
(2018) 11 JH CK 0013

In the Jharkhand High Court

Case No : Criminal Appeal (Jail) No.455 of 2008

Barega Bage @ Berga Bage, S/o Late Mando Bage

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 28-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 154, 161, 165A, 302, 342
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 11 JH CK 0013

Hon'ble Judges : Anant Bijay Singh, J;Kailash Prasad Deo, J

Bench : Division Bench

Advocate : Vishal Kumar Singh, Arun Kumar Pandey

Final Decision : Allowed

Judgement

1. Heard, Mr. Vishal Kumar Singh, learned counsel appearing for the appellants and Mr. Arun Kumar Pandey, learned Additional Public Prosecutor appearing for the State.

2. The instant Criminal appeal has been preferred by the aforesaid three appellants being aggrieved and dissatisfied with the Judgment of conviction

dated 27th July, 2007, and order of sentence, dated 04.08.2007, passed by Pradeep Kumar, learned Additional Sessions Judge, Fast Track Court- Vth,

West Singhbhum at Chaibasa,, in Sessions Trial No.120 of 2006/ S.T.R. No.38 of 2006, arising out Manjhari (Tatnagar O.P.) P.S. Case No.11 of 2006

(dated 02.04.2006) corresponding to G.R. No.191 of 2006, whereby learned trial court has convicted the appellants under Section 302 read with

Section 34 I.P.C. and awarded sentence to undergo imprisonment for life.

3. Vide order dated 05.05.2008 passed by the Hon'ble Division Bench, delay in filing the instant Criminal Appeal was condoned and further vide order

dated 06.05.2008, it was admitted for hearing and L.C.R. was called for and Mr. Binod Singh, Advocate was appointed as amicus curiae to assist the

Court on behalf of the appellants.

Further, it appears that vide order No.4, dated 16.12.2010, the prayer for bail was allowed to appellant No.3 (Radhi Bage) after furnishing bail bond of

Rs.10,000/-.

Further, record also reveals that Interlocutory application bearing I.A. No.2195 of 2017 was preferred by the appellants, Barega Bage and Balima

Bage through their counsels, Sri Vishal Kumar Singh and Sri Ashok Kumar Singh and vide order No.5 dated 28.03.2017, prayer for bail of appellant

No.2 (Balima Bage) was allowed after suspending the sentence, as the appellant No.2 has been languishing in jail custody since 03.04.2006 i.e. more

than 11 years. Thereafter this criminal appeal was listed before this Court on 24.10.2018 and thereafter on 31.10.2018, and on 31.10.2018, learned

counsel for the appellant prayed some time to ascertain the fact that the appellant No.1 is alive or not.

Further, report dated 30.10.2018 sent by the Superintendent of Police, West Singhbhum, Chaibasa has been received whereby it appears that all the

appellants are alive and they are residing at Jamshedpur. Thereafter the matter was heard on 02.11.2018.

4. The case of the prosecution, as unfolded in the 'fardbeyan' of informant, Malti Bage (P.W.1), W/o Dulu Bage [although declared hostile by the

prosecution], recorded by Sub Inspector of Police, Sri T. P. Singh of Tant Nagar Police O.P. on 02.04.2006 at 10.45 hrs, is that the informant is giving

his 'fardbeyan' with support of one Siram Birua (P.W.3), as the informant does not understand Hindi wherein she has alleged that one Jambira Bage

@ Lola, who is son of his 'bhaisur' (elder brother of her husband), 15 days ago, has brought one lady after marriage from Lagra. Last evening at 8.00

o' clock, the mother-in-law and father-in-law of lady evicted her stating that character of the lady is not good, whereupon lady (Jerain Bage, not

examined in this case) along with her husband, Jambira Bage (not examined in this case) came to the house of the informant. Thereupon, the husband

of the informant, Dulu Bage went to the house of his brother, Barega Bage and tried to reconcile the matter.

Thereupon, Basia, wife of Barega Bage, started abusing her husband, and then,

the daughter of Barega Bage, Radhi Bage (appellant No.3), Lawni

Bage and son, Mando Bage came there and all of them, in front of the house of the informant, in the 'sahan', thrashed the husband of the informant,

Dulu Bage and caught-hold of him and Barega Bage (appellant No.1) took out knife from his house and assaulted the husband of the informant by

means of knife on left side of neck, causing injuries, and pushed him towards the wall of house of Narayan Bage, where bamboo stick was lying

which got smeared with blood. With the bamboo stick, Barega chased the informant.

The informant went to the house of Dakua and disclosed the incident. Thereafter Dakua along with informant came to the house of the informant and

till then husband of the informant, Dulu Bage already died.

It has categorically been alleged that the occurrence has been witnessed by the sons of the informant, Ram Bage (P.W.7), Lakhan Bage (P.W.2) and

one Yadav Bage (P.W.6).

On the basis of the aforesaid 'fardbeyan' of the informant, the Police instituted First Information Report bearing Manjhari (Tatnagar O.P.) P.S. Case

No.11 of 2006 (dated 02.04.2006) corresponding to G.R. No.191 of 2006 under Sections 342 /302 / 34 of the Indian Penal Code against the five

named accused persons.

5. After investigation, the Police submitted charge-sheet against the five accused persons including the present appellants vide Charge-sheet No.21 of

2006 dated 11.05.2006 under Section 302 /34 of the Indian Penal Code.

6. The cognizance of the offence has been taken vide order dated 11.05.2006 and the case has been committed to the Court of Sessions vide order

dated 25.05.2006. The charge has been framed against the appellants/ accused persons under Section 302/34 I.P.C. on 14.08.2006, to which the

appellant/accused persons pleaded not guilty and claimed to be tried and thus, they were put under trial.

7. During the course of trial, the prosecution, in order to prove its case, has examined altogether twelve witnesses and also adduced a number of

documentary evidences as Exhibits.

8. Malti Bage, informant of the case, has been examined as P.W.1 (though declared hostile by the prosecution), Lakhan Bage (son of the deceased-

Dulu Bage), a hearsay witness has been examined as P.W.2, Siram Birua, a Government Teacher has been examined as P.W.3 and he helped Sri

Tun Tun Prasad Singh, the Sub Inspector of Police and Officer-in-charge, Tatnagar Police O.P. in recording the fardbeyan of the informant (P.W.1)

in Hindi, as she does not understand Hindi.

Fagu Ram Hasda, also a hearsay witness has been examined as P.W.4, Bhim Sen Barda, also a hearsay witness has been examined as P.W.5,

Yadav bage has been examined as P.W.6 and although he has been cited as one of the witnesses in the 'fardbeyan' of P.W.1, but he has been

declared hostile by the prosecution.

Ram Bage, aged about 8 years and a child witness, son of the informant (P.W.1) has been examined as P.W.7, Nemo Hembrom, also a hearsay

witness has been examined as P.W.8. Karan Hansda has been examined as P.W.9 and he is a seizure list witness who has proved his signature on

the seizure list of the blood-stain soil, which was seized by the Police and also the bamboo stick which has been marked as Exhibit-3/1.

Kuwar Birua, also a hearsay witness has been examined as P.W.10.

Dr. Sudama Prasad, a Medical officer has been examined as P.W.11, who conducted post- mortem on the dead body of the deceased (Dulu Bage),

Tun Tun Prasad Singh has been examined as P.W.12 and he has recorded the fardbeyan of the informant and is also Investigating officer of the case

9. Signature of Siram Birua (P.W.3) on the inquest report has been proved and marked as Exhibit-1, signature of Siram Birua (P.W.3) on fardbeyan

has been proved and marked as Exhibit-2, signature of Siram Birua (P.W.3) on the seizure list has been proved and marked as Exhibit-3, signature of

Fagu Ram Hasda (P.W.4) on the inquest report has been proved and marked as Exhibit-1/1, signature of Karan Hansda (P.W.9) on the seizure list

has been proved and marked as Exhibit-3/1, Post- mortem report of deceased (Dulu Bage) has been proved and marked as Exhibit-4, fardbeyan has

been proved and marked as Exhibit-5, inquest report has been proved and marked as Exhibit-6 and seizure list has been proved and marked as Exhibit-

7.

It appears that serological test of the blood-stained soil and the bamboo stick was done by the Forensic Science Laboratory and the report dated

12.02.2008 is on record, but it has not been marked as Exhibit.

10. After closure of the prosecution evidence, the statement of the accused persons/ appellants has been recorded under Section 313 Cr.P.C. on

11.06.2007, to which the appellants have denied about the occurrence and have stated that they are innocent.

11. The point of adjudication of this case before this Court is whether in view of the evidence of P.W.1 (Malti Bage), informant and wife of the

deceased and P.W.7 (Ram Bage), a child witness, who is also supposed to be an eye-witness read with evidence of P.W.11 (Dr. Sudama Prasad)

and the Post-mortem report (Exhibit-4), the prosecution has been able to prove its case beyond all reasonable doubt against the accused persons?

12. P.W.1 (Malti Bage) in examination-in-chief in the Court, has stated that the occurrence is five months old and it was Saturday and she was inside

the house and her husband (Dulu Bage) was sitting outside the house. Radhi has caught-hold the hand of her husband and Mando has caught his neck

and Barega assaulted the husband of the informant and also chased the informant.

The motive for occurrence is that the son of Barega has brought a lady, but his father was not allowing her to remain in the house whereupon Dulu

has requested to permit the lady to remain in the house and for that hot exchange of words took place.

In examination-in-chief, she has not stated that Barega assaulted her husband by knife, as she was inside the house and when her son (P.W.2-

Lakhan Bage) called her, she has noticed that Dulu has received injury on the neck and has died.

She has further stated that the Police came on Sunday and recorded the statement but she was declared hostile by the prosecution and the prosecution

has examined her with respect to the alleged statement.

In her cross-examination by the prosecution, she has stated that she has said before the Police that Radhi Bage and Lawni Bage have caught-hold left

and right hands of Dulu and Mando Bage has also caught him from behind and Barega took out a knife and assaulted him on the left neck and thrown

him on the ground towards the house of Narayan Bage and one bamboo stick was there which got smeared with blood.

In cross-examination by the defence, she has categorically stated that there is no electricity in her house. At 8 Oâ?? clock, it was dark and

â??dibriâ?? was burning inside, but outside the house there was no light and she has stated that the Police has recorded the statement twice, but

denied the suggestion by the defence that she has falsely implicated the appellants in this case.

13. P.W.7 (Ram Bage), son of the informant and the deceased, has been cited as a fardbeyan witness by P.W.1 and has been alleged to have seen

the occurrence, but in his examination-in-chief, he has stated that the occurrence is 8 months old and he was sleeping in the house.

He has further stated that Balima, Radhi and Lawani have caught-hold of his father and Barega has assaulted on neck of his father by knife. On hulla,

he woke up and he saw the dead-body of his father.

In cross-examination, he has categorically stated that he has not seen the appellant No.1 (Barega) assaulting his father, as he was sleeping in the

house.

14. P.W.2 (Lakhan Bage), who is cited as an eye-witness in the fardbeyan of the informant (P.W.1), but P.W.2 in his examination-in-chief has

admitted the fact that the quarrel has taken place and Barega has assaulted his father by means of knife and the occurrence took place in his

presence.

They were also assaulting his mother and the mother was inside the house. He asked her as his father was being assaulted, informed about the

occurrence and then she came outside the house. In cross-examination, he has stated that there is no electricity in the house.

He and his uncle lives in separate houses. When the court asked the question, he stated that none of the villagers has come after the occurrence and it

was night.

They remained in the house and subsequently they disclosed the occurrence to Nimu and Narsingh.

15. P.W.3 (Siram Birua) is also a hearsay witness, who has stated in examination-in-chief that wife of Dulu and son disclosed about the occurrence

and then he went to the place of occurrence.

On the next day, Police came and in front of him, inquest report was prepared. He being a formal witness, has put his signature and the same has

been proved and marked as Exhibit-1. In cross-examination at Para-19, he has stated that when he reached to the place of occurrence, he noticed the

blood stained bamboo, but he has not seen the knife.

He has stated at Para-23 that he had seen Barega fleeing from the place of occurrence from 18 to 23 feet. He has claimed that he can see up-to 50

feet in the night. He has admitted that he wears spectacle since 2000, as his eyesight is weak and Doctor prescribed him spectacle. He has denied

the suggestion of the defence that Barega has not assaulted Dulu and he is giving false evidence to falsely implicate him.

He has stated that he has translated, version of the informant (P.W.1) in Hindi and put his signature on the fardbeyan and the same has been proved

and marked as Exhibit-2 and further the Police has seized blood-stained bamboo stick and blood-stained soil from the place of occurrence and

prepared the seizure list which has been proved and marked as Exhibit-3.

16. P.W.4 (Fagu Ram Hasda) is inquest witness and a hearsay witness. He put signature on the inquest report which has been proved and marked as

Exhibit- 1/1.

17. P.W.5 (Bhim Sen Barda) has stated that it was 1st April at 7-8 p.m., he was inside the house and on hulla, he heard that wife of Dulu has told that

her husband has been murdered. He went to the house and noticed the dead-body. In cross-examination, he has stated that he has not seen the

occurrence and on the basis of hearsay, he is deposing in the Court.

18. P.W.6 (Yadav Bage) although has been cited as one of the witness in the fardbeyan of the informant (P.W.1), but in examination-in-chief, he has

stated that he does not know anything about the occurrence.

He has been declared hostile. With respect to the alleged statement, he has stated that he has not stated before the Police that who has killed Dulu, he

does not know.

19. P.W.8 (Nemo Hembram) is also a hearsay witness and he has stated that after hearing occurrence, he went to the place of occurrence and

noticed blood-stained bamboo stick and also there was some blood on the wall of house of Narayan Bage and also noticed the deadbody of Dulu.

20. P.W.9 (Karan Hansda) is a seizure list witness and he has put his signature which has been proved and marked as Exhibit-3/1. Bamboo-stick

stained with blood was seized by the Police.

21. P.W.10 (Kuwar Birua) is also a hearsay witness and he has stated that on 1st

April, 2006, while he was taking his meal, he heard the voice of wife of Dulu that Barega has murdered his husband. He went thereafter and noticed the dead body. He has stated in cross-examination that he deposed in the Court on the basis of hearsay, the version he has heard from the other witnesses.

22. P.W.11 (Dr. Sudama Prasad), Medical Officer, posted at Sadar Hospital, Chaibasa and on 02.04.2006, he conducted post-mortem upon the deadbody of Dulu Bage, S/o Late Mando Bage, Resident of Village- Baru Dangwa, P.S. Manjhari Tant Nagar O.P. brought by Dasrath Singh. He

conducted post-mortem and found the following ante-mortem injuries :-

(1) External Injury - "incised wound on the left side of neck above cleical of size 2" x 1" x 3" with blood clot present.

(2) On Internal examination - " head and neck - Cutting of major vessels of left side of neck. Thorax - heart- empty, Stomach - Semi digested food material. Bladder - empty. Other viscera - NAD.

In my opinion - " cause of death sharp cutting substance. The aforesaid injury was sufficient to cause death in the ordinary course of nature.

Time since death - " in between 6 to 36 hours.

In my opinion the deceased died due to shock and haemorrhage due to above injury. Post-mortem report has been proved and marked as Exhibit-4.

In examination-in-chief, he has also stated that same injury can be caused by - " chura". In cross-examination, he has stated that injury may be caused by fall upon sharp edged substance.

23. P.W.12 (Tun Tun Prasad Singh), Sub Inspector of Police and the Investigating officer of the case, posted on 02.04.2006 at Tatnagar Police O.P.

as Officer-in-charge and he received rumour that in the preceding night in the Village- Baru Dangua, a deadbody is lying. He made Daily Diary Entry

No.18 dated 02.04.2006 and proceeded to the place of occurrence. He reached the house of Dulu Bage (deceased) and noticed the deadbody of Dulu lying in the cot in the house.

He recorded the statement of the informant (P.W.1).

He proved the fardbeyan in his handwriting which has been marked as Exhibit-5. He has stated that with the support of Siram Birua (P.W.3) who

interpreted the version of P.W.1, recorded the fardbeyan and also there is

signature of Siram Birua (P.W.3) on the fardbeyan.

On the basis of the fardbeyan, First Information Report was instituted, inquest report was prepared which has been proved and marked as Exhibit-6

and the dead body was sent for post- mortem through Constable- Dasrath Singh. Further in examination-in-chief, he has stated that at 12.15 noon, he

inspected the place of occurrence.

The place of occurrence is situated within Tatnagar O.P. Police Station in the Village- Baru Dangua which is sahan situated at east north of the house

of the informant (P.W.1) which is east facing to the place of occurrence. About 3' x3' blood was spilled over and in the northern side of place of

occurrence, house of Narayan Bage (not examined) is situated.

He further noticed that in southern east wall of Narayan Bage at the height of 3 feet, blood has spilled over the wall. He has further stated that further

in the east, house of Sabja Bage (not examined) is situated and further in the south, the house of Barega Bage (appellant No.1) which is having brick-

tiles and asbestos roof house is situated. Amongst the houses in four sides, Sahan of 22'x16' is situated between the house of the deceased

and the accused in common and on the north-west side of the sahan is the place of occurrence.

Further in the north after the house of Narayan Bage, land of Fotwa Muslim is situated and further in the south, house of accused, Barega Bage is

situated and after his house, house of Rothe Barda is situated.

He went to the place of occurrence and seized three feet long bamboo-stick with blood-stained and seizure list was prepared which has been proved

and marked as Exhibit-7. P.W.12 (Tun Tun Prasad Singh) has further recorded subsequent statement of the informant (P.W.1) and also recorded

statement of Siram Birua (P.W.3), Fagu Ram Hasda (P.W.4), who supported the case of the prosecution. He tried to search the knife, but could not

seize the knife.

On the next day i.e. 03.04.2006, he arrested the accused, Barega Bage from his house, recorded statement and arrested him and remanded and he

was produced before the Court and the statement was also recorded.

The exhibits which were seized from the house i.e. bamboo-stick with blood-stained was sent for Forensic Science Laboratory after getting

permission from the Court.

After completion of the investigation, final form was submitted. In his cross-examination, he has stated that he has not enquired from the munda of

Village- Baru Dangwa.

He has not verified the papers of land of joint possession of both the parties. He also did not record the statement of Deepak Gope.

He also stated that blood-stained soil and the bamboo-stick which were seized and sent to F.S.L. While deposing in the Court, the report of F.S.L. was

not with him. He denied the suggestion of defence that investigation of the case is defective.

24. Learned Additional Public Prosecutor appearing for the State while going through the evidence, has categorically stated that although P.W.1 has

been declared hostile who is informant of this case, but has supported her fardbeyan. Learned counsel for the State in support of his submission, has

relied upon a decision in the case of Devraj Vs. State of Chhatisgarh, reported in (2016) 13 Supreme Court Cases 366. Paras 17 to 20 of the case of

Devraj Vs. State of Chhatisgarh (supra) read as follows :-

-Held, evidence of hostile witness can be relied on, if there are some other material, on basis of which, said evidence can be corroborated â?" More

so, that part of evidence of witness, as contained in examination-in-chief, which remains unshaken even after cross-examination, is fully reliable, even

through witness has been declared hostile â?" Murder trial â?" Herein, in spite of eye-witnesses P.Ws. 13 and 16 having been declared as hostile

witnesses, their evidence, that appellant-accused assaulted deceased, is unshaken, and has rightly been relied upon by courts below in recording

appellant's conviction â?" Penal Code, 1860 â?" S. 302 â?" Evidence Act, 1872, S. 154 (2) (Paras 17 to 22).

17. In a three-Judge bench judgment of this Court in Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389, the witness Jagat Singh was declared

hostile. The appellant was convicted under Section 165AIPC. It was contended that the whole case is destroyed since the witness was declared as

hostile. In the aforesaid decision the Court held that there is no legal bar to base a conviction upon his testimony if corroborated by other reliable

evidence. Following was stated in paragraph 8:

â??8. We have carefully perused the evidence of Jagat Singh, who was examined

in the trial after more than a year of detection of the case. The prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge against the appellant. If Jagat Singh had accepted the bribe he would have been guilty under Section 161 IPC. There is, therefore, clear abetment by the appellant of the offence under Section 161 IPC and the ingredients of Section 165-AIPC are established against him.â??

18. Another judgment which needs to be noted is *Khujji v. State of M.P.*, (1991) 3 SCC 627. This Court in the above case held that merely because a witness was declared hostile, his entire evidence cannot be treated as effaced from the record, his testimony, to the extent found reliable, can be acted upon. In paragraph 6 following was observed:

â??6.....The evidence of PW 3 Kishan Lal and PW 4 Ramesh came to be rejected by the trial court because they were declared hostile to the prosecution by the learned Public Prosecutor as they refused to identify the appellant and his companions in the dock as the assailants of the deceased. But counsel for the State is right when he submits that the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of the evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court â??" Bhagwan

Singh v. State of Haryana, (1976) 1 SCC 389, *Rabindra Kumar Dey v. State of Orissa*, (1976) 4 SCC 233 and *Syad Akbar v. State of Karnataka*, (1980) 1 SCC 30, â??" that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as

hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can

be accepted to the extent their version scrutiny thereof.....â?? is found to be dependable on a careful

19. The above propositions have again been reiterated by this Court in Vinod Kumar vs. State of Punjab, (2015) 3 SCC 220, where in paragraph 31

following has been stated: â??31. The next aspect which requires to be adverted to is whether testimony of a hostile evidence that has come on

record should be relied upon or not. Mr. Jain, learned senior counsel for the appellant would contend that as PW- 7 has totally resiled in his cross-

examination, his evidence is to be discarded in toto. On a perusal of the testimony of the said witness, it is evincible that in examination-in-chief, he has

supported the prosecution story in entirety and in the cross-examination he has taken the path of prevarication. In Bhagwan Singh V. State of

Haryana, (1976) 1 SCC 389, it has been laid down that even if a witness is characterized as a hostile witness, his evidence is not completely effaced.

The said evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable

evidence. In Khuji @ Surendra Tiwari V. State of Madhya Pradesh,(1991) 3 SCC 627, the Court after referring to the authorities in Bhagwan Singh

(supra), Rabindra Kumar Dey V. State of Orissa,(1976) 4 SCC 233 and Syad Akbar V. State of Karnataka,(1980) 1 SCC 30, opined that the

evidence of such a witness cannot be effaced or washed off the record altogether, but the same can be accepted to the extent it is found to be

dependable on a careful scrutiny thereof.â??

20. The evidence of a witness who has been declared hostile can be relied if there are some other material on the basis of which said evidence can be

corroborated. More so, that part of evidence of a witness as contained in examination-in-chief, which remains unshaken even after cross-

examination, is fully reliable even though the witness has been declared hostile.â??

He further submitted that evidence of P.W.1 read with evidence of P.W.7 and the evidence of the Doctor (P.W.11) and objective finding of P.W.12,

the prosecution has been able to prove its case beyond all reasonable doubt.

25. On the other hand, learned counsel appearing for the appellants has

submitted that from close scrutiny of evidence, it transpires that the informant (P.W.1 â?" Malti Bage) in her fardbeyan, recorded by P.W.12 (Tun Tun Prasad Singh), and she has claimed to be eye-witness and has supported it as she has claimed to have seen the occurrence from her own eyes, but in her evidence as P.W.1, she has been declared hostile by the prosecution and has given a different version of the occurrence.

Learned counsel appearing for the appellants has further submitted that P.W.7 (Ram Bage), aged 8 years, a child witness and corroboration from his evidence cannot be relied upon, as during his cross-examination in Para 1, he has stated that he has not seen the occurrence from his own eyes, as he was sleeping in his house. So judgment relied upon by the learned Additional Public Prosecutor for the State is not applicable in the facts of the case, as there is no independent corroboration of the material fact or the informant (P.W.1), who has been declared hostile.

26. Learned counsel appearing for the appellants has further submitted that the prosecution has not produced the weapon of assault i.e. knife or the blood-stained bamboo-stick although has been seized and the soil and sent for F.S.L. for its chemical examination report as per the evidence of P.W.12 (Investigating officer), but the report has not been exhibited although it is available on record. So taking all these facts into consideration, it was submitted that the prosecution has failed to prove its case beyond all reasonable doubt.

27. Learned counsel appearing for the appellants has further submitted that in this case P.W.12 (Tun Tun Prasad Singh) has himself recorded the 'fardbeyan' of the informant (P.W.1) and also investigated the case instead of handing-over to some other Police officer which has caused serious prejudice to the appellants. For this proposition, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the case of Mohan Lal Vs. State of Punjab, reported in 2018 Supreme (SC) 814.

28. It was also submitted that the judgment relied upon by the learned counsel appearing for the State, as reported in, (2016) 13 Supreme Court Cases 366, in close scrutiny, it appears that the witnesses have been declared hostile, but major part of the occurrence was corroborated by the other witnesses. So in the circumstances, it was held by the Hon'ble Supreme Court that even if the witnesses are declared hostile, the entire evidence is not

washed away and the ratio is not applicable in the facts of the case. The informant (P.W.1), who is wife of the deceased, whose fardbeyan has been recorded and has supported it, but she has been declared hostile during cross-examination. None of the witnesses, namely, Ram Bage (P.W.7), who is son of the informant and deceased, to whom she has claimed to have seen the occurrence. P.W.2 (Lakhan Bage) and P.W.6 (Yadav Bage), both have been cited in the fardbeyan, but they have not supported the case of prosecution. So no corroboration is found, as such, her evidence cannot be relied upon.

29. Learned counsel for the appellants has thus, submitted that one of the cardinal principles of anglo- saxon jurisprudence is that the prosecution has to prove its case beyond all reasonable doubt.

30. Learned counsel for the appellants has further submitted that upon close scrutiny of the evidence of the witnesses, which has been discussed, herein-above and admittedly the informant (P.W.1), who has been declared hostile and all the witnesses cited by her in the fardbeyan, namely, Lakhan Bage (P.W.2), Yadav Bage (P.W.6) and Ram Bage (P.W.7, who is son of the deceased and informant), have also been declared hostile by the prosecution.

31. So, in the facts and circumstances of the case, the prosecution has not been able to prove its case beyond all reasonable doubt.

32. After hearing the learned counsel for the parties and upon close scrutiny of the evidence, we are of the considered view that the prosecution has not been able to prove its case beyond all reasonable doubt and as such, the impugned judgment of conviction and order of sentence is not sustainable in the eyes of law.

33. Accordingly, the Judgment of conviction dated 27th July, 2007, and order of sentence, dated 04.08.2007, passed by Pradeep Kumar, learned Additional Sessions Judge, Fast Track Court- Vth, West Singhbhum at Chaibasa,, in Sessions Trial No.120 of 2006/ S.T.R. No.38 of 2006, is hereby set aside.

34. In the result, the instant Criminal Appeal stands allowed.

35. The appellant No.2 (Balima Bage) and appellant No.3 (Radhi Bage), who are on bail, are discharged from the liability of their bail bonds.

36. The appellant No.1, Barega Bage @ Berga Bage, S/o Late Mando Bage is directed to be released forthwith, if not wanted in any other case.

37. Let the L.C.R. along with a copy of this judgment be sent to the concerned trial court forthwith.