IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.216 of 2024

Arising Out of PS. Case No.-51 Year-2015 Thana- AZIMABAD District- Bhojpur

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Manoj Manzil Son Of Mithilesh Kumar, Resident of Village - Kapoor Dihra, P.S. - Tarari, District – Bhojpur.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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with

CRIMINAL APPEAL (DB) No. 237 of 2024

Arising Out of PS. Case No.-51 Year-2015 Thana- AZIMABAD District- Bhojpur

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1. Ravindra Chaudhary, Son of Sri Ramadhar Chaudhary Resident of Village-Bargaon, P.S.-Azimabad, District-Bhojpur, Ara
2. Guddu Chaudhary, Son of Sri Akshay Kumar Chaudhary @ Abhay Chaudhary Resident of Village-Bargaon, P.S.-Azimabad, District-Bhojpur, Ara
3. Rohit Chaudhary, Son of Late Sigan Chaudhary Resident of Village-Bargaon, P.S.-Azimabad, District-Bhojpur, Ara

... ... Appellants

Versus

The State of Bihar

... ... Respondent

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with

CRIMINAL APPEAL (DB) No. 510 of 2024

Arising Out of PS. Case No.-51 Year-2015 Thana- AZIMABAD District- Bhojpur

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1. China Ram S/o Shree Minik Ram R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
2. Manoj Chaudhary S/o Shree Dhurpukan Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
3. Nand Kumar Chaudhary S/o Late Timil Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
4. Bharat Ram S/o Sri Minik Ram R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
5. Triloki Ram S/o Sri Minik Ram R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
6. Prem Ram S/o Late Maahil Ram R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
7. Babban Chaudhary S/o Shree Bhorik Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur

8. Pawan Chaudhary S/o Shree Shiv Pujan Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
9. Gabbar Chaudhary S/o Shree Mukundi Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
10. Ram Bali Chaudhary S/o Shree Bhagwan Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
11. Shiv Bali Chaudhary S/o Shree Ram Ladhu Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
12. Ramadhar Chaudhary S/o Late Timil Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
13. Sarvesh Chaudhary S/o Late Shivpujan Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
14. Ramanand Prasad S/o Late Devraj Prasad R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
15. Tanman Chaudhary S/o Shree Police Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
16. Prabhu Chaudhary S/o Late Chalitra Chaudhary R/o vill - Bangon, P.S. - Azimabad, Distt. - Bhojpur
17. Jai Kumar Yadav S/o Shree Shiv Deep Yadav R/o vill - Kheri, P.s. - Azimabad, Distt. - Bhojpur
18. Nandu Yadav S/o Shree Shiv Deep Yadav R/o vill - Kheri, P.s. - Azimabad, Distt. - Bhojpur
19. Chandra Dhan Rai S/o Late Yaduvansh Rai R/o vill - Kurmichak, P.S. - Narainpur, Distt. - Bhojpur

... ... Appellants

Versus

The State of Bihar

... ... Respondent

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Appearance :
(In CRIMINAL APPEAL (DB) No. 216 of 2024)
For the Appellant : Mr. Y.C. Verma, Sr. Advocate
Ms. Shahrukh Alam, Advocate
Ms. Priyanka Singh, Advocate
Mr. Rizwanul Jama Khan, Advocate
Mr. Adarsh Singh, Advocate
Mr. Rabish Kumar, Advocate
Mr. Khalid Faizan, Advocate
Mr. Avijeet Kumar Rahul, Advocate
For the State : Mr. Abhimanyu Sharma, Addl.PP
(In CRIMINAL APPEAL (DB) No. 237 of 2024)
For the Appellants : Mr. Ajay Kumar Thakur, Advocate
Ms. Kiran Kumari, Advocate
Md. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Ms.Vaishnavi Singh, Advocate
Mr. Purushottam Kumar, Advocate
Mr. Paranshu, Advocate
For the State : Mr. Abhimanyu Sharma, Addl.PP

(In CRIMINAL APPEAL (DB) No. 510 of 2024)

For the Appellants	:	Mr. Y.C. Verma, Sr. Advocate Ms. Shahrukh Alam, Advocate Ms. Priyanka Singh, Advocate Mr. Rizwanul Jama Khan, Advocate Mr. Rabish Kumar, Advocate Mr. Khalid Faizan, Advocate Mr. Avijeet Kumar Rahul, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl.PP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE AJIT KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date :07-10-2025

Heard Mr. Y.C. Verma, learned Senior Counsel assisted by Ms. Shahrukh Alam for the appellants in Criminal Appeal (DB) No. 216 of 2024 and Criminal Appeal (DB) No. 510 of 2024, Mr. Ajay Kumar Thakur, learned counsel for the appellants in Criminal Appeal (DB) No. 237 of 2024 and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State in Criminal Appeal (DB) No. 216 of 2024 and Criminal Appeal (DB) No. 237 of 2024 as also Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State in Criminal Appeal (DB) No. 510 of 2024. Ms. Shahrukh Alam, learned counsel has appeared physically as well as virtually through online mode and assisted this Court.

2. These three appeals are arising out of judgment of conviction dated 13.02.2024 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 13.02.2024 (hereinafter referred to as the ‘impugned order’) passed by learned

Special Judge of M.P/M.L.A. Court-cum-Additional Sessions Judge-III, Bhojpur at Ara (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 123 of 2019 arising out of Azimabad P.S. Case No. 51 of 2015.

3. By the impugned judgment, the learned trial court has been pleased to convict all the appellants for the offences punishable under Sections 302, 364 and 201 of the Indian Penal Code (in short 'IPC') read with Section 149 IPC.

4. By the impugned order, the appellants have been ordered to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each for the offence punishable under Section 302/149 IPC and in case of default in payment of fine, they have to further undergo three months simple imprisonment. For the offence under Section 364/149 IPC, they have to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- each and in case of default in payment of fine, they have to further undergo three months simple imprisonment. For the offence punishable under Section 201/149 IPC, they have to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/- each and in case of default in payment of fine, they have to further undergo one month simple imprisonment. All the sentences are to run concurrently.

Prosecution Case

5. The informant (PW-8), namely, Chandan Kumar Singh in his written application alleged that his father, namely, Jay Prakash Singh was abducted and after his murder his dead body has been hidden. The informant and his father were coming together when (1) China Ram, (2) Bharat Ram, (3), Triloki Ram, (4) Prabhu Chaudhary, (5) Ramanand Prasad, (6) Chandraghan Ram, (7) Jai Kumar Yadav, (8) Nandu Yadav, (9) Tantan Chaudhary, (10) Manoj Chaudhary, (11) Sarvesh Chaudhary, (12) Pavan Chaudhary, (13) Nand Kumar, (14) Ram Bali, (15) Guddu Chaudhary, (16) Gabbar Chaudhary, (17) Prem Ram, (18) Manoj Manjil, (19) Jawahir Paswan, (20) Baban Chaudhary, (21) Ramadhar Chaudhary, (22) Ravindra Chaudhary, (23) Shiv Bali, (24) Rohit Chaudhary, and other unknown persons caught the informant's father when his Aam Sabha had come to an end. While returning home, they caught hold of his father and started assaulting him by lathi, danda, bricks and stones instigating to kill him as he belongs to an upper caste. The informant somehow saved his life. The accused persons assaulted his father mercilessly as a result whereof he died on the spot. They also hid his dead body. The time of the occurrence was about 06:00-06:30 Hours.

6. On the basis of this written application, Azimabad P.S. Case No. 51 of 2015 dated 22.08.2015 was registered under Sections 364/34, 302, 201 IPC against the accused persons.

7. After investigation police submitted first chargesheet being Chargesheet No. 70 of 2015 dated 31.12.2015 under Sections 364/302/201/34 IPC against Manoj Manjil and Manjoj Chaudhary who were in custody and 14 others showing them absconder keeping investigation open against other accused. Thereafter, a supplementary chargesheet being Chargesheet No. 26 of 2016 dated 31.05.2016 was submitted under Sections 364/302/201/34 IPC against (1) Ramadhar Chaudhary, (2) Sarvesh Chaudhary, (3) Chandra Dhan Rai, (4) Ramanand Prasad keeping investigation open against other accused. Again, another supplementary chargesheet being Chargesheet No. 08 of 2018 dated 31.01.2018 was submitted under Sections 364/302/201/34 IPC against (1) Jai Kumar Yadav, (2) Nandu Yadav and (3) Prabhu Chaudhary.

8. Learned trial court vide order dated 15.03.2019 took cognizance of the offences under above mentioned Sections and committed the records to Sessions Court. Thereafter, Sessions Trial No. 123 of 2019 was registered.

9. Charges were read over and explained to the appellants in Hindi to which they pleaded not guilty and claimed

to be tried, accordingly, vide order dated 13.04.2022, charges were framed under Sections 364/34, 302/34 and 201/34 IPC.

List of Prosecution witnesses

PW-1	Kundan Singh @ Kundan Kumar Singh
PW-2	Ramchandra Singh
PW-3	Sanjan Kumar
PW-4	Shishu Kumar @ Rakesh Raushan
PW-5	Arjun Chaudhary
PW-6	Dr. Jitendra Nath Mishra
PW-7	Virendra Singh
PW-8	Chandan Kumar
PW-9	Shyamdev Singh

List of Exhibits on behalf of Prosecution

Exhibit ‘1’	Post-mortem report of deceased Jay Prakash Singh
Exhibit ‘2’	Signature of informant Chandan Kumar on FIR
Exhibit ‘3’	Signature of I.O. Shyamdev Singh on charge-sheet bearing charge-sheet no. 70 of 2015 dated 31.12.2015
Exhibit ‘4’	Signature of ASI Vimlesh Kumar Paswan on charge-sheet bearing chargesheet no. 26 of 2016 dated 7.5.2016
Exhibit ‘5’	Signature of SHO Raju Kumar on chargesheet bearing Charge-sheet No. 08 of 2018 dated 31.01.2018
Exhibit ‘6’	Writing and signature of I.O. Shyamdev Singh on formal FIR
Exhibits ‘7’	Signature of I.O. Shyamdev Singh on registration of written application

10. Thereafter, the statements of the appellants were recorded under Section 313 of the CrPC. The appellants denied all the allegations and took a plea that they are innocent.

11. The defence has not adduced any oral or documentary evidence.

Findings of the Learned Trial Court

12. The learned trial court having analyzed the oral as well as documentary evidences adduced on behalf of the prosecution recorded that the informant of this case is the most important witness. In his statement, the informant, Chandan Kumar (PW-8) has stated that he along with his father Jai Prakash Singh was returning from village Nariyadih after taking vegetables, the above named accused persons assaulted his father and killed him. He died at the spot and thereafter the accused persons eloped with the dead body of his father to save themselves and when he reached at the place of occurrence with the police personnel, then he saw blood stains at the place of occurrence. The learned trial court also found that the prosecution witness nos. 1, 2, 3 and 4 have fully supported the prosecution case. The learned trial court also held that the official witnesses, namely, PW-6 and PW-9 are the supportive witnesses. The learned trial court held that in absence of any defence led on behalf of the accused persons

showing otherwise or that there is a probability of some other version, there is nothing to distrust the testimonies of the eye witnesses. The learned trial court held that the prosecution case largely rests upon the testimonies of PW-8 which is found to be cogent and reliable on close scrutiny. It is pointed out that there is no legal impediment in convicting the accused persons on the basis of sole testimony of a single witness. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact.

13. The learned trial court rejected the contention of defence that the accused persons had no motive to carry out the alleged offence and that the prosecution has failed to establish motive behind the alleged act. It is held that undoubtedly, 'motive' plays significant role in a case based on a circumstantial evidence where the purpose would be to establish the important link in the chain of important circumstances in order to connect the accused with the crime, but in cases where there is a direct evidence for the offence committed, like the present case, proving motive is not an important factor. The learned trial court has held that the prosecution has been able to prove and establish both the criminal act and intent of the accused persons. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Shivaji Sahabrao**

Bobade v. State of Maharashtra reported in **(1973) 2 SCC 793**, the learned trial court quoted paragraph '6' of the said judgment and keeping in view the facts and circumstances in the light of the judgment of the Hon'ble Supreme Court, the learned trial court arrived at a conclusion that the prosecution has been able to prove and establish its case beyond all reasonable doubts. Accordingly, the judgment of conviction has been passed.

14. Learned trial court further found that the post-mortem report of the deceased is in complete consonance with the prosecution story. Learned trial court found from the evidence of the Doctor (PW-6) that the injuries inflicted on the body of the deceased was caused by strangulation and was sufficient in ordinary course of nature to cause death.

15. Learned trial court after appreciating the evidences available on the record found that the prosecution has been able to prove and establish the charges under Sections 302, 364 and 201 read with Section 149 IPC beyond all reasonable doubts. Accordingly, the appellants in these appeals are convicted under Sections 302, 364 and 201 read with Section 149 IPC.

Submissions on behalf of the Appellants

16. Learned Senior Counsel for the appellants has made the following submissions:-

(i) The FIR has been lodged belatedly on 22.08.2015 with respect to an incident which took place in the evening of 20.08.2015. The FIR at once alleged both kidnapping (implying that the complainant's father was still alive) and being killed on the spot. Two days after the alleged incident, the FIR was registered both under Sections 304 and 302 read with 201 IPC.

(ii) It is submitted that since the alleged murder and hiding the body is central to the prosecution case, the body that was recovered by police eight days later and in some other area, must have first been shown to belong to the complainant's father but there was no effort to match the body with the complainant's father. It is submitted that there was enough indicators to prove that it was some other totally unconnected body that was randomly recovered and sought to be joined to this case. To strengthen his submission, learned Senior Counsel submits that the postmortem report indicates that the body belongs to a man in age younger (40-45 years) while the postmortem report (Exhibit '1') states that son claims his father was around 55 years. The learned trial court has relied upon the family's identification without giving the reasons and it has recorded that the medical evidences corroborates the ocular version. It is submitted that the postmortem's age estimate contradicts the family's 55 year claim and decomposition made

visual identification inherently unsafe. It is further submitted that the postmortem report does not indicate any injuries matching the one described in the prosecution case. If dozens of people had assaulted the deceased with rod, stones and bricks, surely the body would indicate multiple fractures and severe injuries. The cause of death with respect to the recovered body is shown as strangulation which does not match the allegations. The time of death is stated to be between 23rd and 25th August, 2015 which does not match the facts of the present case.

(iii) Learned Senior Counsel for the appellants submits that the dead body was displaying heightened stage of putrefaction and decomposition. It was bloated and discoloured and the prosecution witnesses did not identify it explicitly and categorically. The prosecution witnesses claim to have recognized him through vague criteria like a mark on stomach, hair cut and hair dye. It is submitted that in such advanced putrefaction with bloating, skin slippage/discolouration, any small scar would be distorted/obscured.

(iv) It is pointed out that the samples of skin, nails and hair were collected from the complainant and his brothers and from the dead body and sent for the DNA testing, however, the results were never produced to confirm the identity. His

submission is that since the FSL report was never produced, an adverse inference should be drawn for withholding the best ('DNA') evidence. Relying upon the judgment of the Hon'ble Supreme Court in the case of **S. Kaleeswaran Vs. State by the Inspector of Police Pollachi Town East Police Station, Coimbatore District, Tamil Nadu** reported in **(2022) 17 SCC 699**, learned Senior Counsel submits that in the said case it was held that since the superimposition report was not supported by any other reliable medical evidence like the DNA report or the postmortem report, it would be very risky to convict the accused believing the identification of the dead body of the victim through the superimposition test. In the present case, even a superimposition test was not done. The postmortem report indicates every sign of it being a third person's body not matching in age, or other descriptions. On the use of superimposition technique in Indian investigation, learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Pattu Rajan Vs. The State of Tamil Nadu** reported in **(2019) 4 SCC 771**.

(v) Learned Senior Counsel submits that in the present case, PW-1 states that there were 100-150 people in the group. He also says that he recognized people from his own village but did

not recognize outsiders. PW-3 states that there were 200 people present on the spot. The Investigating Officer has admitted that ‘Badgaon’ is a very large village with Panchayat functionaries and a formal post of Chaukidar, however, none has been examined. Thus, there is not a single independent witness amongst the prosecution witnesses. No test identification parade was held to identify the outsiders to the village who were not known to the prosecution witnesses. Reliance has been placed upon the judgment of the Hon’ble Supreme Court in the case of **Masalti and Others Vs. State of Uttar Pradesh** reported in **1964 SCC OnLine SC 30** (paragraph ‘16’) and in the case of **Busi Koteswara Rao Vs. State of Andhra Pradesh** reported in **(2012) 12 SCC 711** (paragraphs ‘13’ and ‘15’) to submit that in a case that pertains to an offence involving a large number of offenders, the Hon’ble Court has held that conviction may be sustained only if it is supported by two or three or more witnesses who give a consistent kind of the incident. In the case of **Golbar Hussain and Others Vs. State of Assam and Another** reported in **(2015) 11 SCC 242** (paragraphs ‘10’ and ‘11’), it has been held that when two witnesses contradict each other then unless one of their statements is otherwise corroborated by an independent witness, the accused will have to be granted the benefit of doubt.

(vi) Learned Senior Counsel submits that the testimonies with regard to the role of the appellants are not at all reliable and are conflicting. PW-1 has stated only that the accused appellants were wrestling the complainant's father on the ground. PW-2 only makes very broad based and general allegation saying that the appellants were part of a large crowd that was taking the complainant's father. No specific role has been attributed to the appellant Manoj Manjil who was admittedly part of a large group of persons. PW-3 mentions that the accused collectively gave almost a hundred lathi blows to his father causing his head to split, however, the recovered body exhibited no such signs. PW-3 does not name the people who caused this particular injury. PW-4 alleged that the appellant was wrestling and shoving and also using rods and stones in the presence of many other people. PW-8 alleges wrestling on the ground and hitting with a rod while several other people were assaulting him with stones and bricks even if believed, none of those matches to any form of assault that may result in strangulation or chocking.

On these grounds, submissions have been made to set aside the impugned judgment and order of the learned trial court and acquit the appellants.

Submissions on behalf of the State

17. On the other hand, Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State has opposed the appeals. It is submitted that in this case, the occurrence took place in the evening of 20.08.2015. Chandan Kumar (PW-8) who is the son of the deceased is an eye witness of the occurrence. He was accompanying his father from Nariyadih and was returning to his village but as soon as they reached at Nariyadih, Kharanja Road, all of a sudden the named accused persons came running. He has specifically stated in his deposition that on that day, there was a meeting of the Malle Party in Badgaon Bazar. In his presence, Manoj Manjil caught hold of his father Jai Prakash Singh and slammed down him on the road whereafter one person started assaulting him by lathi, the other accused persons, namely, China Ram, Bharat Ram and other accused were assaulting by lathi, danda, bricks and stones. He is an eye witness of the occurrence of assault which took place at the Nariyadih, Khranja Road. He had fled away saving his life through maize fields towards his house raising hulla but because of the fear of the accused persons, the villagers did not go to the place of occurrence.

18. Learned Additional Public Prosecutor further submitted that when he along with Ramchandra Singh, Shishu

Singh, Sanjan Singh and Kundan Singh tried to go to the place of occurrence and they were at some distance, Manoj Manjil, Sarvesh Chaudhary, Manoj Chaudhary, Baban Chaudhary, Rambali Chaudhary and other accused chased them shouting ‘pakro pakro’. It is submitted that when after some times, police came there, at the place of occurrence, i.e., Nariyadih, Kharanja Road, blood was found scattered at some places which were tried to be covered by soil but blood could have been seen. In course of search, the blood stained *gamchha* of his father was found but his father could not be traced. It is submitted that the informant had given an application to the Chaukidar of Azimabad police station on 21.08.2015. He has identified the application and his signature thereon which has been marked Exhibit ‘P/2’. It is submitted that in such circumstances, where the prosecution side remained in search of the victim with the police for the whole night, the fact that the written application was given to the police on the next day could not throw any doubt over the genuineness of the prosecution case. Relying upon the judgment of the Hon’ble Supreme Court in the case of **Chotkau v. State of U.P.,** reported in **(2023) 6 SCC 742,** learned Additional Public Prosecutor submits that the mere delay in lodging of the FIR cannot be a ground to throw away the

prosecution case. The entire evidence must be considered to take a cumulative view of the matter.

19. Learned Additional Public Prosecutor further submits that in the cross-examination of the informant (PW-8), it has come that his house is at a distance of 50-70 yards from Nariyadih and 20-25 persons came running to them in Nariyadih. He has stated that the place where he had started at Nariyadih , the maize field and Kharanja Road are at a distance of 50 steps and the maize field would be at a distance of five steps from Kharanja Road. He has stated that Kundan Singh, Sanjan Singh, Ramchandra Singh and Shishu Singh were reaching to the place of occurrence with him and all of them had seen the occurrence from a distance of twenty yards. All the accused persons were brutally assaulting his father. All the five persons tried to save his father but could not save.

20. Learned Additional Public Prosecutor submits that somebody had informed the police about the occurrence and police had reached there within 20-25 minutes. Police had seen the place of occurrence and seized *gamchha* and the blood soaked soil. At that time, darkness had prevailed, police had inquired about the occurrence but did not record his statement. It is submitted that in course of his cross-examination, the defence did not question or

suggested this witness that these appellants were not present in the meeting of Malle which was held in Badgaon on the date of occurrence. The defence did not point out any reason for the false implication of the accused persons. PW-8 has rather stated that he had no enmity with the accused Triloki Ram, Bharat Ram and Chinna Ram but on the date of occurrence, Chinna Ram and Bharat Ram had instigated that whosoever belonging to upper caste is found, he should be killed. Learned Additional Public Prosecutor has, therefore, submitted that the evidence of the informant (PW-8) has remained intact on the point of date, time, place and manner of occurrence. He has remained consistent throughout his deposition.

21. To strengthen his submission, learned Additional Public Prosecutor has relied upon the evidence of Shyamdev Singh (PW-9) who was posted as Officer-in-Charge of Azimabad police station and had received the written information of the informant and on that basis registered Azimabad P.S. Case No. 51 of 2015 dated 22.08.2015 under Section 364/34 IPC. In his deposition, PW-9 has stated that the place of occurrence is in village Nariyadih at Kharanja Road. He had found blood fallen at this place. PW-9 has given the description of the place of occurrence and according to his description, in the east after fifteen feet, the

pakki road going to Badgaon is there and in west there is Kharanja Rood which goes to Nariyadih. In paragraph ‘5’ of his deposition, he has stated that a Forensic team came to the place of occurrence and had seized fallen blood. He had recorded the statement of the informant, Kundan Singh and others namely, Ramchandra Singh, Birendra Singh, Sanjay Singh, Dharmendra Singh. He had also recorded the evidence of independent witness Arjun Chaudhary.

22. Learned Additional public Prosecutor further submits that PW 9 had received information from the Sub-Divisional Officer, Piro that the dead body of the abducted Jai Prakash Singh was lying in Sadar Hospital, Arra, therefore, he should go there and do the needful. As per direction, he reached Sadar Hospitalon 27.08.2015 and submitted application to the Deputy Superintendent of Police for necessary action. The dead body was identified by Chandan Kumar (PPW 8) and his family members. He got recorded the statement of informant under Section 164 Cr.P.C. in the court. Nail, hair and blood samples of the informant was given for DNA test in the hospital. The viscera of the deceased was preserved and preserved sample of informant and the wife of the deceased were sent to the FSL, Patna for DNA test. Thereafter, he had arrested Manoj Manjil on 06.10.2015.

23. It is submitted that from paragraph ‘14’ of the deposition of PW-9, it would appear that the first Chargesheet No. 70 of 2015 dated 31.12.2015 was filed showing the accused Nand Kumar Chaudhary, Chinna Ram, Bharat Ram, Triloki Ram, Prem Ram, Baban Chaudhary, Tanman Chaudhary, Pawan Chaudhary, Guddu Chaudhary, Gabbar Chaudhary, Rambai Chaudhary, Shivbali Chaudhary, Ravindra Chaudhary, Rohit Chaudhary absconder, accused Manoj Manjil and Manoj Chaudhary were in custody. The investigation was kept open. Second chargesheet was filed vide Chargesheet No. 26 of 2016 under the handwriting and signature of Vimlesh Kumar Paswan the then Sub Inspector of Azimabad police station and the third chargesheet was filed vide Chargesheet No. 8 of 2018 dated 31.01.2018 Prabhu Chaudhary, Jai Kumar Yadav and Nandu yadav and others were showing absconder. The three chargesheets have been marked Exhibits ‘P/3’ ‘P/4’ and ‘P/5’ respectively.

24. Learned Additional Public Prosecutor submits that there were some lapses on the part of Investigating Agency in not recording about the seizure of the blood soaked soil or any other article in the case diary but that alone cannot prove fatal to the prosecution. Police reached at place of occurrence within 20-25 minutes of the occurrence on 20.08.2015 but there is nothing on

the record to show that any ‘Sanha’ or ‘fardbeyan’ of any person was recorded on 20.08.2015. It is, however, submitted that these lapses on the part of the I. O. (PW-9) would not be any reason to create doubt about the prosecution story.

25. It is submitted that the I.O. (PW-9) had taken the informant and the deceased’s wife to the hospital where the samples were given for matching the DNA with the deceased and according to PW-9, the samples were sent to the FSL through Chaukidar Ramesh Kumar but it appears that the FSL report were not obtained by the I.O. and those were not placed before the learned trial court. It is again submitted that for non-production of DNA test report no adverse inference may be raised against the prosecution.

26. The defence has sought to make out a case of adverse inference but in his submission, the inaction on the part of the Investigating Agency in not bringing on record the FSL reports would not inure any benefit to the accused.

27. The age assessment of the dead body in the postmortem is based on eye estimation only. The doctor assessed it between 40-45 years, however, PW-8 claimed that his age was approximately 55 years. The medical board which was constituted for the purpose of conducting autopsy on the dead body had not

conducted any bone ossification test to assess the age of the deceased, therefore, the mention of the age of the dead body approximately 40-45 years has no scientific basis. The informant (PW-8) has identified the dead body of his father Jai Prakash Singh. It is submitted that Dr. Jitendra Mishra who has issued the postmortem report has been examined as PW-6 who has stated that cause of death on the postmortem was strangulation still the viscera i.e. lungs, liver, spleen, kidney, intestine are being sent for detail detection of the cause of death since the body is putrefied. It is, thus, submitted that the cause of death could have been more specifically known if the FSL report would have been brought on record by the I.O. It is, however, submitted that no adverse inference can be drawn against the prosecution for the reason that the FSL report has not been brought on the record.

28. Learned Additional Public Prosecutor has further submitted that the appellant Manoj Manjil in Cr. Appeal (DB) No. 216 of 2024 has 18 criminal antecedents on his head which includes serious offences of murder and cases of sexual offences.

29. It is lastly submitted that the informant has stated about 20-25 persons who had come running to him. The accused persons from village ‘Badgaon’ whom he identified and the role of appellant Manoj Manjil has also been specifically stated by the

informant. In such circumstance, learned trial court has rightly held that the prosecution has been able to prove its case beyond all reasonable doubts.

Consideration

30. Having heard learned counsel for the parties and upon perusal of the trial court records, we have noticed that in this case, the occurrence took place on 20.08.2015 at about 06:30 PM at Nariyadih-Kharanja Road. Chandan Kumar (PW-8) is the son of the deceased who is the star witness of this case. He was accompanying the deceased from Nariyadih and was returning to his village but according to him, as soon as they reached Nariyadih-Kharanja Road, all of a sudden the named accused persons came running whereafter the appellant Manoj Manjil caught hold of the deceased/victim Jai Prakash Singh, slammed him down on the road and one person started assaulting him by *lathi*, the other accused persons who have been named by PW-8 in his deposition were also assaulting by *lathi*, *danda*, stones and bricks. It has come in deposition of PW-8 that he ran towards his house raising *hulla* and reached there with Ramchandra Singh, Shishu Singh, Sanjan Singh and Kundan Singh, they had tried to go to the place of occurrence and save the victim but the accused persons shouted *pakro pakro*.

This witness has stated that only within some time, the police reached and he had gone with the police to the place of occurrence. In his cross-examination, he has stated that Nariyadih is situated at a distance of 50-70 yards from his house and he had proceeded from Nariyadih to his house at 06:30 PM. He has given the description of the place of occurrence in his deposition. From the deposition of PW-8, it is evident that the police had arrived at the place of occurrence within 20-25 minutes and thereafter the informant and the police were engaged in tracing the victim for the whole night but they could not succeed. He has stated that there were blood fallen at the place of occurrence and police had also collected the blood soaked soil. From the pattern of cross-examination of this witness, it would appear that the defence has not at all questioned the statement of PW-8 that on 20.08.2015, there was a meeting of Malle Party in Badgaon Bazar, the defence has neither questioned nor has suggested otherwise with regard to the presence of the accused persons in the said meeting. The statement of PW-8 that when he along with his father was coming on Nariyadih-Kharanja Road, then all of a sudden, all the accused persons came running to them has not been questioned by the defence. The defence has also not questioned the occurrence which

had taken place at Nariyadih-Kharanja Road on the date and at the time as alleged by the prosecution.

31. It is evident from the evidence of PW-8 that the information with regard to the occurrence was given to police by someone from village and police had arrived at the place of occurrence. The I.O. (PW-9) has deposed that he had received the written information of Chandan Kumar (PW-8) on 22.08.2015 and on that basis, registered Azimabad P.S. Case No. 51 of 2015 dated 22.08.2015 under Section 364/34 IPC. In his examination-in-chief, PW-9 has stated that he had gone with the informant, his family members and the local *chaukidar* in search of the abducted person but could not find any trace. A team from FSL had also come and collected blood which had fallen at the different places at the place of occurrence. As regards the registration of the FIR, learned Counsel for the appellants have made a submission that the FIR has been lodged belatedly on 22.08.2015, therefore, the authenticity of FIR becomes doubtful. This has been contested by learned Additional Public Prosecutor for the State by making a submission that a mere delay in lodging of the FIR would not be a ground to throw away the prosecution case.

In this regard, before we examine the evidence, it would be appropriate to have a glance over the recent judicial

pronouncements in the case of **Chotkau** (supra)**.** A plea was raised as regards delayed transmission of the FIR to the court. In the said case, the occurrence took place on 08.03.2012 at 04:00 PM, the FIR was lodged on the same day at 20:10 Hrs. but it was received in the court of C.J.M., Shravasti on 13.03.2012. The Hon'ble Supreme Court in paragraph '60' in the case of **Chotkau** (supra) took note of paragraph '12' from the judgment of **Meharaj Singh vs. State of U.P.** reported in **(1994) 5 SCC 188** which we reproduce hereunder:-

> "***60.*** On the importance of promptitude, both in the registration of the FIR and in the transmission of the same to the court, reliance is placed by Shri Nagamuthu, learned Senior Counsel on the following passage in *Meharaj Singh v. State of U.P.*[3]: (SCC pp. 195-196, para 12)
>
> *"12*. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger

3. (1994) 5 SCC 188 : 1994 SCC (Cri) 1391

also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

Then the Hon'ble Supreme Court quoted paragraphs '28' to '30' from the judgment in the case of **Bhajan Singh and Others vs. State of Haryana** reported in **(2011) 7 SCC 421** and went on to refer **Brahm Swaroop and Another vs. State of U.P.** reported in **(2011) 6 SCC 288** (paragraph '21') and three Judge Bench decision in **Balram Singh and Another vs. State of Punjab** reported in **(2003) 11 SCC 286** and **State of Rajasthan vs. Daud Khan** reported in **(2016) 2 SCC 607**. A complete reading of the case laws referred hereinabove would throw much light on the settled judicial views on this issue, therefore, we reproduce paragraphs '61' to '65' hereunder:-

> "**61.** While reiterating the above principles, a note of caution was also added by this Court in *Bhajan Singh* v. *State of Haryana*[4]. Paras 28 to 30 of the said decision read as follows : (SCC p. 431)
> "*28*. Thus, from the above it is evident that the Criminal Procedure Code provides for internal and external checks : one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159CrPC, if so required. Section 159CrPC empowers the Magistrate to hold the investigation or preliminary enquiry of the offence either himself or through the Magistrate subordinate to him. This is designed to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction.

4. (2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241

29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression "forthwith" mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. Of course, the same is to be sent within reasonable time in the prevalent circumstances.

30. However, unexplained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. Delay provides legitimate basis for suspicion of the FIR, as it affords sufficient time to the prosecution to introduce improvements and embellishments. Thus, a delay in dispatch of the FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when the prosecution furnishes a cogent explanation for the delay in dispatch of the report or prosecution case itself is proved by leading unimpeachable evidence."

(emphasis supplied in original)

62. It is clear from the aforesaid decisions that the delay in forwarding the FIR may certainly indicate the failure of one of the external checks to determine whether the FIR was manipulated later or whether it was registered either to fix someone other than the real culprit or to

allow the real culprit to escape. While every delay in forwarding the FIR may not necessarily be fatal to the case of the prosecution, courts may be duty-bound to see the effect of such delay on the investigation and even the creditworthiness of the investigation.

63. Section 157(1) of the Code requires the officer-in-charge of the police station to send the FIR, "*forthwith*". The legal consequences of the delay on the part of the police in forwarding the FIR to the court was considered by this Court in *Brahm Swaroop* v. *State of U.P.*[5] Incidentally *Brahm Swaroop*[5] is also a case where there was a delay of five days in sending the report to the Magistrate (as in the present case). After taking note of several earlier decisions of this Court, this Court held in *Brahm Swaroop*[5] in para 21 as follows : (SCC p. 300)

"*21. In the instant case, the defence did not put any question in this regard to the Investigating Officer, Raj Guru (PW 10), thus, no explanation was required to be furnished by him on this issue. Thus, the prosecution had not been asked to explain the delay in sending the special report*. More so, the submission made by Shri Tulsi that the FIR was ante-timed cannot be accepted in view of the evidence available on record which goes to show that the FIR had been lodged promptly within 20 minutes of the incident as the police station was only 1 km away from the place of occurrence and names of all the accused had been mentioned in the FIR."

(emphasis supplied in original)

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5. (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923

64. To come to the above conclusion, reliance was placed upon a decision of a three-Judge Bench in *Balram Singh* v. *State of Punjab*[6]. In *Balram Singh*[6], the three-Judge Bench of this Court rejected the contention with regard to the delay in transmitting the FIR to the Magistrate, on the ground that : (SCC p. 291, para 10)

"*10*. … while considering the complaint in regard to the delay in the FIR reaching the jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the jurisdictional Magistrate by itself would not in any manner weaken the prosecution case."

65. In *State of Rajasthan* v. *Daud Khan*[7], this Court referred to *Brahm Swaroop*[5] and interpreted the word "forthwith" appearing in Section 157(1) of the Code, as follows : (*Daud Khan case*[7] , SCC p. 619, para 26)

"*26*. … The purpose of the "forthwith" communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the

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6. (2003) 11 SCC 286 : 2004 SCC (Cri) 149
7. (2016) 2 SCC 607 : (2016) 1 SCC (Cri) 793

> investigating officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard."

32. In the case of **Chotkau** (Supra), the Hon'ble Supreme Court found that the evidence of prosecution witnesses PWs-1, 2 and 3 were untrustworthy, particularly on the question of origin and genesis of the First Information Report, therefore, the inordinate delay in the FIR reaching the Jurisdictional Court assumes significance. The Hon'ble Supreme Court also highlighted the mandate of Section 157(1) of the Code of Criminal Procedure and held that the prosecution is expected to place on record the basic foundational facts such as the Officer who took the First Information Report to the Jurisdictional Court, the authority which directed such a course of action and the mode by which it was complied. It was held that explaining the delay is a different aspect than placing the material in compliance of the Code.

33. The same issue of delay in registering FIR came to be considered more recently in **Hariprasad v. State of Chhattisgarh** reported in **(2024) 2 SCC 557.** In the said case,

there was a delay of over one year and three months in lodging of the FIR. The Hon'ble Supreme Court considered the settled legal position that the receipt and recording of the information report by the police is not a condition precedent to set into motion a criminal investigation as held in **Apren Joseph v. State of Kerala** reported in **(1973) 3 SCC 114** and it was held that no doubt unreasonable delay in lodging the FIR may give rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. Paragraphs '10' and '11' of the judgment in the case of **Hariprasad** (supra) are reproduced hereunder:-

> "**10.** Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution.
>
> **11.** In *Ravinder Kumar* v. *State of Punjab*[6], it has been held that : (SCC pp. 695-96, paras 13-15)
>
> "*13*. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there

6. (2001) 7 SCC 690 : 2001 SCC (Cri) 1384

would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR.

> Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. (Vide *Zahoor* v. *State of U.P.*[7], *Tara Singh* v. *State of Punjab*[8] and *Jamna* v. *State of U.P.*[9]) In *Tara Singh*[8] the Court made the following observations : (*Tara Singh case*[8], SCC p. 541, para 4)
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> '*4*. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report.' "

The Hon'ble Supreme Court in the case of **Arpen Joseph** (supra) has observed in paragraph '11' as under:-

> **"11.** Now first information report is a report relating to the commission of an offence given to the police and recorded by it under Section 154, CrPC As observed by the Privy Council in *K.E.* v. *Khwaja*[2], the receipt and

7. 1991 Supp (1) SCC 372 : 1991 SCC (Cri) 678
8. 1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710
9. 1994 Supp (1) SCC 185 : 1994 SCC (Cri) 348
2. [ILR 1945 Lah 1 : AIR 1945 PC 18 : 71 IA 203]

> recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can only be made by an eye witness. First information report under Section 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. But this information when recorded is the basis of the case set up by the informant. It is very useful if recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue unreasonable delay in lodging the FIR, therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. In our opinion, no duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the court in each case. Mere delay in lodging the first information report with the police is, therefore, not necessarily, as a matter of law, fatal to the prosecution. The effect of delay in doing so in the light of the plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case."
>
> (underline is mine)

34. In the light of the aforementioned settled legal position, when we examine the evidences available on the record, it is noticed that in course of cross-examination of the prosecution witnesses, the defence never questioned them on the point of delay

in lodging or sending of the FIR. The defence has not suggested that there was any effort to concoct a version. We have rather noticed that in this case, though PW-8 handed over a written application which is the basis of the present FIR to the *Chaukidar* on 21.08.2015, the reason for delayed handing over of the written application may be found in the deposition of the informant (PW-8) who has stated that after 20-25 minutes of the occurrence, police had arrived and thereafter he along with police had gone in search of his father but for the whole night his father could not be traced.

The FIR was registered on 22.08.2015 at 11:00 AM. Taking recourse to Section 172(3) of the Code of Criminal Procedure, we have perused the case diary which is available on the record of the trial court. It is found that the information with regard to the occurrence was received on 20.08.2015 that Jai Prakash Singh has been abducted by the supporters of Malle. On the direction of Sub-Divisional Police Officer, Piro, the Officer-in-Charge, Sadar and Charpokhri had gone to the place of occurrence and found that blood had fallen in the maize field and on information, the team from FSL had also come and had collected the blood and the towel and the police had gone in search of the abducted person to the possible places but could not trace him. In fact, in paragraph ‘7’ of

the case diary, it is recorded that after the occurrence, the FSL team came and collected the blood from the crime scene. The date and time of first visit of the police officer is mentioned at 06:30 PM on 20.08.2015. The date and time of visit of FSL expert is mentioned as 02:00 PM on 21.08.2015 and the place of occurrence is mentioned as Badgaon. It further mentions the details of the samples. The suspected blood sample ‘A’ was collected from Kharanja Road Bargaon, suspected blood sample ‘B’ was found in front of the house of Sijan Chaudhary, suspected blood on cloth ‘C’ was also found there, suspected blood sample ‘D’ was found near machan of Bahadur Dom, suspected blood sample ‘E’ was found near well and in front of the house of Birendra Singh, suspected blood sample ‘F’ was found near the Kharanja path near house of Narain Choudhary, suspected blood sample ‘G’ was found at Nala near the house of Shyam Singh and suspected blood sample ‘H’ was found in the house of Mukhiyajee. The name of the experts mentioned are (1) Sri Vinay Kumar, (2) Shri Jitendra Kumar, (3) Shri Satish Kumar. Photograph/sketch of the place of occurrence was taken by I.O. on 21.08.2015. In fact, the I.O. (PW-9) has categorically stated in his deposition that at the place of occurrence, a team from FSL had come and had collected blood scattered at different places. Thus, there are credible materials on

the record to show that the occurrence had immediately come to the notice of the police and the criminal investigation was set in motion within half an hour of the occurrence. In the kind of evidences on the record, there being no defence case that there was any effort to concoct a version which caused delay in lodging of the FIR. This Court is of the considered opinion that on the face of the evidence of PW-8 and PW-9 who are trustworthy witnesses of the prosecution, the delay in registration of the FIR and sending the same to the jurisdictional court would not prove fatal to the prosecution.

We would rely upon the judgment of the Hon'ble Supreme Court in the case of **Animireddy Venkata Ramana and Ors. vs. Public Prosecutor, High Court of Andhra Pradesh** reported in **AIR 2008 SC 1603.** Paragraphs ‘10’, ‘11’ and ‘13’ of the said judgment are quoted hereunder:-

> “**10**. …. The investigating officer was also informed. A report to that effect might have been noted in the general diary but the same could not have been treated to be an FIR. When an information is received by an officer in charge of a police station, he in terms of the provisions of the Code was expected to reach the place of occurrence as early as possible. It was not necessary for him to take that step only on the basis of a first information report. An information received in regard to commission of a cognizable offence is not required to be preceded by a first information report. Duty of

> the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in a situation of this nature is his implicit duty and responsibility. If some incident had taken place in a bus, the officers of Road Transport Corporation also could not ignore the same. They reached the place of occurrence in another bus at about 1 a.m. The deceased and the injured were only then shifted to Tuni Hospital..”
>
> **11.** A first information report was recorded at about 3 o'clock in the night. In the aforementioned situation, it cannot be said that the information received by the investigating officer on the telephone was of such a nature and contained such details which would amount to a first information report so as to attract the provisions of Section 162 of the Code.
>
> **13.** … If furthermore the purported entry in the general diary, which had not been produced, is not treated to be a first information report, only because some enquiries have been made, the same by itself would not vitiate the entire trial. Enquiries are required to be made for several reasons; one of them is to ascertain the truth or otherwise of the incident and the second to apprehend the accused persons...”

The aforementioned opinion of the Hon'ble Supreme Court duly answers the plea of the defence that the FIR in this case would be hit by Section 162 CrPC. We find no force in this submission.

Here, we would hasten to add that in this case, the investigating agency, the Public Prosecutor as well as the trial

court could have acted more diligently. The police submitted three chargesheets in this case. The first one was filed on 31.12.2015 in which 16 persons were chargesheeted. In the chargesheet, three of the officers of FSL who had come and collected blood from the place of occurrence were not made chargesheet witnesses. The report of the FSL were not obtained and placed on the record. In the second and third chargesheet as well, the same situation remained, however, the evidence of PW-9 has disclosed about the visit of the officers from the FSL and collection of blood which had fallen at different places, therefore, this Court has found that the prosecution story as disclosed in the written information dated 21.08.2015 submitted by PW-8 remained unblemished.

35. We have analysed the evidence of prosecution witnesses. The learned trial court has rightly held that the informant (PW-8) is a cogent and reliable witness. To this Court, it also appears that PW-8 is the star witness of this case and the case of the prosecution largely rests upon the testimony of this witness. He seems to be a natural witness and his conduct has been found quite natural. He was accompanying his father from Nariyadih. He has given the date, time, place and manner of occurrence. He is an eyewitness of the occurrence. He had later on identified the dead body of his father on 27.08.2015 in Sadar Hospital. He had come

to know that the dead body was recovered from the Western Canal of Narayanpur from the water. He had identified his father from the old scar mark wound on his abdomen and the red colour on the skin which had occurred in course of colouring of his hair. He has stated that at the time of identification of the dead body, his family members and *gotiyas* including Birendra Singh (PW-7) were also present. In course of his cross-examination, PW-8 has stated that two days prior to the recovery of the dead body, his blood, nail and hair samples were taken in the Sadar Hospital for DNA test. The defence suggested this witness that the dead body identified by him was unknown/unclaimed but he had identified the dead body of his father for obtaining the insurance policy and his father was mentally ill and had gone missing. PW-8 denied the suggestion of the defence. The defence further suggested that due to village politics, Chinna Ram and his family members were falsely implicated. Again, this witness denied the suggestion.

36. We have found that Kundan Singh (PW-1) is brother of PW-8 who has supported the prosecution case. He has stated that on that day, there was a meeting of Malle party in the bazar and they were returning after the meeting in the evening, he had heard the hulla at Nariyadih-Kharanja Road whereafter he was going there to know the reason, then one person informed him that

Satish Yadav has been murdered whereafter when he reached near Kharanja Road, then he found that his father Jai Prakash Singh had been caught by Manoj Manjil, Chinna Ram, Bharat Ram, Jai Kumar Yadav, Chandradhan Rai, Pawan Chaudhary, Tanman Chaudhary, Ramadhar Chaudhary, Nand Kumar Chaudhary, Manoj Chaudhary. He has stated that Manoj Manjil slammed down his father on Kharanja Road, Chinna Ram and Bharat Ram were asking to catch him and other accused persons were assaulting him by bricks. The accused persons had chased this witness also whereafter he had fled away to his house. In paragraph '5', he has stated that the police, though, had gone in search of his father but he could not be traced thereafter his brother Chandan Kumar (PW-8) had submitted the application against 24 persons who were involved in the occurrence. In paragraph '8' of his deposition, this witness has stated that the occurrence had taken place in revenge of murder of Satish Yadav, though, his father had no quarrel with anyone. He has stated that on the asking of Manoj Manjil, his father was murdered. This witness was cross-examined on behalf of Manoj Manjil and some other accused persons. In paragraph '17' of his deposition, he stated that he had seen Manoj Manjil and nine others assaulting his father. Manoj Manjil was assaulting by *danda* whereas nine other persons were assaulting by *lathi*, *danda,*

bricks, legs and fists. In paragraph ‘22’ of his deposition, this witness was suggested that the Officer-in-Charge of Sadar Police Station informed him about the recovery of dead body of his father. He did not know him from before. He had gone to Sadar Hospital with his brother and his mother had also reached there. His nail and hair were also taken for DNA test.

37. Ram Chandra Singh (PW-2) has stated that on 20.08.2015 at 06:30 PM, he was in his house and there was a meeting of Malle in Badgaon Bajar. In the said meeting, Manoj Manjil, Chinna Ram, Bharat Ram, Chandradhan Rai, Jai Kumar Yadav, Nandu Yadav and several other persons had assembled. Chandan Singh came running to him and informed him that his father Jai Prakash Singh was being assaulted by Manoj Manjil and several other accused persons. On this information, he went towards Nariyadih where at Kharanja Road, Jai Prakash Singh was being assaulted and after assaulting him, the accused persons had taken him away with them. After police arrived then he along with others had gone there and found that blood had fallen in the maize field and blood stained towel was also lying there. On 27.08.2015, they got information from police that the dead body of Jai Prakash Singh is thrown in canal. Police brought the dead body in Sadar Hospital where they had gone there. This witness has also stated in

paragraph ‘6’ that the occurrence took place in revenge of murder of Satish Yadav. In his cross-examination, this witness has stated that Chandan is in his relation as he happens to be the son of the nephew. He has stated that Badgaon Bajar was at a distance of 300-400 yards from his house.

38. Sanjay Kumar (PW-3) has stated that at the time of occurrence, he was in his house. On that day, there was Aam Sabha of Malle party in Bardgaon Bajar. The same had culminated at 06:30 PM. The meeting place was beside his house where 20-22 mics were placed. This witness supported the prosecution case and specifically stated that the accused persons had assaulted his father Jai Prakash Singh and he had seen Manoj Manjil and other accused persons assaulting his father. In his cross-examination, this witness has stated that in the meeting which was taking place in the bajar, nothing was stated against his family but they were speaking against his caste. This witness has stated that in this case, his family members are the witnesses and there is no other witness.

39. Shishu Kumar @ Rakesh Raushan (PW-4) is the another witness who has stated that on the date of occurrence, there was a meeting of Bhartiya Communist Party Malle in Badgaon Bazar and 20-25 mics were installed and he was hearing the voice. Manoj Manjil, Janardan Rai, Nandu Yadav, Satish

Yadav, Ramkumar Yadav, Chinna Ram, Bharat Ram and several other persons were present. After some time, he came to know that somebody has been killed. On hearing this, when he went towards Naryadih-Kharanja Road then he found that Jai Prakash Singh was being assaulted by Manoj Manjil, Chinna Ram, Bharat Ram and several other persons. Manoj Manjil had slammed down Jai Prakash Singh on the earth and Chinna Ram was assaulting by lathi, danda, bricks and stones. The accused persons were saying that whosoever Rajput comes he should be killed and thrown away. This witness claims that he fled away after hearing this and police personnel came then he had gone to the place of occurrence with Chandan Singh, Dharmendra Singh and Sajjan Kumar, where they did not find Jai Prakash Singh. They had seen blood marks in the maize field and found blood stained towel of Jai Prakash Singh and the maize plants were lacerated. In his cross-examination, this witness has stated that the place of occurrence was at a distance of 100-200 yards from the place where he was present and the place of occurrence is at a distance of 200 meters from Badgaon Bajar. He had first got information of the occurrence from Chandan Kumar (PW-8) at 06:30 PM. At that time, he was talking with Dharmendra Singh and Sanjan Singh regarding the Aam Sabha. He had run towards the place of occurrence. This witness has also

specifically stated that he had seen the accused persons assaulting Jai Prakash Singh.

Arjun Chaudhary (PW-5) is a resident of village Nariyadih who has turned hostile.

40. On a complete reading of the evidences of the prosecution witnesses such as PWs-1, 2, 3 and 4, it is evident that they had fully supported the informant (PW-8). They have stated that on that day, one Satish Yadav was murdered and this occurrence had taken place in revenge of the murder of Satish Yadav. The defence has not whispered/suggested that Jai Prakash Singh or his family members had any role in the murder of Satish Yadav. The prosecution witnesses have stated that in the Aam Sabha, nothing was said against the family of Jai Prakash Singh but they were speaking against the caste. The defence has not questioned such statement of the prosecution witnesses.

41. Learned counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court in the case of **Amar Singh v. State (NCT of Delhi)** reported in **(2020) 19 SCC 165** to submit that in this case the sole testimony of PW-8 is not a cogent and reliable piece of evidence to base the conviction of the accused on his testimony.

On going through the judgment of the Hon'ble Supreme court in the case of **Amar Singh** this Court finds that in the said case the Hon'ble Supreme Court had found that the conduct of the deceased's two brothers in not making even slightest attempt to save the deceased from the assault by three assailants was unnatural, when the assailants found only armed with hockey sticks, stones and knife and not with any firearm. The Hon'ble Supreme Court held that in such circumstance presence of alleged eye witnesses i.e. both the brothers of the deceased would not be believable, particularly when facts stated by one brother in this regard found not corroborated by other brothers.

We have found that the facts of the present case are quite different and distinct. In this case about 24 persons had chased the father of PW-8, caught hold of him and started assaulting him. PW-8 was alone there, therefore, in order to save himself he ran towards the maize field and reached his house raising hulla. Thereafter, he returned with four other prosecution witnesses of this case but in presence of huge number of accused persons, they could not save the deceased. We find no unnatural conduct on the part of PW-8 or other prosecution witnesses. In fact in the case of **Amar Singh** in paragraph '16' the Hon'ble Supreme Court has observed inter alia as under:-

> "**16**……...As a general rule the court can and may act on the testimony of single eyewitness 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. It is not the number, the quantity but quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise [see *Sunil Kumar* v. *State (NCT of Delhi)*[2]*]*."

42. Learned counsel for the appellants has made one of the submissions that these prosecution witnesses are related witnesses, therefore, it would not be safe to rely upon their evidences. The submission is that Badgaon is a very large village with panchayat functionaries and a formal post of Chaukidar is there but no independent witness has come to support the prosecution case.

This Court is not impressed with these submissions of learned counsel for the appellants. In the case of **Mallanna v. State of Karnataka** reported in **(2007) 8 SCC 523**, the Hon'ble Supreme Court has held that merely because witnesses are related

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2. (2003) 11 SCC 367 : 2004 SCC (Cri) 1055]

and interested and not injured, their evidences cannot be discarded if they are natural witnesses and their testimonies are otherwise found to be credible, especially when they support the prosecution case in material particulars. In this case, we cannot lose sight of the fact that one of the accused in this case was a sitting Member of the Legislative Assembly (MLA) from Agiaon Constitutency and in the present day circumstances where normal people are afraid of becoming a witness in a criminal case, absence of an independent witness cannot be taken as fatal to the prosecution. The I.O. (PW-9) has stated in paragraph '32' of his deposition that Badgaon is a big village but he had not recorded the statement of any elected officer/member of the Gram Panchayat. He had also not recorded the statement of Chaukidar of Badgaon Panchayat.

We find that the informant (PW-8) is a natural witness of this case and he has withstood the test of cross-examination so well that we find his testimony cogent and reliable. The law is well settled that the testimony of a single witness may be found sufficient to prove the prosecution case. We would rely upon the judgment of the Hon'ble Supreme Court in the case of **Vadivelu Thevar v. State of Madras** reported in **AIR 1957 SC 614.** Paragraph '10' of the said judgment is quoted hereunder:

> "**10.** The decision of this Court in the case of *Vemireddy Satyanarayan Reddy* v. *State of Hyderabad,* [(1956) SCR

247 : ((S) AIR 1956 SC 379) (B) was also relied upon in support of the contention that in a murder case the court insists on corroboration of the testimony of a single witness. In the said reported decision of this Court, PW 14 has been described as “a *dhobi* boy named Gopai”. He was the only person who had witnessed the murder and his testimony had been assailed on the ground that he was an accomplice. Though this Court repelled the contention that he was an accomplice, it held that his position was analogous to that of an accomplice. This Court insisted on corroboration of the testimony of the single witness not on the ground that his was the only evidence on which the conviction could be based, but on the ground that though he was not an accomplice, his evidence was analogous to that of an accomplice in the peculiar circumstances of that case as would be clear from the following observations at p. 252 (of SCR) : (at p. 381 of AIR) :

“…Though he was not an accomplice, we would still want corroboration on material particulars in this particular case, as he is the only witness to the crime and as it would be unsafe to hang four people on his sole testimony unless we feel convinced that he is speaking the truth. Such corroboration need not, however, be on the question of the actual commission of the offence; if this was the requirement, then we would have independent testimony on which to act and there would be no need to rely on the evidence of one whose position may, in this particular case, be said to be somewhat anologous to that of an accomplice, though not exactly the same.”

It is not necessary specifically to notice the other decisions of the different High Courts in Indian in which the court insisted or corroboration of the testimony of a single witness, not as a proposition of law, but in view

> of the circumstances of those cases. On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions maybe safely stated as firmly established:
>
> (*1*) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.
>
> (*2*) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.
>
> (*3*) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

Same view has been reiterated in the case of **Lallu Manjhi v. State of Jharkhand** reported in **(2003) 2 SCC 401**. One credible witness would outweigh the testimony of number of other witnesses of indifferent character**.**

43. Learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Masalti** (supra) to submit that in case of mob violence, there should be an identification of accused by at least 2-3 prosecution witnesses. We

have examined this contention of learned counsel for the appellants in order to answer the submission of learned counsel for the appellants, we would first reproduce paragraph ‘16’ of the judgment in the case of **Masalti** (supra):

> “**16.** Mr. Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.”

On a bare reading of paragraph ‘16’ of the **Masalti** (supra) case, it would appear that **Masalti** (supra) case was involving a large number of offenders and a large number of victims. In that view of the matter, the Hon’ble Supreme Court observed that it is usual to adopt the test that the conviction may be sustained only if it is supported by 2-3 or more witnesses who give a consistent kind of the incident. Towards the end of the said paragraph, the Hon’ble Supreme Court has, in fact, reiterated the settled legal position that quality of evidence matters and not the number of witnesses who give such evidence. It, however, says “But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.”. In our considered opinion, **Masalti** (supra) case would not help the appellants in the present case.

Learned counsel for the appellant Manoj Manjil in Criminal Appeal (DB) No. 216 of 2024 has argued that the testimonies with regard to the role of the appellants are not at all reliable and are conflicting. We have taken note of the testimonies of the prosecution witnesses hereinabove. We have also taken note of the pattern of cross-examination of the prosecution witnesses on behalf of the defence. PW-8 who was accompanying his father at the time of occurrence has specifically stated that Manoj had caught hold of his father and slammed him down on the Kharanja Road and started

assaulting him by lathi. In his cross-examination on behalf of Manoj Manjil, there is no suggestion that Manoj Manjil was not present among the persons who had come running to the father of the informant and had assaulted him. PW-1 has also stated that Manoj Manjil had slammed down his father on the Kharanja Road. He has stated that he had seen him with others assaulting his father. Similarly, PWs-2, 3 and 4 all have attributed specific role to Manoj Manjil who is the appellant in Criminal Appeal (DB) No. 216 of 2024.

44. In the case of **State of Punjab v. Jagir Singh** reported in **(1974) 3 SCC 277**, the Hon'ble Supreme Court has been pleased to hold that a criminal trial concerns itself with the question as to whether the accused arraigned at the trial is guilty of crime with which he is charged. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Paragraph '23' of the judgment in the case of **Jagir Singh** is reproduced hereunder:-

> "**23.** A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In

> arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."
>
> (underline is mine)

45. On the aforesaid principle, when we appreciate the evidences on the record, we have found that on the date of occurrence, there was a meeting of Malle party in the Badgaon village in which Manoj Manjil who was local MLA from Agiaon Constituency was present. The statements were being made in the sabha against a caste. It has come in the statement of the prosecution witnesses that one Satish Yadav was killed and in the revenge of said occurrence, the accused persons caught hold of Jai Prakash Singh, assaulted him and took him away who could not be traced despite hectic search made by police immediately after receipt of the information as recorded hereinabove. The defence has not either by the pattern of the cross-examination of the prosecution witnesses or by adducing any evidence tried to create any dent on the prosecution version that Manoj Manzil and other accused persons named by the prosecution had caught hold of the father of PW-8 and had assaulted

him whereafter he was abducted. We, therefore, take a view that even this argument of learned counsel for the appellant Manoj Manzil would not impress this Court.

46. This brings us to a last and final view on the issue which is strenuously argued by learned counsel for the appellant with regard to the identity of the dead body. Before we proceed to consider the submission of learned counsel for the appellant on this point, it would be necessary to reproduce the findings present in the postmortem report:-

> "External:- R. Mortis absent, foul smelling was coming out of the body, putrefaction present, tongue protruded, whole body swollen. Eyes liquefied abd distended scoture swollen, penis swollen and oedematous maggots present around the neck, nostrils and infested region on skin deep bluish patch present all over the body. Body gets dark coloured. Neck blacked & bruised neck muscle blackened and contused. Throat (airways) collapsed no mud or fluids present in airways."

To prove the postmortem report, Dr. Jitendra Nath Mishra (PW-6) has deposed before the learned trial court. He was posted at Sadar Hospital, Ara on 28.08.2015, had examined the unclaimed dead body approx 40-45 years age brought by Azimabad Police, later recognized by his son Chandan Kumar Singh as Late Jay Prakash Singh of age approx 55 years. The postmortem report revealed that rigor mortis

was absent, foul smelling was coming out of body and putrefaction was present. The cause of death has been shown as strangulation leading to cardio respiratory failure. The doctor had preserved the viceras i.e. part of lungs, liver, spleen, kidney and intestine and sent the same for DNA testing. Unfortunately, once again the DNA report has not come and in this regard, the I.O., Public Prosecutor as well as the trial court remained ignorant during the trial. Learned counsel for the appellants has taken a plea that the non-production of DNA test report would lead to an adverse inference. By placing reliance upon the postmortem report, learned counsel has contended that there were enough indicators to prove that it was some other totally unconnected body that was randomly recovered and sought to be joined to this case.

47. Learned counsel has submitted that different prosecution witnesses have stated differently how they identified the dead body. It is submitted that the dead body was found at the advance stage of decay. It would not be believable that in advance stage of decay, any mark would have been visible on the body of the deceased. Submission is that the findings of the learned trial court, in this regard are completely erroneous.

Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **S. Kaleeswaran** (supra) to submit that

in the said case, the corpus when found was in a highly decomposed condition and only skeleton remains were found almost after five months from the date of the incident when the deceased went missing. The identification was done by getting the skull superimposition test done through PW-16 who was a forensic expert. The Hon'ble Supreme Court in the case of **S. Kaleeswaran** (supra) referred **Pattu Rajan** (supra) and observed that in the said case the Apex Court had explained that though identification of the deceased through superimposition is an acceptable piece of opinion evidence, however, the courts generally do not rely upon opinion evidence as the sole incriminating circumstances, given its fallibility, and the superimposition technique cannot be regarded as infallible.

48. Learned counsel submits that in the present case, no superimposition test was conducted. There is no reliable medical evidence like the DNA report or postmortem report with regard to identification of the dead body, therefore, as held by the Hon'ble Supreme Court in **S. Kaleeswaran** (supra), it would be very risky to convict the accused believing the identification of the dead body of the victim.

49. On going through the judgment of the Hon'ble Supreme Court in **S. Kaleeswaran**, this Court has noticed that in the said case admittedly, the entire prosecution case rested on the

circumstantial evidence. The Hon'ble Supreme Court, therefore, was appreciating the evidences keeping in view the well-settled principles known as five golden principles laid down by the Apex Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116.** The Hon'ble Supreme Court outlined the conditions which were required to be fulfilled, before a case based on circumstantial evidence against an accused can be said to be fully established. The case was based on theory of last seen together. The dead body or the skeleton remains of dead body was found after almost five months from the date of incident. The prosecution case was that the dead body of the victim was discovered from the place shown by the accused, therefore, in that context, the Hon'ble Supreme Court observed inter alia

> "….. It is true that in the case based on circumstantial evidence, if the entire chain is duly proved by cogent evidence, the conviction could be recorded even if the corpus is not found, but when as per the case of prosecution, the dead body of the victim was discovered from the place shown by the accused, it is imperative on the part of the prosecution to prove that the dead body or the skeleton found at the instance of the accused was that of the victim and of none else."

50. On a bare reading of the aforesaid observations of the Hon'ble Supreme Court, it would be evident that the prosecution case in the present case is completely different and distinct. At first

instance, it is not based on circumstantial evidence. The dead body has not been recovered from the place shown by an accused. In this case, the dead body has been found within seven days of the occurrence and the accusation against the appellants is based on direct evidence. The prosecution witnesses have attributed the assault and abduction of Jai Prakash Singh to the appellants. It is evident from the judgment in **S. Kaleeswaran** (supra) that even in a case based on circumstantial evidence, if the entire chain is duly proved by cogent evidence, the conviction should be recorded even if the corpus is not found. That principle laid down by the Hon'ble Supreme Court in the case of **S. Kaleeswaran** (supra) only helps the prosecution in this case.

51. So far as the judgment in the case of **Pattu Rajan** (supra) is concerned, learned counsel for the appellants has placed reliance on paragraph '22' and '23' of the judgment. Paragraph '22' takes note of the background of the case which would show that in the said case, two different incidents had taken place at two different points of time at two different places of occurrence, even the number of accused involved in the incident were different. The Hon'ble Supreme Court found that the first offence was committed with the intention to abduct the accused and PW-1. The purpose for which was merely to threaten and pressurize them. In contrast, the intention

behind the second offence was to murder the deceased with a view to permanently get rid of him. Having taken a view that the incident of murder is entirely separate and distinct from the earlier incident of abduction, the Hon'ble Supreme Court held in paragraph '22' of its judgment that there cannot be any dispute that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible, but also violates Article 21 of the Constitution. The Hon'ble Supreme Court thereafter referred the case of **T.T. Antony vs. State of Kerala** reported in (**2001) 6 SCC 181** (paragraph '19') but ultimately held in paragraph '23' of its judgment in **Pattu Rajan** (supra) that the principles of law may not be applicable to the facts of the incident on hand, as the crimes underlying the two FIRs are different and distinct. The offence punishable under Section 302 IPC was committed during the course of investigation of the case of the first FIR that is relating to crime of abduction.

52. We are afraid that the judgment in the case of **Pattu Rajan** does not help the appellants from any point of view. In the present case, a bare perusal of the written information submitted by the informant (PW-8) would show that there is a specific allegation of assault and thereby causing death of Jay Prakash Singh at the place of occurrence and thereafter taking away of his dead body by the

appellants. In such circumstance, police has rightly investigated the case taking the offence under Sections 364 and 302 IPC committed in course of the same transaction. The judgment in the case of **Pattu Rajan** (supra) would rather help the prosecution in answering the plea of the defence that non-production of DNA evidence would lead to an adverse inference against the prosecution. We quote paragraph '49' to '52' of **Pattu Rajan** hereunder:-

> "**49.** One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Evidence Act. Undoubtedly, an expert giving evidence before the court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the court in forming its opinion on questions concerning foreign law, science, art, etc., on which the court might not have the technical expertise to form an opinion on its own. In criminal cases, such questions may pertain to aspects such as ballistics, fingerprint matching, handwriting comparison, and even DNA testing or superimposition techniques, as seen in the instant case.
>
> **50.** The role of an expert witness rendering opinion evidence before the Court may be explained by referring to the following observations of this Court in *Ramesh Chandra Agrawal* v. *Regency Hospital Ltd.*[11] : (SCC p. 714, para 16)
>
> "*16*. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that

11. (2009) 9 SCC 709 : (2009) 3 SCC (Civ) 840

the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. *Thus cases where the science involved is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed*."

(emphasis supplied in original)

51. Undoubtedly, it is the duty of an expert witness to assist the Court effectively by furnishing it with the relevant report based on his expertise along with his reasons, so that the Court may form its independent judgment by assessing such materials and reasons furnished by the expert for coming to an appropriate conclusion. Be that as it may, it cannot be forgotten that opinion evidence is advisory in nature, and the Court is not bound by the evidence of the experts. [See *State (UT of Delhi)* v. *Pali Ram*[12] ; *State of H.P.* v. *Jai Lal*[13]; *Baso Prasad* v. *State of Bihar*[14]; *Ramesh Chandra Agrawal* v. *Regency Hospital Ltd.*[11] [(2009) 9 SCC 709 : (2009) 3 SCC (Civ) 840] and *Malay Kumar Ganguly* v. *Sukumar Mukherjee*[15].]

52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on the facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party."

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12. (1979) 2 SCC 158 : 1979 SCC (Cri) 389
13. (1999) 7 SCC 280 : 1999 SCC (Cri) 1184
14. (2006) 13 SCC 65 : (2007) 2 SCC (Cri) 567
15. (2009) 9 SCC 221 : (2009) 3 SCC (Civ) 663 : (2010) 2 SCC (Cri) 299

It is evident on bare reading of the aforesaid paragraphs that absence of DNA evidence would not lead to draw an adverse inference against the prosecution in the present case on the face of the other cogent and reliable evidence on the record.

53. At this stage, we would also briefly notice the kind of observations present in the postmortem report and whether such observations would lead to a conclusive proof of fact that the prosecution case of assault upon Jai Prakash Singh before his death is ruled out from the postmortem report. MODI A TEXTBOOK OF MEDICAL JURISPRUDENCE AND TOXICOLOGY, Twenty Seventh Edition, Chapter 16 P**ost-Mortem Artefacts** paragraphs 16.1 and 16.2 would be important to take note of which are quoted hereunder:-

> "**16.1 Introduction**
>
> Post-mortem artefacts[1] are due to any change caused, or features introduced in a body after death. The artefacts are physiologically unrelated to the natural state of the body or tissues, or the disease process, to which the body was subjected to before death. The artefacts that mimic traumatic lesions may lead to suspicions of violent death and hence may give rise to request for inquest.
>
> Ignorance and misinterpretation of such post-mortem artefacts leads to:
>
> (1) wrong cause of death;
>
> (2) wrong manner of death;
>
> (3) undue suspicion of criminal offence:
>
> (4) a halt in the investigation of criminal death;
>
> (5) unnecessary spending of time and effort as a result of misleading findings, or even
>
> (6) miscarriage of justice.
>
> Post- mortem artefacts are classified under the following headings.

1. Artefacts are also spelt as artifacts, depending on the source material and the way the expression has been used in the said source.

(1) Artefacts of Decomposition
(2) Third Party Artefacts
(i) Animals, birds, insect activity
(ii) Emergency medical treatment in agonal and post-mortem state and surgical intervention
(iii) Deliberate mutilation, and dismemberment by criminals
(iv) Embalming artefacts
(v) Artefacts induced by autopsy surgeon
(3) Artefacts of Environment
(i) Post-mortem burning
(ii) Post-mortem corrosion
(iii) Post-mortem maceration
(4) Other Artefacts
(i) Artefacts due to storage prior to examination
(ii) Handling of dead body
(iii) Exhumation artefacts
(iv) Artefacts associated with accidental deaths
(v) Artefacts due to delay in post-mortem examination

16.2 Artefacts of Decomposition

16.2.1 Putrefaction of the Body

Putrefaction of the body is one of the most significant artefacts. It leads to the swelling of lips, nose, eyelids, protrusion of the tongue and eyes, distension of the chest and the abdomen, and swelling of the extremities. These may give a false impression of obesity. Presence of sanguineous fluids in the mouth and nose is a frequent finding. Large quantities of such fluid may escape from the mouth and nose in case of pulmonary oedema, giving the impression of massive haemorrhage.

In a decomposed body, a deep groove may be seen around the neck, if the deceased was wearing tight garments around the neck at the time of death. This groove simulates ligature marks as seen in case of strangulation.

Occasionally, due to rapid digestion by gastric juices, one may find a ruptured fundus of the stomach, which lacks in vital reaction.

In some cases, a marked bluish discoloration of the loop of bowels, especially in the pelvic cavity is seen, which is often labelled as an infracted bowel, whereas this could be one of the first signs of decomposition.

Gas bubbles in the blood may be an early and even the only recognisable sign of decomposition. Air in the large veins and on the right side of the heart, if positive for oxygen. indicates towards ante-mortem air embolism.

Post-mortem separation of the satures of child's skull is caused by the presence of putrefaction gases within the brain.

In a decomposed body, the pancreas may resemble haemorrhagic pancreatitis. Pancreatic necrosis, in histology is often seen within few hours after death. In absence of inflammatory reaction and fat necrosis, these are identified as post-mortem changes.

As one of the early signs of decomposition, particularly in bodies exposed to sunburn, epidermis at site may easily peel off, giving appearance of burns, wherein not only vital reaction is lacking, but singeing of hair is not present. Fissures or splits formed in the skin due to decomposition may simulate lacerated or incised wounds. Ethyl alcohol may be produced in a putrefying body or during storage or autopsy, due to fermentation of protein and carbohydrates present in the blood due to the action of enzymes or bacteria or fungi.[2]

In asphyxial death due to hanging, the autopsy doctors noticed that when putrefaction had set in, dark red brown and foul smelling fluid that resembled blood running down the body. The report explained that such fluids originated from decomposing tissue and their presence could not be confused with evidence of injury. The red cells are the most affected sedimenting through the lax network, but plasma also drifts towards to a lesser extent causing an eventual post mortem dependent oedema that contributes to skin blistering which is a part of early post mortem decay. They hypothesised that where most of the blood from a hanging body gravitated towards the limbs, the remaining part of the blood in the upper part might be transformed into greyish pasty material, the exact mechanism of such transformation being still not covered by available literature on the subject[3].

Sometimes in hanging cases, there may be post-mortem bleeding from the anus if the deceased had haemorrhoids and the suspension duration is long. Gravitational forces due to the upright position of the body facilitate post-mortem per-rectal bleeding from the ulcerated haemorrhoids[4].”

(underline is mine)

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2. VD Pleuckhahn, MSL, July 1968, pp 169-175.

3. Sharma L K, Sharma G, Sirohiwal B L, Khanagwal V P, Paliwal P K, Yadav D R, "Artifacts of blood in a case of hanging: Medico-legal masquerades" in *Anil Aggrawal's Internet Journal of Forensic Medicine and Toxicology* [serial online], vol. 7, no. 1, January-June 2006, http://www.anilaggrawal.com/ij/vol_007_no_001/papers/paper001. html: Published 1 January 2006, (last Accessed in July 2020).

4. Dr H T Thejaswi, Dr A P Rayamane, Dr R Puneeta, Dr S Kalai, Dr Jagadeesh H and Dr Chandrasekaraiah C, " Artefacts a nd its Medico legal problems", in *Journal of Forensic Medicine, Science and Law,* vol 22(2), (2013).

54. From the aforementioned studies of the Modi's Textbook it may be noticed that in a decomposed body, deep groove may be seen around the neck if the deceased was wearing tight garments around the neck at the time of death. This groove simulates ligature marks as seen in case of strangulation.

55. It is evident that putrefaction of the body may led to false impression of obesity and several other impressions. In the present case it is evident from the post mortem report (Ext. 1) that putrefaction was present, foul smelling was coming out of the body, tongue protruded and whole body was swollen. The doctor noted oedematous maggots present around the neck, nostrils and infested region on skin deep bluish patch present all over the body. Body gets dark coloured. Neck blackened & bruised neck muscle blackened and contused.

It is evident from the kind of injuries present on the body that that the deceased was brutally assaulted over his body. Impression of strangulation may be for various reasons. The trial court has, therefore, not committed any error in recording that the post mortem report corroborates the prosecution story. In any case, the defence cannot contend that the post mortem report rules out the manner of occurrence. We do not find any perversity in the findings of the learned trial court on this point as well.

56. As regards the age, it has been contended on behalf of the appellants that the doctor had noted age approximately 40-45 years whereas PW-8 claimed that his father was aged about 55 years. We find that PW-6 has stated in course of his cross-examination that he had stated the age of the dead body within 40-45 years because he thought so. We have noticed from the evidence on the record that Chandan Kumar (PW-8) was aged about 32 years at the time of his deposition in course of trial on 5th December, 2023 i.e. after about 8 years 4 months of the occurrence. It means that on the date of occurrence he was aged about 23 and ½ years. His brother PW-1 was aged about 27 years in May, 2022 i.e. about 7 years after the occurrence, therefore, he was aged about 20 years at the time of occurrence and PW-3 who is younger brother of PW-8 was aged about 23 years in the year 2022 therefore, at the time of occurrence he was aged about 16 years. Even if for argument sake the age of the dead body is taken as 45 years as assessed by PW-6 by his necked eye, the difference of age between the deceased Jai Prakash Singh and his son PW-8 would be around 21 and ½ years. This we have calculated only to satisfy ourselves. The fact remains that in this case PW-8 has disclosed before the doctor that the dead body was of his father Jai Prakash Singh who was aged about approximately 55 years, however, no bone ossification test has been conducted in this case to ascertain the nearby age of the deceased. The prosecution

witnesses have identified the dead body and they have identified the same in several ways. They received the dead body after post mortem and performed last rites in accordance with their customs. Thus, the plea of the defence that the dead body was an unclaimed body which has been connected with the present case would not inspire confidence of this Court. There is no evidence at all that any Insurance claim was obtained by PW-8. We have already taken note of the judgment in the case of **S. Kaleeswaran** (supra) which says that conviction may take place even if the dead body is not found. Once PW-8 has been found to be a wholly reliable witness, his evidence with regard to killing of his father by the appellants at the place of occurrence and then the fact that the dead body could not be traced despite hectic search by him, his family members and the I. O. (PW-9) fully proved the prosecution case beyond all reasonable doubts.

57. In ultimate analysis we find no plausible reason to interfere with the judgments of the learned trial court. All these appeals would fail, they are dismissed accordingly.

58. Appellant Manoj Manjil in Cr. Appeal (DB) No. 216 of 2024, appellants (1) Ravindra Chaudhary, (2) Guddu Chaudhary and (3) Rohit Chaudhary in Cr. Appeal (DB) No. 237 of 2024 and appellants (1) China Ram, (2) Manoj Chaudhary, (3) Nand Kumar Chaudhary, (4) Bharat Ram, (5) Triloki Ram, (6) Prem Ram, (7)

Babban Chaudhary, (8) Pawan Chaudhary, (9) Gabbar Chaudhary, (10) Ram Bali Chaudhary, (11) Shiv Bali Chaudhary, (12) Ramadhar Chaudhary, (13) Sarvesh Chaudhary, (14) Ramanand Prasad, (15) Tanman Chaudhary, (16) Prabhu Chaudhary, (17) Jai Kumar Yadav, (18) Nandu Yadav and (19) Chandra Dhan Rai of Cr. Appeal (DB) No. 510 of 2024 are on bail, their bail bonds are cancelled.

59. They are directed to surrender before the learned trial court within one week from today to serve the sentence as awarded by the learned trial court, failing which learned trial court shall immediately take appropriate coercive measures to secure their custody.

60. Let a copy of this judgment with the complete trial court records be sent to the concerned trial court through a special messenger immediately to ensure the availability of the records in the trial court at the earliest.

(Rajeev Ranjan Prasad, J)

(Ajit Kumar, J)

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