

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 1819 of 2017

(Against the Judgment of conviction dated 04.08.2017 and Order of sentence dated 07.08.2017, passed by learned Additional Judicial Commissioner-VIII, Ranchi in Sessions Trial No.186 of 2013/Tr. No.94 of 2016).

Chhotu Singh @ Ajay Singh, S/o Lodha Singh, R/o Village – Ulgada, P.O. + P.S. – Lapung, District Ranchi.

... ... **Appellant**
Versus
The State of Jharkhand **Respondent**
With

Criminal Appeal (D.B.) No. 1707 of 2017

Rajesh Gope, Son of Late Nand Lal Gope, Residence of Village-Chalangi, P.O.-Mahogaon, P.S.-Lapung, District-Ranchi, Jharkhand. **Appellant**

Versus
The State of Jharkhand **Respondent**

For the Appellant : Mr. Gopal Kumar Sinha, Advocate
[in Cr. A.1819/2017]

: Mrs. Pragati Prasad, Amicus Curiae
[in Cr. A.1707/2017]

For the Resp.-State : Mr. Pankaj Kumar Mishra, A.P.P.
[in Cr. A.1819/2017]

Mrs. Lily Sahay, A.P.P.
[in Cr. A.1707/2017]

PRESENT

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

C.A.V. on 18.03.2024

Pronounced on 25/04/2024

Per Sujit Narayan Prasad, J.

1. Both these appeals have been preferred under Section 374(2) of the Code of Criminal Procedure against the Judgment of conviction dated 04.08.2017 and Order of sentence dated 07.08.2017, passed by learned Additional Judicial Commissioner-VIII, Ranchi, in Sessions Trial No.186

of 2013/Tr. No.94 of 2016, whereby, the appellants have been found guilty and convicted for the offence under Section 302/34 of the Indian Penal Code and under Section 25(1-B) a/26 read with 35 of the Arms Act. Appellant Chhotu Singh has been further held guilty for the offence under Section 27 of the Arms Act also. Upon hearing on the point of sentence, the appellants have been sentenced to undergo imprisonment for life for the offence under Section 302/34 of the Indian Penal Code and fine of Rs.10,000/- and in default of payment of fine, further S.I. for one year.

Further, the appellants have been sentenced to undergo one and half years rigorous imprisonment under Section 25(1-B) a/26 read with 35 of the Arms Act in each Section and fine of Rs. 1000/- each.

Further, the appellant Chhotu Singh has been sentenced to undergo five years R.I. with fine of Rs. 2,000/- under Section 27 of the Arms Act.

2. The prosecution case was instituted on the basis of fardbeyan of the informant, namely, Gopal Singh, alleging therein that on 17.11.2012 at 3.00 P.M he had gone to Govindpur weekly Bazar along with his cousin Rajesh Singh on motorcycle. His father Baleshwar Singh (deceased) had also gone to bring vegetables Govindpur weekly Bazar on his bicycle. He saw his father at 4.30 P.M near Zia Digital Studio.

After some time, he returned with his cousin to his home and on the way at 5.00 P.M he found Rajesh Gope and Chhotu Singh (accused persons) were standing at some distance from Ulagada Bara Pool (bridge). Chhotu Singh signaled him to stop. He stopped his motorcycle then Chhotu Singh came near to him at that time he thought, he will also accompany with them to home.

3. Thereafter, Chhotu Singh told him that he will not go with them, he will come with Rajesh Gope and demanded balance money of brick owed by him. He replied to Chhotu Singh 'come home' and take money and after returning from the weekly Bazar of Govindpur, he along with his cousin brother Rajesh Singh received information through his uncle Lakhan Singh that Chhotu Singh and Rajesh Gope are fleeing away after killing his father at Pakki road on the way of Patra Toli and after getting information, he along with his brother Awadhesh Singh and Guruwa Singh went to the way of Patra Toli through his motorcycle and reached there where he saw his father was lying dead due to bullet injury on left temple and the accused Chhotu Singh and Rajesh Gope were fleeing away in the field of Patra Toli then the informant and his brother tried to apprehend them but they managed to escape away from there. He further claimed that due to old enmity Chhotu Singh and Rajesh Gope killed his father.

4. On the basis of the aforesaid written report Lapung P.S case no.45/2012 dated 17.11.2012 u/s 302/34 of the IPC & 25(1-B) a/26/27/35 of Arms Act was registered against Chhotu Singh and Rajesh Gope.

5. After completion of investigation I.O submitted charge sheet in this case for the offence under sections 302/34 of the IPC & 25 (1-B) a/26/27/35 of Arms Act.

6. The cognizance of the alleged offence was taken and the case was committed to the Court of Sessions.

7. The charges were framed against the accused persons, namely, Chhotu Singh and Rajesh Gope, to which they pleaded not guilty and claimed to be tried.

8. In order to prove its case prosecution has examined altogether nine prosecution witnesses, namely, P.W.1 Gopal Singh, P.W.2 Rajiv Kumar, P.W.3 Lakhan Singh, P.W.4 Santosh Kumar Singh, P.W.5 Dr. Manoj Kumar Korah, P.W.6 Rajesh Kumar Singh, P.W.7 Pawan Kumar Singh, P.W.8 Andrias Malto and P.W.9 Nag Narayan Singh.

9. Prosecution has also proved the signature of informant P.W.1 on fardbeyan as Ext.-1, signature of P.W.7 on fardbeyan as Ext.-1/1, endorsement of Sudhir Kumar Choudhary on the fardbeyan as Ext.-1/2, signature of P.W.2 Rajiv Kumar on ballistic report as Ext.-2, seizure list prepared by Sudhir Kumar Choudhary as Ext.-3/1, signature

of P.W.6 on seizure list as Ext.-3/2, signature of P.W.6 as exhibit-3/3, seizure lists as Ext-3/4 and 3/5, postmortem report as Ext-4, First Information Report as Ext.-5, arrest memo of accused persons was marked as Ext.-6 and 6/1 Confessional Statement of accused Rajesh Gope was marked as Ext.-7 and confession statement of Chhotu Singh was marked as Ext.-7/1.

10. The statements of the accused persons were recorded under section 313 of the Criminal Procedure Code wherein they denied the evidence against them.

11. On behalf of accused persons one witness, namely, Shivnandan Singh @Situ Singh (DW-1) has also been examined and in the form of documentary evidence photo copy of the plaint of P.S. No- 140/1988 was adduced which was marked as X for identification.

12. The trial Court, after evaluating the evidence of prosecution witnesses found the charges levelled against the appellant proved.

13. Accordingly, the appellants have been found guilty under Section 302/34 of the Indian Penal Code and under Section 25(1-B) a/26 read with 35 of the Arms Act and appellant Chhotu Singh has been held guilty for the offence under Section 27 of the Arms Act, as such convicted and sentenced vide impugned Judgment of conviction dated

04.08.2017 and Order of sentence dated 07.08.2017, which is the subject matter of instant appeal.

14. Mr. Gopal Kumar Sinha, learned counsel for the appellant, namely, Chhotu Singh @ Ajay Singh, has taken the following grounds in assailing the impugned order of conviction: -

- (i) The conviction is based upon the sole testimony of PW-3 who cannot be said to be credible witness to substantiate the alleged crime, since the testimony of PW-3 is required to be corroborated by the other witnesses to prove the charges against the appellants beyond reasonable doubt but in the instant case the said corroboration is absent.
- (ii) The testimony of PW-3 is having contradiction to the effect that in examination-in-chief it has been deposed that the convict, namely, Chhotu Singh, has assaulted the deceased through bullet from behind the head while in the cross-examination it has come that the bullet injury is from the front which is considered to be the major contradiction in the testimony of PW-3 and hence, the conviction since is based upon the sole testimony of PW-3, as such, it cannot be said that the prosecution has been able to substantiate the charge beyond all

reasonable doubt.

- (iii) The contradiction is also there regarding the time of commission of crime.
- (iv) It has also come in the testimony of the witnesses that there was inimical relationship of the deceased with the appellant namely Chhotu Singh because of land dispute and only for the said purpose there is possibility of false implication and in that view of the matter, the benefit of doubt is to be given to the appellants.
- (v) The testimony of PW-3 has also not been corroborated by the testimony of the Doctor so far as the nature of injury is concerned.

15. Learned counsel for the appellant, on the basis of these grounds, has submitted that the instant appeal may be allowed by quashing and setting aside the judgment of conviction.

16. Mrs. Pragati Prasad, learned Amicus Curiae, for the appellant Rajesh Gope, in addition to the aforesaid ground, has taken the following grounds: -

- (i) Even if the testimony of PW-3 is to be taken into consideration in entirety, then also the conviction so far as the appellant, namely, Rajesh Gope, is concerned, cannot be said to be substantiated for

the reason that the PW-3 has not disclosed the name of the present appellant, rather, he has said that along with appellant Chhotu Singh, one criminal was also shown to be fleeing away.

- (ii) It has been contended that if the PW-3 was knowing the name of the present appellant then there was no difficulty for the said witness to disclose the name but instead of taking the name, he has deposed that at the time of occurrence, one criminal was also present along with Chhotu Singh whose name is Rajesh Gope who also fled away.
- (iii) The PW-3 in his cross-examination has specifically deposed that Rajesh Gope had not given the bullet injury.
- (iv) the learned trial court committed a serious error in coming to the conclusion that the murder was the intention of both the appellant and without any evidence the trial court found that the appellant namely Rajesh Gope has a common intention to kill the deceased.
- (v) No motive has been established for commission of crime.
- (v) Even though the empty cartridge of the bullet which has been said to be used for the purpose of

causing assault has been recovered but the same was not sent for its examination before the expert.

(vi) The police seized the blood-stained soil and the pistol along with cartridges but the same were not sent for its forensic test which also causes doubt upon the prosecution version.

17. *Per contra*, learned Additional Public Prosecutor, appearing for the respondent State, has defended the impugned judgment of conviction on the following grounds: -

(i) The conviction is based upon the testimony of PW-3 having been corroborated by the testimony of other witnesses and hence, it is incorrect on the part of the learned counsel for the appellants that the prosecution has miserably failed in substantiating the charge said to be not proved beyond all reasonable doubt.

(ii) So far as the issue of contradiction in the testimony of PW-3 with respect to the place of assault is concerned, the same cannot be said to be so vital that the entire prosecution will vitiate, rather, the testimony of PW-3 having been corroborated by the testimony of Doctor, hence the PW-3 is having credibility and based upon that if the conviction is there, the same cannot be said to

suffer from an error.

- (iii) The Doctor has fully corroborated the version of the PW-3.
- (iv) The ground of land dispute has been taken on behalf of the appellants but it is the settled position of law that the animosity is the double-edged sword that can go either way depending upon the corroborative piece of evidence.

18. Learned counsel for the State respondent, on the basis of the aforesaid grounds, has submitted that the conviction is inflicted upon the appellants by the judgment passed by the trial court which suffers from no infirmity and needs no interference.

19. We have heard the learned counsel for the parties, considered the finding recorded by the learned trial court in the impugned judgment, gone across the testimony of the prosecution witnesses as well as the other documents available in the lower court records.

20. This Court is required to answer the following issues: -

- (i) Whether the judgment passed by the learned trial court convicting the appellants can be said to be justified?
- (ii) Whether the trial court is correct to rely upon the testimony of the sole eye witness in reaching out

the conviction of the appellants?

(iii) The next important question that falls for our consideration is whether the appellants participated in the commission of the crime sharing common intention or whether the appellant Chhotu Singh, who allegedly shot the deceased with pistol is alone liable for the offence of murder.

21. All the aforesaid issues since are interlinked, as such, are being considered together and being answered hereinafter. But before considering the aforesaid issues, the testimony of the witnesses are required to be referred herein which reads hereunder as: -

PW-1 Gopal Singh - P.W.1 is informant of this case. He has stated in his examination-in-chief that occurrence was happened on 17.11.2012 at 5.00 p.m. At that very time he was present at his house. In the meantime, his uncle Lakhan Singh came and stated that Chhotu Singh and Rajesh Gope had shot fire upon his father at pakki road of Ulgarha village. Thereafter, he along with his brothers namely Awedhesh Singh and Guduwa Singh went there on motorcycle and reached there then he saw that his father was lying dead due to bullet injury on left temple and blood was oozing out. He also saw that Chhotu Singh and Rajesh Gope fleeing from there. He also chased them but they managed to escape away

from there by taking advantage of bush. Thereafter, he informed the police, after sometime police came there and recorded his statement. He identified his signature on the fardbeyan which was marked as exhibit-1. He also identified the accused persons who were present in the court.

During cross-examination this witness has stated that his statement was not recorded by the I.O during investigation of this case. Chhotu Singh is his co-villager and there is no enmity with him. He has further stated that though it is mentioned in the fardbeyan that there is enmity with Chhotu but he has no enmity with Chhotu Singh. His uncle Lakhan Singh has stated about the said occurrence. Thereafter, he along with his brothers went to the place of occurrence on his motorcycle which was some distance away from his house. He and his brothers had not seen the occurrence. When he reached at the place of occurrence, he saw that Biju Munda, Phul Kumari and Dharam Singh were present there. He along with his three brothers chased the accused persons but people present there had not chased them. Police had reached at the place of occurrence after 10 minutes of occurrence. He has given his fardbeyan at the place of occurrence. He has informed the police during course of chasing the appellants but he cannot say the number because the number was saved in his mobile. He cannot say

in what time he had informed the police. He has denied the suggestion that he gave false evidence in this case.

PW-2 Rajiv Kumar – This witness has deposed that on the date of occurrence, i.e. 10.01.2013, he was posted at police line. On that very time S.I. Pawan Kumar of Lapung P.S. brought seized articles before him for testing. After opening the seal, one country made pistol, two .315 cartridges and one empty cartridge was found. After testing he found that the said pistol was in working condition.

PW-3 Lakhan Singh – This witness is the eye witness to the occurrence and he is own younger brother of the deceased. He has stated that occurrence took place two years ago at 4.00 p.m., when he was returning from Govindpur market. When he reached at Patratoli Uligarha road, he saw accused Chhotu Singh closely shot on the backside of head of his brother Baleshwar Singh by revolver. In result Baleshwar Singh fell down and died at the spot. Chhotu Singh was accompanied with Rajesh Gope. Chhotu Singh and Rajesh Gope ran away therefrom. Thereafter, he had gone to inform the villagers. Villagers came and caught the accused persons along with weapon and handed over to the police at Lapung Police station.

In his cross-examination this witness has stated that he is only person in the family who had seen the occurrence.

Informant and his brothers had come after one hour of the place of occurrence and that time accused persons had fled away. Police had come at the place of occurrence after 1½ to 2.00 hours. Rajesh was not involved in the firing. That day was market day but he was the only person present at the spot. The distance between his house and place of occurrence is about one kilometer. He had informed the family members by himself going to house, thereafter, Gopal and his brothers had come. Accused persons were arrested in another village with the help of villagers. The deceased was coming on bicycle and he was coming on foot because his bicycle was damaged. When occurrence took place he was 100 hands away from the place of the occurrence. The occurrence was seen by the many people.

PW-4 Dr Santosh Kumar Singh - This witness is seizure list witness. This witness has identified his signature on the seizure list. He has further stated that gun, cartridges and blood stain soil was also seized in his presence. On his identification the same was marked as exhibit-3 and 3/1 respectively.

During cross-examination he has stated that he made his signature on the seizure list at police station on the behest of Bade Babu of police station. He has got knowledge that gun was recovered in this case. The said gun was shown

in police station and police had not recorded his statement in this case.

PW-5 Dr. Manoj Kumar Korah - is the doctor who conducted the postmortem of the deceased and found the following external injuries: -

- i. Average built, Rigor mortise present all over, abdomen not distended, dried blood stain on head face and cloth.
- ii. Firearm injury having wound of entrance 2 cm x 1 cm left chick upper part 3 cm below the left orbital lateral side. Entrance would are abbreviated, lacerated and contused marginal. Burning area 7 cm x 4 cm left chick upper part. The projectile passes through soft tissue breaks maxilla lacerating of left side of duramatical and left side of occipital lobe and cerebellum and breaks left side of occipital bone and makes an exit would 3 cm x 2 cm right occipital region 4 cm below right mastoid process. Contusion of brain presence of sub durable blood and blood clot right side of brain. Internal organ fail.

Opinion -

- i. The above noted firearms injuries are anti-mortem in nature,
- ii. Caused by firearm,
- iii. Death is due to head injury as a result of firearm shot.

iv. The since death 12 hours to 36 hours on the time of postmortem examination. This postmortem report is prepared by him and his pen and signature and counter signed by Doctor Aman Kumar which was marked as exhibit-4. Defence counsel has denied to cross-examine the said witness.

PW-6 Rajesh Kumar Singh is seizure witness as well as family member of the deceased. He has stated that deceased Baleshwar Singh was his elder father and he was murdered on 17.11.2012 at 6.00 p.m. in the evening. At that very time he had reached home from Govindpur market then Lakhan Singh has stated that Chhotu Singh and Rajesh Gope had shot fire upon Baleshwar Singh. Thereafter, he went to the place of occurrence where he saw that deceased was lying there. Thereafter, he chased the accused persons but they managed to escape from there. At the place of occurrence police has seized articles and he put his signature on seizure list which has been marked as exhibit-3/1. His another signature on seizure list was marked as exhibit-3/3. He has identified the accused Chhotu Singh and also claimed to identify Rajesh Gope.

In his cross-examination he has stated that he heard about the occurrence from Lakhan Singh. What is written on the seizure list he had not read. Further he has stated that

one pistol, three cartridges and empty cartridge were seized in this case. Chhotu Singh is his co-villager, hence he identified him.

PW-7 Pawan Kumar Singh – He is I.O of this case. He has stated in his examination-in-chief that on 17.11.2012 he was posted at Lapung P.S. on the post of Sub Inspector. He got information regarding the occurrence by the Officer-in-Charge of the police station on phone. Thereafter, he along with armed forces proceeded towards place of occurrence on official vehicle and reached at place of occurrence at 6.30 pm. Where, he saw that deceased was lying due to bullet injury. Thereafter, the fardbeyan was recorded and took over the charge of investigation of this case there. When Officer-in-charge returned to police station, he registered the case. This witness has further stated that the formal FIR was written by Chowkidar-cum-Munsi Arun Kumar upon which Sudhir Kumar Choudhary put his signature which was marked as exhibit-5. After taking over the charge of this case he recorded the restatement of informant. Thereafter, he inspected the place of occurrence. The place of occurrence is Phatepur, Mahugaon pitch road, near Patara Toli and stated the boundary of place of occurrence. Thereafter, inquest report was prepared and the dead body was sent for postmortem at RIMS. He also collected the blood-stained soil.

He also identified his signature on seizure list which was marked as exhibit- 3/4. Thereafter, he recorded the statement of witness Rajesh Singh, Lakhan Singh and Santosh Singh. At 8.30 a.m he got information that accused persons were seen at Patratoli thereafter, he along with Officer-in-charge proceeded towards there and reached Ulgara village and arrested both the accused persons namely Rajesh Gope and Chhotu Singh. He identified his signature on arrest memo which was marked as exhibit-6, 6/1. Thereafter, he recorded the confessional statement of both the accused persons and he along with Officer-incharge put their signatures upon it which was marked as exhibit-7 and 7/1 respectively. On the confession of the appellant, he recovered three .315 bore cartridges upon which at the bottom 8 mm was written on it and one loaded pistol was also recovered which was kept hidden in the bushes of Patratoli. Thereafter, seizure list was prepared. On his identification, his signature was marked as exhibit-3/5. All the seized articles were brought before the court thereafter sent for testing. Thereafter, he received the postmortem report. On perusal of police record he got knowledge that there is criminal antecedent of the accused persons and he also mentioned the same in the case diary. Thereafter, in compliance of order of his senior officer, he submitted charge

sheet in this case against the accused persons. He identified both the accused persons. He also got sanction order from the Deputy Commissioner, Ranchi.

During cross-examination he has stated that he took the charge of investigation of this case at the place of occurrence at 19.45 hours and copy of the fardbeyan was given by the Officer-in-charge to him thereafter he perused the fardbeyan. In the fardbeyan Lakhan Singh has stated that he saw the occurrence. During the investigation he found that there is land dispute in between deceased and Chhotu Singh. The place of occurrence is 500 yards away from the house of informant. During the whole investigation save and except Lakhan Singh, no one had seen the occurrence. He has not sent the blood-stained soil and arms for F.S.L test. In his presence, officer-in-charge seized the pistol and 315 bore cartridges and regarding this fact he has mentioned in para-33 of the case diary. The confessional statement was recorded in police custody. The seized articles were kept in Malkhana of police station but no number was written on it. He sealed the seized articles at police station but that fact was not mentioned in case diary. He has denied the suggestion that he investigated the case in wrong manner and submitted charge sheet in this case.

PW-8 Andrias Malto- This witness is clerk of D.C. office.

He in his evidence has stated that on 31.01.2013 he was posted at D.C. office. At that very time the sanction order was typed by Prashant Kumar in computer which was in two pages. This sanction order is against the accused Chhotu Singh and Rajesh Gope.

PW-9 Nag Narayan Singh – He is formal witness of this case. He has brought the seized article of P.S. case no.45/12 before the court.

During cross-examination this witness has stated that he has no knowledge about the occurrence.

22. Apart from the aforesaid prosecution evidence, one defence witness, **DW 1 Shivnandan Singh** has also been produced on behalf of defence. He has deposed that accused Chhotu Singh is his nephew. There is long dispute in between the family of informant and accused's father and in support he produced photocopy of Title Suit No. 140/1988 which has been marked as Exhibit-X for identification. Further he has deposed that due the above land dispute the accused Chhotu Singh has been falsely implicated in this case.

23. This Court has heard the learned counsel for the parties, gone across the finding recorded by the learned trial court in the impugned judgment, gone across the testimony

of the prosecution witnesses including the postmortem report as available in the trial court records.

24. It is evident from the evidences as laid that informant's father Baleshwar Singh had been killed by gunshot and this fact has also been substantiated by postmortem report. Hence, it is established that Baleshwar Singh was murdered and except PW-3 no one has seen the commission of alleged crime.

25. Now coming to the argument of the learned counsel for the parties. The main ground has been taken by the learned counsel for the appellant that the conviction is based upon the testimony of sole eyewitness PW-3 who cannot be said to be credible witness to substantiate the case of prosecution, since the testimony of PW-3 is required to be corroborated by the other witnesses for the purpose of corroborating his testimony but that has not been corroborated by other witnesses.

26. The learned counsel further argued that there is major contradiction among the testimonies of witnesses especially regarding the timing of the murder of the deceased.

27. He further contended that since most of the witnesses herein are related witness and no independent witness has been examined, thus in such circumstances prosecution case has no leg to stand.

28. Further, learned Amicus Curiae for the appellant Rajesh Gope has contended that there is no common intention between the appellants regarding the murder of deceased and, as such, appellant Rajesh Gope cannot be held liable under section 302 of the IPC by taking aid of section 34 of the IPC and mere presence of anyone at the place of occurrence cannot make him/her liable for the alleged crime.

29. Learned Amicus Curiae has further contended that in the instant case, there is no evidence of any prior meeting of mind, and it is nowhere suggested that the appellant Rajesh Gope was indulged in any overt or covert act based on which any inference of common intention could be drawn.

30. In the aforesaid context this court thinks fit to discuss the evidentiary value of the sole eyewitness. It is settled proposition of law that the judgment of conviction can be passed on the basis of the testimony of sole eyewitness but the testimony of said witness should be trustworthy and inspire confidence in the mind of the Court.

31. Reference in this regard may be taken as per the judgment rendered by Hon'ble Apex Court in the case of ***Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91*** paragraphs 30 to 34 of the said judgment are being referred hereunder as:-

“**30.** Shri Bagga has also submitted that there was

sole testimony of Sujit Mondal, PW 1, and the rest i.e. depositions of PW 2 to PW 8, could be treated merely as hearsay. The same cannot be relied upon for conviction.

31. In Sunil Kumar v. State (Govt. of NCT of Delhi)¹⁰ this Court repelled a similar submission observing that: (SCC p. 371, para 9)

“9. ... as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration.”

In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

32. In Namdeo v. State of Maharashtra this Court reiterated the similar view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.

33. In Kunju v. State of T.N., a similar view has been reiterated placing reliance on various earlier judgments of this Court including Jagdish Prasad

v. State of M.P. and Vadivelu Thevar v. State of Madras.

34. Thus, in view of the above, the bald contention made by Shri Bagga that no conviction can be recorded in case of a solitary eyewitness has no force and is negated accordingly.”

32. Likewise, the Hon’ble Apex Court in the case of **Kuriya and another vs. State of Rajasthan, (2012) 10 SCC 433** held as under:-

“ 33. ---The Court has stated the principle that, as a general rule, the Court can and may act on the testimony of a single eyewitness provided he is wholly reliable and base the conviction on the testimony of such sole eyewitness. There is no legal impediment in convicting a person on the sole testimony of a single witness.”

33. Further, the Hon’ble Apex Court in the case of **Kalu @ Amit vs. State of Haryana, (2012) 8 SCC 34** has held as under:-

“11. We find no infirmity in the judgment of the High Court which has rightly affirmed the trial court’s view. It is true that the accused have managed to win over the complainant PW 4 Karambir Yadav, but the evidence of PW 5 Ram Chander Yadav bears out the prosecution case. It is well settled that conviction can be based on the evidence of a sole eyewitness if his evidence inspires confidence. This witness has meticulously narrated the incident and supported the prosecution case. We find him to be a reliable witness.”

34. Further, the Hon’ble Apex Court in case of **Sheelam**

Ramesh v. State of A.P., (1999) 8 SCC 369 in Para -18 has held as follows:-

“18. According to learned counsel for the accused appellants, though PW 3 has deposed that 10-15 persons were in the vicinity at the time of occurrence, no independent witness was examined by the prosecution. There is nothing on evidence to show that there was any other eyewitness to the occurrence. Having examined all the eyewitnesses even if other persons present nearby were not examined, the evidence of the eyewitnesses cannot be discarded. Courts are concerned with quality and not with quantity of evidence and in a criminal trial, conviction can be based on the sole evidence of a witness if it inspires confidence.”

35. At this juncture, this Court thinks fit to revisit the testimony of the witnesses particularly the sole eyewitness, in the backdrop of aforesaid legal proposition.

36. PW-3, the eye witness, has stated that when he was returning from Govindpur market, he saw accused/appellant Chhotu Singh @ Ajay Singh (Appellant in Cr. Appeal (DB) No. 1819 of 2017) shot on the backside of head of his brother Baleshwar Singh (deceased) from a close range by revolver. In result Baleshwar Singh fell down and died at the spot. Chhotu Singh was accompanied with Rajesh Gope and thereafter Chhotu Singh and Rajesh Gope ran away from the place of occurrence.

37. In his cross-examination this witness has stated that he is only person in the family who had seen the

occurrence. Informant and his brothers had reached after one hour to the place of occurrence and by that time the accused persons had fled away. He further testified that Rajesh Gope (Appellant in Cr. Appeal (DB) No. 1707 of 2017) was not involved in the firing.

38. Thus, it is evident from the testimony of P.W.3 that he saw the accused/Appellant Chhotu Singh while he was shooting by the revolver on the backside of head of his brother Baleshwar Singh (deceased) and at the same time this witness had categorically stated that the accused Rajesh Gope was not involved in the firing.

39. Now coming to the post-mortem report that the Doctor, PW-5, has found firearm injury having wound of entrance 2 cm x 1 cm left chick upper part 3 cm below the left orbital lateral side. He has also found the burning area 7 cm x 4 cm left chick upper part.

40. From the post-mortem report it is evident that there was sign of burning on the left chick upper part of deceased and as per the ***Modi: A Textbook of Medical Jurisprudence and Toxicology***, such type of injury may be caused if the shot was fired from very close range. Reference in this regard may be taken from aforesaid book, 23rd Edition at page 721, which is quoted as under:

"If a firearm is discharged very close to the body or

in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be a greyish or white deposit on the skin around the wound. If the area is photographed by infrared light, a smoke halo round the wound may be clearly noticed. Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet. In the absence of powder residue no distinction can be made between one distance shot and another, as far as distance is concerned. Scorching in the case of the latter firearms is observed within a few inches, while some evidence of scorching in the case of shotguns may be found even at one to three ft. Moreover, these signs may be absent when the weapon is pressed tightly against the skin of the body, as the gases of the explosion and the flame smoke and particles of gunpowder will all follow the track of the bullet in the body. Wetting of the skin or clothes by rain reduces the scorching range. Blackening is not affected by wet surface although it can easily be removed by a wet cloth. Blackening with a high power rifle can occur up to about one ft. Usually if there are unburnt powder grains, the indication is that the shot was fired from a revolver or a pistol and shorter the barrel of the weapon used the greater will be the tendency to the presence of unburnt or slightly burnt powder grains."

41. Thus, the case of the prosecution has also been substantiated by the postmortem report (Ext.4) that the

death of deceased was caused by shot as made by the firearm from very close range.

42. Further, the PW-3 in his testimony has categorically stated that he had seen the appellant Chhotu Singh shooting the deceased from a very close range and as discussed above, this fact has been corroborated by the testimony of the Doctor who has found burn injury in the left chick which is possible if the gunshot is made from a very close range.

43. So far as shot made by the accused /appellant Chhotu Singh on the deceased is concerned this Court, on the basis of the discussion made hereinabove, is of the view that testimony of PW-3 can be said to be reliable and trustworthy.

44. Further, learned counsel for the appellant has contended that there is inter-se contradiction among the witnesses and most of the witnesses are related and interested witness, as such, the version of prosecution is not reliable.

45. In the aforesaid contention, law is well settled that merely because there are some contradictions and discrepancies in the testimonies of the witnesses, the same cannot be enough to vitiate the prosecution story, as has been held by the Hon'ble Apex Court in the case of **Mukesh Kumar v. State (NCT of Delhi)**, reported in **(2015) 17 SCC 694**, wherein, at paragraph-8, it has been held as under:

"8. While the slight difference in the initial version of the prosecution and the FIR version has been reasonably explained by the cross-examination of PW 6, it is our considered view that minor discrepancies, embellishments and contradictions in the evidence of the eyewitnesses do not destroy the essential fabric of the prosecution case, the core of which remains unaffected. Even if we have to assume that there are certain unnatural features in the evidence of the eyewitnesses the same can be reasonably explained on an accepted proposition of law that different persons would react to the same situation in different manner and there can be no uniform or accepted code of conduct to judge the correctness of the conduct of the prosecution witnesses i.e. PWs 1 and 2. The relation between PWs 5 and 6 and PWs 1 and 2 and the deceased, in our considered view, by itself, would not discredit the testimony of the said witnesses. There is nothing in the evidence of PWs 1 and 2 which makes their version unworthy of acceptance and their testimony remains unshaken in the elaborate cross-examination undertaken."

46. Likewise, the Hon'ble Apex Court in the case of ***Shyamal Ghosh v. State of West Bengal***, reported in **(2012) 7 SCC 646**, wherein, at paragraphs-46 & 49, it has been held which is being quoted as under:

"46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. It is true that there is some variation in the timing given by PW 8, PW 17 and PW 19. Similarly, there is some variation in the statement of PW 7, PW 9 and PW11. Certain variations are also pointed out in the statements of PW 2,

PW 4 and PW 6 as to the motive of the accused for commission of the crime. Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused.

47. Thus, from the aforesaid proposition of law it is evident that minor discrepancies, embellishments and contradictions in the evidence of the eyewitnesses do not destroy the essential fabric of the prosecution case, the core of which remains unaffected.

48. Indeed, in the instant case there is some inter-se contradiction in the testimonies of the witnesses relating to the timing of murder of the deceased.

49. Further, another point has also stated by PW-3 that the informant and others reached at the place of occurrence after one hour of the murder of deceased whereas, PW-1 has stated that after receiving information from PW-3 he reached at the place of occurrence within one minute.

50. Further, PW-6 has stated that when he heard news from

PW-3 then he ran towards place of occurrence and reached there and also seen the accused persons running away, then he also chased the accused persons but they succeeded to fled away.

51. As pointed out, although there are some contradictions in the evidence about chasing of the accused persons by PW-1 and PW-6, but the evidence of PW-3 regarding firing murderous shot by the accused Chhotu Singh and that the accused persons were seen fleeing from the place of occurrence, has not been shaken by the defence, as such evidence regarding chasing has no relevancy.

52. In our view aforesaid contradiction cannot be termed as major contradiction in view of the judgment as quoted herein above. Further the moment when such type of incident occurs in front of any person then at that time his mindset is not in normal stage and when they give their testimony in the court, they just memorize the incident and state in front of trial court and, as such, in that situation the court cannot expect that such witnesses will testify graphic detail of the incident.

53. Further the contention has been raised that most of witnesses are interested and related witness, therefore prosecution case has no independent basis.

54. The contention of the learned counsel for the appellants

that the witnesses being close relative and consequently being partisan witnesses should not be relied upon, has no substance. This theory was repelled by the Hon'ble Apex Court in ***Dalip Singh and Ors vs. State of Punjab AIR 1953 SC 364*** in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that the relatives were not the independent witness.

Relevant paragraph-26 reads as under:

"26. 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. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

55. Again, in ***Masaltı and Ors Vs. State of Uttar Pradesh, AIR 1965 SC 202***, the Hon'ble Apex Court has observed that

there is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with such evidence of a partisan type with great care. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan, cannot be accepted as correct.

56. Further, the law is well settled in this regard that what would be the effect if the conviction is solely based upon the testimony of interested witness, as has been held by Hon'ble Apex Court in the case of ***Mallanna and Ors. vs. State of***

Karnataka, (2007) 8 SCC 523 wherein it has laid down that the evidence of interested witnesses cannot be thrown out and the only requirement for the Court is to consider their evidence with great care and caution and if such evidence does not satisfy the test of credibility then the Court can disbelieve the same. Relevant paragraph of the aforesaid judgment reads as under:

"22. Another ground of attack to the evidence of PW 1, PW 2 and PW 3 is that no reliance should be placed upon these witnesses as PW 1 and PW 2 are close relations of the deceased and PW 3 is his bodyguard inasmuch as, undisputedly, there was animosity between the deceased and the accused persons, especially when these witnesses cannot be said to be stamp witnesses as none of them has received any injury. In our view, merely because witnesses are related or interested or not injured, their evidence cannot be discarded if the same is otherwise found to be credible, especially when they have supported the prosecution case in material particulars. All the three eyewitnesses, PW 1, PW 2 and PW 3 are natural witnesses. PW 3 was undisputedly bodyguard of the deceased and PW 1 and PW 3 came with the deceased to the house of PW 2 which was in Gulbarga the previous night for appearance of the deceased in sessions trial, pending against him, in the morning court at Gulbarga and in the morning all of them went to the court where the present occurrence had taken place in the broad daylight. So far as PW 2 is concerned, further submission has been made that his evidence should be discarded also on the ground that he made the statement before the doctor (PW 6) to the

effect that A-4 was also the assailant, as would appear from Exhibit P-10, an entry made in the register duly maintained in the hospital, which shows that he had not seen the occurrence."

57. Similarly, in ***Kulesh Mondal vs. State of W.B., (2007) 8 SCC 578***, the Hon'ble Apex Court has laid down at paragraph- 10 which reads as under:

"10. We may also observe that the ground that the [witnesses being close relatives and consequently being partisan witnesses,] should not be relied upon, has no substance. This theory was repelled by this Court as early as in *dalip singh v. state of punjab* [AIR 1953 SC 364] in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses.

58. Thus, it is evident from the aforesaid settled proposition of law that criminal court has to appreciate the evidences given by witnesses who are partisan or interested and it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.

59. Now Adverting to the facts of the instant case the prosecution witness no. 3, who is the sole eye-witness of the occurrence, has categorically stated that he had seen the accused/appellant Chhotu Singh assaulting the deceased through shot fired by Revolver from behind the head of the deceased. Further this Court in preceding paragraph has

found the testimony of sole eyewitness as reliable and trustworthy and the testimony of this witness has fully been substantiated from the post-mortem report of the deceased.

60. Thus, the culpability of the accused /appellant Chhotu Singh @ Ajay Singh in the commission of alleged crime has fully been established by the prosecution and the learned trial court basing upon the testimony of PW-3 has rightly convicted the appellant Chhotu Singh @ Ajay Singh for the murder of the deceased.

61. On the basis of discussion made herein above, this Court is of the considered view that the sentence as inflicted by the learned trial Court against the appellant Chhotu Singh @ Ajay Singh does not require any interference.

62. Accordingly, the appellant Chhotu Singh @ Ajay Singh is convicted for the offence under section 302 IPC and under Section 25(1-B) a/26, 27 read with 35 of the Arms Act.

63. Consequently, the Criminal Appeal (DB) No. 1819 of 2017 is hereby dismissed.

64. Consequently, I.A. No.3435 of 2021 filed in Criminal Appeal (DB) No.1819 of 2017 also stands dismissed.

Criminal Appeal (DB) No. 1707 of 2017

65. So far as the culpability of the appellant namely Rajesh Gope (appellant in Cr. Appeal (DB)) is concerned, this Court thinks fit to appreciate the contention of the learned Amicus

Curiae wherein it is contended that that there is no common intention between the appellants regarding the murder of deceased and, as such, appellant Rajesh Gope cannot be held liable under section 302 of the IPC by taking aid of section 34 of the IPC and mere presence of anyone at the place of occurrence cannot make him/her liable for the alleged crime.

66. Learned amicus further contended that from perusal of record it would be evident that it is nowhere suggested that the appellant Rajesh Gope indulged in any overt or covert act based upon which any inference of common intention could be drawn.

67. At this juncture, in the aforesaid context this Court thinks fit to discuss the scope and core of the section 34 IPC. Section 34 IPC which is nothing but rule of evidence provides that:

“34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

68. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. In 1870, it was amended by the insertion of the words ‘in furtherance of the common intention of all’ after the word ‘persons’ and before the word ‘each’, so as to make the object of Section 34 clear.

69. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime.

70. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it prearranged or on the spur of the moment; but it must necessarily be before the commission of the crime.

71. To apply Section 34 apart from the fact that there should be two or more accused, two factors must be established : (i) common intention, and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability.

72. But if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be

invoked. The burden lies on the prosecution to prove that actual participation of more than one person for commission of criminal act was done in furtherance of common intention of all at a prior concert. Therefore, in order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence before a person can be vicariously convicted for the act of the other.

73. The Hon'ble Apex court in the case of **Pandurang v. State of Hyderabad [AIR 1955 SC 216]** has observed at paragraph 32 and 33 as under:

“32. ... It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all: *Mahbub Shah v. King Emperor* [(1944-45) 72 IA 148] (IA pp. 153-54). Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to

kill could be proved in his case: *Barendra Kumar Ghosh v. King Emperor* [(1924-25) 52 IA 40 : AIR 1925 PC 1] (IA p. 49) and *Mahbub Shah v. King Emperor* [(1944-45) 72 IA 148]. As Their Lordships say in the latter case (*Mahbub Shah case* [(1944-45) 72 IA 148], IA p. 154), ‘the partition which divides “their bounds” is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice’.

33. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other e.g. the intention to rescue another and, if necessary, to kill those who oppose.”

74. The Hon’ble Apex Court in ***Hardev Singh v. State of Punjab* [(1975) 3 SCC 731]** has observed at paragraph 9 as under:

“9. ... The common intention must be to commit the *particular crime*, although the actual crime may be committed by any one sharing the common intention. Then only others can be held to be guilty.”

75. In ***Dharam Pal v. State of Haryana* [(1978) 4 SCC 440]** the Hon’ble Apex Court has laid down the test when Section 34 IPC is applicable and held at paragraph 14 and 15 as under:

“14. It may be that when some persons start with a pre-arranged plan to commit a minor offence, they may in the course of their committing the minor offence come to an understanding to commit the major offence as well. Such an understanding may appear from the conduct of the persons sought to be made vicariously liable for the act of the principal culprit or from some other incriminatory evidence but the conduct or other evidence must be such as not to leave any room for doubt in that behalf.

15. A criminal court fastening vicarious liability must satisfy itself as to the prior meeting of the minds of the principal culprit and his companions who are sought to be constructively made liable in respect of every act committed by the former. There is no law to our knowledge which lays down that a person accompanying the principal culprit shares his intention in respect of every act which the latter might eventually commit. The existence or otherwise of the common intention depends upon the facts and circumstances of each case. The intention of the principal offender and his companions to deal with any person who might intervene to stop the quarrel must be apparent from the conduct of the persons accompanying the principal culprit or some other clear and cogent incriminating piece of evidence. In the absence of such material, the companion or companions cannot justifiably be held guilty for every offence committed by the principal offender.”

(emphasis supplied)

76. In *Brijlala Pd. Sinha v. State of Bihar* [(1998) 5 SCC

699] the Hon’ble Apex Court in clear and categorical terms laid down that:

“11. ... Unless a common intention is established as a matter of necessary inference from the proved circumstances the accused persons will be liable for their

individual act and not for the act done by any other person. For an inference of common intention to be drawn for the purposes of Section 34, the evidence and the circumstances of the case should establish, without any room for doubt, that a meeting of minds and a fusion of ideas had taken place amongst the different accused and in prosecution of it, the overt acts of the accused persons flowed out as if in obedience to the command of a single mind. If on the evidence, there is doubt as to the involvement of a particular accused in the common intention, the benefit of doubt should be given to the said accused person.”

77. In **Suresh v. State of U.P. [(2001) 3 SCC 673]** the Hon’ble Apex Court after referring to a number of its earlier judgments and the judgments of the Privy Council observed that:

“31. It is difficult to conclude that a person, merely because he was present at or near the scene, without doing anything more, without even carrying a weapon and without even marching along with the other assailants, could also be convicted with the aid of Section 34 IPC for the offence committed by the other accused.”

78. The instant case must be assessed in terms of the above legal position. It transpires from record that PW-3 the sole eye-witness in his evidence did not attribute any overt or covert act as against the appellant Rajesh Gope.

79. Further, no circumstances were brought on record from which it could be reasonably inferred that the appellant Rajesh Gope shared common intention with appellant Chhotu Singh and committed the murder of the deceased in

furtherance of such common intention.

80. The contents of the FIR and the evidence of prosecution witnesses if read together make it clear that the appellant Rajesh Gope was not armed with any deadly weapon, neither is there any charge nor any evidence even as against Rajesh Gope that he shared common intention along with the appellant to commit murder of the deceased.

81. Further there is also no evidence that there was a prior meeting of minds which developed on the spur of the moment and appellant Rajesh Gope helped the appellant Chhotu Singh in shooting of the deceased in furtherance of such common intention resulting in death of the deceased.

82. Further, there is no evidence of any premeditation between the appellant Rajesh Gope and appellant Chhotu Singh @ Ajay Singh.

83. Looking to the facts and circumstances at hand, i.e., the appellant Rajesh Gope had no specific motive to participate in the commission of the offence, did not have any rivalry with the deceased or his family, and has not been shown to be a friend, relative or hireling of the other accused/ Chotu Singh, we are of the considered opinion that the prosecution has failed to prove any common intention on the part of appellant Rajesh Gope, inasmuch as there is no hint of any motive or reason for him to have either participated in pre-planning the

murder of the deceased, or to develop the common intention to do so while present at the spot of the offence.

84. A perusal of the evidence of prosecution witnesses, particularly the informant, raises further suspicion in the mind of the Court about the complicity of the appellant Rajesh Gope in the offence in question. Though in his examination-in-chief, the informant deposed that he saw the appellant Rajesh Gope fleeing away with Chhotu Singh, the main executor of the alleged crime, but from the deposition of PW-3 in the cross-examination it is evident that the informant along with the other witnesses reached at the place of occurrence after considerable lapse of time. Thus, it can be safely said that the prosecution has not proved its case beyond reasonable doubt so far as active involvement of the appellant Rajesh Gope is concerned, in the offence in question through any overt act.

85. Further, the prosecution case is that accused persons were arrested on the next day from other village by the Police. In this regard the PW-3 has stated that villagers gathered and villagers searched the accused persons and they caught them with weapon and handed them over to Lapung Police. But, on perusal of the exhibits like arrest memo, recovery of weapon it appears that when and where the accused persons were caught by villagers has not been mentioned. It appears that

this statement has not been corroborated by the police.

86. Thus, it is evident that in the instant case murderous assault on the deceased by Chhotu Singh @ Ajay Singh was his individual act. There is no evidence suggestive of any common intention to commit the murder. Circumstances are completely lacking compelling us to draw any inference that both the appellants together shared common intention to commit the murder and in furtherance of such common intention Chhotu Singh shot dead the deceased.

87. On the basis of the discussion made herein above, this Court is of the opinion that the learned trial court concluded against the appellant merely on assumptions and conjectures and not on reliable evidence, in spite of the prosecution having failed to discharge its burden to prove the case against the appellant Rajesh Gope beyond reasonable doubt.

88. Be that as it may, since the evidence against the appellant Rajesh Gope is shaky and insufficient to bring home the guilt against him, we find it to be a fit case in which appellant Rajesh Gope ought to have been given the benefits of doubt.

89. On consideration of the evidence and the material available on record and in the light of the legal principles referred hereinabove, it is clear that the accusations made against the appellant Rajesh Gope making him constructively

liable for the criminal act of murder committed by Chhotu Singh with the aid of Section 34 IPC were not established.

90. Since the prosecution is failed to prove the charges beyond reasonable doubt against appellant Rajesh Gope by taking aid of section 34 IPC, hence the impugned Judgment of conviction dated 04.08.2017 and Order of sentence dated 07.08.2017, passed by learned Additional Judicial Commissioner-VIII, Ranchi in Sessions Trial No.186 of 2013/Tr. No.94 of 2016, convicting and sentencing the appellant Rajesh Gope, is hereby, set aside. Since the appellant Rajesh Gope is on bail, he is discharged from the liabilities of his bail bonds.

91. Accordingly, Criminal Appeal (DB) No. 1707 of 2017 is hereby allowed.

92. 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.

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Jharkhand High Court, Ranchi
Dated, the 25th day of April, 2024.
Birendra / **N.A.F.R.**