

(Against the judgment and order of conviction and sentence dated 14.02.2020 (sentence passed on 19.02.2020) passed by Sri Vishwa Nath Shukla, Addl. Sessions Judge-IV, Koderma in S.T. No. 75/2016.)

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Death Reference No. 01 of 2020

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

1. Sanjay Yadav @ Sanjay Prasad Yadav, S/o Sri Bal Kishun Mahto @ Balkrishn, R/o Vill- Khabh, P.O. Nandudih, P.S.- Satgawan, Dist.- Koderma.

2. Rambriksh Yadav @ Rambriksh Pd. Yadav, S/o Late
Wajir Raut, R/o Vill- Dumri, P.O. Nanudih,
P.S.- Satgawan, Dist.- Koderma.

... Respondents

Criminal Appeal (DB) No. 337 of 2020

1. Sanjay Yadav @ Sanjay Prasad Yadav, S/o Sri Bal
Kishun Mahto @ Balkrishn, R/o Vill- Khabh,
P.O. Nandudih, P.S.- Satgawan, Dist.- Koderma.

2. Rambriksh Yadav @ Rambriksh Pd. Yadav, S/o Late
Wajir Raut, R/o Vill- Dumri, P.O. Nanudih,
P.S.- Satgawan, Dist.- Koderma.

... **Appellants**

The State of Jharkhand ... Respondent

— — — —

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

— — — —

In D. Ref. No. 01 of 2020.

For the State : Mr. Pankaj Kumar, P.P.
For the Convicts : Mr. B.M. Tripathi, Sr. Adv.

In Cr. Appeal (DB) No. 337 of 2020.

For the Appellants : Mr. B.M. Tripathi, Sr. Adv.
For the Resp. : Mr. Pankaj Kumar, P.P.

Dated : 09/03/2026

JUDGMENT

Per Rongon Mukhopadhyay, J. :

1. Heard Mr. B.M. Tripathi, learned senior counsel for the appellants in Cr. Appeal (DB) No. 337 of 2020 and Mr. Pankaj Kumar, learned P.P.
2. Death Reference No. 01 of 2020 has been put up before us for confirmation of the death sentence imposed upon both the convicts under Section 366 Cr.P.C.
3. One of the convicts (appellant) has preferred a separate appeal being Criminal Appeal (DB) No. 337 of 2020 which is directed against the judgment and order of conviction and sentence dated 14-02-2020 (sentence passed on 19-02-2020) passed by Sri Vishwa Nath Shukla, learned Additional Sessions Judge-IV, Koderma in S.T. Case No. 75/2016, whereby and whereunder, the appellants have been convicted for the offences under Sections 147, 148, 458/149 and 302/149 IPC and have been sentenced to rigorous imprisonment for 02 years for the offence under Section 147 IPC, rigorous imprisonment for 03 years for the offence under Section 148 IPC, rigorous imprisonment for 14 years along with a fine of Rs. 50,000/- each for the offence under Section 458/149 IPC and in default in payment of fine to undergo imprisonment for 2 years and they have also been sentenced to death under Section 302/149 IPC along with the fine of Rs. 50,000/- each and in default in payment of fine to undergo imprisonment for 02 years.
4. The prosecution case arises out of the written report of Suresh Kumar dated 26-09-2004 in which it has been stated that on 25-09-2004 at about 8:00PM, 20-25 persons variously

armed had attacked his house. The informant along with Kapildeo Prasad Yadav, Neeraj Kumar alias Sudhir Kumar were in the terrace of the house and on seeing the armed miscreants, the informant jumped from the terrace and hid himself. The informant had seen his father Kapildeo Prasad Yadav being dragged by Darogi Prasad Yadav, who had a farsa, Ranjit Prasad Yadav who had a gadasa and Bipin Prasad Yadav who had a rifle, and taken outside the house after which the hands of Kapildeo Prasad Yadav were tied with a gamchha and thereafter his head was chopped off with a farsa. It has been alleged that the brother of the informant Neeraj Kumar alias Sudhir Kumar was also dragged towards the door by Sunil Prasad Yadav who was armed with a farsa and rifle, Nawlesh Prasad Yadav who was armed with a gadasa and Rajesh Prasad Yadav who was armed with a farsa and rifle and after tying his hands with the lungi he was wearing, he was thrown on the ground and Nawlesh Prasad Yadav and Rajesh Prasad Yadav pressed Neeraj Kumar to the ground, while Sunil Prasad Yadav cut off his head with a farsa and Nawlesh Prasad Yadav assaulted him with a gadasa on his abdomen. It has further been alleged that when Anoj Kumar started raising an alarm, his hands were tied by Rambriksh Yadav with a gamcha after which Rajkumar Prasad Yadav and Ram Prasad Yadav thrashed Anoj Kumar to the ground and Rambriksh Yadav cut his throat with a farsa. The assailants thereafter caught hold of Sakaldeo Yadav and his hands were also tied with a gamcha by Umesh Yadav and after throwing him on the ground, Sanjay Yadav and Umesh Yadav pressed him, while Anil Yadav cut his neck with a farsa and Sanjay Yadav assaulted him on his abdomen with a gadasa. At the time of the occurrence, Baldeo Prasad Yadav was instigating the others not to spare anyone. The miscreants, while fleeing away, had thrown bombs and

threatened of eliminating the other persons.

Based on the aforesaid allegations, Satgawan P.S. Case No. 34/04 was instituted under Section 396 IPC, Section 3/4 Explosive Substances Act and Section 17 of the Criminal Law Amendment Act. On completion of investigation, charge sheet was submitted and after cognizance was taken, the case was committed to the Court of Sessions where it was registered as S.T. No. 75/2016. Charge was framed against the accused under Sections 147, 148, 149, 458/149, 380/149, 302/149 IPC and Section 3/5 Explosive Substances Act which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as **eleven** witnesses in support of its case:

P.W.1 Manoj Yadav has stated that the incident is of 25-09-2004 at 7:30PM and he was in his kitchen garden tending to the corn when he saw 20-25 persons variously armed going towards the house of Suresh Yadav. The said persons included the Area Commander of MCC Sunil Yadav as well as Nawlesh Yadav, Rajesh Yadav, Anil Yadav, Sanjay Yadav, Umesh Yadav, Mahavir Yadav, Darogi Yadav, Ranjit Yadav, Bipin Yadav, Rambriksh Yadav, Ramprasad Yadav and others. He had seen the miscreants taking away Kapildeo Yadav after which Darogi Yadav thrashed Kapildeo Yadav to the ground and severed his head with a farsa. The accused persons by exploding bombs and raising slogans fled away. Sunil Yadav had blasted bombs and he also had a rifle in his possession. He along with the villagers had seen the dead body of Kapildeo Yadav with his neck chopped off. When he and the others had gone to the house of Kapildeo Yadav, he had seen the dead bodies of Sudhir Yadav, Anoj Yadav and Sakaldeo Yadav.

In cross-examination, he has deposed that the distance between his house and the place of occurrence is about 100-125 feet. He had seen the incident from his terrace. The incident had occurred just a few distance from the hillock which is situated in front of his house. It was a moonlit night and the visibility was clear to a considerable distance. All the persons who were present had seen the occurrence. Kapildeo Yadav was assaulted and he was dragged by Ranjit Yadav and Bipin Yadav and near Malwa Pahadi his head was severed from his body. He had not seen any other person standing in their terrace and witnessing the incident. Not a single villager had come out from their house at the time when the Naxals were shouting and raising slogans. Kapildeo Yadav was his grandfather in relation. Out of the accused persons, Darogi Yadav, Ranjit Yadav, Bipin Yadav, Rambriksh Yadav, Nawlesh Yadav, Rajesh Yadav, Anil Yadav, Area Commander Sunil Yadav and Ram Prasad Yadav are of his own village.

P.W.2 Rambriksh Prasad Yadav did not support the case of the prosecution and he was declared hostile by the prosecution.

P.W.3 Saroj Devi has stated that on the date of the incident she was at her parents' house in Dumri and the others present were her parents and her brother Sakaldeo. About 15 persons including Rambriksh Yadav, Sanjay Yadav, Bipin Yadav, Darogi Yadav, Sunil Yadav and Ranjit Yadav had come to her house and knocked at the door. As soon as she opened the door, her brother Sakaldeo was asked to accompany them for some queries. When Sakaldeo was being taken away, she and her mother followed them but they were asked to go back by these persons. After about one hour she could come to know that Sakaldeo has been murdered. When she and the others went to

the house of Kapildeo Yadav, she found the dead body of Kapildeo, Anoj and Sakaldeo lying there and all three had their heads severed from their bodies.

In cross-examination, she has deposed that it was a moonlit night. She does not know the name of every person in her village. When she had reached the place where the murders were committed, the accused persons had fled away by then. Her statement was never recorded by the Police. On the date of the incident, all the extremists had their faces covered.

P.W.4 Mahesh Kumar has stated that the incident is of 25-09-2004 at 7:30PM. It was a moonlit night and he was sitting in the terrace of his house. The house of Kapildeo Yadav is adjacent to his house and Kapildeo Yadav was also sitting in the terrace of his house and was listening to the radio when all of a sudden, 25-30 persons came and some of them entered into his house. The younger son of Kapildeo Yadav, namely, Neeraj Kumar was caught by Nawlesh Kumar, Rajesh Kumar and Sunil Kumar after which they tied the hands of Neeraj Kumar with the lungi he was wearing. He has stated that Kapildeo Yadav and Suresh Kumar had jumped from the terrace, but Kapildeo Yadav was caught by Darogi Yadav, Ranjit Yadav and Bipin Yadav, while Suresh Yadav managed to flee away. He had also seen Sakaldeo Yadav being caught hold of by Sanjay Yadav, Umesh Yadav and Anil and the hands of Sakaldeo Yadav were tied at the back with a gamchha. When Anoj Yadav appeared and offered the miscreants money, he was intercepted by Ram Prasad Yadav, Raj Kumar Yadav and Rambriksh Yadav and his hands were also tied with a gamchha. He has stated that Sunil Yadav, Rajesh Yadav and Nawlesh Yadav had thrashed Sudhir Yadav to the ground and cut his neck with a farsa. Anil Yadav cut the neck of Sakaldeo Yadav, while Sanjay Yadav and Umesh Yadav had

caught hold of him. Anoj Yadav was thrown on the ground by Ram Prasad Yadav, Sanjay Yadav and Rambriksh Yadav and Ram Prasad Yadav had cut his neck. He has also stated that Kapildeo Yadav was taken to Malwa Pahadi and he had followed them and he had seen Darogi Yadav severing the head from the body of Kapildeo Yadav. After committing the murders, all the accused persons had fled away by raising slogans and by firing. He has identified Rambriksh Yadav and Sanjay Yadav in the dock.

In cross-examination, he has deposed that he had not given any statement to the Police. He knows Sanjay Yadav because he lives in the adjacent village. He had seen the occurrence from his terrace. The distance between his house and that of the informant is about 30 feet. He had raised an alarm on witnessing the incident. There was no enmity between Sanjay Yadav and three of the deceased. The face of none of the miscreants were covered. He had hid himself out of fear in the staircase going towards the terrace. All the accused persons had seen him but nothing untoward was done to him. The distance between the house of Suresh Yadav and Malwa Pahadi is 250 meters. He had not raised any alarm when the accused persons were taking away Kapildeo Yadav towards Malwa Pahadi.

P.W.5 Sarswati Devi has stated that it was 7:30PM and she was in her house along with her grandson Anoj and son Sudhir Kumar, while in the terrace her husband and son Suresh were present. All of a sudden there was a commotion at which her son Sudhir opened the door. As soon as the door was opened, Sunil had caught hold of Sudhir. She had seen 30-35 persons surrounding her house. The hands of her son Sudhir were tied at the back by a Gamchha after which Rajesh and Nawlesh

pushed him on the ground and thereafter Sunil severed the head of her son from his body and Sudhir Yadav gave a farsa blow on his abdomen. Anoj was caught hold of by Ramprasad and Rajkumar, while Rambrikshsh cut his neck. The head of Sakaldeo was chopped off by Umesh and Sanjay. When on hearing the commotion, her husband came he was forcibly taken to Malwa Pahadi where also his head was severed from his body. She has identified Sanjay and Rambriksh in the dock and has also claimed to identify the other accused persons.

In cross-examination, she has deposed that it was a moonlit night. Her husband Kapildeo Yadav was murdered near Malwa Pahadi by Darogi Yadav. Several persons had assembled at the time of the incident, but she cannot name anyone because she was not in a fit mental state of mind. Neither her husband, nor she had any enmity with Sanjay Yadav. She had seen Sanjay Yadav along with the other accused persons. She has deposed that there are 06 cameras in her house, out of which 02 cameras are not functional. The persons who had come had their faces covered and had also put paint on their faces but even then, she identified everyone. She had earlier deposed against Sunil Yadav in Court. She has a political rivalry with Rambriksh Yadav.

P.W.6 Dayanand Prasad Yadav has stated that the occurrence had taken place on 25-09-2004 at 7:30PM. It was a moonlit night and he was returning with grasses cut from his field and as soon as he reached near his house, he had seen Sunil Yadav, Nawlesh Yadav, Rajesh Yadav, Anil Yadav, Sanjay Yadav, Mahavir Yadav, Ramprasad Yadav, Rajkumar Yadav, Rambriksh Yadav, Bipin Prasad Yadav, Ranjit Yadav, Darogi Prasad Yadav, and 20-25 other persons variously armed near the house of Kapildeo Prasad Yadav. He, out of fear, had hid himself. He has stated that after sometime when he reached near the house of

Kapildeo Prasad Yadav, he had seen the dead bodies of Neeraj Yadav, Sakaldeo Yadav and Anoj Yadav and all had their heads severed from their bodies. When he reached Malwa Pahadi, he had found the dead body of Kapildeo Prasad Yadav.

In cross-examination, he has deposed that he had reached the place of occurrence 15 minutes after the incident had already taken place. His father was on litigating terms with the accused as a case was going on between them. He had not witnessed any of the murders. He has a dispute with the maternal uncle of Sanjay Yadav.

P.W. 7 Suresh Kumar is the informant who has stated that on 25-09-2004 at 7:30PM he was sitting in his terrace and along with him were his father and brother Neeraj alias Sudhir. At that point of time, he had seen some persons climbing on the terrace and he had jumped from the terrace and hid himself behind a wall. He had seen Darogi Prasad Yadav, Ranjit Yadav, Bipin Yadav variously armed dragging his father outside the house and they had also tied the hands of his father Kapildeo Prasad Yadav with a gamchha. His father was taken towards Malwa Pahadi where Darogi Prasad Yadav had severed the head of Kapildeo Prasad Yadav. Sunil Yadav, Nawlesh Yadav and Rajesh Yadav who all were armed with various weapons had dragged Neeraj alias Sudhir outside and while Nawlesh Yadav and Rajesh Yadav had pinned him to the ground, Sunil Yadav had cut his neck with a farsa. When Anoj Kumar raised a cry of alarm, he was also caught hold of by the miscreants and Rambriksh Yadav had tied his hands with a gamchha and while Raj Kumar Yadav and Ram Kumar Yadav pinned him to the ground, Rambriksh Yadav had cut his neck with a farsa resulting in his death. He has stated that Sakaldeo Yadav was accosted by Umesh Yadav, Sanjay Yadav and Anil Yadav and Anil Yadav had

cut his neck with a farsa, while Sanjay Yadav gave a gadasa blow on his abdomen. Baldeo Prasad Yadav was instigating the others to eliminate everyone. The incident had occurred because of refusal to give levy to the MCC. He had witnessed the incident. The occurrence was also witnessed by Saraswati Devi, Mahesh Kumar, Saroj Devi, Dayanand Prasad and Chandrika Prasad Yadav. He had given a written report to the Police Station which has been marked 'X' for identification. He had put his signature on the inquest reports prepared by the Police at the place of occurrence.

In cross-examination, he has deposed that the house of Chandrika is at a distance of 20-25 feet from his house. The house of Rambriksh Yadav is at a distance of 50 feet from his house. There was a cordial relationship between Rambriksh Yadav and his father. He had not identified the accused persons in the light of a torch. He had identified all the accused persons because it was a moonlit night. The distance between his house and Malwa Pahadi is 500 meters. He had followed the accused persons while they were taking his father to Malwa Pahadi, but the accused persons had not seen him. He has deposed that he had informed about the incident to the Police Station at 9:00PM. At the time of the incident, all the persons of the village had assembled which included Rajeshwar Tiwari, Bholaram, Chhotu Paswan, Shiv Paswan, Mahendra Pandey, Shahdeo Yadav, Basudeo Yadav, Pradeep Yadav, Ramjai Yadav, Madan Yadav, Birendra Yadav, Shankar Yadav, Munshi Yadav, Arjun Yadav and others. Sanjay Yadav is a member of MCC and he has documentary proof of the same. He had jumped from the terrace and had hid himself behind a wall. He had come out after one hour when the accused persons had left. There was a gap of 1-1.5 hours between the occurrence which took place in front of

his house and the occurrence at Malwa Pahadi. The Police had not seized any weapons at the place of occurrence. He had seen the members of MCC from a distance of about 10 feet.

P.W.8 Chandrika Prasad Yadav has stated that on 25-09-2004 at 7:30PM, he had gone to answer the call of nature and on returning, he had seen on torch light several persons going who were raising slogans. He had thereafter reached the house of Suresh where he had seen the dead body of Sudhir Yadav, Sakaldeo Yadav and Anoj Yadav. He had seen the dead body of Kapildeo Yadav near Malwa Pahadi. He had identified Sunil Yadav, Rajesh Yadav, Nawlesh Yadav, Anil Yadav, Ram Prasad Yadav and Vijay Yadav as the persons who were raising slogans.

In cross-examination, he has deposed that he had not witnessed any incident. The distance between his house and the house of Kapildeo Yadav is about 2.5 feet. He had not heard from anywhere that the assailants belonged to MCC. The incident is of 14 years back. He had seen the accused Sanjay Yadav in the dock for the first time.

P.W.9 Bindeshwari Das was posted as an Officer-in-charge in Satgawan P.S. and on 26-09-2004 he had registered Satgawan P.S. Case No. 34/04 based on the written report of Suresh Yadav and he had taken over the investigation of the case. He has proved his endorsement in the written report which has been marked as Exhibit-1. The formal FIR has been proved and marked as Exhibit-2. In course of investigation, he had recorded the re-statement of the informant and had also inspected the place of occurrence which is at village Dumri in the open courtyard of the house of Suresh Yadav where the dead bodies of Neeraj Kumar alias Sudhir Yadav, Sakaldeo Yadav and Anoj Yadav were found lying. He has proved the inquest reports

which have been marked as Exhibits-3, 4, 5 and 6. The second place of occurrence is at a distance of 300 yards from the first place of occurrence. He had recorded the statements of Mahesh Kumar, Saraswati Devi, Rambriksh Yadav, Dayanand Prasad Yadav, Saroj Devi, Manoj Kumar, Chandrika Prasad Yadav, Suresh Paswan and Shiv Mahto. In course of investigation, he had apprehended Sunil Yadav on 27-11-2004 who had recorded his confessional statement implicating himself as well as the co-accused in the murders. He had received the post-mortem report from Sadar Hospital, Koderma and consequent to his transfer, he had handed over the investigation to Inspector Madho Ram Bhargav.

In cross-examination, he has deposed that the distance from the place of occurrence to the Police Station is 04km. He had received information about the incident at 10:00PM and he had reached the place of occurrence at 05:00AM on the next day. It is possible on a moonlit night to see the second place of occurrence from the first place of occurrence. There are 8-10 houses adjacent to the first place of occurrence. It was a moonlit night when the incident had taken place.

P.W.10 Madho Ram Bhargav had taken over the investigation on 20-01-2005 and had gone through the case diary. He had recorded the statements of Suresh Yadav, Chandrika Prasad Yadav, Dayanand Prasad Yadav, Mahesh Kumar, Saroj Devi and Shiv Mahto. The witness Rambriksh Yadav had stated that he was having his meal when on hearing a cry of alarm, he had come out of his house and had seen the accused persons variously armed, surrounding the house of Suresh Yadav. When he had tried to go towards the house of the informant, somebody had made a firing and he was also abused at which, out of fear, he had gone back to the safety of his house.

After sometime, he had heard slogans and the sound of bomb blasts and after the accused persons went away, he had seen the dead bodies of 04 persons. He had handed over further investigation to police inspector Babu Kumar.

In cross-examination, he has deposed that he had recorded the statement of Dr. Saryu Yadav who had stated that Rambriksh Yadav was getting treatment in his clinic on the date of incident from evening till late at night. He had not found any connection of Rambriksh Yadav with the Naxal organization in course of his investigation. In the statement of Sunil Yadav, the name of Sanjay Yadav does not figure.

P.W.11 Dr. Shri Bhagwan Sudhanshu was posted as a Medical Officer at Sadar Hospital, Koderma and on 26-09-2004, he had conducted autopsy on the dead body of Kapildeo Prasad Yadav and had found the following:

External Examination -

A. Sharp cutting by sharp weapon 1" x 3" on neck.

Internal Examination -

A. Head - NAD

B. Heart, Liver, Lungs, Kidney - Pale

C. Stomach - Empty

D. Intestine - Gas and fluid.

E. Urinary bladder - Empty

F. Ribs - NAD

G. Vessels - NAD

Trachea - Cut by sharp weapon.

The cause of death was opined to be on account of hemorrhage and shock.

On the same day, he had conducted autopsy on Neeraj Kumar alias Sudhir Kumar and had found the following injuries

on his person:

External examination-

- A. Sharp cutting by sharp weapon 1x3 on neck.*
- B. 6 inches stab wound on the stomach and intestine part came out.*
- C. Abrasion on the left forearm 10 inches x 3 inches.*
- D. Abrasion on the left interior shoulder joint 2 inches x 2 inches.*

Internal Examination -

- A Head and Skull - NAD*
- B. Heart - Both chamber empty.*
- C. Lungs, Liver, Spleen, Kidney - Pale*
- D. Stomach - Tear and empty*
- E. Intestine - Gas and fluid.*
- F. Urinary bladder – Empty*

The cause of death was opined to be due to hemorrhage and shock. The injuries may be caused by farsa and gadasa.

He had also conducted post-mortem on the dead body of Anoj Prasad Yadav and the following injuries were found on his person:

External examination-

- A. Sharp cutting by sharp weapon 1" x 3" on neck.*

Internal Examination-

- A Head and Skull - NAD*
- B. Heart - Both chamber empty.*
- C. Lungs, Liver, Spleen, Kidney - Pale*
- D. Stomach - empty*
- E. Intestine - Gas and fluid.*
- F. Urinary bladder – Empty*

The cause of death was opined to be due to shock and

hemorrhage. The injury may be caused due to farsa and gadasa.

On the same day, he had conducted autopsy on the dead body of Sakaldeo Prasad Yadav and had found following injuries:

External examination -

A. Head - NAD. Sharp cutting by sharp weapon 1" x 3" on neck. 6" stab wound in the abdomen and intestine came out.

Internal Examination -

A Head and Skull - NAD

B. Heart - Both chamber empty.

C. Lungs, Liver, Spleen, Kidney - Pale

D. Stomach - Tear and empty

E. Intestine Gas and fluid.

F. Urinary bladder - Empty

The cause of death was opined to be due to shock and hemorrhage and the injuries may be caused by farsa and gadasa. The post-mortem reports have been proved and marked as Exhibits- 7, 7/1, 7/2 and 7/3 with objections.

In cross-examination, he has deposed that no medical board was constituted for conducting autopsy. He had personally conducted autopsy on all four dead persons.

6. The statements of the accused were recorded under Section 313 Cr.P.C. in which they have denied their complicity in the occurrence.

7. The defence has examined **four** witnesses in support of its case:

D.W.1 Sanjay Kumar Gupta has stated that he has a friendship with Sanjay Kumar Yadav which goes back 25 years. He had gone to Jhumri Tilaiya on 25-09-2004 to attend a political meeting and Sanjay Prasad Yadav was also with him. He, Sanjay

Prasad Yadav and others had sat near a telephone booth where they had snacks and all had stayed there from 6:30PM to 10:00PM. Sanjay Yadav is a nice person and at this point of time he was unemployed.

In cross-examination, he has deposed that he runs his business in Kolkata. He has been asked to give his testimony by the family members of Sanjay Yadav.

D.W.2 Binod Kumar has stated that from 6:30PM to 10:00PM Sanjay Yadav was with him and the others who were present were Om Prakash Yadav and Sanjay Gupta.

In cross-examination, he has been deposed that he does not know the date of occurrence. He later on says that the incident had occurred on 25th September. He has given his evidence on the request of the father of Sanjay Yadav.

D.W.3 Om Prakash Yadav has also stated about Sanjay Yadav being present with him on 25-09-2004 from 6:30PM to 10:00PM.

In cross-examination, he has deposed that on the request of the father of Sanjay Yadav he is giving his evidence.

D.W.4 Mahendra Kumar has stated that on 25-09-2004, he had taken Rambriksh Yadav to the clinic of Dr. Saryu Prasad and he was given treatment till 01:00AM. On 26-09-2004, he had left at 7:30AM and after dropping Rambriksh to his house at Dumri, he had returned back to Pirra, his village.

In cross-examination, he has deposed that though there is a government hospital at Satgawan which is at a distance of 3-4 km, Rambriksh was not taken to the said hospital. He cannot submit any documentary proof regarding the treatment which Rambriksh had undergone in the clinic of Dr. Saryu Prasad.

8. It has been submitted by Mr. B M Tripathi, learned

senior counsel for the appellants that as per the informant (P.W.7), he had given a written report to the Police on 25-09-2004 itself but the said report which is the first information of the occurrence has been suppressed by the prosecution as the written report which forms the basis of institution of Satgawan P.S. Case No. 34/04 is dated 26-09-2004. The CID which had taken over the investigation had submitted Final Form against 09 accused persons despite allegations of specific overt act made against Rajkumar Yadav, Ramkumar Yadav, Anil Yadav and Umesh Yadav. It has been submitted that in spite of the evidence of P.W.1, P.W.4, P.W.5 and P.W.7 specifically naming some of the accused not charge-sheeted, the prosecution did not invoke Section 319 Cr.P.C., while at the same time, the appellants were convicted based on the same evidence though there was no distinguishing feature in both the category of the assailants. The plea of alibi as generated by the appellants have not at all been appreciated by the learned trial court. Mr. Tripathi has submitted that despite charge having not been framed against the appellants for the murder of Kapildeo Prasad Yadav and Neeraj Kumar alias Sudhir Kumar but it has been framed for committing the murder of Sanoj Kumar and Ramsakal who were not even the victims of the case. In the 313 Cr.P.C. statement of the appellants, questions were put regarding the murder of Kapildeo Prasad Yadav and Neeraj Kumar alias Sudhir Kumar though there was no charge for committing their murders. Mr. Tripathi, learned senior counsel for the appellants has submitted that the identification of the appellants is encompassed in a cloud of mist as it was 7:30PM when the incident had occurred and as per some of the witnesses the faces of the miscreants were covered which makes such identification impossible. Even P.W.7 was hiding behind a wall for one hour and he, in no

circumstance, could have given such a vivid description of the occurrence specifying the role of each of the appellants. The eyewitness account does not deserve any serious consideration because of its inherent weaknesses and fallibility which have not been properly appreciated by the learned trial court and hence both the appellants deserve to be acquitted from the charges levelled against them.

9. Mr. Pankaj Kumar, learned P.P. has submitted that four brutal murders were committed in a daredevil fashion by the appellants and others and their presence as well as the active participation in the murders have been chronicled in the evidence of the eyewitnesses. It has been submitted that an error or omission in the charge cannot be fatal to the prosecution case as the defence has failed to show that such error or omission has prejudiced the defence. The manner of occurrence, as depicted by the eyewitnesses, has been corroborated by the post-mortem report. Mr. Pankaj Kumar, learned P.P. has submitted that it was a moonlit night when the incident had taken place in a rural set-up and in general, the rural people have a keen sense of observation and, therefore, the identification of the appellants by the eyewitnesses cannot be disbelieved.

10. We have heard the learned counsel for the respective parties and has also perused the trial court records.

11. Multiple murders had taken place in the evening of 25-09-2004 in a most diabolical and grotesque manner possible with heads severed from the trunk. P.W.7 in his written report dated 26-09-2004 has given a vivid description in the manner in which the incident of four murders had taken place and the degree of participation in the murders by the appellants and other accused persons. In fact, all the murders seem to have a common thread to the effect that their hands were tied at the

back with lungi or gamchha, they were pinned down to the ground and their heads were severed from their bodies.

12. P.W.3 and P.W.6 have stated about the presence of the appellants along with the other accused persons. Though P.W.6 has not given any specific instance of any overt act, but P.W.3 has stated that the accused persons had taken away Sakaldeo Yadav and after one hour she could come to know that Sakaldeo has been murdered. P.W.3 in her cross-examination has deposed that the face of all the miscreants were covered. She has also stated that the Police had not recorded her statement. P.W.6 has stated about an enmity with the maternal uncle of the appellant no. 1. The evidence of P.W.3 and P.W.6 does not conclusively prove that the appellants were involved in the murders.

13. P.W.1, P.W.4, P.W.5 and P.W.7 claim themselves to have seen either all the four murders or a part of the incident and their evidence seems to be the pivotal aspect of the case of the prosecution.

14. P.W.1 in his examination-in-chief has stated about seeing the appellants and the other accused persons going towards the house of the informant (P.W.7). He had seen the miscreants taking away Kapildeo Yadav and Darogi Yadav committing his murder. As per his cross-examination, the incident of murder of Kapildeo Yadav was seen from his terrace and the distance of the place of occurrence from the place from where he had witnessed the incident was about 100-125 feet. Despite such distance, the visibility, according to this witness, was good as it was a moonlit night. There was a hillock situated in front of his house and the murder had taken place a few distance ahead of the hillock. Though it was a moonlit night, but the obstacle in front of the house of P.W.1 and the distance of the place of occurrence from his house would put his evidence in

the realm of doubt. This view of ours would be further fortified by the fact that the house of P.W.7 is at a distance of 20 feet from the house of P.W.1 as stated by P.W.1 and the first place of occurrence is in front of the house of P.W.7 which, as per P.W.9 (first I.O.), the distance between the first place of occurrence and the second place of occurrence was about 300 yards which can be converted to mean 900 feet.

15. So far as P.W.4 is concerned, he has described in details all the murders but his cross-examination reveals otherwise. He was also in the terrace but out of fear he had hid himself in the staircase going towards the terrace. He claims that the accused persons had seen him but did not cause any bodily harm to him. He has stated that the distance between the first place of occurrence and the second place of occurrence is 250 meters. Though the distance has been exaggerated when we consider the evidence of P.W.9 (first I.O.), but at the same time we cannot lose sight of the fact that the incident had taken place at 7:30PM which was witnessed by him from behind a staircase which suggests the absurdity of such evidence more so, when a descriptive version has been narrated by him specifying the role played by each of the accused.

16. P.W.5 is the wife of the deceased Kapildeo Yadav whose version of the events is once again very descriptive, but in her cross-examination, she has stated that all the miscreants had covered their faces and had also put paint on their faces. She has admitted that she was not in a fit mental state of mind which is understandable considering the fact that four of her family members were hacked to death and in the touchstone of such mental instability, identification of the appellants and specifying the role played by each of the accused would make such evidence vulnerable. Moreover, the possibility of false

implication of the appellant no. 2 cannot be ruled out since she had a political rivalry with the appellant no. 2. The evidence of P.W.5, therefore, cannot be said to be reliable and trustworthy.

17. The informant has been examined as P.W.7 and he has also given an eyewitness account of each of the murders and his examination-in-chief is more or less consistent with the contents of his written report. However, in his cross examination, his status as an eyewitness, falters as on seeing the miscreants he had jumped from the terrace and hid himself behind a wall and he had come out of his hiding place after one hour only when the accused persons had left. This would run contrary to his eyewitness account, even to the extent of seeing his father murdered in Malwa Pahadi which was at a considerable distance from his house. The written report of P.W.7 is dated 26-09-2004, while the incident had taken place on 25-09-2004 and P.W.7 has stated about submitting a written report in the Police Station in the night of 25-09-2004 itself. It can, therefore, be construed that the written report given on 25-09-2004 is the first information, but the prosecution seems to have suppressed such report. In this context, we may refer to the case of **Allarakha Habib Memon & Ors. v. State of Gujarat** reported in **(2024) 9 SCC 546** in which, it has been held as follows:

“19. Since the Police Constable, Demistalkumar (PW 12) claiming to be an eyewitness to the heinous assault had reported at the police station with the crime weapons, there was no reason whatsoever as to why his statement would not have been recorded immediately on his arrival at the police station. From the circumstances discussed above, a reasonable doubt is created in the mind of the Court that the statement of

Demistalkumar (PW 12) would definitely have been recorded in the daily diary (roznamcha) but his version may not have suited the prosecution case and that is why, the daily diary entry was never brought on record. Non-production of the daily diary is a serious omission on part of the prosecution.

20. *There cannot be any doubt that the first version of the incident as narrated by the Police Constable, Demistalkumar (PW 12) would be required to be treated as the FIR and the complaint lodged by Mohammad Arif Memon (PW 11) would be relegated to the category of a statement under Section 161 CrPC and nothing beyond that. The same could not have been treated to be the FIR as it would be hit by Section 162 CrPC. Evidently thus, the prosecution is guilty of concealing the initial version from the Court and hence, an adverse inference deserves to be drawn against the prosecution on this count.”*

18. The defence witnesses have shown exuberance in raising the plea of alibi so far as the appellants are concerned, but in view of the findings recorded above, we refrain ourselves from making any observation with respect to such plea.

19. Incoherent, inconsistent exaggerations and contradictions seems to be the hallmark of the evidence of the purported eyewitnesses and when the identification of the appellants as members of the unlawful assembly and of their participation in the murders has a sense of incertitude, the benefit of doubt has to accrue in favour of the appellants. The impugned judgment having not considered the finer nuances of

the evidence of the witnesses becomes erroneous in law and consequently, we hereby set aside the judgment and order of conviction and sentence dated 14-02-2020 (sentence passed on 19-02-2020) passed by Sri Vishwa Nath Shukla, learned Additional Session Judge-IV, Koderma in S.T. Case No. 75/2016.

20. Consequently, Cr. Appeal (DB) No. 337 of 2020 is **allowed**. Death Reference No. 01 of 2020 is answered accordingly.

21. Since the appellants are in custody, they are directed to be released immediately and forthwith, if not wanted in any other case.

22. Pending I.A.(s), if any, stands closed.

(RONGON MUKHOPADHYAY, J.)

(DEEPAK ROSHAN, J.)

Jharkhand High Court, Ranchi
Dated the 09th Day of March, 2026

Preet/N.A.F.R.

Uploaded on: 10 / 03 / 2026.