IN THE HIGH COURT OF JHARKHAND AT RANCHI
Death Reference No.04 of 2018

The State of Jharkhand …. …. …. **Appellant**

Versus

1. Sukhlal @ Prabir Murmu @ Pravir Da @ Pravil Da @ Harendra Da @ Sanat Da @ Marang Da @ Amrit, S/o Late Sukar Murmu, R/o Village- Barwadih, P.S.- Pirtarnd, District- Giridih
2. Sanatan Baski @ Sahdeo Rai @ Tala Da, S/o Late Kistu Baski, R/o Village- Chirudih, P.O.- Rajdaha, P.S.- Kathitand, District- Dumka

…. …. …. **Respondents**

With

Cr. Appeal (DB) No.1363 of 2018

Sanatan Baski @ Sahdeo Rai @ Tala Da, S/o Late Kistu Baski, R/o Village- Chirudih, P.O.- Rajdaha, P.S.- Kathitand, District- Dumka

…. …. …. **Appellant**

Versus

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

With

Cr. Appeal (DB) No.1378 of 2018

Sukhlal @ Prabir Murmu @ Pravir Da @ Pravil Da @ Harendra Da @ Sanat Da @ Marang Da @ Amrit, S/o Late Sukar Murmu, R/o Village- Barwadih, P.S.- Pirtarnd, District- Giridih.

…. …. …. **Appellant**

Versus

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

CORAM : **HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY**

[Death Reference No.04 of 2018]
For the Appellant : Mrs. Priya Shrestha, Special P.P.

[Cr. A. (D.B.) No.1363 of 2018]
For the Appellant : Mr. S. K. Murtty, Advocate
For the Resp./State : Mrs. Priya Shrestha, Special P.P.

[Cr. A. (D.B.) No.1378 of 2018]
For the Appellant : Mr. Jitendra S. Singh, Advocate
For the Resp./State : Mrs. Priya Shrestha, Special P.P.

C.A.V. ON 11.11.2025 **PRONOUNCED ON 08 / 12/ 2025**

Heard, learned counsel for the parties.

1. Both these Cr. Appeals as well as Death Reference were heard by the Division Bench of this Court which pronounced separate judgment on 17.07.2025. There was difference of opinion between the learned Judges hearing the Appeals. Justice Rangon Mukhopadhyay, was of the opinion that the charge against the appellants had not been

proved beyond the shadow of all reasonable and probable doubt, therefore appellants were entitled to acquittal, whereas Justice Sanjay Prasad held that appellants guilty of the offences charged and confirmed the death sentence.

2. In view of the aforesaid difference of judicial opinion, this appeal has been laid before this Court under Section 392 of the Cr.P.C under the orders of the Hon'ble the Chief Justice.

3. Appellant, Sanatan Baski @ Sahdeo Rai @ Tala Da has been convicted and sentenced by learned trial Court in S.T. No.31 of 2014, whereas appellant- Sukhlal @ Prabir Murmu @ Pravir Da @ Pravil Da @ Harendra Da has been convicted and sentenced by learned trial Court in S.T. No.16 of 2015 for the offences under Sections 148, 302 read with Sections 149, 120B, 109, 396, 307, 333, 353, 427 of IPC and Section 27 of Arms Act as well as under Section 17 of CLA Act.

4. Both the appellants have been sentenced to death by the learned trial Court for the offence under Section 302 and 396 of IPC.

5. Self-statement of S.I, Ashok Kumar, Officer-in-charge of Kathikund Police Station recorded on 02.07.2013 at 16:10 hours is the basis of the formal FIR of the case.

PROSECUTION CASE

6. Briefly stated Superintendent of Police, Pakur (namely, Amarjit Balihar) on his way from Dumka to Pakur along with armed escort party were ambushed by extremists in forest area. In the intense firing that followed from the extremists the Superintendent of Police and five other Police personnel were mortally wounded and fell in their line of duty. Five died on spot and one died while being shifted for treatment to the hospital. Two other police personnels (PWs-12 &30) and driver (PW-31) of the Scorpio sustained grievous injury, but survived. Reinforcement was rushed from the nearby police stations to the place of occurrence, which rescued the injured police personnels.

7. As per FIR, Informant (PW-20) received information on his mobile on the same day at 14:28 hours that there was an ongoing firing near Jamni crusher plant in the forest area. Informant rushed to the place

of occurrence along with the Police party which was situated in the District of Dumka in between Jamni and Amtala Villages. When he reached the place of occurrence, he saw that a Bolero vehicle without any Registration Number and another white Scorpio vehicle were standing at a distance of 20-25 metres from each other. He approached the vehicle and found that both the vehicles were riddled with bullet marks and the glass of the window pane was smashed. The dead bodies of police personnels were lying there.

8. It was also found that 04 INSAS and 02 AK-47 rifles, cartridges and mobiles were looted in the said incidence. Police party seized empty shells fired from SLR and AK-47 rifles, 303 rifles apart from the empty emission received. The other articles were also seized from the place of occurrence like black shoe, piece of plastic slipper, a hat of pinto colour and seizure list was drawn.

9. On the basis of self-statement of Ashok Kumar, Officer-in-Charge, Kathikund P.S. Case No.55 of 2013 was registered on 02.07.2013 at 22:00 hours under Sections 427, 379, 147, 148, 149, 326, 307, 302 of IPC. Later on, Sections 332, 333, 353, 396, 120B of IPC were added apart from Section 27 of Arms Act and Section 17 of CLA Act **against four named accused persons, namely, Parvir Da, Tala Da, Joseph, Daud** and 25-30 unknown MCC extremists.

10. After investigation, first charge sheet was submitted against the accused namely 1. Satan Besra and 2. Wakil Hembrom vide charge sheet No.78/2013 dated 04.10.2013 for the offences punishable under Sections 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of IPC, 27 of Arms Act and 17 of CLA Act. Accordingly, cognizance of the offences under Sections 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of IPC, Section 27 of Arms Act and Section 17 of CLA Act. Cognizance was taken by the leamed A.C.J.M., Dumka vide order 23.10.2013 and the case was committed to the Court of Session vide order dated 18.11.2013, whereas S.T. No.232/2013 was assigned to the record and the same was transferred to the Sessions court for trial and disposal.

11. Second charge sheet No.01/2014 dated 21.01.2014 was submitted against the accused Sanatan Baski @ Sahdeo Rai @ Tala Da for the

offences punishable under Sections 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of IPC, Section 27 of Arms Act and Section 17 of CLA Act. Accordingly, cognizance of the offences under Sections 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of IPC, Section 27 of Arms Act and Section 17 of CLA Act was taken by the learned A.C.J.M., Dumka vide order 03.02.2013 and the case was committed to the Court of Sessions vide order dated 28.02.2014, whereas S.T. No.31/2014 was assigned to the record and the same was transferred to the Sessions court for trial and disposal.

12. Third charge sheet No. 58/2014 dated 26.07.2014 was submitted against the accused 1. Manwel Murmu, S/o Late Raisan Murmu, 2. Manvel Murmu, S/o Late Sundar Murmu for the offences punishable under Sections 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of IPC, Section 27 of Arms Act and Section 17 of CLA Act. Accordingly, cognizance of the offences under Sections 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of IPC, Section 27 Arms Act and Section 17 of CLA Act was taken by the learned A.C.J.M., Dumka vide order 28.07.2013 and the case was committed to the Court of Sessions vide order dated 28.07.2014, whereas S.T. No.146/2014 was assigned to the record and the same was transferred to the Sessions Court for trial and disposal.

13. Fourth charge sheet No.106/2014 dated 29.11.2014 was submitted against accused 1. Prabil Da @ Harendra Da @ Amrit @ Sanot Da @ Marang Da @ Suklal, 2. Lobin Soren @ Lobin Murmu for the offences punishable under Sections 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of IPC, Section 27 of Arms Act and Section 17 of CLA Act. Accordingly, cognizance of the offences under Sections 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of IPC, Section 27 of Arms Act and Section 17 of CLA Act. was taken by the learned A.C.J.M., Dumka vide order dated 06.12.2014 and after commitment on 14.01.2015, S.T. No.16/2015 was assigned to the record and the same was transferred to the Sessions Court for trial and disposal.

14. All the four set of charge-sheets were filed by the Police against altogether seven accused persons. After commitment, three sets of accused persons were separately charged and were jointly put on

trial under Sections 148,302/149, 307/149, 333/149, 353/149, 427/149, 396 and 120B of IPC, Section 27 of Arms Act and Section 17 of CLA Act. They were **(i) Sanatan Besra, (ii) Wakil Hembrom (iii)** Lobin Murmu **(iv)Pravir Da @ Pravil Da @ Harendra Da @Snant Da @ Marang Da @ Amrit @ Sukhlal (v) Sanatan Baski @Tala Da, (vi)Marbel Murmu, (vii) Marvel Murmu**.

15. The prosecution in order to prove its case examined altogether 31 witnesses, and adduced the following documents into evidence:

(i) Ext. 1 is Seizure list dated 10.07.2013 of samples of blood collected from different portions of Scorpio and Bolero Vehicles,

(ii) Ext. 2 is P. M. report of the deceased Amarjit Balihar, the S. P. Pakur,

(iii) Ext. 3 is P.M. report of the deceased Ashok Kumar Srivastava,

(iv) Ext. 4 is P. M. report of the deceased Rajiv Kumar Sharma,

(v) Ext. 5 is P. M. report of the deceased Manoj Hembrom

(vi) Ext. 6 is Requisition slip for injury of the injured Danraj Maraiya,

(vii) Ext. 6/1 is Requisition slip for injury of the injured Levenius Marandi,

(viii) Ext. 6/2 is Requisition slip for injury of the injured Bablu Murmu, and

(ix) Ext. 6/3 is Requisition slip for injury of the deceased Santosh Kr. Mandal,

(x) Ext. 7 is Inquest report of the deceased Amarjit Balihar,

(xi) Ext. 7/1 is Inquest report of the deceased Rajeev Kr. Sharma,

(xii) Ext. 7/2 is Inquest report of the deceased Ashok Kr. Srivastava,

(xiii) Ext. 7/3 is Inquest report of the deceased Chandan Kr. Thapa,

(xiv) Ext. 7/4 is Inquest report of the deceased Manoj Hembrom, and

(xv) Ext. 7/5 is Inquest report of the deceased Santosh Kr. Mandal,

(xvi) Ext. 8 is Dead body Challan of the deceased Amarjit Balihar, the S. P. Pakur,

(xvii) Ext. 8/1 is Dead body Challan of the deceased Rajeev Kr. Sharma,

(xviii) Ext. 8/2 is Dead body Challan of the deceased Ashok Kr. Srivastava,

(xix) Ext. 8/3 is Dead body Challan of the deceased Chandan Kr. Thapa,

(xx) Ext. 8/4 is Dead body Challan of the deceased Manoj Hembrom, and

(xxi) Ext. 8/5 is Dead body Challan of the deceased Santosh Kr. Mandal,

(xxii) Ext. 9 is Signature of Arun Kr. Hembrom on Ext.1,

(xxiii) Ext. 9/1 is Signature of Arun Kr. Hembrom on Ext.11,

(xxiv) Ext. 10 is Post-mortem of the deceased Santosh Kr. Mandal,

(xxv) Ext. 10/1 is Signature of P. Hansda on post-mortem report of the deceased Santosh Kumar Mandal,

(xxvi) Ext.11 is Seizure list of cartridge and magazine etc. dated 02.07.2013,

(xxvii) Ext.12 is Seizure list dated 10.07.2013(wrongly exhibited twice vide Ext. 01),

(xxviii) Ext.13 is Map sketched by I.O. C. K. Minj in the place of occurrence, Paragraph No. 79 of the case diary,

(xxix) Ext. 14 is SFSL report of bullet holes on the Scorpio and Bolero submitted by Office of the Director, State Forensic Science Laboratory, Jharkhand, Ranchi vide Memo No. 1006/Go dated 20.07.2013 in 10 sheets,

(xxx) Ext. 15 is S.F.S.L. report no. 1124/13 dated 21.12.13 in 05 sheets of various empty shells continuing from C1 to C 41 and B1 to B 15 etc. respectively.

(xxxi) Ext. 15/1 is Signature of Director R. S. Singh, Asst. Director and Dr. H. K. Sinha of State Forensic Science Laboratory, Jharkhand, Ranchi on the examination of blood.

(xxxii) Ext. 16 is Signature and writing on written report of S.I. Sitor Kerketa, Kathikund Malkhana

(xxxiii) Ext. 17 is Search-cum-Seizure list of 41 empty shells of SLR, 15 empty shells of AK-47 etc.

(xxxiv) Ext. 18 is Written report (F.I.R.) dated 02.07.2013.

(xxxv) Ext. 19 to 19/3 are T.I.P. Chart no. 19/1,19/2 & 19/3

(xxxvi) Ext. 20 is Postmortem report of the deceased Chandan Kumar Thapa

Ext. 20/1 is signature of D.K. Keshri on Ext.20.

(xxxvii) Ext. 21 is Injury report of Dhanraj Maraiya.

(xxxviii) Ext. 22 is Injury report of Levenius Marandi.

(xxxix) Ext. 23 is Injury report of Hawaldar Bablu Murmu.

(xl) Ext. 24 is Certified Copy of seizure list (of country made pistol) dated 30.08.18, Ext. 1 and 2 of S.T. 99/17 in Civil Court, Pakur.

(xli) Ext. 25 is Certified Copy of confessional statement of Sanatan Baskey and Ext. 3 of S.T. 99/17 in Civil Court, Pakur.

16. The Prosecution also got the following documents marked for identification, which have not been formally proved:

    (i) Mark of Identification 'X' is photo copy of confessional statement of Sanatan Baskey
    (ii) Mark of Identification 'Y' is photo copy of seizure list of bullet proof jacket in Pakur in S.T. No. 99/2017
    (iii) Mark of Identification 'Z is photo copy of notification no. 12/05 Aa. Su. (51) 22/14 dated 08.11.2013 of Grih Bibhag, Jharkhand Government.
    (iv) Mark of Identification 'Z/1' is photo copy of notification dated 19.01.2014 of Jharkhand Government.

17. The following Materials have been exhibited as Material Exhibits in evidence which are as follows:

    (i) Material Ext. I is Broken Grip of A. K. 47 Rifle,
    (ii) Material Ext. I/1 is A shoe of black colour,
    (iii) Material Ext. I/2 is One piece Plastic slipper,
    (iv) Material Ext. I /3 is Hat of pinto colour,
    (v) Material Ext. I/4 is One Gamchha,
    (vi) Material Ext. I/5 is One empty Jerry Can,
    (vii) Material Ext. I/6 is One empty Magazine of black colour,
    (viii) Material Ext. I /7 is Black colour Magazine, 12 cartridges, 2 cartridges and
    (ix) Material Ext. I/8 is One bullet proof Jacket (said to be looted from S. P., Pakur)

18. After the prosecution evidence, the statements of the accused were recorded under Section 313 of Cr.P.C., however, defence is of denial and false implication. However, no specific plea of defence has been taken in the statement under Section 313 of Cr.P.C.

19. Learned Trial Court acquitted five accused persons and convicted these **two appellants** [who are before this Court].

20. Learned trial court convicted the accused persons mainly on the basis of the eye witnesses account i.e. PWs 12, 30 and 31 who were injured in the ambush. Further, one bullet proof jacket (Material Ext.1/8) of the then Superintendent of Police, Pakur was recovered and seized on the basis of the disclosure statement (Ext.25) made by the appellant Sanatan Baski recorded in S.T. No. 99 of 2017.

ARGUMENT ON BEHALF OF THE APPELLANT

21. Argument on behalf of the appellants has some common ground which can be summed up as under:

I. The sheets of anchor of prosecution case are P.W.12, P.W.30 and P.W.31. As per the FIR, it was P.W.12 [being injured in the incidence] who had disclosed the name of the accused persons in the incidence including the appellant- Sukhlal @ Prabir Murmu @ Pravir Da @ Pravil Da. However, P.W.-12 has not supported the case of prosecution and was declared hostile. Further, he has stated in his examination-in-chief that he had not seen any of the assailants and had heard only the sound of firing and thereafter, he became unconscious. He has categorically stated in para- 5 that after getting bullet injury over his eye, he got unconscious and had not seen anything in the incidence.

II. With regard to P.W.30, it is submitted that he was also injured in the firing, as a result of which, he became unconscious. He has deposed in para -19 that while in ditch, none had come close, had they done so he would have definitely fired at them. His identification is doubtful in view of the deposition in paras 17 to 20, wherein he had stated that before the incidence, he had not seen any of the accused who were firing at the police party after concealing themselves in the forest. This witness was returning the fire from a ditch and it was not physically possible to have identified the assailants.

III. Accused persons were not put on TIP. In these background facts, it is contended that identification of the accused in dock is highly suspicious and a very weak piece of evidence in view of the ratio laid down by the Hon'ble Apex Court in ***Dana Yadav @ Dahu & Ors. Vs. State of Bihar (2002) 7 SCC 295 and also in Lal Singh & Ors. Vs. State of U.P. (2003) 12 SCC 554.***

IV. With regard to recovery of the bullet-proof jacket on the disclosure statement made by this appellant, it is submitted that the said disclosure statement was not made in this case, but in another case being Maheshpur P.S. Case No.250 of 2013. After the recovery of Bullet Proof Jacket, the prosecution has failed to establish that it was that of the then Superintendent of Police

who was assassinated in the incidence. Further, the TIP of the said bullet proof jacket has also not been done by observing the procedural protocol to be followed in such TIP.

22. Argument on behalf of the appellant in Cr. Appeal (DB) No. 1378/2018 that the incidence took place on 02.07.2013, on behalf of **Tala Da** can be summed up as under: -

I. Statement of PW-31 was recorded on 15.07.2013, that too after recording the confessional statement of one of the co-accused persons-Satan Beshra.

II. P.W.31, who claims to be an eyewitness to the incidence and has named the accused and identified him in the dock had never given any statement to the Police as said by him in Para-7 of his cross-examination. Further, the first-time identification in dock without any Test Identification Parade makes the identification to be suspicious.

III. With regard to P.W.30 (who is another injured), it is argued that he has not identified the appellant- Sanatan Baski in dock.

23. With respect to P.W.-31, it is further argued on the behalf of the appellant- **Prabir Murmu** that P.W.-31 has not identified this witness in the Court and had wrongly identified one Shivcharan Mohali as this appellant. This witness was driving the vehicle and after receiving bullet injury over his right leg and on the backside, he became unconscious. It is further argued that immediately after receiving bullet injury in his leg, he became unconscious and, therefore, he had no opportunity to identify any of the accused. He has also not scribed any specific role to this appellant.

24. P.W.21 is Block Development Officer cum Circle Officer, who got the TIP chart prepared and has proved it. In the said TIP, P.W.12 and P.W.30 are the witnesses to it. PW-12 has turned hostile and has not supported the factum of seizure.

ARGUMENT ON BEHALF OF THE STATE

25. It is argued by Mrs. Priya Shrestha, learned Special P.P. for the State that the witnesses to the incidence are not confined to P.W.12, P.W.30 and P.W.31 rather the statement of P.W.3 of what he heard from

P.W.12 soon after the incidence will be relevant as per illustration (a) of Section 6 of the Evidence Act.

26. It is argued that P.W.3 Prem Kumar Hansda [who was a Constable posted at Kathikund Police Station] has deposed at Para-3 that after receiving the information from Jamni Picket by the Officer in charge regarding the incidence, he along with other members of the Police Party went to the place of occurrence after getting fully armed. When they arrived at the place of occurrence near the Bolero vehicle, they saw that Bablu Murmu lying in an injured condition in the Scorpio vehicle. In para-3 he has deposed that another constable Lebennius Marandi (PW-30) was lying in an injured condition in a ditch on the left side of the vehicle. The dead-body of the Superintendent of Police was also lying there. It has further been deposed by him that Bablu Murmu informed them that at the place of occurrence, the firing commenced from the right side and thereafter, the extremists came close to the vehicle and thinking all of them to be dead went away. He further informed, "एक उग्रवादी बोला कि प्रवीर दा, काम हो गया है। आगे बताया कि एक उग्रवादी बोला कि ताला दा सबका राइफल गोली उठा लीजिये। नक्सली बोला कि जल्दी भागना है क्योकि पुलिस वाला आ जायेगा। जाने से पहले बबलू मुर्मू बताया था कि वे लोग माओवादी जिंदाबाद का नारा लगाया था" ।

27. It is argued that there is no cross-examination on this point and the attention of the witness was also not drawn to his statement under Section 161 of Cr.P.C. to draw any contradiction.

28. At Para-3, P.W.5 has also corroborated the testimony of P.W.3 that P.W.12 was not completely unconscious rather he was crying for help. P.W.-5 was also one of the police parties who reached the place of occurrence immediately after the incidence. He has also deposed in para 4 that Bablu Murmu had asked for water in the vehicle while being taken to the hospital and had stated that he had heard one sound of whistle and thereafter, indiscriminate firing was opened by the extremists.

29. The testimony of P.W.-3 and P.W.-5 is further corroborated by testimony of P.W.-8, who was also a member of the police party who have arrived at the place of occurrence immediately after the incidence. As per his deposition, when he approached the place of

occurrence, one of the injured constables was crying for help and was rescued by the raiding party and taken into the vehicle for treatment.

30. P.W.-9 has also deposed that Bablu Murmu was in his senses while being shifted for treatment to Rinchi Hospital and had disclosed that about 30-35 extremists had laid the ambush and opened indiscriminate firing on the police party. It was also narrated by Bablu Murmu that members of the extremist party called Pravir Da and Tala Da that Superintendent of Police had also received bullet injury who was in the Scorpio vehicle at the front.

31. It is argued that P.W.-20 who is the informant in this case has also deposed in para 4 that when he reached the place of occurrence, he found among others Levenius Marandi and Hawaldar Bablu Murmu who were in police uniform disclosed their name, as such, one of the injured Dhanraj Maraiya [who was in civil dress] also disclosed his name who were removed for treatment. He further deposed that Bablu Murmu disclosed about the incidence naming these two appellants. This corroborates the testimony of PW-30 that after receiving gun-shot injury, he became unconscious and then Superintendent of Police was shot dead from the close range and thinking him to be dead, they spared this witness. Due to this, he could overhear the conversation between the accused persons wherein the name of this appellant was being called by them.

32. It has been argued on behalf of the prosecution, that deposition of PW-20 and other police witnesses who arrived soon after the incident, will be admissible under Section 6 of the Evidence Act, as it relates to statements made by the injured to the witnesses soon after the incident and this is in course of the same transaction.

33. In order to appreciate this argument of prosecution regarding relevancy of the police personnels who came just after the incidence, section 6, along with the relevant illustration is extracted below:

> **Relevancy of facts forming part of same transaction.—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.**

Illustrations

(a) *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

Section 6 is an exception to the rule that hearsay evidence is not admissible. It has been held in **Javed Alam Vs State of Chattisgarh 2009(6) SCC 450** that the test for applying the rule of res gestae is that the statement should be spontaneous and should form part of the same transaction ruling out any possibility of concoction. If the transaction has terminated and then the statement is made, the statement is irrelevant. The admissibility is dependent on continuity. —Vazir Begam Ammal Vs Seth Tula Ram 1960 (1) MLJ 142. It was held in **Hadu Vrs. State AIR 1951 Orissa 53, Bhaskaran Vrs. State of Kerela 1985 Cr. L. J 1711** that even hearsay statements are admissible under this section, if they are part of the transaction and not merely uttered in the course of transaction. On *res gestae* the commentary in law of evidence 17th edition volume1 page 692 of Sir John Woodroffe and Syed Amir Ali notes that " a statement made by bystander shortly after the incident in relation to the same transaction would be admissible in evidence, provided it is made in condition of involvement or pressure or a force out of him by the excitement or emotion generated by the events perceived by him, i.e. by physiological reaction to the incident, without there being interval of time as to permit reflection or concoction".

***Sukhar v. State of U.P.*, (1999) 9 SCC 507**

6. *Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus:*

"Under the present exception [to hearsay] and utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."

34. In view of the above stated position of law, in the present case statement of the injured witnesses as narrated to the police personnel who arrived at the place of occurrence (PW-20 and other police witnesses) can be accepted or not is rather debatable, as the transaction had come to an end after slaughter of the police personnel, and the police reinforcement party came thereafter. Narration by PW-12 to the police party who arrived soon after the incidence, cannot be technically relevant under Section 6 of the Evidence Act, as their arrival took place after the mayhem had come to an end and transaction cannot be said be continuing.

35. It is argued that bullet proof Jacket of the slain S.P. has been recovered on the basis of the disclosure statement made by appellant Santan Baski @ Tala Da. PW-19 Chohans Kumar Minj, who is the Investigating Officer, has deposed that he was posted as inspector at Kathikunda police station. In para 12, he has deposed that on the disclosure statement made by Sanatan Baski, a bulletproof jacket was recovered. He has identified the seizure list which was marked as Y. In Para 14 he has deposed that on 20.01.2014, TIP of the recovered, bulletproof jacket was done in the presence of the Circle Officer, Kathikunda. Formal proof of TIP chart of articles, is dispensed with and not required under Section 291-A of the Cr.P.C. The jacket was however identified in the TIP by the witnesses. PW 21 is BDO-cum-CO who has proved the TIP chart of the bullet proof jacket marked as exhibits-19 and 19 /1. PW 17 who was officer-in-charge of Gopikandar Police Station, that two AK-47 rifles, four INSAS rifles, bulletproof jacket of the SP and mobiles were also looted by the extremists. Loot and recovery of the bullet proof jacket of the SP has been thus duly proved.

FINDINGS

36. In every criminal prosecution, two foundational elements must be established: the fact that a crime has been committed, and the identity of the person or persons who committed it. Unlike cases where even the occurrence of the crime is shrouded in doubt, the present matter involves no such uncertainty. Here, the factum of the crime stands

beyond dispute, leaving no room at all, for any reasonable doubt concerning its commission.

37. From objective findings of the autopsy surgeon in the postmortem examination reports (Exts.-2,3,4,5&10), there cannot be a shadow of doubt that Superintendent of Police, Pakur and five of his men died a homicidal death by multiple gunshot injuries, when they were ambushed in a forest area between Jamni and Amtala villages, while Superintendent of Police, Pakur was returning from Dumka in the afternoon on 02.07.2013 at 14:28 hours. Superintendent of Police was in a white coloured Scorpio Jeep with his body guards and a private driver, while an escort party on Bolero Jeep followed him closely. This part of the prosecution case has been established in the consistent account of the injured witnesses (PWs-12, 30 & 31) and duly corroborated by other police personnels who arrived at the place of occurrence soon after the incidence. Further place of occurrence has been established by the I.O. (PW-20), corroborated by documentary evidence like inquest reports and seizure lists. These facts have remained unrebutted, and in the cross-examination, no contrary suggestion has been given to the witnesses.

38. Defence has also neither disputed the incidence, nor Justice Rangon Mukhopadhyay in his judgment of acquittal has anywhere cast doubt on the factum of incidence.

39. What is in challenge in these appeals is the complicity of the appellants in the offence.

40. Further, there is no material to cast doubt on the testimony of PW-30 the body guard of the Superintendent of Police that he was on the same Scorpio vehicle in which the Superintendent of Police was sitting in the front seat and he was on the middle seat just behind him. P.W. 31 was driver of the said vehicle at the time of accident is also beyond reproach. They were injured in the firing which is proved by their injury reports and from the testimony of the police personnel who on information of the firing came to the place of occurrence as rescue and removed them for treatment to hospital. They were injured in the incidence as proved by their injury reports Ext-21, Ext-22 and Ext-23. PW-12 was in the escort party in the Bolero

Jeep and sustained critical injury is at no stage been disputed and has been established in the evidence of the police party (PW3, PW.9, PW 19 and PW 20,) who arrived at the place of occurrence soon after the incidence.

41. Thus, there is no room to doubt the presence of PW-12, PW-30 and PW-31 at the place of occurrence and were injured in the same incidence.

42. Out of the above three witnesses, PW-12 has supported the prosecution case so far as the incidence is concerned, but has stated that he became unconscious and could not identify any of the assailants, consequently he was declared hostile.

43. Justice Rangon Mukhopadhyay has disbelieved the account of these three witnesses principally for the following reasons: -

I. Bablu Murmu (PW-12) stated that though he had heard the firing, but subsequently he had become unconscious. He did not support the prosecution case and was accordingly declared hostile. Therefore, depositions of PW3, PW.9, PW 19 and PW 20, which was based on the narration of events by Bablu Murmu to them became insignificant.

II. Testimony of PW 30 has been disbelieved for the reason that according to his version he along with the superintendent of police had taken refuge in a ditch from where they were returning fire on the extremists. As he was in the ditch, and the extremist were firing taking cover of the forest, therefore he could not have identified any one of them. By the time firing stopped, he had become unconscious and not in a position to identify the extremist party.

III. PW 31 who was the driver of the Scorpio vehicle in which SP was travelling and has identified the applicant, Sahdeo Rai @ Santan Baski @Tala Da, has been disbelieved for the reason that he deposed that the superintendent of police was shot soon after the firing took place, whereas the investigating officer (PW 19) has deposed at para 4 of his deposition that the dead body of the Superintendent of Police was found at a distance of 20 feet from the Scorpio vehicle in a ditch.

44. Justice Sanjay Prasad has returned a judgment of conviction and awarded death sentence to the appellants for the offence of Section 302 of the IPC by relying on the testimony of PW-12, PW-30 and PW-31.

I. PW 24- Dr. Kumar Abhay Prasad has deposed that Lebenius Marandi (PW 30) and Dhanraj Maraiya (PW 31), were conscious at the time of their medical examination. As per the disposition of PW 30, he had only momentarily become unconscious, but thereafter he had regained his consciousness and had seen S.P. changing the magazine of rifle. PW-30 has deposed in para-8 of the cross-examination that he had not become unconscious. However, in para-16 he again says that he had become unconscious.

II. On the basis of the disclosure statement, (Ext-25) of Sanatan Baski [Cr. Appeal (DB) No.1363 of 2018], the bullet proof jacket of the S.P. Pakur was recovered from the house of his *sasural*. TIP chart has been proved by BDO-cum- circle officer (PW-21), therefore this being not proved by PW-30 and PW-12 is not of much consequence. Recovery of bullet proof jacket on the basis of disclosure statement of the appellant Tala Da was a strong in-criminating evidence against him and relevant under Section 27 of the Evidence Act.

III. Identification of both the appellants by PW-30 & 31 in the dock has been accepted.

45. The pivotal question before this Court is whether the testimonies of the three injured witnesses, together with those of the others who reached the place of occurrence after the incidence, can be accepted and relied upon to sustain the appellants' conviction.

46. In order to answer this question, it will be desirable to draw from fundamental cannon of evidence that is embodied in the definition of 'proof' under Section 3 of the Evidence Act, 1872 which is extracted below:

> **"Proved"**.—*A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the*

circumstances of the particular case, to act upon the supposition that it exists.

There are three important elements in this definition, which are 'matters before it', 'probable' and 'prudent man'. What is interesting to note that word 'evidence' has been consciously and conspicuously avoided in the definition of proved for the reason that the 'matters' is an expression with wider import, of which 'evidence' is only a species. It does not give courts an unfettered discretion to veer beyond the evidence which is brought on record. Nevertheless, it does give courts an amplitude to take a realistic consideration of factors which becomes so notoriously obvious, that prudent man cannot ignore. The Apex Court elucidated the expression 'matter' and 'prudent man' in **Rajesh Yadav Vs State of U.P. (2022) 12 SCC 381:-**

> "***13.*** *The definition of the word "proved" though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the "matters before it". The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.*
>
> ***14.*** *Matters are necessary, concomitant material factors to prove a fact. All evidence would be "matters" but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court's sojourn in deciphering the truth. Thus, the definition of "matters" is exhaustive, and therefore, much wider than that of "evidence". However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.*
>
> ***15.*** *Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.*
>
> ***16.*** *In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word "matter", and*

> *for that purpose, the definition of the expression of the words "means and includes", meant to be applied for evidence, has to be imported to that of a "matter" as well. Thus, a matter might include such of those which do not fall within the definition of Section 3, in the absence of any express bar.*
>
> ***17.*** *What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.*
>
> ***18.*** *The word "prudent" has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a judge. It is only after undertaking the said exercise can he resume his role as a judge to proceed further in the case.*
>
> (emphasis supplied)

Third element of the definition of 'proved' is to be on the touchstone of probability. The degree varies in civil and criminal, be that proof beyond reasonable doubt or that of preponderance of probability, but it is on the yardstick of probability that a fact is to be proved. There cannot be any certainty and absolute perfection, in human affairs, and therefore there is nothing like perfect proof, and the law does not require it.

In ***M. Narsinga Rao v. State of A.P.*****, (2001) 1 SCC 691** it has been held:

> ***15.*** *The word "proof" need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.*

Fletcher Moulton L.J. in *Hawkins* v. *Powells Tillery Steam Coal Co. Ltd.* [(1911) 1 KB 988] observed like this:

> *"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion."*

***State of Punjab v. Karnail Singh*, (2003) 11 SCC 271**

> **12.** *Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh [(1990) 1 SCC 445 : 1990 SCC (Cri) 151 : AIR 1990 SC 209] .) The prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava [(1992) 2 SCC 86 : 1992 SCC (Cri) 241 : AIR 1992 SC 840] .) A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh v. State (Delhi Admn. [(1978) 4 SCC 161 : 1978 SCC (Cri) 564 : AIR 1978 SC 1091]).] Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in Stirland v. Director of Public Prosecution [1944 AC 315 : (1944) 2 All ER 13 (HL)] quoted in State of U.P. v. Anil Singh [1988 Supp SCC 686 : 1989 SCC (Cri) 48 : AIR 1988 SC 1998] , SCC p. 692, para 17.) Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. (See : Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : (1974) 1 SCR 489] , State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] and Gangadhar Behera v. State of Orissa [(2002) 8 SCC 381 : 2003 SCC (Cri) 32 : (2002) 7 Supreme 276] .)*

The test to scrutinise oral evidence has been laid down over the years by way of judicial precedents. The underlying principles have been summed up in. **2023 SCC OnLine SC 355 Balu Sudam Khalde & Anr. Vs State of Maharastra:**

> **25.** *The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The*

judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might

emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*

X. *In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.*

XI. *Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.*

XII. *A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.*

XIII. *A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."* (emphasis supplied)

47. Another cardinal principle that has crystallised over time is that, the testimony of an injured witness is to be accorded a higher degree of credence. Their presence is assured at the time and place of occurrence and they are not likely to depose against an innocent person absolving the real offender. [see **Rajan v. State of Haryana, 2025 SCC OnLine SC 1952**].

48. In the present case, PW-30 is the bodyguard of the Superintendent of Police, who was accompanying him in the Scorpio vehicle, and was sitting just behind him, in the middle row seat. He has stated that on 02.07.2013 at around 12:45 hours, after attending a meeting at Dumka D.I.G. Office, they started for Pakur at about 2 O'clock.

Driver of the vehicle was Dhanraj Maraiya (PW-31) and the Superintendent of Police was sitting in the front seat, besides him. In 25–30 minutes, they reached between Jamni and Amalatalla, where the vehicle slowed down near a newly constructed small culvert. As soon as the vehicle slowed down, firing started and the driver received an injury over his leg and the vehicle came to a halt.

49. In order to return the fire, body guard (PW-30) asked the Superintendent of Police to come down from the vehicle. While getting out of the vehicle he received gunshot injury over his right leg. He along with the Superintendent of Police took refuge in a nearby ditch. Superintendent of Police continued to fire from there from the arms of this witness. Somehow Superintendent of Police could talk to the officer in-charge of Amrapara. In the meantime, this witness received another gun shot over his hand and he became senseless. As soon he regained his senses he changed the magazine of the rifle being used by the Superintendent of Police. Thereafter the Naxalites called out the names of Tala Da, Joseph, Pravir that all the police personnel had been killed, and commanded others to loot the arms and ammunition of all. They came close and fired at the Superintendent of Police, and thinking them to be dead they went away. While fleeing, naxal slogans were raised by them. He identified the accused Pravir Murmu @ Pravir Da in Court, and refused to identify others.

50. In his cross-examination, he has deposed that the firing continued for about 5–7 minutes. Driver of the vehicle had received gunshot injury over his leg and on the backside and he had received gunshot injury over his right leg and left hand. About 70-80 bullets had hit the vehicle.

51. He has however admitted that he had not seen the accused persons before the incidence as the extremist fired from concealed position in the forest. He has stated that he, along with the Superintendent of Police, had taken cover inside a ditch. He further deposed that none had approached him while he was in the ditch, and had anyone done so, he would have retaliated by returning fire. This last assertion appears to be more in the nature of bravado than a

reflection of the actual situation, considering that they were clearly surrounded, outnumbered, and outgunned by the extremists.

52. PW-31 Dhanraj Maraiya has corroborated the testimony of PW-12 and PW-30 with regard to the place, time and manner of occurrence. It has been specifically deposed by him in para-2 that he received gunshot injury over his leg. The vehicle came to halt. Superintendent of Police asked for mobile, which was given by him. In the meantime, he received another injury on his back. He fell down from the vehicle. SP was killed in the firing. All the criminals came close to the vehicle and decamped with loaded arms and ammunitions. Thereafter, he became बेहोश, and regained consciousness in the hospital. This witness identified appellant Tala Da, and incorrectly identified accused Shiv Charan Mohli as Praveer. He declined to identify other accused persons in the dock.

53. Nothing significant has come in cross-examination. He has denied the suggestion in para-19 that he had immediately become बेहोश after receiving the gunshot injury.

54. One question that has been raised in argument that both PW-30 and 31 were not in a position to identify the accused persons as they had become unconscious, by their own account. In order to appreciate this argument, deposition of PW-30 at Para-16 needs to be read together with Para-8. He has denied the suggestion in para-8 that he had become बेहोश and had not seen the incident, whereas in para-16 he states that he had become बेहोश and his statement had not been recorded there. PW-31 specifically states in para-3 that he became बेहोश after the incidence and at Para 19 he has denied the suggestion that he became unconscious immediately after receiving the bullet injury.

55. In normal parlance the Hindi word बेहोश is used to express both, semiconscious and unconscious state. Even in the event where a person suffers a shock leading to momentary loss of senses, it is loosely termed as बेहोश by common man without adverting to its medico-legal import. Both these witnesses have clarified in no uncertain term that they were conscious when the incidence took place. Testimony of PW-30 gives an impression that caught in

intense firing and injured in it, he was swinging between state of consciousness and semiconsciousness. As referred to by the learned PP in her argument Police personnels arriving at the place of occurrence soon after the incidence have deposed that injured witnesses were not completely unconscious.

56. PW 24 is the Doctor who examined all the three injured persons, six hours after the incidence on the same day. He has proved the injury reports which have been marked as Ext-21, 22 and 23. In his deposition while referring to Bablu Murmu (PW-12), he has stated that he was unconscious at the time of examination, but has not stated so about the other two witnesses.

57. Thus, it cannot be accepted that injured witnesses at the time of incidence had completely become unconscious, so as to be incapable of identifying the appellants.

58. Question naturally arises whether the identification of both the appellants by PW–30, the bodyguard of the Superintendent of Police, and by PW 31 driver of the vehicle is worthy of credit and can be accepted or not.

59. This Court is of the view that on cumulative reading of the evidence on record, there cannot be reasonable doubt over identification of these two appellants by these two witnesses for the following reasons:

I. It is significant to note that only these two appellants were not put jointly on trial, rather five other accused persons were also put on trial, who were not identified by these witnesses. Had they acted under the influence of superiors, they should have identified the other five accused persons as well. Their testimony cannot be disbelieved for the reason that PW 30 was a police witness and PW 31 was the driver of the Scorpio. It has been held in ***Ramehwar Vs State of Rajasthan AIR 1952 SC 54; Dalip Singh v. State of Punjab*, (1953) 2 SCC 36**:

> **24.** *A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely.*

II. Witnesses were injured in the incidence and there is nothing on record to impute any motive on the part of these witnesses to falsely implicate these appellants. It has been held in case of **Rajan** (supra) that testimony of an injured witness is entitled to a higher degree of credence, as his presence at the place of occurrence and he is not likely to implicate an innocent person, absolving the real assailant.

III. A question has been raised in the argument on behalf of these appellants that as the firing was resorted to from concealed positions in the forest, so there was no possibility for their identification. There cannot be any doubt that initial firing by the extremist were resorted to by taking position by the side of road, which could not have been visible to the victims, even in the broad daylight. The opportunity to identify the accused presented itself, when they approached the police party after initial firing from the side of police had died down, six had been mortally wounded and three were critically injured in the firing. Unless they had approached from close quarters, the arms could not have been looted. Therefore, this argument that the injured witnesses had no opportunity to identify the accused, does not stand to reason.

IV. It has been deposed by PW 31, that assailants had come close and fired at the Superintendent of Police from close range, whereas spared others thinking them to be dead. PW 20 is the informant of the case and was the first to approach the place of occurrence on receiving information regarding ambush and firing. In para-4, he has deposed that he had asked the name of all the three surviving injured persons (PW 12, PW 30 and PW 31), who had disclosed their names, meaning thereby that they being critically injured, had not completely become unconscious and were rather semiconscious after getting injured when the extremist party came close and looted the arms and ammunitions after shooting the Superintendent of Police. Other members of the police party (P.W.-3, P.W.-5 and P.W.-8,) who arrived at the place of occurrence, soon after the

incidence have stated that the injured were groaning out of pain and had not completely lost their consciousness.

V. The incident took place on 02.07. 2013 at. Around 16:10 hours, whereas the fardbeyan was recorded without any delay at 16:10 hours. Delay in any case gives rise to possibility of interpolations by way of afterthought. Promptness in institution of a case, is an assurance of getting the earliest version of any incidence. In the present case, it is notable that FIR was promptly lodged and both these appellants have been named in the FIR by the informant (PW-20).

VI. PW-3 has deposed in para-3 that Bablu Murmu (PW-12) had narrated about the manner of incidence and had disclosed the name of both these appellants and they had left the place of occurrence raising slogan of Maoist Zindabad. There has been no cross-examination on this point. Even suggestion has not been given denying this part. PW-4 has also deposed that while he was removing injured Bablu Murmu (PW-12) for treatment he had narrated to him about the other injured. PW-5 is another member of the police party who reached the place of occurrence and has deposed that, Bablu Murmu had asked for water in the vehicle. PW-9 has deposed that Bablu Murmu was groaning and while being taken for treatment in the land-mines vehicle he had narrated about the incidence and had named Praveen Da and Tala Da.

VII. PW-11 Ranjeet Minz, the Officer-in-Charge, Amrapara, in para-2 corroborates the testimony of PW-30 by stating that the slain SP had called him twice on his mobile seeking rescue as he was trapped in the ambush. He has further deposed that Bablu Murmu was lying injured inside the Bolero; PW-30 and PW-31 were lying injured to the south of the Scorpio; and the SP's body was found in a ditch towards the north. He further deposed that PW-30, though injured, was not found in the ditch from where the SP's body was recovered; rather, when the police party arrived, PW-30 was found lying near the Scorpio. This creates an inconsistency with PW-30's statement

that he had joined the SP in returning fire from the ditch. This is, however peripheral and cannot be termed as vital contradiction so as to erode the evidentiary value of his testimony. Even if it is assumed that PW-30 had not, joined the SP in the ditch, this does not discount his presence at the place of occurrence. Ferocity of the attack can be imagined from 32 bullet holes found on Scorpio and 15 bullet holes on Bolero vehicle. It needs to be appreciated that in gruesome incidence, when the police party almost came under a cascade of indiscriminate firing by the extremist party, resulting in death of six, injury of three, arms of the police personnel being looted, in the dynamics of the moment, shifting of the injured from the ditch to near the vehicle does not materially affect the veracity of testimony and his identification of the appellant Pravir Da in the dock.

VIII. Identification of appellant Pravir Da by PW-30 and Sanatan Baski @ Tala Da by PW-31 in Dock cannot be doubted only on the ground that TIP was not held for the reason that evidence of identification in the TIP is not a substantive evidence but is only corroborative evidence. It falls in the realm of investigation. The substantive evidence is the statement of the witness made in the court. Further, where the accused is named, like in the present case, then there cannot be significant object to hold TIP. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what he has seen earlier, strength or trustworthiness of the evidence of the identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. [See **Matru @ Girish Chandra Vs state of UP (1971) 2 SCC 75]** It has been held in ***Motilal Yadav v. State of Bihar*, (2015) 2 SCC 647**

> ***11.*** *The evidence as to the identity of a person is admissible under Section 9 of the Evidence Act, 1872. In Ravi Kapur v. State of Rajasthan [(2012) 9 SCC 284 : (2012) 4 SCC (Civ) 660 : (2012) 3*

SCC (Cri) 1107], this Court has opined in para 35 as follows : (SCC p. 305)

> *"35. … The court identification itself is a good identification in the eye of the law. It is not always necessary that it must be preceded by the test identification parade. It will always depend upon the facts and circumstances of a given case. In one case, it may not even be necessary to hold the test identification parade while in the other, it may be essential to do so. Thus, no straitjacket formula can be stated in this regard."*

60. This Court is of the opinion that for the reasons discussed above, testimony of PW 30 and PW 31, has a ring of truth as there is nothing on record to remotely suggest that these two witnesses were actuated by any extraneous consideration or motive to falsely implicate these two appellants in the case, by identifying them in Dock. In hour of peril, when a person is under mortal threat to his life, the cognitive faculties are accentuated to record every little detail received by senses. These witnesses have stated that, they had heard the extremist calling out the name of each other. PW 30 has claimed to identify only Praveer Da, and has stated in para-1 that he heard the extremist calling of the name of Tala Da, Joseph and Praveer Da. PW 31 has identified appellant Tala Da in dock which proves the case of the prosecution that the appellants were part of the extremist group which was involved in the incidence.

61. What follows from the above, is that even if the recovery of the bulletproof jacket of the SP on the disclosure statement made by the Appellant Tala Da is discarded, and the testimony of the police witnesses who arrived at the place of occurrence as a reinforcement is not accepted under section 6 of the Evidence Act, yet the testimony of injured witnesses PW 30 and PW 31 is sufficient to prove the charge that these two appellants were part of the extremist party, who laid ambush, when Superintendent of Police, Pakur was returning from Dumka after a meeting with the DIG, near culvert in the forest area and mowed down the police party.

62. Most of the organised crimes like the present one is preceded by thorough planning and an element of conspiracy to execute the crime. Criminal conspiracy is a substantive offence punishable under section 120-B of the IPC., nevertheless, proof of principal

offence does not perforce lead to the proof of criminal conspiracy. There should be some evidence, in the form of anything said, done or written, to disclose that the offenders had conspired to bring into fructification the common design in commission of the offence. In the absence of any such evidence of criminal conspiracy, in the present case, the charge under section 120-B is not proved.

63. Learned trial Court appears to have misdirected itself in recording a conviction under section 109 of the IPC against the appellants who had participated in the offence and were present at the place of occurrence. When an abettor is present at the place of occurrence, he can be convicted under section 114 of IPC and not under section 109 of IPC. However, in order to constitute the offence of abetment there needs to be an evidence that the he instigates, aided, engaged or conspired with the other accused person to bring about the criminal result in view of the definition under Section 107 of IPC. Provision of section 109 of IPC is directed against a class of offenders who is not present at the place of occurrence or has participated in the offence, but has abetted its commission. One cannot ordinarily be both an abettor as well as a participant in an offence. Here since the evidence is that the appellants were present at the place of occurrence and had participated, but there being no evidence of abetment in the offence, therefore charge under section 109 of IPC is not proved.

64. This court is of the opinion that in the light of the direct eyewitness account of the injured witnesses who were part of the police party, which was ambushed by the extremists the following charges are proved against both these appellants:

I. To form an unlawful assembly with other extremists, variously armed with deadly weapons to ambush the police party with common object to kill the police person and loot the fire arms, and in prosecution of the common object committed murder of six, caused grievous injury to three of them, by use of fire arms. The assault caused grievous injury to public servants and was intended to deter the public servants from discharge of public duty. The wanton and indiscriminate firing caused loss of life

and damage to police vehicles. Fire arms of the police party and bullet proof jacket was also looted. The entire act was orchestrated by the left wing extremists under the banner of MCC.

II. Judgment of conviction under Sections 302,307,333,353 &427 read with Section 149 of IPC against both the appellants is affirmed. Conviction of the appellants under Sections 396, 148 of IPC, Section 27 of Arms Act and Section 17 of the CLA Act is also affirmed.

SENTENCE

65. Learned trial Court has awarded death sentence to the appellants, considering the gravity of offence and the guidelines for inflicting death sentence in rarest of rare cases. Death Refence No. 04 of 2018 has been preferred for confirmation of death sentence.

66. There cannot be a scintilla of doubt that the ambush was a carefully pre-meditated assault on the Superintendent of Police, who had been spearheading anti-extremist operations. It was cold-bloodedly planned and ruthlessly executed, resulting in the martyrdom of six police personnel, including the SP, while they were in the line of duty. The attack was not merely upon the police force, but upon the sovereign authority of the State, exercised through its law-enforcement agencies. The rule of law, a fundamental tenet of our constitutional framework, is realised and sustained through the institutions and instrumentalities of the State. The very foundation of the nation stands imperilled if armed groups are permitted to challenge and overwhelm the executive arm of the State.

67. Despite the gravity of offence and absence of any mitigating factor in favour of the appellants, there is one factor that weighs heavily for commuting the death sentence to life imprisonment—that is difference of opinion on the point of conviction. In the present appeals, one of the Hon'ble Judge of this Court had dissented and in his separate judgment had recorded a judgment of acquittal. Therefore, it will not be proper to confirm the death sentence. As held in ***Pandurang v. State of Hyderabad*, (1954) 2 SCC 826.**

68. In this view of matter, **Death Reference No. 04 of 2018 is answered in the negative and is dismissed,** and death sentence awarded under Section 302 and Section 396 of IPC is commuted to imprisonment for life against both the Appellants with a fine of Rs 10,000/- each. In default of payment of fine, the appellants will serve SI of three months each.

69. Judgment of conviction and sentence under Sections 307,333,353, 148 and 427 of IPC, Section 27 of Arms Act and Section 17 of CLA Act awarded by the learned trial Court against both the appellants is affirmed.

70. Sentence of imprisonment for life under Sections 302,396 and 307 of the IPC and Section 27 of Arms Act to run concurrently. Rest of the sentences under Sections 333,353,148 and 427 of IPC and Section 17 of CLA Act to run concurrently after completion of sentence of imprisonment for life (with remission) awarded under Sections 302, 396 and 307 of IPC and Section 27 of the Arms Act.

With this modification in sentence, Cr. Appeal (DB) No. 1363 of 2018 and Cr. Appeal (DB) No.1378 of 2018 stand dismissed with modification in sentence.

(**Gautam Kumar Choudhary, J.**)

Jharkhand High Court, Ranchi
Dated 08th December, 2025
NAFR/ AKT/Pawan