only identified Shiv Kumar Mahto out of four persons. They took their meal and thereafter went away from there and thereafter, a rumour spread that someone was shot at Naisaray, but he cannot say who was shot.

25. He was declared hostile on behalf of prosecution. In his cross-examination, he deposed that he did not give any statement before the police.

26. **P.W.-4 Shiv Kumar** had stated in his evidence that at the time of occurrence, he was the then City President of Yuva Morcha, Ramgarh and Bablu Sonkar was City Present of B.J.P., Ramgarh. He had no knowledge about any occurrence took place at the house of Bablu Sonkar and also about the threatening to Bablu Sonkar. He further deposed that on the date of occurrence at 11A.M., Bablu Sonkar had told him they are holding protest against the Electricity Board and had also told him to arrange for meat and rice, they will take meal. He got food cooked at Jaldhar hotel on the direction of Bablu Sonkar. Bablu Sonkar came at 4 A.M., in the evening on two motorcycles with four people out of which two were bodyguards, Bablu Sonkar himself and Subodh Singh. After taking meal, they left the said hotel at about 05:30 P.M. Bablu Sonkar had two body

guards out of which one was Rajesh Singh and the name of the other bodyguard, he could not remember. Thereafter, after 1 hour, rumour spread that Bablu Sonkar was shot by some miscreants. In his cross-examination, he stated that his statement was not recorded by the police in this case.

27. **P.W.5 Lalu @ Lalo Devi** is one of the injured witnesses to the occurrence. She has deposed in her evidence that occurrence is of 4-5 years ago. At that time, she was going to her house after supplying milk to the customers. When she reached near Durga temple fires began to start, due to which she sustained bullet injury on her right leg, then she became senseless and she gained sense at Naisaray Hospital. She does not know who made fire. She does not identify the miscreants who made fire. She also does not know whether her statement was recorded by the police or not. She was declared hostile on behalf of the prosecution.

28. **P.W.6 Sushil Sonkar** is the brother of the deceased Bablu Sonkar. He has stated in his evidence that occurrence took place on 16.08.2013 at about 05:00 P.M. At that time, he was taking meal at his house. He heard from his son that his brother Bablu Sonkar was shot by someone, then, he reached Naisaray Hospital by motorcycle, where he came to know that Bablu Sonkar was shot four-five bullets. He was referred to Apollo Hospital, Irba, Ranchi, then he went there and saw that his treatment was going on and he was kept in

CICU and took out from CICU after 39 days and admitted in a private A/c room. Thereafter, he died on 28.09.2013 at about 04:05 P.M. He was declared hostile on behalf of the prosecution.

29. PW-7 Om Prakash Kumar, is the informant of this case. He had stated in his evidence that occurrence is dated 16th August, 2013 and at that time, he was posted in Ramgarh District and he was deputed as a body-guard of Bablu Sonkar, Bhajpa Nagar Adyaksh. Bablu Sonkar had another body-guard namely Rajesh Kumar was also deputed with him. From 12.08.2013, an indefinite protest was being made by the members of B.J.P. against the Electricity Department at Electricity Office, Subhash Chowk, Ramgarh, which used to commence every day at 10:00 AM and ended at 05:00 PM. On 16.08.2013, Hon'ble the then M.P. Yaswant Sinha also came at 03:00 PM at the protest place and after making conversation with the higher officials of the Electricity Department protest came to an end at 04.00 PM. The protest was being made in the leadership of Bablu Sonkar and on that very date he was also there and they were present for his security.

30. Informant further stated that after ending protest Bablu Sonkar told us that Shiv Mahto had cooked meat and rice in Jaldhr hotel situated at Bijhar, where they had to go to eat. Bablu Sonkor sat on a motorcycle and behind him he

sat. Another motorcycle was being driven by Subodh Singh, on which police Rajesh sat. They reached at hotel at 04:15 PM. After eating they started to proceed at about 05:00 PM, then Bablu Sonkar asked him to drive the motorcycle and Bablu Sonkar sat behind him on the motorcycle and Subodh Singh who was driving another motorcycle, on which Rajesh Kumar sat and they proceed from there. In the meantime, a man who was acquainted with Bablu Sonkar came on Vagon R at the hotel, then Bablu Sonkar started talking with him and they were late by 5-10 minutes. Thereafter, they proceeded 1 to 2 km towards Naisarai Mor and as soon as they reached before 100 meters of S.D.O. residence he heard noise "*fatak*", it seems as if the wheel of back side burst. He slowed the motorcycle and saw right side leaning his head, then he saw three miscreants riding on two motorcycles each started firing upon Bablu Sonkar. His motorcycle became unbalanced and Bablu Sonkar fell down from the motorcycle. Anyhow he stopped the motorcycle, he took out his pistol, but he saw people gathered in the opposite side and thus, the miscreants succeeded in fleeing. When firing was being made Rajesh was some distance from the motorcycle and he also stopped and immediately came running there. At that time, it was 05:20 PM**.** Informant further deposed that some of the people who gathered there were talking that shooters of Sushil Srivastava namely

Amrendra Tiwary, Mukesh Singh, Sanju Singh and other three miscreants were involved in the said crime. Informant further stated that in course of firing a woman also sustained bullet injury. Thereafter, he and Rajesh, stopped a car and the injured Bablu Sonkar was taken to CCL Hospital, Naisarai, with the help of people on a car. Bablu Sonkar sustained bullet injuries on right *pakhura*, near waist and other places. After the preliminary treatment at the CCL Hospital, Naisarai, he was referred to Appollo Hospital, Ranchi and was admitted in ICU and at that time he was unconscious. He was treated about 1-1½ months, but later on he died.

31. Informant further stated that the brother of Bablu Sonkar namely Shri Niwas alias Budulu Patrakar, was killed in the year 2012, and the said case was running in Hazaribag Court, in which Bablu Sonkar was eye witness. When Bablu Sonkar went to Hazaribag to depose, the miscreants in connection with this case namely Riyaz Ansari, Suraj Singh and Ravi Sardar had threatened him to shot dead. Informant further deposed that police came in Appollo Hospital on 16.08.2013 at 20:45 PM, in the night, and took his fardbeyan. Informant had identified his signature on the fardbeyan, which was marked as Ext.-1. He had told the police that he could identify the accused persons on seeing them. He was taken to the Central Jail,

Hazaribag by police for T.I.P. within 1-1½ months, where he identified the accused who was driving the motorcycle and the person who sat in the middle and was firing was also identified by him.

32. **PW-8 is ASI Taraknath Singh**. He had stated in his evidence that on the date of occurrence on 26.08.2013, he was posted at Ramgarh P.S. as constable and on that very date, at about 05:00 A.M., in the morning, he alongwith the then SI Hari Prasad Sah and constable Quadir Ansari left Ramgarh P.S. alongwith apprehended accused Prem Ram, Subhash Paswan and Arun Ram on a Government vehicle and raided the house Vijendra Ram situated at Sweeper Colony near Ramgarh football ground and following the rules of seizure they entered into the house of Vijendra Ram in presence of two independent witnesses namely Subhash Paswan and Subodh Singh, had found blue colour bag hanging in the hook of the wall, from where one country-made pistol of .315 bore, two mobile sets and some clothes were recovered, which were seized by making a seizure list by Hari Prasad Sah and thereafter, it was sealed the same was kept in a cloth, upon which accused persons and independent witnesses put their respective signatures. Thereafter, one mobile set was recovered from the football ground on saying of the accused persons which was also seized by making seizure list. On interrogation, the accused

persons admitted that the pistol which was recovered from the house of Vijendra Ram was used in commission of murder of District BJP President Bablu Sonkar.

33. In his cross-examination, he stated that the family members of Vijendra Ram were present at the time of search, but no signature was obtained from the family member of Vijendra Ram on the seizure list. Signature of the aforesaid three accused persons namely Vijendra Ram, Arun Ram and Subhash Paswan were taken on the seizure list. He has further stated that the bag, spice mobile and pocket diary which were recovered and seized from the house of Vijendra Ram were not before him in the Court.

34. **P.W.9 Hari Prasad Sah** is the part Investigating Officer of this case. He had stated in his evidence that on 16.08.2013, he was posted at Ramgarh as S.I. On that very date, at about 17:33 hrs, he was informed by constable 87 Om Prakash Kumar on telephone that Bablu Sonkar was shot near Naisaray Hospital, then, after entering the said information as sanha no.374 in the thana dainiki he rushed to Naisaray CCL Hospital along-with Chandrika Prasad, the then in-charge Ramgarh P.S. and armed forces. On reaching the Hospital, he found Bablu Sonkar in emergency ward, where he was crying and shouting saying that save him, save him (*bachaiya-bachaiye*). At that time blood was also oozing from his waist, ribs (*panjra*) and thigh etc. After

preliminary treatment, he was referred to higher center /RIMS at once for his better treatment. Thereafter, injured Bablu Sonkar was admitted at Appollo, Ranchi, by his elder brothers and his family members and his body guards constable no.87 Om Prakash Kumar and constable no.362 Rajesh Kumar were also with him. Thereafter he also reached at Appollo Hospital as per direction of the then Dy. S.P., Ramgarh, where he recorded the fardbeyan of his body guard constable 87 Om Prakash Kumar at 20:45 hours. He has proved his signature and signature of informant Om Prakash Kumar, on the fardbeyan. The fardbeyan was marked as Ext.-1/1. On the basis of the aforesaid fardbeyan of the informant, a case u/s 307, 326/120B IPC & 27 Arms Act was registered and he started the investigation of this case. He recorded the statement of the injured Bablu Sonkar, who was then admitted in ICU, Apollo Hospital. Bablu Sonkar had stated in his statement before him that at Hazaribag Court, he had given his evidence in Ramgarh P.S. case no.112/12, which relates to murder case of his brother Srinivas Sonkar and outside the court, he was threatened by accused Riyaz Ansari, Suraj Singh and Ravi Sardar saying to withdraw the case, otherwise he will face such consequences as faced by his brother (*case utha lo warna wahi anjam hoga jo tumhare bhai ka kiya hai*) and one week of that threatening accused Shankar Karmali, Sanju Singh and

Arun Ram, came at his house and told him that they had come at his house as per direction of their boss Sushil Srivastava and their boss Sushil Srivastava had directed to withdraw case after taking Rs.10,00,000/- and when he refused to withdraw the case, then the aforesaid accused persons went away after giving threatening to face consequences.

35. He further stated that Bablu Sonkar also told in his statement before him that on 16.08.2013, at the time of occurrence, accused Shankar Karmali, Sanju Singh and Arun Ram fired upon him. He could not tell the name of other three miscreants who were on other motorcycle. Bablu Sonkar also told him that he could not talk about the occurrence further because he was feeling trouble in breathing. He further deposed that he recorded the re-statement of the informant constable 87 Om Prakash Kumar in course of investigation who fully supported the FIR and occurrence. Thereafter, he returned back at Ramgar P.S, at about 11:00 p.m. from Apollo Hospital, where a formal FIR was drawn as Ramgarh P.S. Case no.225/13. He has identified the writing and signature of then S.I. Chandrika Prasad on endorsement of the case, which has been marked as Ext.-1/2. He has proved formal FIR, search-cum-seizure list dated 17.08.2013 prepared at 06:45 p.m. and search-

cum-seizure list dated 26.08.2013 at 05:15 a.m., which have been marked as Exts. -2, 3 and 4 respectively.

36. He further deposed that he inspected the place of occurrence on 17.08.2013 at 06:30 a.m. The place of occurrence is situated at the bank of pitch road which goes to Naisaray Mor from Giddi within Ramgarh Police Station. In course of inspection of the place of occurrence, he found one empty cartridge of .315 bore, one empty cartridge of 9 mm and one empty cartridge of 7.62 mm were found with firing mark on its firing point in the bottom of the aforesaid empty cartridges which were seized in presence of independent witnesses namely, Jitendra Chourasiya and Rajkumar Sao by making a seizure list by marking A of .315 bore of the said empty cartridges, by marking B of the said 9mm and by marking C of 7.62 mm cartridges and thereafter sealed them in presence of the aforesaid independent witnesses. He further deposed that in course of investigation, he also received preliminary injury examination report of Bablu Sonkar from CCL Hospital, Naisaray. Thereafter, on 21.08.2013 he recorded the confessional statement of accused Suraj Singh. On 24.08.2013, he produced the materials seized from the place of occurrence before the Court. Thereafter, he recorded the confessional statement of Arun Ram, Vijendra Ram and Subhash Paswan who were arrested on 26.08.2013 at the

time of making a plan for committing dacoity in Ramgarh P.S. Case no.235/13, in which they have confessed their involvement in the commission of offence of firing on Bablu Sonkar. They also disclosed that the pistol which was used by accused Arun Ram in the commission of murder of Bablu Sonkar has been kept in the house Vijendra Ram situated at Canton Sweeper Colony, which may be recovered from there. Thereafter, he proceeded to the house of Vijendra Ram on 26.08.2013 at about 05:15 a.m. alongwith accused Arun Ram, Vijendra Ram and Subhash Paswan and the house of the Vijendra Ram was searched in presence of two independent witnesses namely Subhash Nayak and Subodh Singh and in the said search, a blue colour *pithu* bag hanging in the corner of the wall of the house was recovered, from which a country-made pistol of .315 bore, was recovered which was seized by making a proper seizure list in presence of two independent witnesses and the aforesaid three accused persons namely Arun Ram, Vijendra Ram and Subhash Paswan. They also put their respective signatures on it and one copy of the said seizure list was given to each of the accused persons who put their respective signatures on it. On 27.08.2013 he filed a petition before the Court for mechanical examination of seized country made pistol of .315 bore by Sergeant Major, Police Centre, Hazaribag. On 28.08.2013, he received examination report of seized pistol

of .315 bore by Sergeant Major, which bears the signature of Sergeant Major Rajendra Singh, which was marked as Ext.9.

37. PW-9 in his cross-examination, had stated that he took over charge of investigation of the case at Apollo Hospital and recorded the fardbeyan of the informant constable 87 Om Prakash Kumar at 20:45 hrs at Apollo Hospital. He did not record statement of any staff of the Hospital. When he reached at Apollo Hospital from the place of occurrence Bablu Sonkar was admitted in ICU. At that time no patient was admitted except Bablu Sonkar in ICU. Bablu Sonkar was not at ventilator at the time of recording of his statement. He had neither put his signature on inspection register of Hospital nor took permission from the Doctor of the Hospital before recording statement of Bablu Sonkar. Bablu Sonkar was not in life support system at the time of recording his statement. He did not make any map of the place of occurrence and did not record the statement of the witness of inquest report. He did not seize bloodstained soil from the place of occurrence. The seized articles were not before him in the Court. He had sent only Exts. A & D to F.S.L. for comparative examination out of the seized articles. He did not give any M.R. number of the seized materials.

38. **PW-10 Dr. Ajit Kumar Choudhary** under whose supervision postmortem examination of the deceased was conducted by Dr. Kaushal Kishor. He had proved

postmortem examination report of the deceased Bablu Sonkar which has been marked as Ext-10 in this case. He had deposed that on 28th of September 2013, he was posted as Professor and head of department and Dr. Kaushal Kishor junior resident academic in the department of Forensic Medicine RIMS Ranchi and on that very day at 22:30 hrs. postmortem examination was conducted by Kaushal Kishor under my supervision and it was conducted at night by the order of DC Ranchi vide memo no. 918, dated 28.09.2013 over the dead body of Bablu Sonkar s/o-Ashok Sonkar of vill- Golpar, Chatti Bazar, Ramgarh P.S. + Distt. Ramgarh male aged about 38 yrs. He found the following: -

(a) The body was as average build, rigor mortis present over the body, abdomen was not distended, cornea hazy, tracheostomy done

Recently healed scar-

(1) 1 & 1/2 X 1 cm on back of right arm upper part situated 12 cm below top of right shoulder underneath there was fracture of right clavicle in which the healing process was in progress and there was presence of pus in right chest cavity.

(2) 1 X 1/2 cm on lateral side of right chest lower part situated 18 cm on right to midline and 10 cm above the umbilicus underline soft tissue are healed

(3) 1cm X 1cm on lateral side of right abdomen lower part situated 3 cm above the right iliaccrest the underline soft tissue were healed

(4) 1 X 1cm on left abdomen front and lower part situated 7 cm left to midline and 5 cm below the level of umbilicus. The underline tissue were healed

(5) Stitched wound 1 X 1/2cm which two stitches on left chest lateral side middle part situated 15 cm below left axilla and 19 cm left midline underneath there was fracture of 6th rib and hence were in healing process

(6) 2 X 1&1/2cm on anterior side of upper part of right thigh situated 8 cm below anterior superior iliac spine. The underline soft tissue were healed. There was another recently healed scarf 1 X 1/2 cm on anteromedial side of right thigh of middle part. Surgical stitched wound. 29 cm long which 28 stitched mark (stitched were removed and wound was healed) on right posterolateral side of chest situated 10 cm below the right axilla and extending from anterior part of right chest. There was sloughing wound 2 X 2 cm on right chest lateral side 10 cm below the right nipple and 17 cm from midline. The underline track was upto chest cavity with presence of pus in right chest cavity and right lung is adherent to right chest wall

Opinion-:

(1) The above noted injuries were antimortem

(2) opinion regarding original nature of wound can be obtained from the Surgeon concerned who has firstly attended a case and the surgeon who operated and treated the case.

(3) Death was due to septicemia as a result of above noted injuries.

(4) Time elapsed since death was between 3 to 12 hrs. from the time of postmortem examination.

39. **PW-11 Dr. Ashok Giri,** had firstly treated the deceased. He had stated in his evidence that on 16.08.2013, he was posted as medical officer at Naisarai Hospital and was on 2nd shift duty at 2:00 PM to 10:00 PM. A patient namely Bablu Sonkar was brought at hospital by local people as well as police personnel before him at 5:30 PM and he started medical treatment as instructed by his senior specialist Dr. Mithilesh Prasad. After initial management patient was referred to higher center considering critical condition of patient. During the treatment, he had found following injuries on the person:-

(a) Penetrating lacerated wound of about 2/2 cm on the posterior side of right shoulder

(b) Penetrating lacerated wound of about 2/2 cm on the right side of upper abdomen

(c) Lacerated wound about 3 cm on the right side of lower abdomen

(d) Penetrating lacerated wound of about 2/2 cm on the lateral side of right upper thigh

(e) Penetrating lacerated wound of about 3/3 cm on the medial side of right upper thigh

Mark of Identification: black mole on left side of chest, two inches below left axilla.

40. PW-11 had further stated in his evidence that on same day (i.e.16.08.2013), Lalo Devi also came to Naisarai Hospital and according to the patient a bullet from primary source came and hit at her joint area. She was also provided first-aid and sent home.

Wound details:

(a) One injury on the right ankle as abrasion injury.

41. Doctor PW-11 has proved injury report of Bablu Sonkar which has been marked as Ext-12 and injury report of Lalo Devi which has been marked as Ext.-13 in this case.

42. Doctor PW-11 in his cross-examination, had stated that there is no seal in the injury report of the CCL Hospital Naisarai. He has not mentioned registration no. of the injury report and the time of departure of injured. He has also not mentioned colour of injury on the injury report. Both injuries report prepared by him in different date and time.

43. **P.W.-12 Rajendra Singh,** is Sergeant Major. He had stated in his evidence that on 28.08.2013 he was posted at the post of Sergeant Major, Hazaribag and on that day, the seized materials of Ramarh P.S. Case no.225/13 dated 16.08.2013 was produced before him in a sealed form in white colour markin cloth by the investigating officer Hari Prasad Sah in compliance of order of the S.D.J.M., Hazaribag. After unsealing the said sealed materials, one

country-made pistol of length 30.9 cm bearing P.S. Case number and marked 'D' was found. At the time of testing, it was found that .315 bore cartridges may be easily inserted in it. At the time of testing its trigger, it was found that fire may be made from it. He has proved his examination report, which has been marked as Ext.-9.

44. **P.W.13 Dharmendra Kumar Singh**, is the then Judicial Magistrate, 1st class, Hazaribag, who conducted the TIP of the suspects of Ramgarh P.S. Case no.225/13. He had stated in his evidence that on 07.11.2013, he had conducted T.I.P. of the suspect Prem Ram s/o Baban Ram of Ramgarh P.S. Case no.225/13 u/s 302, 307, 326, 120B IPC & 27 Arms Act at Loknayak Jai Prakash Narayan Central Jail, Hazaribag and in that T.I.P., witness constable 87 Om Prakash and constable 362 Rajesh Kumar, both had identified the accused Prem Ram as a miscreant who was driving the said motorcycle from which fires were being made. He has proved T.I.P. chart dated 07.11.2013, which has been marked as Ext.-14.

45. **P.W.-14 A.S.I. Rajesh Kumar Rai**, is the formal witness, who had produced seized material exhibits of Ramgarh P.S. Case no.225/13. He had produced two separate sealed form materials one having F.S.L. no.1086/13 dated 15.09.2016 and initial signature of AD/SSO balletic and other sealed form material having

Ramgarh P.S. Case no.225/13 G.R. no.2733/13 sealed by S.D.J.M. on 07.08.2013. On being opened first sealed cover materials, one country-made pistol on which Ramgarh P.S. Case no.225/13 dated 16.08.2013 and F.S.L. no.1086/13 marked 'D', was written, which has been marked as material Ext.-I in this case. In the aforesaid sealed materials, two envelopes were also found upon which marked 'A' & 'D' were written and when mark 'A' envelope was opened, one empty cartridge of .315 bore bearing no. S.F.L. no.1046/13 was found and in the other envelope marked 'D', also one empty cartridge of .315 bore was found and both the envelop were marked as material Exts. II & III respectively.

46. PW-14 in his cross-examination, had stated that both the empty cartridges have neither signature of any police officer, independent witnesses nor bears M.R. number nor bears P.S. case number. He further deposed that the *markin* cloth of the seized exhibit has neither seal of S.F.L. nor M.R. number.

47. **P.W.-15 Vidyapati Ohdar**, is also one of the parts investigating officer of this case. She had stated in her evidence that she neither recorded the statement of any witness nor recorded defence statement of any accused in course of investigation.

48. **P.W.16 Rameshwar Bhagat** is also another part investigating officer of this case. He had submitted the

supplementary charge-sheet bearing no.05/18 against the accused Suraj Singh, Lakhan Sao, Prem Ram, Arun Ram, Amrendra Tiwary, Mumtaz Bangali, Vijendra Ram, Subhash Paswan, Riyaz Ansari, Ravi Sardar and Shankar Karmali u/s 25(1-b) a, 26/35/27 Arms Act keeping the investigation going against the accused Sanju Singh @ Sanjay Singh @ Sanjeev and Mukesh Singh.

49. **P.W.17 Sanjay Kumar Singh No.3**, is the then Judicial Magistrate, 1st Class, Hazaribag, who had conducted the T.I.P. of the suspects of Ramgarh P.S. Case no.225/13. He had stated in his evidence that on 20.07.2013 he had conducted T.I.P. of the suspect Arun Ram @ Teniya s/o Moti Ram in G.R. Case no.2737 at Loknayak Jai Prakash Narayan Central Jail, Hazaribag. Constable 87 Om Prakash and constable 362 Rajesh Kumar identified the accused Arun Ram @ Teniya as a miscreant who was firing from the motorcycle. This witness has proved T.I.P. chart dated 20.09.2013 which has been marked as Ext.-14.

50. **P.W.18 Abraham Hembram** is also one of the part investigating officer of this case. He has deposed that he took over the charge of the supplementary investigation of Ramgarh P.S. Case no.225/13 on 01.03.2015 and in course of investigation, he received F.S.L. report from Ranchi State Forensic Laboratory and attached it with the case diary.

51. Apart from the above oral evidences, the prosecution has also produced and exhibited the following documents as documentary evidence in support of its case:-

Ext.-1: Fard-beyan of the informant namely, Om Prakash Kumar (PW-7)
Ext.-1/1: Signature of Hari Prasad Sah (PW-9) on the fardbeyan of the informant
Ext-1/2: Endorsement of the case
Ext.-2: Formal FIR
Ext.-3: Search-cum-seizure list dated 17.08.2013 prepared at 6:45 hrs.
Ext-4: Search-cum-seizure list dated 26.08.2013 prepared at 5:15 hrs.
Ext.-5: confessional statement of accused Arun Ram @ Teni dated 26.08.2013 recorded at 00:15 hrs. at Ramgarh police station
Ext-6: Confessional statement of accused Vijendra Ram dated 26.08.2013 recorded at Ramgarh police station 1:00 hrs.
Ext.-7: Confessional statement of accused Subhash Kumar Paswan dated 26-08-2013 recorded at 02:00 hrs. at Ramgarh police station
Ext.-8: Seizure list dated 26.08.2013 prepared at 06:05 a.m.
Ext.-9: Arms and ammunition report of the Surgeant Major
Ext.-10: Inquest report of deceased Bablu Sonkar
Ext.-11: Postmortem examination report of the deceased Bablu Sonkar
Ext.-12: Injury report of the deceased Bablu Sonkar
Ext.-13: Injury report of Lalo Devi
Ext.-14: T.I.P. chart dated 07.11.2013
Ext.-15: T.I.P. chart dated 20.09.2013
Ext.-16: Sanction for prosecution order dated 04.12.2013 of the Dy. Commissioner-cum-District Magistrate, Ramgarh
Ext.-16/1: Sanction for prosecution order dated 02.12.2017 of the Dy. Commissioner-cum-District Magistrate, Ramgarh
Ext.-17: F.S.L. report dated 09.09.2016

Ext.-18: Death-cum-injury report dated 28.09.2013 issued by Apollo Hospital Ranchi

52. Prosecution had also produced and material exhibited as material exhibits in support of its case which are as follows:-

Material Ext.-I: A country-made pistol

Material Ext.- II: An empty cartridge of .315 bore

Material Ext.- III: An empty cartridge of .315 bore

Material Ext.- IV: Mobile set of spice company

Material Ext.- V: Mobile set of Samsung company

Material Ext.- VI: A red and blue pithu bag

Material Ext.- VII: One note book

Material Ext.- VIII: One note book

Material Ext.- IX: One note book

Material Ext-X: One note book and shirts

Material Ext.- XI: Full pants, half ganjis (banyans), full T-shirt.

53. Learned trial court, based upon the testimonies of eye witnesses, referred hereinabove, has passed the judgment of conviction convicting the appellants under Section 302 r/w Section 120B of the Indian Penal Code and under Sections 25(1-B)a/35 and 27(1) of the Arms Act and sentenced as aforesaid.

54. 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 witnesses PW-3 and PW-5(injured witness), turning hostile, their evidence shall be discarded as a whole?*

ii. *Whether there is delay in forwarding the F.I.R to Court i.e. requirement of section 157 CrPC was not complied?*

iii. *Whether the two body guards Om Prakash Kumar (PW-7) and Rajesh Kumar (PW-2), were present at the place and time of occurrence and had witnessed the incidence of firing on Bablu Sonkar(deceased), by the accused persons/appellants?*

iv. *Whether Rajesh Kumar (PW-2) and the informant Om Prakash Kumar (PW-7), who were the body guard of the deceased, had identified the appellants firing on the deceased at the place of occurrence?*

v. *Whether the prosecution has proved the guilt of the appellants for the offence under Section 302 r/w Section 120B of the Indian Penal Code and under Sections 25(1-B) a / 27(1) / 35 of the Arms Act, beyond the reasonable doubt.*

Re: Issue No.(i)

55. The first issue is whether the witnesses PW-3 and PW-5 (injured witness), turning hostile, their evidence shall be discarded as a whole?

56. In the present case Gautam Gope (P.W.-3) and Lalu @ Lalo Devi (P.W.-5), were declared hostile. Gautam Gope (P.W.-3) is the owner of hotel, where as per the prosecution case, Bablu Sonkar(deceased), along with his two body gaurds Om Prakash Kumar (informant PW-7) and Rajesh Kumar (PW-2), and one Subodh Singh had eaten food, before

the incidence of firing on Bablu Sonkar, and after eating they had proceeded from the hotel and on the way incidence of firing on Bablu Sonkar took place. Lalu @ Lalo Devi(P.W.-5), was also injured in firing, when she was going to her house after supplying milk to the customers.

57. At this juncture it would be pertinent to see the judgments rendered by the Hon'ble Apex Court on the issue of hostile witness. The law is well settled that merely because the witness is declared as hostile, whole of his evidence is not liable to be thrown away.

58. In case of ***Attar Singh v. State of Maharashtra, (2013) 11 SCC 719***, Hon'ble Apex Court held that merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. The Hon'ble Apex Court further held that testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused. Paragraph-14 to 17 of this judgment is quoted herein below-

"14. *We have meticulously considered the arguments advanced on this vital aspect of the matter on which the conviction and sentence imposed on the appellant is based. This compels us to consider as to whether the conviction and sentence recorded on the basis of the testimony of the witness who has been declared hostile could be relied upon for recording conviction of the appellant-accused. But it was difficult to overlook the relevance and value of the evidence of even a hostile witness while considering as to what extent their evidence could be allowed to be relied upon and used by the prosecution. It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well settled by a catena of decisions that the court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by this Court in Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59] whereby the learned Judges of the Supreme Court reversed the judgment of the Karnataka High Court which had discarded the evidence of a hostile witness in its entirety.*

15. *Similarly, other High Courts in Gulshan Kumar v. State [1993 Cri LJ 1525 (Del)] as also Kunwar v. State of U.P. [1993 Cri LJ 3421 (All)] as also Haneefa v. State [1993 Cri LJ 2125 (Ker)] have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in State of U.P. v. Chet Ram [(1989) 2 SCC 425 : 1989 SCC (Cri) 388 : AIR 1989 SC 1543 : 1989 Cri LJ 1785] , it was held that if some portion of*

the statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in Shatrughan v. State of M.P. [1993 Cri LJ 120 (MP)] that hostile witness is not necessarily a false witness. Granting of a permission by the court to cross-examine his own witness does not amount to adjudication by the court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in Sat Paul v. Delhi Admn. [(1976) 1 SCC 727 : 1976 SCC (Cri) 160 : AIR 1976 SC 294]

16. *Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.*

17. *While examining the instant matter on the anvil of the aforesaid legal position laid down by this Court in several pronouncements, we have noticed that the support rendered by the daughter Mangibai approving the incident should be accepted as reliable part of evidence in spite of she being a hostile witness. The witness Mangibai's evidence pushes the accused with his bag to the wall and the accused is obliged to explain because her evidence shows that the accused was the only person in the company of the deceased soon before the death. The defence of the accused that Nagibai's injury was a result of fall is ruled out by*

medical evidence and the details available of the location in the panchnama of offence. The courts below thus have rightly drawn some support from the reports of the chemical analysis since all the articles of the victims and clothes of the accused are found having bloodstains of human Blood Group A. This was in view of the fact that the results of the analysis for determination of the blood group of the victim and accused were conclusive when blood sent in phial was analysed. Thus, the evidence of the daughter of the deceased coupled with other material as also evidence of other witnesses i.e. Ramesh, Khandu, Bhatu and Makhan, provided a complete chain and the prosecution successfully proved that the incident occurred in the manner and the place which was alleged."

59. Again, in case of ***Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731** Hon'ble Apex Court held that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. Relevant paragraph of this judgment is quoted herein below-

"87. *Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic*

rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence."

60. Again, Hon'ble Apex Court in the case of ***C. Muniappan and Ors v. State of T. N*** ,***(2010) 9 SCC 567,*** reiterated that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. Paragraph 81 to 83 of this judgment is quoted herein below-

"81. *It is settled legal proposition that:*

"6. … the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

(Vide Bhagwan Singh v. State of Haryana[43], Rabindra Kumar Dey v. State of Orissa[44], Syad Akbar v. State of Karnataka[45] and Khujji v. State of M.P.[46], SCC p. 635, para 6.)

82. *In State of U.P. v. Ramesh Prasad Misra[47] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in*

Balu Sonba Shinde v. State of Maharashtra[48]*, Gagan Kanojia v. State of Punjab*[49]*, Radha Mohan Singh v. State of U.P.*[50]*, Sarvesh Narain Shukla v. Daroga Singh*[51] *and Subbu Singh v. State*[52]*.*

83. *Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."*

61. Reverting back to the present case, Gautam Gope (P.W.-3) had stated in his examination-in-chief that he has a hotel in front of IFCO, New Colony, Binjhar and on the day of occurrence, Shiv Mahto (P.W.-4) came at his hotel taking 1/2 kg meat and gave him for cooking saying that his two or three friends will come for taking meal and at about 03:00 to 03:30 p.m. four persons came there along-with Shiv Kumar. They took their meal and thereafter went away from there and after sometime rumour spread that someone was shot at Naisaray.

62. This Court finds that the testimony of Gautam Gope (P.W.-3) that on the day of occurrence, Bablu Sonkar(deceased), had come to his hotel, finds corroboration from the evidence of Shiv Kumar (P.W.-4). Shiv Kumar (P.W.-4) had stated in his evidence that on the day of occurrence he got food cooked at Jaldhar hotel on the direction of Bablu Sonkar and Bablu Sonkar came at 4 A.M., in the evening on two motorcycles with four people out of which two were

bodyguards, Bablu Sonkar himself and Subodh Singh. After taking meal, they left the said hotel at about 05:30 P.M.

63. Further, Lalu @ Lalo Devi (P.W.-5) had stated in her examination-in-chief that on the date and time of occurrence, she was going to her house after supplying milk to the customers. When she reached near Durga temple fires began to start, due to which she sustained bullet injury on her right leg, then she became senseless and she gained sense at Naisaray Hospital. She does not know who fired. She was declared hostile on the point of identification of the accused persons.

64. The testimony of Lalu @ Lalo Devi (P.W.-5) that she had sustained injury, is corroborated from the testimony of the Dr. Ashok Giri (P.W.-11), who had treated the victim Lalo Devi (P.W.-5), at Naisarai Hospital.

65. Dr. Ashok Giri (P.W.-11), had stated in his evidence that on 16.08.2013, Lalo Devi (PW-5) had come to Naisarai Hospital and he had provided first-aid to her and sent her home. Dr. Ashok Giri had found one injury on the right ankle as abrasion injury on the body of Lalo Devi (PW-5).

66. Hence, as per the ratio laid down by the Hon'ble Apex Court on the issue of hostile witness, as referred in the preceding paragraph, it is considered view of this Court that in the present case, testimony of Gautam Gope (P.W.-3), as

stated by him in his examination-in-chief, to the extent that on the day of occurrence Bablu Sonkar(deceased) along with his two body guard and one Subodh Singh had come to his Hotel and after eating food Bablu Sonkar(deceased) had proceeded, which finds corroboration from the testimony of Shiv Kumar (P.W.-4), and the same can be taken into account as an evidence, as it supports the prosecution case to this extent.

67. Again, the testimony of injured Lalu @ Lalo Devi (P.W.-5), as stated by her in her examination-in-chief that incidence of firing took place in the evening of the date of occurrence, can be taken into account as evidence, as it supports the prosecution case to this extent.

68. Accordingly, issue no.(i), has been answered.

Re: Issue No.(ii)

69. The issue no.(ii) is whether there is delay in forwarding the F.I.R to Court i.e. requirement of section 157 CrPC was not complied?

70. In this learned counsel for the appellants had submitted that FIR was registered on 16.08.2013 and the same was sent to the court on 18.08.2013, i.e. after two days from the registration of the FIR and these two days delay has not been explained by the prosecution.

71. In this regard this Court finds that after the indiscriminate firing by the miscreants on Bablu Sonkar (deceased), he was badly injured, and Bablu Sonkar was taken to Naisarai CCL Hospital, were he was firstly treated by Dr. Ashok Giri (PW-11).

72. Dr. Ashok Giri (PW-11) had stated in his evidence that Bablu Sonkar(deceased) was brought at the hospital before him at 5.30 PM and he had given initial medical treatment to Bablu Sonkar and patient was referred to higher center considering critical condition of patient.

73. Further, in the evidence it has come that Bablu Sonkar was taken to Apollo Hospital, Ranchi, where the fardbeyan of the informant PW-7 was recorded by the investigating Officer Hari Prasad Sah (PW-9), at 20.45 hrs i.e. at 8.45 PM on 16.08.2013, in the night.

74. On going to the formal FIR Ext.-2, this Court finds that FIR was registered on 16.08.2013 at 11PM, in the night.

75. At this juncture it would be pertinent to note the judgment of Hon'ble Apex Court on the issue of sending the special report to the Magistrate as required under section 157 CrPC. The issue of sending the special report to the Magistrate as required under section 157 CrPC was dealt by Hon'ble Apex Court in case of ***Ravi Kumar v. State of Punjab, (2005) 9 SCC 315*** and paragraph-16 of this judgment is quoted herein below-

> *"16. Sending the copy of the special report to the Magistrate as required under Section 157 CrPC is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not."*

76. Hence, in ***Ravi Kumar (Supra),*** Hon'ble Apex Court has laid down that delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not.

77. In the present case on going to the evidence of investigating Officer Hari Prasad Sah (P.W.-9), this Court finds that investigating Officer had stated in his evidence that during investigation, he had inspected the place of occurrence on 17.08.2013 at 6.30 AM in the morning.

Relevant paragraph of the deposition of the investigating Officer(PW-9) is as follow-

> *"10. अनुसंधान के कम में घटना के समय से सुरक्षित करके रखे गये घटना स्थल का निरीक्षण दिनांक 17.08.2013 को 6:30 बजे प्रातः मेरे द्वारा किया गया।"*

78. Hence, in the present case, incident of indiscriminate firing on deceased, occurred in the evening of 16.08.2013, and thereafter, deceased was admitted in Hospital where faradayan of the deceased was recorded on 16.08.2013 at 8.45 PM, in the night and thereafter, FIR was registered on 16.08.2013 at 11PM, in the night and on the next day of occurrence i.e. on 17.08.2013 at 6.30 AM, in the morning, investigating Officer (PW-9), had gone to the place of occurrence for investigation.

79. Hence, under such circumstances, allegation of the defence that delay of two days in sending the FIR to the Court has not been explained by the prosecution, has no leg to stand. Instead, in the present case prosecution has reasonably explained the delay of two days in forwarding the FIR to the court concerned.

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

Re: Issue No.(iii)

81. The issue no. (iii) is whether the two body guards Om Prakash Kumar (PW-7) and Rajesh Kumar (PW-2), were present at the place and time of occurrence and had

witnessed the incidence of firing on Bablu Sonkar(deceased), by the accused persons/appellants?

82. In this regard, this Court finds that as per the FIR Ext.-2, incidence of firing on Bablu Sonkar(deceased), occurred on 16.08.2013, after 17.10 hrs. when he proceeded from hotel after eating food.

83. Informant Om Prakash Kumar (PW-7) and Rajesh Kumar (PW-2), are the body guards of the Bablu Sonkar(deceased) and as per the prosecution case both the body guards were along with the Bablu Sonkar(deceased) at the alleged place at the time of occurrence, and had witnessed the firing on the deceased by the accused persons/appellants.

84. On going to the deposition of the Informant Om Prakash Kumar (PW-7), this Court finds that PW-7 had stated in his evidence that in the leadership of Bablu Sonkar(deceased) protest was being made against the Electricity Department at Electricity Office, Subhash Chowk, Ramgarh, and the protest came to an end at 04.00 PM on 16.08.2013. Thereafter, Bablu Sonkor(deceased) sat on a motorcycle and the informant sat behind him and another motorcycle was being driven by Subodh Singh, on which police constable/bodyguard Rajesh Kumar (PW-2) sat and they reached to Jaldhar Hotel situated at Bijhar, at 04:15 PM, where Shiv Kumar (PW-4) had arranged meat and rice.

After eating, they started to proceed at about 05:00 PM, then Bablu Sonkar asked him (P.W.7) to drive the motorcycle and Bablu Sonkar sat behind him on the motorcycle and Subodh Singh who was driving another motorcycle, on which Rajesh Kumar sat and they proceed from there. In the meantime, a man who was acquainted with Bablu Sonkar came on Vagon R at the hotel, then Bablu Sonkar started talking with him and they were late by 5-10 minutes. Thereafter, they proceeded 1 to 2 km towards Naisarai Mor and as soon as they reached before 100 meters of S.D.O. residence, then he saw three miscreants riding on two motorcycles each started firing upon Bablu Sonkar(deceased) and fled away. Informant also stated that in course of firing a woman (i.e. P.W.5 Lalu @ Lalo Devi) had also sustained bullet injury. Thereafter, he and Rajesh Kumar (PW-2), stopped a car and the injured Bablu Sonkar was taken to CCL Hospital, Naisarai, with the help of people on a car.

85. Hence, in his testimony, informant PW-7 had stated that on the day of occurrence on 16.08.2013 at 04:15 PM, Bablu Sonkor (deceased) along with his two body guards Om Prakash Kumar (informant PW-7) and Rajesh Kumar (PW-2) and one Subodh Singh, on two motorcycles, had reached at Jaldhr Hotel situated Bijhar, were, Shiv Kumar (PW-4), had arranged meat and rice and after taking food they proceeded from the hotel and on the way indiscriminate firing was

made by the accused persons on Bablu Sonkor (deceased), as a result he sustained bullet injury for which Bablu Sonkor was taken to CCL Hospital, Naisarai.

86. Again, going to the testimony of the other body guard Rajesh Kumar (PW-2) of Bablu Sonkar (deceased), this Court finds that body guard Rajesh Kumar (PW-2) had stated in his evidence that on the day of occurrence i.e. on 16.08.2013, Bablu Sonkar, after ending of the protest against the Electricity Board, had gone to Jaldhar Hotel at about 04:15 hrs, where arrangement of food was made and thereafter, they came out from the hotel at 05:00 p.m. and he sat on the motorcycle of Subodh Singh and Bablu Sonkar sat on his motorcycle behind Om Prakash (informant PW-7) and Om Prakash was riding it. When they were on the way six miscreants on two motorcycles were also coming behind them. As soon as motorcycle of Bablu Sonkar, reached near Durga Mandap, indiscriminate firing was made upon Bablu Sonkar. Bablu Sonkar sustained bullet injuries and fell down from the motorcycle alongwith his bodyguard Om Prakash Kumar. In the said firing one woman (P.W.5 Lalu @ Lalo Devi) had also sustained bullet injury on her leg.

87. In his cross-examination, body guard Rajesh Kumar (PW-2), had stated that at the time of firing, he was standing at the distance of 25 yard from the place of firing.

88. Further, on the day of occurrence, before the incidence of indiscriminate firing on Bablu Sonkar(deceased), the deceased had gone the Jaldhar Hotel situated at Bijhar along with his two body guards and one Subodh and had eaten food in the hotel, is also proved by the testimony of Gautam Gope (P.W.-3), who is the owner of the hotel and this fact has been dealt with while answering issue no.1.

89. Again, the fact that Bablu Sonkar(deceased), had come to the Jaldhar Hotel situated at Bijhar along with his two body guards and one Subodh, had eaten food, before leaving the hotel is also corroborated by Shiv Kumar (PW-4),

who had deposed that he got food cooked at Jaldhar hotel on the direction of Bablu Sonkar(deceased) and at 4 PM, in the evening, four people came at Jaldhar hotel in two motorcycles, out of which two were bodyguards, Bablu Sonkar himself and Subodh Singh and after taking meal, they left the said hotel at about 05:30 PM and then within hour, rumour spread that Bablu Sonkar was shot by some miscreants.

90. Further, ongoing to the evidence of PW-11 Dr. Ashok Giri, this Court finds that PW-11 Dr. Ashok Giri, had firstly treated Bablu Sonkar(deceased).

91. PW-11 Dr. Ashok Giri, had stated in his evidence that on 16.08.2013, when he was posted as medical officer at Naisarai Hospital, then, at about at 5:30 PM, Bablu Sonkar

was brought by local people and police personnel, before him and he had treated the Bablu Sonkar. After initial management patient was referred to higher center considering critical condition of patient. During the treatment, he had found following injuries on the person of Bablu Sonkar: -

> *(a) Penetrating lacerated wound of about 2/2 cm on the posterior side of right shoulder*
> *(b) Penetrating lacerated wound of about 2/2 cm on the right side of upper abdomen*
> *(c) Lacerated wound about 3 cm on the right side of lower abdomen*
> *(d) Penetrating lacerated wound of about 2/2 cm on the lateral side of right upper thigh*
> *(e) Penetrating lacerated wound of about 3/3 cm on the medial side of right upper thigh*

92. Hence, from the testimony Dr. Ashok Giri (PW-11), it is proved that after sustaining bullet injury, Bablu Sonkar(deceased) was treated by him at Naisarai Hospital, at about at 5:30 PM on 16.08.2013 by him and he had found four penetrated wounds on the person of Bablu Sonkar(deceased).

93. Again, it has come in the evidence that on the date of occurrence, in the evening, during indiscriminate firing on Bablu Sonkar(deceased), one Lalu @ Lalo Devi (P.W.5), had also sustained injuries in bullet firing by the accused persons and this fact has been proved while answering issue No.(i), in the preceding paragraph.

94. Hence from the evidence of both the body guards of the deceased Om Prakash Kumar (informant PW-7) and Rajesh Kumar (PW-2), Gautam Gope (P.W.-3), Shiv Kumar (PW-4), injured Lalu @ Lalo Devi (P.W.5) and Dr. Ashok Giri (PW-11), who had firstly given the treatment to the Bablu Sonkar(deceased), this Court comes to the conclusion that on the day of occurrence on 16.08.2013, Bablu Sonkar(deceased), along with his two bodyguards Om Prakash Kumar (informant PW-7) and Rajesh Kumar (PW-2) and one Subodh Singh, had gone to the Hotel of Gautam Gope (P.W.-3) and had eaten food in the hotel. Thereafter, they proceeded from the hotel and on the way indiscriminate bullet firing was made by the miscreants on Bablu Sonkar(deceased), in which Bablu Sonkar(deceased), was badly injured and one Lalu @ Lalo Devi (P.W.5), was also injured in the firing, when she was going to her house after supplying milk to the customers. The incidence of firing on Bablu Sonkar(deceased), occurred in the evening of the day of occurrence on 16.08.2013, which is corroborated from the testimony of Dr. Ashok Giri (PW-11), who had stated in his evidence that Bablu Sonkar(deceased) was brought at the hospital by local people and police personnel before him at 5:30 PM on 16.08.2013 and he started medical treatment as instructed by his senior specialist Dr. Mithilesh Prasad and

after initial management patient was referred to higher center considering critical condition of patient.

95. Hence, from the forgoing discussion, it is proved that on the day of occurrence on 16.08.2013, the evening, both the body guards of the deceased Om Prakash Kumar (informant PW-7) and Rajesh Kumar (PW-2), were present at the place and time of occurrence and had witnessed the incidence of indiscriminate firing on Bablu Sonkar(deceased), by the accused persons.

96. Accordingly, issue No.(iii) has been answered.

Re: Issue No.(iv)

97. The fourth issue is whether Rajesh Kumar (PW-2) and the informant Om Prakash Kumar (PW-7), who were the body guard of the deceased, had identified the appellants firing on the deceased at the place of occurrence?

98. Learned trial court had found that appellant Prem Ram was driving the motorcycle of the miscreants from which firing was made at the place of occurrence and at the time of occurrence and he was identified by the informant Om Prakash Kumar (PW-7) and Rajesh Kumar (PW-2) in the Test Identification Parade.

99. Further, learned trial court had found that appellant Arun Ram @ Teniya was firing from the motorcycle at the time of occurrence and he was identified by the informant

Om Prakash Kumar (PW-7) and Rajesh Kumar (PW-2) in the Test Identification Parade.

100. At this juncture, it needs to refer herein the judgment of Hon'ble Apex Court delineating on the issue of identification parade. The Hon'ble Apex Court in case of ***Suraj Pal v. State of Haryana, (1995) 2 SCC 64***, had pointed out the object, purpose and importance of test identification parade. In this case Hon'ble Apex Court pointed out that the holding of identification parades has been in vogue since long in the past with a view to determine whether an unknown person accused of an offence is really the culprit or not, to be identified as such by those who claimed to be the eyewitnesses of the occurrence so that they would be able to identify the culprit if produced before them by recalling the impressions of his features left on their mind. Paragraph-14 of this judgment is quoted herein below-

> *"14. Before dealing with the various contentions advanced by the learned counsel for the appellants as referred to above, we shall first state the object, purpose and importance of the test identification parade. It may be pointed out that the holding of identification parades has been in vogue since long in the past with a view to determine whether an unknown person accused of an offence is really the culprit or not, to be identified as such by those who claimed to be the eyewitnesses of the occurrence so that they would be able to identify the culprit if produced before them by recalling the impressions of his features left on their mind. That being*

so, in the very nature of things, the identification parade in such cases serves a dual purpose. It enables the investigating agency to ascertain the correctness or otherwise of the claim of those witnesses who claimed to have seen the offender of the crime as well as their capacity to identify him and on the other hand it saves the suspect from the sudden risk of being identified in the dock by such witnesses during the course of the trial. This practice of test identification as a mode of identifying an unknown person charged of an offence is an age-old method and it has worked well for the past several decades as a satisfactory mode and a well-founded method of criminal jurisprudence. It may also be noted that the substantive evidence of identifying witness is his evidence made in the court but in cases where the accused person is not known to the witnesses from before who claimed to have seen the incident, in that event identification of the accused at the earliest possible opportunity after the occurrence by such witnesses is of vital importance with a view to avoid the chance of his memory fading away by the time he is examined in the court after some lapse of time."

(emphasis supplied)

101. Further, in the case of ***Dara Singh v. Republic of India, (2011) 2 SCC 490,*** the Hon'ble Apex Court has laid down that in the absence of any independent corroboration like TIP held by the Judicial Magistrate, the evidence of eyewitnesses as to the identification of the appellant-accused for the first time before the trial court generally cannot be accepted. Paragraph-41 of this judgment id quoted herein below-

"41. It is a well-settled principle that in the absence of any independent corroboration like TIP held by the Judicial Magistrate, the evidence of eyewitnesses as to

the identification of the appellant-accused for the first time before the trial court generally cannot be accepted. As explained in Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , that if the case is supported by other materials, identification of the accused in the dock for the first time would be permissible subject to confirmation by other corroborative evidence, which are lacking in the case on hand except for A-1 and A-3."

(emphasis supplied)

102. In the present case, so far as participation of the appellants in the offence and their identification is concerned, this Court has gone to the evidence of both the body guards of Bablu Sonkar(deceased) i.e. informant Om Prakash Kumar (PW-7) and Rajesh Kumar (PW-2), and both PW-7 and PW-2 had stated in their evidence that in the TIP, they had identified the accused persons namely Arun Ram @ Teniya and Prem Ram. Prem Ram has been identified as a person who was driving motorcycle and Arun Ram @ Teniya has been identified as a person who was firing upon the deceased.

103. Body guard Rajesh Kumar (PW-2), in his testimony had stated that he had identified the accused persons, who were driving motorcycle at the time of firing and the accused who had fired, is quoted as under-

"2 जो छह आदमी मोटरसाइकिल पर थे जो गोली चला रहे थे उन्हें मैं भी देखा था। घटना के कुछ दिन के बाद मुझे तथा ओम प्रकाश को पुलिस पहचान के लिए हजारीबाग सेंट्रल जेल ले गई थी। वहां पर जो

मोटरसाइकित चला रहा था उसकी मैने पहचान किया था और एक गोली चलाने वाले का पहचान किया था।"

104. Further, the testimony of the other body guard Prakash Kumar (PW-7), is quoted as under-

"7. पुलिस को मैने बता दिया था कि जो लोग गोली चलाए थे उनको देखकर मैं पहचान सकता हूँ। डेढ़ महीना के अंदर पुलिस हजारीबाग सेंट्रल जेल टी.आई.पी. के लिए ले गई थी। वहां मैने जो मोटरसाइकिल चला रहा था उसकी पहचान किये थे और उसी मोटरसाइकिल पर जो बीच में बैठकर गोली चला रहा था उसकी भी पहचान किये थे।"

105. Further, this Court finds that there are two T.I.P. chart on record which are dated 07.11.2013 and 20.09.2013, marked as Ext.-14 and Ext.-15, respectively.

106. It is evident from record that P.W.13 Dharmendra Kumar Singh, the Judicial Magistrate, 1st class, Hazaribag, had conducted the T.I.P. of suspect Prem Ram. He had deposed that in the T.I.P., witness constable 87 Om Prakash (PW-7) and constable 362 Rajesh Kumar (PW-2), both had identified the accused Prem Ram as a miscreant who was driving the said motorcycle from which fires were being made.

107. Further, P.W.-17 Sanjay Kumar Singh No.3, the Judicial Magistrate, 1st Class, Hazaribag, had conducted the T.I.P., of the suspect Arun Ram @ Teniya. He had deposed that in the T.I.P., Constable 87 Om Prakash (PW-7) and constable 362 Rajesh Kumar (PW-2) had identified the accused Arun Ram @ Teniya as a miscreant who was firing from the motorcycle.

108. Hence, on the basis of the legal principles enunciated by the Hon'ble Apex Court, as referred to and quoted hereinabove in the preceding paragraphs, this Court comes to the considered conclusion that, in the present case, informant Om Prakash Kumar (PW-7) and Rajesh Kumar (PW-2), who were the body guards of Bablu Sonkar(deceased) and present at the place of occurrence, had identified the appellant Prem Ram, as a miscreant who was driving the motorcycle and appellant Arun Ram @ Teniya, as a miscreant who was firing from the said motorcycle, which is supported by T.I.P. chart dated 07.11.2013 and 20.09.2013, marked as Ext.-14 and Ext.-15, respectively.

109. Accordingly, issue No.(iv) has been answered.

Re: Issue no.(v)

110. Now, this Court is proceeding to examine whether the prosecution has proved the guilt of the appellants for the offence under Section 302 r/w Section 120B of the Indian Penal Code and under Sections 25(1-B) a / 27(1) / 35 of the Arms Act, beyond the reasonable doubt.

111. The appellants herein are inter alia convicted under Section 302 r/w Section 120B of the Indian Penal Code. Hence, at this juncture, it needs to refer herein the judgment of Hon'ble Apex Court delineating the issue of criminal conspiracy.

112. In case of ***Bhagwan Swarup Lal Bishan Lal* v. *State of Maharashtra, AIR 1965 SC 682,*** Hon'ble Apex Court laid down that the offence of conspiracy can be established either by direct evidence or by circumstantial evidence and this section will come to play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong. Paragraph-8 of this judgment is quoted hereinbelow-

> *"8. Before dealing with the individual cases, as some argument was made in regard to the nature of the evidence that should be adduced to sustain the case of conspiracy, it will be convenient to make at this stage some observations thereon. Section 120-A of the Indian Penal Code defines the offence of criminal conspiracy thus:*
>
> > *"When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy."*
>
> *The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence : it can be established by direct evidence or by circumstantial evidence. But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators. The said section reads:*
>
> > *"Where there is reasonable ground to believe that two or more persons have conspired together to commit an*

> *offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."*

This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence

of the conspiracy as for the purpose of showing that any such person was a party to it". It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows : (1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.

(emphasis supplied)

113. Further in case of ***Mohd. Usman Mohd. Hussain Maniyar v. State of Maharashtra*, (1981) 2 SCC 443,** Hon'ble Apex Court laid down that for an offence under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. Paragraph-30 of this judgment is quoted herein below-

"30. *It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary*

> *implication. In this case, the fact that the appellants were possessing and selling explosive substances without a valid licence for a pretty long time leads to the inference that they agreed to do and/or caused to be done the said illegal act, for, without such an agreement the act could not have been done for such a long time."*
>
> *(emphasis supplied)*

114. Again, in case of ***Devender Pal Singh v. State (NCT of Delhi)*****, (2002) 5 SCC 234,** Hon'ble Apex Court laid down that in the case of conspiracy there cannot be any direct evidence and the circumstances proved during and after the occurrence have to be considered to decide about the complicity of the accused. Paragraph-41 of this judgment is quoted herein below-

> ***"41.*** *No doubt, in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means, an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."*

115. Again, in case of ***Hira Lal Hari Lal Bhagwati v. CBI*****, (2003) 5 SCC 257,** Hon'ble Apex Court laid down that it is difficult to establish conspiracy by direct evidence. Paragraph -32 of this judgment is quoted herein below-

> ***"32.*** *To bring home the charge of conspiracy within the ambit of Section 120-B of the Penal Code, 1860, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is difficult to establish conspiracy by direct evidence."*

116. Hence, from the ratio of the judgments of the Hon'ble Supreme Court on the issue of criminal conspiracy, as discussed in the preceding paragraphs, the legal position can be succinctly summed up as follows:

i. The offence of conspiracy can be established either by direct evidence or by circumstantial evidence.

ii. the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication.

iii. In case of conspiracy, an agreement between the conspirators need not be directly proved but it can also be inferred from the established facts in the case.

iv. It is difficult to establish conspiracy by direct evidence.

117. This Court in order to test the veracity whether the appellants herein were involved in hatching conspiracy in the murder of Bablu Sonkar(deceased), has perused the fardbeyan and testimony of the informant Om Prakash Kumar (PW-7).

118. From the fardbeyan and testimony of the Informant, fact emerges that brother of Bablu Sonkar(deceased) namely Shri Niwas alias Butul Patrakar, was murdered by a gangster, by his shooter in the year 2012 and regarding this case was running in Hazaribag Court, in which Bablu Sonkar(deceased) was eye witness and for this Bablu Sonkar(deceased) was being threatened by the miscreants. Accused persons had sent one miscreant namely, Anand Sahni at the house of Bablu Sonkar to kill him, but he was apprehended and sent to jail. Thereafter, on the direction of S.P., two bodyguards were deputed with Bablu Sonkar(deceased) and on the day of occurrence also both the body-guards constable no. 87 informant Om Prakash Kumar (PW-7) and constable no. 362 Rajesh Kumar (PW-2), were along with the deceased.

119. Hence, Bablu Sonkar(deceased) was under constant pressure and threat of the accused persons, as he was an eye witnesses to the murder of his brother.

120. From the aforesaid factual matrix, this Court finds that the motive for the murder of *Bablu Sonkar* (deceased) stands clearly established. The evidence on record, when read conjointly, demonstrates that the accused was actuated by animus and had sufficient reason to commit the offence, thereby lending corroboration to the prosecution case on the aspect of motive.

121. Learned counsel for the appellants submitted that learned trial Court had not appreciated that on the basis of confession of appellant Vijendra Ram, one pistol was recovered from the house of Vijendra Ram, but there is no evidence to connect the recovered pistol with the crime weapon and none of the witnesses have identified the appellants Vijendra Ram and Subhash Kumar Paswan @ Subhash Kr. Pashwan @ Subhash Paswan, to be perpetrator of crime.

122. Hence, this Court in order to ascertain the involvement of both these appellants Vijendra Ram and Subhash Kumar Paswan @ Subhash Kr. Pashwan @ Subhash Paswan, has gone into the evidence of the investigating officer (PW-9) of the case.

123. Investigating officer of the case Hari Prasad Sah(P.W.-9) had sated in his evidence that on 26.08.2013, accused persons Arun Ram, Vijendra Ram and Subhash Paswan were arrested while they were planning to commit dacoity in Ramgarh P.S Case No.235/2013 and in their confessional statements Exts.-5,6 and 7, accused persons had disclosed that the pistol by which Bablu Sonkar(deceased) was killed, the said pistol can be recovered from the house of accused Vijendra Ram (appellant herein) situated at Canton Sweeper Colony.

124. Then, search of the house of the Vijendra Ram, was made at 5.15 AM on 26.08.2013 and in the house of Vijendra Ram, a country-made pistol of .315 bore was recovered, which was marked as 'D'. The seizure list of the recovered pistol from the house of Vijendra Ram was marked as Ext.-4.

125. On going through the seizure list Ext.-4 of the pistol recovered from the house of the appellant Vijendra Ram, this Court finds that in this seizure list recovery of .315 of one country-made pistol of barrel length 12.4 cm and length of pistol from barrel to butt is noted as 24 cm.

126. Further, the aforesaid pistol Ext.-4, seized from the house of the appellant Vijendra Ram, was examined by P.W.-12 Rajendra Singh, who is Sergeant Major.

127. P.W.-12 Rajendra Singh, Sergeant Major, on examination of the seized pistol Ext.-4, in his arms and ammunition report Ext.-9, had noted that pistol was of length 30.9 cm.

128. Hence, there is contradiction in the length of pistol Ext.-4, recovered from the house of appellant Vijendra Ram, wherein the length of the pistol is shown as 24 cm whereas in the arms and ammunition report Ext.-9, the length of pistol was found 30.9 cm.

129. Now, question arises whether the contradiction in length of the pistol used in the murder of the deceased is

fatal for the prosecution case and this contradiction can be accepted as valid defense for the appellants.

130. In this regard, this court has gone to the medical evidence pertaining to Bablu Sonkar(deceased), which has been exhibited by the prosecution.

131. On going to the evidences and records, this court finds that three sets of medical evidence, pertaining to Bablu Sonkar(deceased), have been led by the prosecution -

i. Ext.-12, which is the injury report, issued by the Dr. Ashok Giri (PW-11).

ii. Ext.-18, which is the Death-cum-injury report, and

iii. Ext.-11 Post mortem report of Bablu Sonkar(deceased).

132. In the evening of the day of occurrence on 16.08.2013, when Bablu Sonkar (deceased), was injured by bullet, in the indiscriminate firing by the accused persons, firstly he was taken to Naisarai Hospital, where Dr. Ashok Giri (PW-11), had firstly treated Bablu Sonkar. At the cost of repetition, details of wounds, as noted in injury report Ext.-12, found by Dr. Ashok Giri (PW-11), are as under-

> (a) Penetrating lacerated wound of about 2/2 cm on the posterior side of right shoulder
> (b) Penetrating lacerated wound of about 2/2 cm on the right side of upper abdomen

(c) Lacerated wound about 3 cm on the right side of lower abdomen

(d) Penetrating lacerated wound of about 2/2 cm on the lateral side of right upper thigh

(e) Penetrating lacerated wound of about 3/3 cm on the medial side of right upper thigh

133. Thereafter, considering critical condition of Bablu Sonkar, he was taken to Apollo Hospital, Ranchi, where Bablu Sonkar was treated. Ext.-18, is the Death-cum-injury report of Bablu Sonkar (deceased), dated 28.09.2013, issued by Apollo Hospital, Ranchi, wherein it is noted that Bablu Sonkar was examined in Apollo Hospital Ranchi, on 16.08.2013 at 18.35 hrs and he had sustained multiple bullet injuries. The details of injuries, caused to Bablu Sonkar, as noted in the Death-cum-injury report Ext.-18, are as follows-

Sl.No 1	**Description of wound 2**	**Dimension 3**	**Causative weapon 4**	**Age of wound 5**	**Simple/Grievous 6**
1.	Bullet injury rt. Shoulder	1.5cmx1.5 cm	bullet	Fresh	Grievous
2.	Bullet injury cervical region front	1cmx1cm	bullet	Fresh	Grievous
3.	Bullet injury left rt. Flank abdomen entry and exit	1cmx1cm	bullet	Fresh	Grievous
4.	Bullet injury	1cmx1cm	bullet	Fresh	Grievous

	rt. lumber region back				
5.	Bullet injury rt. thigh	1.5cmx1.5 cm	bullet	Fresh	Grievous
6.	Bullet injury rt. lower chest	1cmx1cm	bullet	Fresh	Grievous

134. Further, in the Death-cum-injury report Ext.-18, issued by Apollo Hospital, Ranchi, it is noted that Bablu Sonkar expired on 28.09.2013.

135. Thereafter, postmortem examination of Bablu Sonkar was conducted under the supervision of Dr. Ajit Kumar Choudhary (PW-10). Doctor had found recently healed scar on the body of the deceased, which were noted in the postmortem report Ext.-11, as follows-

> **Recently healed scar-**
>
> (1) 1 & 1/2 X 1 cm on back of right arm upper part situated 12 cm below top of right shoulder underneath there was fracture of right clavicle in which the healing process was in progress and there was presence of pus in right chest cavity.
>
> (2) 1 X 1/2 cm on lateral side of right chest lower part situated 18 cm on right to midline and 10 cm above the umbilicus underline soft tissue are healed
>
> (3) 1cm X 1cm on lateral side of right abdomen lower part situated 3 cm above the right iliac crest the underline soft tissue were healed
>
> (4) 1 X 1cm on left abdomen front and lower part situated 7 cm left to midline and 5 cm below the level of umbilicus. The underline tissue were healed
>
> (5) Stitched wound 1 X 1/2cm which two stitches on left chest lateral side middle part situated 15 cm below left

> axilla and 19 cm left midline underneath there was fracture of 6th rib and hence were in healing process
> (6) 2 X 1&1/2cm on anterior side of upper part of right thigh situated 8 cm below anterior superior iliac spine. The underline soft tissue were healed. There was another recently healed scarf 1 X 1/2 cm on anteromedial side of right thigh of middle part. Surgical stitched wound. 29 cm long which 28 stitched mark (stitched were removed and wound was healed) on right posterolateral side of chest situated 10 cm below the right axilla and extending from anterior part of right chest. There was sloughing wound 2 X 2 cm on right chest lateral side 10 cm below the right nipple and 17 cm from midline. The underline track was upto chest cavity with presence of pus in right chest cavity and right lung is adherent to right chest wall

136. Dr. Ajit Kumar Choudhary (PW-10), had opined that Death was due to septicemia as a result of above noted injuries.

137. Hence, from Ext.-12, which is the initial injury report, issued by the Dr. Ashok Giri (PW-11) and Ext.-18, which is the Death-cum-injury report of Bablu Sonkar(deceased), issued by Apollo Hospital, Ranchi and postmortem report Ext.-11, this Court comes to the conclusion that Bablu Sonkar(deceased) had succumbed to injuries due to multiple bullet injuries, fired from a pistol.

138. Further from testimony of P.W.1 it is evident that accused/ appellant Vijendra Ram, Subhash Paswan and Arun Ram have confessed that the pistol which was recovered from the house of Vijendra Ram was used at the time of firing upon deceased Bablu Sonkar. The aforesaid

fact has been substantiated by the testimony of P.W.9 (I.O) who has testified that accused (appellants herein) Arun Ram, Vijendra Ram and Subhash Paswan were arrested on 26.08.2013 at the time of making a plan for committing dacoity in Ramgarh P.S. Case no.235/13, in which they have confessed their involvement in the commission of offence of firing on Bablu Sonkar. He has further stated that they also disclosed that the pistol which was used by accused Arun Ram in the commission of murder of Bablu Sonkar has been kept in the house Vijendra Ram situated at Canton Sweeper Colony, which may be recovered from there, thereafter, he proceeded to the house of Vijendra Ram on 26.08.2013 along-with accused Arun Ram, Vijendra Ram and Subhash Paswan and reached at about 05:15 a.m. and the house of the Vijendra Ram was searched and in the said search, a blue colour *pithu* bag hanging in the corner of the wall of the house was recovered, from which a country-made pistol of .315 bore, along with other articles were recovered which was seized by making a seizure list in the presence of said three accused persons namely Arun Ram, Vijendra Ram and Subhash Paswan. He has categorically testified that accused also put their respective signatures on it and one copy of the said seizure list was given to each of the accused persons who put their respective signatures on it in token of acknowledgement thereof. The aforesaid testimony of P.W.9

has fully been substantiated by testimony of P.W.8 and corroborated the factum of seizure of pistol in house of Vijendra Ram.

139. Further P.W.12 namely, Rajendra Singh who is Sergeant Major, has deposed in his examination-in-chief that the seized materials of Ramgrh P.S. Case no.225/13 dated 16.08.2013 was produced before him in a sealed form in white colour markin cloth by the I.O. namely Hari Prasad Sah in compliance of order of the then S.D.J.M., Hazaribag. After unsealing the said sealed materials, one country-made pistol having length 30.09 cm bearing P.S. Case number and marked 'D" was found. He has further testified that at the time of testing it was found that .315 bore cartridges may be easily inserted on it. Further it was found that fire may be made from it. This witness has also proved his examination report, which has been marked as Ext.9 in this case. This witness has denied the suggestion put to him on behalf of defence to the effect that his examination report is erroneous. Thus, from testimony of this witness, it is evident that the seized pistol was in working condition and it was compatible to use for .315 bore cartridges.

140. The aforesaid pistol seized vide Ext.-4, recovered from the house of Vijendra Ram (appellant herein), was alleged to be used in murder of Bablu Sonkar and the fact that pistol has been used in the alleged incident has been

substantiated from the testimony of P.W.8 and P.W.9. Further both the eye witnesses Om Prakash Kumar (informant PW-7) and constable Rajesh Kumar (PW-2), who had identified the appellant Prem Ram, as a miscreant who was driving the motorcycle and appellant Arun Ram @ Teniya, as a miscreant who was firing from the said motorcycle, in the Test identification parade and the said issue has already been dealt as issue no.(iv).

141. The conspiracy orchestrated by the appellants, proved with the arrest of Arun Ram @ Teniya, Vijendra Ram, and Subhash Kumar Paswan in Ramgarh P.S. Case No. 235/13, and culminating in the recovery of the pistol under Ext.-4, alleged to have been employed in the murder of Bablu Sonkar, stands fortified by medical evidence as the injury report explicitly records firearm-related injuries, thereby lending corroboration to the prosecution's case that the pistol was used in the commission of the offence.

142. From the testimony of PW-9, Hari Prasad Sah, who was part investigating officer of the instant case, it emerges that on 26-08-2013 the accused Arun Ram, Vijendra Ram, and Subhash Paswan were apprehended while conspiring to commit dacoity in Ramgarh P.S. Case No. 235/13. In their respective confessional statements (Exts. -5, 6, and 7), they admitted their involvement in the offence of firing upon Bablu Sonkar. Pursuant to their disclosure statements, the

pistol (Material Ext.-1), alleged to have been used by accused Arun Ram in the murder of Bablu Sonkar, was recovered from the residence of Vijendra Ram along with other incriminating materials. The said seizure list was prepared in the presence of the three accused/appellants namely Arun Ram, Vijendra Ram, and Subhash Paswan each of whom was furnished with a copy and acknowledged the same by affixing his signature. Further, PW-12 Sergeant Major Rajendra Singh, in his examination report (Ext.-9), confirmed that the country-made pistol was in working order and capable of firing .315 bore cartridges. The recovery of the said pistol from the house of Vijendra Ram, based on the confessional statements, stands corroborated by PW-1 Kadir Ansari and PW-8 Taraknath Singh.

143. The evidence of PW-9, Hari Prasad Sah, together with Ext.-3 (production-cum-seizure list dated 17-08-2013, prepared at 6:45 hrs.), further establishes that from the place of occurrence one empty cartridge of .315 bore, one empty cartridge of 9 mm, and one empty cartridge of 7.62 mm were recovered, each bearing firing marks at the base. These were seized and duly marked as A (.315 bore), B (9 mm), and C (7.62 mm), and sealed and the said .315 bore empty cartridges has been fired from the country-made pistol which has been recovered from the house of the Vijendra Ram as it appears from the FSL report Jharkhand,

Ranchi dated 09-09-2016 (Ext.-17) in which it has clearly been stated that "the fired cell mark A noted in item 1 has been fired from the country-made pistol mark D noted in item 2" which have been produced before the court by PW-14 Rajesh Kumar Roy for perusal of the court along-with other material exhibits as it appears from Material Ext.-I & II respectively.

144. Thus, in the present case, there exists sterling ocular testimony in the form of PW-2 and PW-7, who have categorically deposed that appellant Prem Ram was the miscreant driving the motorcycle, while appellant Arun Ram @ Teniya was the miscreant firing from the said motorcycle. Further, the conspiracy orchestrated by the appellants, evidenced through the arrest of Arun Ram @ Teniya, Vijendra Ram, and Subhash Kumar Paswan in Ramgarh P.S. Case No. 235/13, and culminating in the recovery of the pistol (Ext.-4) alleged to have been employed in the murder of Bablu Sonkar, stands further corroborated by medical evidence, the injury report explicitly recording firearm-related injuries. In view of such unimpeachable ocular and medical corroboration, the alleged contradiction regarding the precise length of the pistol used in the murder of the deceased cannot be regarded as fatal to the prosecution case.

145. On the basis of discussion made hereinabove this Court is of the view that, prosecution has proved the charges against the appellants Prem Ram, Arun Ram @ Teniya, Vijendra Ram and Subhash Kumar Paswan @ Subhash Kr. Pashwan @ Subhash Paswan, under section 302 r/w Section 120B of the I.P.C and under Sections 25(1-B) a/35 and 27(1) of the Arms Act, beyond the shadow of reasonable doubt and hence, requires no interference by the Court.

146. Accordingly, issue no.(v), has been answered.

Conclusion:

147. Accordingly, impugned judgment of conviction dated 28.09.2018 and Order of sentence dated 05.10.2018, passed by learned Additional Sessions Judge-II-cum-Fast Track Court, Ramgarh, in Sessions Trial Case No.635 of 2013, passed against the appellants Prem Ram, Arun Ram @ Teniya, Vijendra Ram and Subhash Kumar Paswan @ Subhash Kr. Pashwan @ Subhash Paswan, are hereby sustained and upheld.

148. Accordingly, Criminal Appeal (D.B.) No. 1356 of 2018, Criminal Appeal (D.B.) No. 1357 of 2018 and Criminal Appeal (D.B.) No. 1187 of 2018 are hereby dismissed.

149. Consequent, upon dismissal of the appeal, appellants Vijendra Ram and Subhash Kumar Paswan @ Subhash Kr. Pashwan @ Subhash Paswan, since are enjoying the suspension of sentence after order passed by this Court

directing to release him during pendency of the appeal, the bail bond of both the appellants are hereby cancelled and appellants are directed to surrender before the learned trial court for serving out the sentence passed against them.

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

151. Pending interlocutory application(s), if any, stands disposed of.

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

(Sujit Narayan Prasad, J.)

I agree.

(Sanjay Prasad, J.) **(Sanjay Prasad, J.)**

Jharkhand High Court, Ranchi
Dated, the 1st September, 2026.
Birendra /**A.F.R.**

Uploaded on 03/09/2026