

2. The brief facts leading to this Criminal Appeal are that the *fardebayan* of the informant Niranjan Kumar Pandey @ Pappu Pandey of village Sankosai, PS-Olidih, then residing at Turiabera, PS- MGM, District East Singhbhum was recorded on 01.06.2012 at 7:15 a.m. at T.M.H., Jamshedpur, in presence of his brother Sanjay Kumar Pandey alleging *inter alia* that on 31.05.2012, the informant was at his house at Turiabera because of “**Bharat Band**” called. In the evening when the Band was called off, the informant came to Tata by his Tempo No. JH05T/9746 at about 6:30 p.m. for earning. The informant had received the information from his wife Sanju Pandey at 9:45 p.m., telephonically that a boy had come to her house and was teasing her and asked him to come back to the house. The informant came back to Turiabera and saw the co-villagers Digamber Singh Sardar, Rudan Singh Sardar, Nimai Singh Sardar and others who had assembled in front of his house. The wife of the informant told him that Sandeep had assaulted her with “*Bhujali*” and asked not to spare him and thereafter he took his wife to the Hospital. The boy who had assaulted his wife with “*Bhujali*” began to flee away but was caught red handed by the villagers along with “*Bhujali*”. On queries being made the boy who was apprehended disclosed his name Sandeep Kumar Tripathy, son of Nathu Prasad Tripathy, resident of village Saria, P.S. Manikpur, District- Chitrakut, Uttar Pradesh. The informant left the accused-Sandeep Kumar Tripathy in custody of the villagers and took his wife Sanju Pandey to

T.M.H. Hospital for treatment where she was declared dead by the Doctor. The accused was also assaulted by the villagers who also sustained some minor injuries. It is also further alleged by the informant that his wife had gone to Chhattisgarh to visit her brother and sister-in-law where this Sandeep Kumar Tripathy had come in contact of his wife. The accused Sandeep began to love his wife one sided. The same was objected by the wife of the informant. The accused had come to Turiabera from Uttar Pradesh with the intention to commit murder of the wife of the informant after having made all the preparations and having got the opportunity that the wife of the informant was alone at the house and he came there and assaulted his wife with “*Bhujali*” in the right side of her stomach below her breast, resulting in death of his wife during treatment.

3. On the basis of this *fardbeyan* Mango (Muffasil) P.S. Case No. 255 of 2012 was registered against the accused Sandeep Kumar Tripathy under Section 302 of IPC and the Investigating Officer after having concluded the investigation, filed charge-sheet against the accused Sandeep Kumar Tripathy under Section 302 of IPC to the Court of Magistrate concerned who took the cognizance thereon and committed the same for trial to the Court of Sessions Judge as the case was exclusively triable by the Court of Sessions Judge.

4. The Court of Sessions Judge, Jamshedpur transferred the case for trial to the Court of Additional Sessions Judge, VIII

Jamshedpur. The charge was framed against the accused, the same was read over and explained to him but the accused pleaded not guilty and claimed to face the trial.

5. On behalf of prosecution to prove the charge against the accused in **documentary evidence** filed Ext.-1 (signature of Rudan Singh on seizure list, Ext.1/1 (signature of Digambar Singh Sardar on seizure list dated 02.06.12, Ext.2 (signature of Digambar Singh Sardar on seizure list dated 01.06.2012, Ext.3 (Postmortem Report), Ext.4 (signature of Sanjay Pandey on *fardbeyan*), Ext.5 (signature of Anand Pandey on carbon copy of Inquest Report), Ext.6 (signature of Govind Singh on seizure list dated 01.06.2012), Ext. 4/1 (signature of Niranjana Pandey @ Pappu Pandey on *fardbeyan*), Ext. 6/1 (signature of Suphal Singh Sardar on seizure list), Ext. 5/1 (signature of Bhola Ghosh on Inquest report), Ext. 2/1 (signature of Nimai Singh Sardar on seizure list), Ext. 4/2, 4/3 & 4/4 (*fardbeyan*, forwarding & पृष्ठांकन), Ext. 7 (F.I.R.), Ext.2/2 (seizure list), Ext. 5/2 (Inquest Report), Ext. 6/2 (seizure list), Ext.8 (confessional statement), Ext.9 (seizure list), Ext. 1/2(seizure list), Ext.10 (requisition for F.S.L.), Ext. 11 & 11/1 (F.S.L report) and **in oral evidence** examined altogether 12 witnesses P.W.1-Rudan Singh, P.W.2-Digambar Singh, P.W.3-Dr. Niranjana Minj, P.W.4- Sanjay Kumar Pandey @ Ajay Kumar Pandey (brother of informant) P.W.5-Anand Pandey, P.W.6-Govind Singh, P.W.7-Niranjana Kumar Pandey @ Pappu Pandey (informant of this case), P.W.8 Suphal

Singh Sardar, P.W.9-Bhola Ghosh, P.W.10-Nimai Singh Sardar, P.W.11-Bheem Singh and P.W.12-Dilip Gagarai, Investigating Officer.

6. The statement of the accused under Section 313 of Cr.P.C. was recorded who denied the incriminating circumstances in evidence against him and stated himself to be innocent.

7. The learned trial court after hearing rival submissions of learned Counsel of parties passed the impugned Judgment of conviction of the appellant and sentenced him with imprisonment for life as stated hereinabove.

8. Aggrieved from the impugned Judgment of Conviction and sentence, the instant Cr. Appeal has been directed on behalf of the appellant/convict Sandeep Kumar Tripathy @ Sandeep Tripathy.

9. We have heard the learned Counsel of parties and perused the material on record.

10. The learned Counsel for the appellant has submitted that conviction and sentence of the appellant is based on the wrong appreciation of the evidence on record. The learned trial court has not appreciated the evidence on record in proper perspective. P.W.1-Rudan Singh and P.W.2-Digambar Singh who are claiming themselves to be the eye-witness are not indeed the eye-witness of the occurrence. These two witnesses although had not seen the assault being given by the appellant/convict to the deceased yet had come on hearing alarm and reached to the place of occurrence saw the deceased in injured condition having caught hold of the appellant/convict and told them that it was appellant-Sandeep

Kumar Tripathy who had given the blow with "*Bhujali*" to her. This fact which these two witnesses came to know from the victim who subsequently died in injured condition was not put to the appellant/convict in statement under Section 313 of Cr.P.C. Therefore, the same evidence cannot be read against the appellant/convict Sandeep Tripathy.

10.1 It has been further submitted that there is contradiction in testimony of the witnesses in regard to the weapon used in commission of the murder whether it was "*Bhujali*" or the knife, the same is not ascertained. The ocular evidence is also not corroborated with the medical evidence.

10.2 It is also further submitted that the appellant/convict is alleged to have been caught hold of by the injured-victim, the same cannot be believed by any ordinary person how an injured women can catch hold of the young boy who had given assault to her. There is no arrest memo of the appellant/convict to show that the appellant/convict was handed over by the villagers who had caught hold of him soon after commission of the occurrence. So far as the blood group on the recovered articles which were sent for examination to the F.S.L. are concerned, the same cannot be relied upon because there is nothing on record to show that the blood on the apparel of the appellant was of deceased or of the appellant who had also sustained injuries as per prosecution case the villagers had also assaulted him. In view of the above contended that the prosecution case is not proved beyond

reasonable doubt and the conviction and sentence passed to the appellant is liable to be set aside.

11. Per contra the learned A.P.P. on behalf of State opposed the contentions made by the learned Counsel for the appellant and contended that the prosecution case is based on direct evidence. The witness P.W.1-Rudan Singh, P.W.2-Digambar Singh are the eye-witnesses who immediately reached at the place of occurrence after hearing the alarm raised by the victim/deceased and found the victim in injured condition having caught hold of the appellant soon they took the appellant/convict in their custody with the help of the other persons who had also attracted there at the place of occurrence. The testimony of these two witnesses is also corroborated with the testimony of P.W.3 Dr. Niranjan Minj and also corroborated with the testimony of the rest of the prosecution witnesses. As per F.S.L. report the blood group also matched to that of deceased. P.W.12 Investigating Officer Dilip Gagarai has deposed in his statement that the appellant/convict was caught hold of by the villagers and he was also assaulted by the villagers so he sent the appellant/convict for medical examination and after lodging of the F.I.R. the arrest memo of him was prepared. The seizure memo of the weapon used in commission of the murder is also proved from the prosecution witnesses. As such the impugned Judgment of Conviction and Sentence bears no infirmity and needs no interference.

12. To decide the legality and propriety of the impugned Judgment of Conviction and Sentence, we would like to reproduce here-in-below the evidence adduced on behalf of the prosecution for the purpose of reappraisal of the same.

12.1 **P.W.1-Rudan Singh** in his Examination-in-chief says the occurrence was of 31.05.2012 at 10:30 of night. He had gone to sleep after having food and having heard the 'Hulla' he reached to the house of Pappu. **The wife of Pappu had caught hold of one person who had given a blow with "Bhujali" in right side of her stomach. That person was taken in custody by the villagers and the apprehended person told his name to be Sandeep Kumar Tripathy.** The bloodstained soil was taken by the Police from the place of occurrence. The seizure memo of the same was also prepared. He put his signature thereon and identifies the same marked Ext.1. **The wife of Pappu died amid the way while going to the Hospital for treatment.** In cross-examination this witness says **the house of deceased was in the West of his house.** It was 10:30 of night when the occurrence took place. **On the alarm being raised he went to the house of deceased who had caught hold of the accused and told that not to allow that culprit to flee away. Therefore, that person was caught hold of. He did not see the accused assaulting the deceased;** but he has seen the deceased in injured condition having caught hold of the accused.

12.2 **P.W.2-Digambar Singh** in his Examination-in-chief says the occurrence was of one and half years ago. There was some dispute between the wife of Pappu and Sandeep in the adjoining house. Sandeep had given a blow with the knife to the wife of Pappu which hit to her breast. She was taken to the Hospital where she was declared dead. **The seizure memo of the knife was prepared. He also put his signature thereon. He identifies the same marked Ext.2. The knife was looking like Bhujali.** He identified the accused in dock. In cross-examination this witness says **he did not see the accused giving blow with the knife. He came there having heard the Hulla and found Sanju Pandey stained with blood. There is only one wall between his house where the occurrence took place. The weapon which was sharp edged from both the sides was appearing both knife as well as Bhujali.**

12.3 **P.W.3-Dr. Niranjan Minj** in his Examination-in-chief says he conducted the postmortem on the body of the deceased Sanju Pandey wife of Niranjan Kumar Pandey @ Pappu Pandey and found following injuries:

Stabbed wound

(1) 2 ½ cm x 2 cm x cavity deep, sharp on right chest front over right breast, 2 ½ below the right nipple a can right to mid line.

The weapon entered into the thoracic cavity between the 5th intercostal space right side. Perforated the right lung and entered into the liver 3 & ½ cm deep.

(2) 1 x ½ cm x soft tissue on right chest fronts 6 cm below the right nipple.

(3) 2 x 1 & 1/2 cm x soft tissues on right chest front, 15 cm right to mid line, the weapon was confined to the chest wall only.

(4) **Incised wound**

2cm x 1cm x soft tissues left thumb fronts

Presence of blood & blood clots in the thoracic abdominal cavity

(5) **Opinion:- All the injuries were antemortem caused by sharp cutting and pointed weapon.**

(6) **Death was due to haemorrhage and shock**

(7) Time since death 12-18 hours from the time of postmortem examination.

(8) This P.M. report is in my pen and signature it is marked as Ext.3.

(9) Above injuries may not be caused on fall.

12.4 **P.W.4-Sanjay Kumar Pandey @ Ajay Kumar Pandey** in his Examination-in-chief says the occurrence was of 31.05.2012 at 10:30 p.m. He received the phone call from his brother Niranjana Pandey that his Bhabhi was being teased by someone so he came back to his house by Auto and saw his Bhabhi lying in pool of blood. The assailant was being held at the spot. His Bhabhi had told him that person had assaulted her with Bhujali. His Bhabhi was taken to T.M.H. where during treatment she died. **The accused used to tease his Bhabhi by making call on her mobile phone.** He also put his signature on the *fardebayan*. He identified the accused in the dock. In cross-examination this witness says **he came to know in regard to the occurrence from his brother.** M.G.M. was near in comparison to T.M.H. from his house but took Bhabhi to T.M.H. for better treatment. She had died before the treatment was given to her.

12.5 **P.W.5-Anand Pandey** in his Examination-in-chief says he came to know in regard to the occurrence. He put his signature on the Inquest report and identifies the same. In cross-examination this witness says he did not see the occurrence.

12.6. **P.W.6-Govind Singh** in his Examination-in-chief says he put his signature on the seizure memo of the blood stained soil and identifies his signature thereon.

12.7 **P.W.7-Niranjan Kumar Pandey @ Pappu Pandey** is the informant in his Examination-in-chief says the occurrence was of 31.5.2012. On that day Bharat Band was declared. In the evening at 6:30 he left his house. **At 10 O' clock he received the phone call from his wife that one boy was teasing her at her house. He came back to his house and saw his wife Sanju Pandey in injured condition. Sandeep was caught hold of by the villagers. The Bhujali was also there. His wife had told that Sandeep Tripathy had given blow with Bhujali to her. She was taken to T.M.H. Hospital where she was declared dead. He put his signature on the fardbayan, identifies the same marked Ext. 4/1.** In cross-examination this witness says **he received the phone call of his wife at 10 O' clock. At that time he was at the Mango Bus stand which was 8 k.m. away from his house. It took half an hour to reach to the house from there.** The villagers had caught hold of the accused at the distance of 15 to 20 feet from his house. He did not see the occurrence from his own eye.

12.8 **P.W.8-Suphal Singh Sardar** in his Examination-in-chief says the occurrence was of 31.05.2012 at 10 O' clock in night. Hearing Hulla he reached to the house of Sanju Pandey. The mob was there. He came to know that Sanju was assaulted with Bhujali. **The persons present at the place of occurrence had caught hold of Sandeep Kumar Tripathy. The accused was also beaten by the villagers. The "Bhujali" and the bag were also seized. Seizure memo of the bloodstained soil was also prepared. He put his signature thereon marked Ext. 6/1.** In cross-examination this witness says he came to know in regard to the occurrence after hearing Hulla. He did not see the accused assaulting to the deceased.

12.9 **P.W.9-Bhola Ghosh** in his Examination in chief says that he put his signature on the Inquest report of deceased which he identifies and marked Ext. 5/1.

12.10 **P.W.10-Nimai Singh Sardar** in his Examination-in-chief says the **seizure memo of the Bhujali and a black colour air bag was recovered from Sandeep Kumar Tripathy. The seizure memo of the same was prepared. He put his signature marked Ext. 2/1.** He reached to the place of occurrence after 10 to 15 minutes.

12.11 **P.W.11-Bheem Singh** in his Examination-in-chief says the seizure memo of the "Bhujali" and a black colour bag was prepared. He put his thumb impression thereon and identifies the

same. In cross-examination this witness says he did not see the occurrence.

12.12 **P.W.12 Dilip Gagrai** is the Investigating Officer. This witness in his Examination-in-chief says on 01.06.2012 he was posted at M.E.M. Police Station of District Jamshedpur. He recorded the *fardebayan* of Niranjana Kumar Pandey in T.M.H. Hospital. This *fardebayan* is in his hand writing and signature marked Ext. 4/2. It was forwarded by him to Mango Police Station. The forwarding is in his pen and signature marked Ext. 4/1. The investigation of this case crime was handed over to him by the Station In-charge Officer of the Police Station Mango. The formal F.I.R. was in hand writing of Ram Charitra Pal. He identifies his signature and writing marked Ext.7. **During investigation first of all “Bhujali” was seized by him which was handed over to him by the villager Digambar Singh Sardar. The “Bhujali” was bloodstained. Its seizure memo is in his handwriting and signature which he identifies marked Ext. 2/2.** The Inquest report of the deceased is in his pen and signature marked Ext. 5/2. He got the postmortem of deceased conducted in M.G.M. Hospital. The place of occurrence is situated in Turiabera. The bloodstained soil was also taken in his possession and seizure of the same was prepared which is in his pen and signature marked Ext.6/2. Thereafter he recorded the restatement of the informant and also recorded the statement of Digambar Singh Sardar, Rudan Singh Sardar, Bheem Singh Sardar, Nimai Singh Sardar, Govind

Singh Sardar, Suphal Singh Sardar who all supported the prosecution story. The accused was arrested by him on 01.06.2012 after having received his injury report. The accused had been caught hold by the villagers. Thereafter he recorded the confessional statement of the accused which is in his pen and signature marked Ext.8. He received the postmortem report of deceased Sanju Pandey. During investigation he also seized the bloodstained apparel of Sandeep Kumar Tripathy. The seizure memo of the same was prepared. The witness of which were Shankar Kumar Sao and Sanjay Pandey i.e. in his pen and signature marked Ext.9. **The bloodstained Sari, Petticoat of Sanju Pandey were also seized. The seizure memo of the same in his pen and signature marked Ext. 1/2.** Thereafter the photographs of the place of occurrence were also obtained by him. All the seized articles were sent to Forensic Science Laboratory for examination and the charge-sheet was filed against Sandeep Kumar Tripathy. In cross-examination this witness says **he had received the information of the occurrence during his patrolling and also reached to place of occurrence having seen the mob at the place of occurrence. It was 12:30 of night. Digambar Singh Sardar, Bheem Singh Sardar, Rudan Singh Sardar and the other persons of the village were present there. Those persons had caught hold of the accused. No written information was given of the occurrence. He did not commence the investigation and he did not make any entry to**

this effect in station diary of the Police Station concerned. During patrolling they were along with three police constables and one was Police Officer Mahesh Ram. He left the place of occurrence at 11:15 in night and did not lodge the FIR of his own. The accused who was in custody of the villagers, he did not take the custody of him rather being in injured condition the accused was sent for medical examination. He arrested the accused on 01.06.2012. After having left the place of occurrence, he reached to T.M.H. at 2:30. In this case, he did not find any eye- witness. All the material exhibits were sent for examination by him in three packets. Today same are not produced in Court. **In regard to the one sided love and first introduction at Chhattisgarh and when the husband of deceased came to know he did not investigate.** Whether at the place of occurrence there was source of light or not he did not make entry to this effect in case diary. As per prosecution case, the occurrence is of 31st May, 2012 at 10:30 of night.

13. From the very perusal of the F.I.R. the motive of the occurrence is shown that the deceased-wife of the informant had gone to the house of her brother at Chhastishgarh wherein the appellant/convict had come in her contact in some ceremony therein and he began to have a one-sided love for the wife of informant. The wife of the informant has opposed this conduct of the appellant/convict. On the day of occurrence the appellant/convict had come to the house of informant when the

wife of the informant was alone and he was teasing the wife of informant. It also came in evidence of P.W.4-Sanjay Kumar Pandey @ Ajay Kumar Pandey, the brother-in-law (Devar) of the deceased that the appellant/convict used to make phone call on the mobile phone of the deceased. The informant has also deposed this motive while proving the contents of the F.I.R. in his statement as P.W.7 has stated that the appellant/convict being heart broken and dejected in the one-sided love when he was teasing the wife of the informant, his wife had made phone call to him at about 9:45 in night when the informant P.W.7-Niranjan Kumar Pandey had gone to earn his livelihood by plying the Auto and having received the phone call of his wife, he came back to his house. **Therefore, this motive of the occurrence is well proved from the prosecution evidence of P.W.7-Niranjan Kumar Pandey and P.W.4-Sanjay Kumar Pandey @ Ajay Kumar Pandey who are respectively the husband and the Devar of the deceased who were aware of this motive as told to them by the deceased.**

14. The prosecution witness P.W.1-Rudan Singh has been posed as the eye-witness on behalf of prosecution. This witness P.W.1-Rudan Singh has come to the place of occurrence after hearing the Hulla raised by the injured wife of the informant and he saw the wife of the informant Sanju Pandey having caught hold of one boy and was in injured condition sustaining injury in her stomach told to him that it was the very boy who had given Bhujali blow in her stomach and asked not to allow him to flee

away. The house of this witness is adjoining to the house of deceased. After he reached to the place of occurrence, P.W.2-Digambar Singh also reached to the place of occurrence. The boy who was being caught hold of by the deceased-wife of the informant was then caught hold of by P.W.2-Digambar Singh who has admitted this fact in his testimony.

15. Therefore, **the testimony of this P.W.1-Rudan Singh is admissible as an eye-witness for the part occurrence that having reached the place of occurrence, he had seen the wife of informant in injured condition having caught hold of the appellant/convict.**

15.1 Further the injured wife of the informant had told to P.W.1-Rudan Singh that it was the very boy to whom she had caught hold of him had given a blow with "Bhujali" in her stomach. The "Bhujali" was also found lying there stained with blood. **This declaration made by the deceased while in injured condition to P.W.1-Rudan Singh also becomes admissible in evidence as a dying declaration after death of wife of informant under Section 32 of the Evidence Act.**

15.2 The dying declaration of the deceased-wife of the informant while in injured condition before P.W.1-Rudan Singh was made soon after the occurrence as hearing the alarm the P.W.1-Rudan Singh had reached there. Though the deceased wife of the informant at that time had sustained the injury in her stomach

given by the “Bhujali” by the appellant/convict, yet simultaneously she had caught hold of the accused. **As such she was physically and mentally fit to make the declaration before P.W.1 Rudan Singh. While making declaration by the deceased in injured condition there was no occasion to give the certificate by the Doctor of her mental condition; but her physical and mental condition was found fit by this witness P.W.1-Rudan Singh while she made declaration to him.**

15.3 It is the settled law that **the dying declaration may be oral or in writing. But while relying dying declaration the Court has to satisfy whether it was made in fit state of mind. There is no prescribed format of recording the dying declaration. If the dying declaration is the oral and is very terse that may also inspires the confidence in regard its truthfulness. The dying declaration made by the deceased while in injured condition was prompt and was in fit state of mind and from the very conduct of the declarant at the time of making dying declaration having caught hold of the culprit who had given her Bhujali blow is ample evidence in regard to her physical and mental state of mind. Therefore, even without any certification of the Doctor such dying declaration shall be admissible and reliable.**

15.4 The Hon'ble Apex Court held in ***Laxman vrs. State of Maharashtra (2002) 6 SCC 710*** that the mere absence of

doctor's certification as to fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable- The evidentiary value of such dying declaration depends on the facts and circumstances of each case.

15.5 The Hon'ble Apex Court in ***Sher Singh vrs. State of Punjab (2008) 4 SCC 265*** has enumerated the duty of the Court while deciding the credibility of dying declaration in para 16 which reads as under:

16. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross-examination are dispensed with in case of a dying declaration. Since the accused has no power of cross-examination, the court would insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court should ensure that the statement was not as a result of tutoring or prompting or a product of imagination. It is for the court to ascertain from the evidence placed on record that the deceased was in a fit state of mind and had ample opportunity to observe and identify the culprit.....

15.6 The Hon'ble Apex Court held in ***Labh Singh vrs. State of Punjab (1976) 1 SCC 181*** that the very brevity and rugged simplicity is a guarantee of the genuineness of dying declaration made by rustic villager.

15.7 Therefore, the testimony of this witness P.W.1-Rudan Singh is partly admissible as an eye-witness of the part occurrence and is partly admissible as a witness of the dying declaration before whom the deceased had made dying declaration while in injured condition.

16. The testimony of P.W.1-Rudan Singh is also corroborated with the testimony of P.W.2-Digambar Singh. The house of P.W.2-Digambar Singh is adjoining to the house of deceased.

There is only one wall between the house of deceased and P.W.2-Digambar Singh as deposed by him in his statement.

This witness also reached to the place of occurrence having heard Hulla and on reaching the place of occurrence, he caught hold of the appellant/convict who has given the "Bhujali" blow to the wife of the informant and in the meantime several persons of the locality and P.W.7 Niranjana Kumar Pandey and P.W.4 Sanjay Kumar Pandey @ Ajay Kumar Pandey also came there. P.W.4 Sanjay Kumar Pandey @ Ajay Kumar Pandey when reached at the place of occurrence he also found his Bhabhi in injured condition and the accused was also caught hold of by P.W.2 Digambar Singh. Likewise P.W.7 Niranjana Kumar Pandey @ Pappu Pandey after having received the phone call from his wife he came back to his house when has gone to ply the Auto to earn his livelihood. On reaching to his house, he found P.W.1-Rudan Singh, P.W.2-Digambar Singh, P.W.10 Nimai Singh Sardar and several other persons of the locality. He found his wife in injured condition. Bloodstained "Bhujali" was also lying there and the accused was being caught hold by the villagers.

16.1 So far as the testimony of P.W.2-Digambar Singh, P.W.4-Sanjay Kumar Pandey @ Ajay Kumar Pandey, P.W.7-Niranjana Kumar Pandey @ Pappu Pandey, P.W.8 Suphal

Singh Sardar, and P.W.10 Nimai Singh Sardar are concerned, as per their testimony all these witnesses had reached to the place of occurrence and found the deceased Sanju Pandey in injured condition. Bloodstained Bhujali was lying there and the accused was in custody of P.W.2-Digambar Singh and all these witnesses came to know thereon that the accused in custody had given a “Bhujali” blow to the deceased-wife of the informant. **As such the testimony of all these witnesses also becomes admissible in evidence under Section 6 of the Evidence Act as a res gestae evidence**

16.2 The Hon’ble Apex Court held in ***Bhairon Singh vrs State of M.P. AIR 2009 SC 2603*** at para 16 as under:

16.The rule embodied in Section 6 is usually known as the rule of res gestae. What it means is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. To form particular statement as part of the same transaction utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after its occurrence. Section 6 of the Evidence Act, in the facts and circumstances of the case, insofar as SC2609 admissibility of a statement of PW-4 and PW-5 about what the deceased had told them against the accused of the treatment meted out to her is concerned, is not at all attracted.

17. Further the **testimony of P.W.1-Rudan Singh and the oral dying declaration made to him by the deceased is also corroborated with the testimony of P.W.12-Dilip Gagarai the Investigating Officer.** This witness has stated that he had received the information of the occurrence during his patrolling

and had reached to the place of occurrence and saw the mob at the house in front of the house of deceased. It was 12:30 of night. Digambar Singh Sardar, Bheem Singh Sardar, Rudan Singh Sardar and other persons of village were present there. Those persons had caught hold of accused. No written information was given by anyone to him. Therefore, he did not commence the investigation and he also did not make the entry to this effect in the Station Diary of the Police Station concerned. At that time in Police patrolling with him were the three police constables and one police official Mahesh Ram.

18. Further **the testimony of P.W.1-Rudan Singh is also found corroborated with the medical evidence of P.W.3 Dr. Niranjan Minj** who had conducted the postmortem of deceased Sanju Pandey and has shown the following ante-mortem injuries:

Stabbed wound

(1) 2 ½ cm x 2 cm x cavity deep, sharp on right chest front over right breast, 2 ½ below the right nipple a can right to mid line.

The weapon entered into the thorasic cavity between the 5th intercostal space right side. Perforated the right lung and entered into the liver 3 & ½ cm deep.

(10) 1 x ½ cm x soft tissue on right chest fronts 6 cm below the right nipple.

(11) 2 x 1 & 1/2 cm x soft tissues on right chest front, 15 cm right to mid line, the weapon was confined to the chest wall only.

(12) **Incised wound**

2cm x 1cm x soft tissues left thumb fronts

Presence of blood & blood clots in the thorasico abdominal cavity

and also **opined that all these injuries were caused by sharp cutting and pointed weapon. Cause of death was due to haemorrhage and shock and also proved the postmortem as Ext.3.**

19. The bloodstained Bhujali was recovered from the possession of the accused along with his one black colour air bag, the recovery memo of the same was prepared by P.W.12-Dilip Gagari. P.W.10 Nimai Singh Sardar and P.W.11 Bheem Singh Sardar have also proved the seizure memo of Bhujali as Ext.2. The bloodstained soil from the place of occurrence was taken by the Investigating Officer P.W.12-Dilip Gagari and the recovery memo of the same is also proved by P.W.12-Dilip Gagari and also the witness thereof P.W.8 Suphal Singh Sardar and P.W.6 Govind Singh. Though this "Bhujali" was not produced during trial, yet this laches on the part of prosecution cannot be the ground to disbelieve the testimony of P.W.1-Rudan Singh who is the eye-witness of the part occurrence and to whom the dying declaration was also made by the deceased while catching hold of the accused and that it was the accused who had given Bhujali blow to her. This dying declaration made by the deceased while in injured condition soon after the occurrence to P.W.1-Rudan Singh is also being corroborated with the testimony of P.W.2-Digambar Singh Sardar, P.W.4-Sanjay Kumar Pandey @ Ajay Kumar Pandey and P.W.7-Niranjan Kuma Pandey @ Pappu Pandey informant,

P.W.8-Suphal Singh Sardar and P.W.10-Nimai Singh Sardar whose testimony also becomes admissible as a res gestae evidence though they have not seen the accused giving blow with “Bhujali” to the deceased, yet on reaching place of occurrence they found the deceased in injured condition and the accused was in custody who was handed over to Rudan Singh by the deceased while making dying declaration and subsequently remained in custody of P.W.2-Digambar Singh Sardar and other villagers who were present thereon.

20. Moreover, the bloodstained swab from the Bhujali Ext.A., bloodstained sari cutting Ext. B/1, bloodstained Saya cutting Ext. B/2, bloodstained blouse cutting Ext. B/3, bloodstained bra cutting B/4 of deceased and the bloodstained Gamchha cutting B/5, bloodstained Jeans pant cutting Ext.C of accused were sent by the I.O. for examination to F.S.L. As per F.S.L. report Ext. 11/1 it is found that the blood group of the sari cutting, Saya cutting, blouse cutting of the deceased as well the blood group of the Gamchha cutting and Jeans Pant cutting of the accused were of the same blood group B of deceased.

21. Further the plea raised by the learned Counsel for the appellant that the dying declaration which was made by the deceased before P.W.1-Rudan Singh was not explained to the accused Sandeep Kumar Tripathy in his statement under Section 313 of Cr.P.C. is not found tenable because from the very

question No.1 and the reply given by the accused, it is found that the dying declaration made to P.W.1-Rudan Singh is also the part of the testimony of Rudan Singh along with other witnesses of whose statements were explained by the trial court to the accused including all the incriminating circumstances therein. Moreover, the learned Counsel for the appellant has failed to show what prejudice is caused to him if specifically this dying declaration was not placed to him to explain; while the whole testimony of P.W.1-Rudan Singh was explained to the accused.

22. So far as the non-production of the "*Bhujali*" during trial by the prosecution witness is concerned, the same cannot be fatal because the seizure memo of blood stained "*Bhujali*" is well proved by the prosecution witnesses. Further the swab of the blood from the "*Bhujali*" was also sent to the F.S.L. in which the blood group was found to be group B which was of deceased.

23. In view of the above analysis of evidence on record, we are of the considered opinion that the impugned Judgment of Conviction and Sentence passed by the learned trial court needs no interference. Accordingly, this Cr. Appeal deserves to be dismissed.

24. This Cr. Appeal is **dismissed**. The impugned Judgment of Conviction and Sentence passed by the learned trial court is affirmed.

25. Let the record of court-below be sent back along with the copy of the Judgment.

I agree

(Subhash Chand, J.)

(Ananda Sen, J.)

(Ananda Sen,J.)

Jharkhand High Court, Ranchi
Dated the 19.06.2024
P.K.S./A.F.R.