

[Against the judgment and order of conviction dated 06.09.2018 (sentence passed on 26.09.2018) by Md. Taufiqul Hassan, learned Additional Sessions Judge-IV<sup>th</sup>, Dumka in S.T. No. 232/2013, S.T. No. 31/2014, S.T. No. 146/2014 and S.T. No. 16/2015]

**Death Ref. No. 04 of 2018**

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

**Versus**

1. Sukhlal @ Prabir Murmu @ Pravir Da @ Pravil Da @ Harendra Da @ Sanat Da @ Marang Da @ Amrit
2. Sanatan Baski @ Tala Da ... ... **Respondents**

With

**Criminal Appeal (DB) No. 1363 of 2018**

.....  
Sanatan Baski @ Sahdeo Rai @ Tala Da ... ... **Appellant**

**Versus**

The State of Jharkhand ... ... **Respondent**

With

**Criminal Appeal (DB) No. 1378 of 2018**

.....  
Sukhlal Murmu @ Prabir Murmu @ Pravir @ Sukhlal @ Pravir Da @ Pravil Da @ Harendra Da @ Sanat Da @ Marang Da @ Amrit

... ... **Appellant**

**Versus**

The State of Jharkhand ... ... **Respondent**

.....  
For the Appellants : Mr. S.K. Murtty, Adv.

(In Cr. Appeal (DB) No. 1363/2018)

Mr. Jitendra S. Singh, Adv.

(In Cr. Appeal (DB) No. 1378/2018)

.....  
For the Respondents : Mrs. Priya Shrestha, Spl. P.P.

(In Cr. Appeal (DB) No. 1378/2018)

Mr. Vineet Kr. Vashistha, Spl. P.P.

(In Cr. Appeal (DB) No. 1363/2018)

**P R E S E N T**

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**  
**HON'BLE MR. JUSTICE SANJAY PRASAD**

.....  
**C.A.V. Order**

**R. Mukhopadhyay, J.:** Heard Mr. S.K. Murtty, learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 1363 of 2018, Mr. Jitendra S. Singh, learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 1378 of 2018 and opposed by Mrs. Priya Shrestha, learned Spl. P.P. and Mr. Vineet Kr. Vashistha, learned Spl. P.P.

**2.** These appeals are directed against the judgment and

order of conviction dated 06.09.2018 (sentence passed on 26.09.2018) by Md. Taufiqul Hassan, learned Additional Sessions Judge-IV<sup>th</sup>, Dumka in S.T. No. 232/2013, S.T. No. 31/2014, S.T. No. 146/2014 and S.T. No. 16/2015 whereby and whereunder the appellants have been convicted for the offences u/s 148, 302/149, 302/120B/109, 396/149, 396/120B/109, 307/149, 307/120B/109, 333/149, 353/149, 427/149 of the I.P.C., Section 27(2) of the Arms Act and Section 17 of the C.L.A. Act and have been sentenced to undergo R.I for three years for the offence u/s 148 of the I.P.C. along with a fine of Rs. 3000/- each, sentenced to death for the offence u/s 302/149 of the I.P.C. along with a fine of Rs. 10,000/- each, sentenced to death for the offence u/s 302 read with Section 120(B)/109 of the I.P.C. along with a fine of Rs. 10,000/- each, sentenced to death for the offence u/s 396 read with Section 149 of the I.P.C. along with a fine of Rs. 10,000/- each, sentenced to death for the offence u/s 396 read with Section 120(B)/109 of the I.P.C. along with a fine of Rs. 10,000/- each, sentenced to undergo R.I. for life along with a fine of Rs. 5000/- each for the offence u/s 307 read with Section 149 of the I.P.C., R.I. for life along with a fine of Rs. 5000/- each for the offence u/s 307 read with Section 120(B) and Section 109 of the I.P.C., sentenced to R.I. for 10 years along with a fine of Rs. 5000/- each for the offence u/s 333 read with Section 149 of the I.P.C., R.I. for two years along with a fine of Rs. 2000/- each for the offence u/s 353 read with Section 149 of the I.P.C., R.I. for two years along with a fine of Rs. 1000/- each for the offence u/s 427 read with Section 149 of the I.P.C., R.I. for life along with a fine of Rs. 10,000/- each for the offence u/s 27 of the Arms Act and R.I. for three years along with a fine of Rs. 3000/- each for the offence u/s 17 of the C.L.A. Act.

**3.** The prosecution case as would appear from the First Information Report instituted by the informant Ashok Kumar is to the effect that on 02.07.2013 at about 2:28 P.M. he received an information on his mobile from Jamni Crusher Plant that firing is going on in a road surrounded by jungles. On receiving such

information, a station diary entry was made and to verify the said information he set out for the place of occurrence along with NCF Reserve Guard Hawaldar Vijay Singh, Hawaldar Babu Ram Singh, Hawaldar Arun Kumar Jha, Police 628 Manjeet Kisku, Police 701 Jiyalal Hembrom, Police 583 Prem Kumar Hansda, Police 604 Ganga Ram Choure, Police 616 Darbari Soren, Police 107 Narendra Bhatt and Police 79 Md. Sarfaraj Alam who was the driver of the anti-land mines vehicle. When at about 2:45 P.M. he had reached along with the Police force near the culvert situated between Jamni and Amtalla he had seen a Bolero vehicle without having any number plate and at about 20-25 meters ahead near the culvert a white-coloured Scorpio vehicle also without any number plate were lying in a stationary condition. The police force deboarded from the anti-land mines vehicle and by adopting all safety measures approached the Bolero vehicle. It has been alleged that several bullet marks were detected in the Bolero vehicle and on approaching the Bolero vehicle they saw a constable in the driver's seat and in the middle seat two constables lying dead in a pool of blood. One constable was found in an injured condition who was writhing in pain and the informant ordered his force to shift him to the anti-land mines vehicle. The informant thereafter approached the Scorpio vehicle which was also found to have been riddled with bullets. When he peeped inside the vehicle, he found a constable lying dead and his brain matter was found scattered due to the bullet injury on his head. Near the left side of the vehicle at a distance of about 10-12 feet in a ditch lay a Police personnel and on close scrutiny the dead body was detected to be that of the Superintendent of Police, Pakur, Amarjit Balihar with marks of bullet in his body. Just besides the road two persons were found lying in an injured condition, one in a Police uniform while the other in a civil dress. On being asked they disclosed their names as Lebenius Marandi and Dhanraj Maraiya. They were directed by the informant to be shifted to the anti-land mines vehicle. The injured police personnel who were found in the Bolero vehicle disclosed their names as Constable Bablu Murmu and Police Santosh Kumar

Mandal. It has been alleged that Constable Bablu Murmu disclosed that they were returning with Superintendent of Police, Pakur after attending a meeting with the D.I.G. and near the culvert they were ambushed by the extremists who were making indiscriminate firing on account of which two police personnel namely Manoj Hembrom and Rajiv Kumar Sharma as well as the driver of the Bolero vehicle Ashok Kumar Shrivastava had died. After a few rounds of firing some of the extremists came near the Bolero vehicle and on thinking him to be dead one of the extremists shouted and asked 'Pravil Da' as to what happened to the other vehicles. Bablu Murmu had further disclosed that a reply came that the Superintendent of Police has been shot dead. One of the extremists shouted and urged Tala Da, Joseph and Daud to loot the arms and ammunitions. Bablu Murmu had further disclosed that apart from his *insas* rifle, the arms of his colleagues in the Bolero vehicle were looted by the extremists. In the meantime, he heard the extremists shouting that from the Scorpio vehicle two AK 47 Rifles and cartridges were found. After some time, the extremists who were 30-35 in numbers fled away while raising the slogan "*Maowadi Zindabad*". It has further been alleged that Bablu Murmu had claimed that he can identify the extremists. From the place of occurrence empty cartridges, live cartridges and other articles were recovered.

Based on the aforesaid allegations Kathikund P.S. Case No. 55/2013 was instituted for the offences punishable u/s 147, 148, 149, 326, 307, 302, 427 and 379 of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act against Parvil Da, Tala Da, Joseph, Daud and 25-30 unknown extremists. Subsequently vide order dated 23.09.2013 Sections 332, 333, 353, 396, 120B of the I.P.C were added.

**4.** The first charge-sheet was submitted vide Charge Sheet No. 78/2013 dated 04.10.2013 against Satan Besra and Wakil Hembrom, pursuant to which cognizance was taken for the offences u/s 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of the I.P.C., Section 27 of the Arms Act and Section 17 of the

C.L.A. Act and the case was committed to the Court of Sessions where it was registered as S.T. No. 232/2013.

The second charge-sheet bearing Charge Sheet No. 01/2014 dated 21.01.2014 was submitted against Sanatan Baski @ Sahdeo Rai @ Tala Da for the offences punishable u/s 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act. After cognizance was taken, the case was committed to the Court of Sessions where it was registered as S.T. No. 31/2014.

The third charge-sheet was submitted by the Investigating Officer being Charge Sheet No. 58/2014 dated 26.07.2014 against Manwel Murmu, S/o Late Raisan Murmu and Manvel Murmu, S/o Late Sunder Murmu for the offence u/s 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act. After cognizance was taken, the case was committed to the Court of Sessions on 28.07.2014 where it was registered as S.T. No. 146/2014.

Subsequently the fourth charge-sheet was submitted bearing Charge Sheet No. 106/2014 dated 29.11.2014 against Pravir Da @ Pravil Da @ Harendra Da @ Amrit @ Sanat Da @ Marang Da @ Sukhlal and Lobin Soren @ Lobin Murmu for the offences u/s 147, 148, 149, 326, 307, 302, 427, 379, 332, 333, 353, 396, 120B of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act. After cognizance was taken, the case was committed to the Court of Sessions on 14.01.2015 where it was registered as S.T. No. 16/2015.

All the Sessions Trial being S.T. No. 232/2013, S.T. No. 31/2014, S.T. No. 146/2014, S.T. No. 16/2015 have been jointly tried.

**5.** Charges were framed on 13.03.2014 against Satan Besra and Wakil Hembrom u/s 148, 302/149, 307/149, 333/149, 353/149, 427/149, 396, 120B, 353 of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act. Charges were also framed on 27.01.2015 against Lobin Murmu, Pravir Da @ Pravil Da @

Harendra Da @ Marang Da @ Amrit @ Sukhlal u/s 148, 302/149, 307/149, 333/149, 353/149, 427/149, 396, 120B, 353 of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act and lastly charges were framed on 18.09.2014 against Sanatan Baski @ Tala Da, Manvel Murmu, S/o Late Sunder Murmu and Manwel Murmu, S/o Late Raisan Murmu u/s 148, 302/149, 307/149, 333/149, 353/149, 427/149, 396, 120B, 353 of the I.P.C., Section 27 of the Arms Act and Section 17 of the C.L.A. Act. The charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried.

**6.** The prosecution has examined as many as 31 witnesses in support of its case.

**7.** **P.W.1** (Arun Kumar Jha) was posted on 02.07.2013 as a constable in Kathikund Police Station. At about 2:45 P.M. Ashok Kumar Singh had told him to board the anti-land mines vehicle as an encounter was in progress. He has stated that they reached Jamni Picket where they did not find movement of traffic and no sound of firing was also heard. The Officer-in-Charge Kathikund P.S. gave a direction to take up position and along with him were Inspector C.K. Minz, Police Ganga Ram Choure, Police Narendra Kumar Bhatt, Police Manjeet Kisku, Police Prem Kumar Hansda, Police Jiyalal Hembrom and driver Md. Sarfaraj Alam.

On reaching the jungle near Jamni Picket a sound of groaning was heard from inside a vehicle. It was Constable Bablu Murmu who was taken out from the vehicle and was shifted to the anti-land mines vehicle. The Scorpio vehicle of the Superintendent of Police which was without any registration number was standing in front. He saw the Superintendent of Police lying dead in a ditch besides the road. He has stated that there were bullet marks in the vehicle and the glasses were found shattered. The bodyguard of the Superintendent of Police was also found lying dead in his seat.

This witness has stated that Bablu Murmu had disclosed that another person who had received bullet injury on his ribs was alive. Bablu Murmu was taken to Rinchi Hospital in a

private vehicle from where he was referred to Sadar Hospital, Dumka. When this witness went back to Rinchi Hospital, he found another injured having been brought to the Hospital. The said injured person was also referred to Sadar Hospital, Dumka and after taking the injured to the Sadar Hospital he returned back to the Police Station.

In the cross-examination on behalf of Manwel Murmu and Manvel Murmu, he has stated that the distance of the place of occurrence is about 05 K.M. from the Police Station. On reaching the place of occurrence, he found the Superintendent of Police lying dead while two police personnel were found in injured condition.

**8.** **P.W.2** (Ganga Ram Choure) was posted as Police reserve in Kathikund P.S. and on 02.07.2013 on the orders of the Officer-in-Charge, Ashok Kumar Singh, he and the other Police personnel boarded the anti-land mines vehicle to proceed towards the place of occurrence. Along with him were Arun Kumar Jha, Vijay Kumar Singh, Police Narendra Bhatt, Police Jialal Hembrom, Police Darbari Soren, Police Prem Kumar Hansda, Police Babu Ram Kisku and others. When they reached Jamni Picket firing was already in progress as told to them by a constable of JAP. They proceeded slowly to a culvert which was about three quarters of a kilometer away. Beyond that culvert was a Bolero vehicle as well as a Scorpio vehicle. Both the vehicles did not have any registration number. When they reached the vehicle, they found all the police personnel had received gunshot wounds.

This witness has stated that the injured constable Bablu Murmu was got boarded on a small car and thereafter this witness returned to the place of occurrence where he saw several persons present. He thereafter went to Rinchi Hospital and subsequently to Dumka Hospital.

In his cross-examination on behalf of Wakil Hembrom, he has stated that the place of occurrence is at a distance of 05 K.M. from Kathikund P.S.

**9.** **P.W.3** (Prem Kumar Hansda) was posted as a Reserve Police in Kathikund P.S. and on 02.07.2013 he and his colleagues

were in the Police Station when the Officer-in-Charge disclosed that at some distance from Jamni Picket the extremists have resorted to firing. All the police personnel boarded the anti-land mines vehicle and when they reached Jamni Picket the sound of firing could still be heard. When he reached the culvert near the jungle a Bolero vehicle as well as a Scorpio vehicle without any registration number and in a damaged condition were seen.

The Scorpio vehicle was damaged on the right side. On the left side of the vehicle in a ditch lay the dead body of Superintendent of Police, Pakur. The constable Bablu Murmu had disclosed that they had come to attend the meeting along with the Superintendent of Police in the Office of the D.I.G. When they reached the place of occurrence firing had started from the right side. The extremists had come near the vehicle and thinking that all the police personnel had died, one of the extremists informed 'Pravil Da' that the job is done. Bablu Murmu further disclosed that one of the extremists told 'Tala Da' to take away all the arms and ammunitions. Before leaving the place of occurrence the extremists had raised slogan "*Maowadi Zindabad*".

The Officer-in-Charge had made a list of the articles recovered from the place of occurrence. He has stated that the injured police personnel were taken to the Hospital.

**10. P.W.4** (Jialal Hembrom) has stated that on 02.07.2013 the Officer-in-Charge asked him and other police personnel to leave for the place of occurrence where an encounter was going on. All boarded the anti-land mines vehicle and when they reached Jamni Picket it was told that an encounter was still in progress. On reaching the place of occurrence they found a Scorpio vehicle and a Bolero vehicle without any registration number lying in a stationary condition. On the direction of the Officer-in-Charge the police personnel had taken up positions. He has stated that the firing was being done from the right side. He has further stated that one person was found waving his hand from inside a vehicle at which he was taken to Jamni Picket in the anti-land mines vehicle. The injured

constable disclosed his name as Bablu Murmu. He was taken to Rinchi Hospital. This witness went back to Jamni Picket where he saw the injured persons being taken to the Hospital.

**11.** **P.W.5** (Narendra Kumar Bhatt) has stated that on 02.07.2013 on the orders of the Officer-in-Charge he and the others had boarded the anti-land mines vehicles. They had proceeded towards the Jamni Picket and on reaching the place of occurrence both the vehicles were found in a damaged condition. They had taken up positions when they heard the sound of whining of one person. The said person was constable Bablu Murmu who had suffered gunshot injuries. He was taken to Rinchi Hospital in the anti-land mines vehicle. At about 2-4 feet from the road in a ditch the dead body of the Superintendent of Police was found.

He has stated that Bablu Murmu had disclosed that he had heard the sound of whistling from the right side and when the vehicle proceeded further there was indiscriminate firing on the vehicle.

In the place of occurrence there were 5-6 Police personnel who were dead and their dead bodies were loaded in the vehicle.

**12.** **P.W.6** (Pramod Kumar) was posted in the Office of the Inspector of Police and he has stated that on 02.07.2013 an encounter had occurred between the extremists and the Superintendent of Police, Pakur. On such information being received at the Police Station all the police personnel reached the place of occurrence and had brought the dead bodies back. This witness had not gone to the place of occurrence but had stayed back at the Police Station. He has proved the seizure of blood samples from the vehicle which has been prepared by Chonas Kr. Minj and which bears his signature and which has been marked as Exhibit-1.

In the cross-examination on behalf of Wakil Hembrom, Sanatan Baski and Satan Besra he has stated that the seizure list was prepared in his presence.

**13.** **P.W.7** (Md. Sarfaraz Alam) has deposed that on

02.07.2013 he and the others on the orders of the Officer-in-Charge Ashok Kumar had boarded the anti-land mines vehicle. They had reached the Picket in the jungle and had found a Bolero vehicle as well as a Scorpio vehicle without any registration number and in a damaged condition. He had reversed the vehicle and taken the injured on his vehicle to Sadar Hospital, Kathikund.

In cross-examination on behalf of Manwel Murmu and Manvel Murmu he has stated about reaching the place of occurrence after 30 minutes.

**14.** **P.W.8** (Manjit Kisku) has deposed that on 02.07.2013 he was at Kathikund P.S. when at about 2:30 P.M. the Officer-in-Charge directed him and others to immediately board the anti-land mines vehicle since some firing was going on near Jamni Picket. They reached Jamni Picket at about 2:45 P.M. He has stated that they moved forward to about 01 K.M. where a Bolero vehicle was seen in a stationary condition and without bearing any registration number. A Scorpio vehicle was also found and inside the vehicle some dead bodies were seen. All of them took position on the orders of the Officer-in-Charge. He has further deposed that one police personnel was groaning with pain who was picked up and shifted to the anti-land mines vehicle. He was brought to Jamni Picket from where he was taken in another vehicle to the Hospital. Thereafter all of them returned back to the place of occurrence.

In the cross-examination on behalf of Manwel Murmu and Manvel Murmu he has stated that he had reached the place of occurrence after half an hour after the incident had taken place.

**15.** **P.W.9** (Darbari Soren) was posted at Kathikund P.S. and on 02.07.2013 on the orders of the Officer-in-Charge he and some other police personnel boarded the anti-land mines vehicle with arms and ammunitions. On reaching Jamni Picket they came to know that firing is going on ahead. On moving ahead, a Scorpio vehicle and a Bolero vehicle were found in a stationary condition and none of the vehicles had any registration numbers. In the Bolero vehicle Bablu Murmu was found writhing in pain in an injured

condition and in the other vehicle Dhananjay Maraiya and Silvan Hembrom were found. In the back seat the dead bodies of two police personnel were detected.

In the Scorpio the driver and a bodyguard were found in an injured condition. On the left side the dead body of Superintendent of Police, Pakur was found lying in a ditch under a tree. He has deposed that Bablu Murmu had disclosed that they were returning from a meeting with the D.I.G. and when they reached near the culvert indiscriminate firing had started from the right side. About 30-35 extremists came out from the forest cover and looted all the arms and ammunitions. Bablu Murmu had further disclosed that one of the extremists addressed 'Tala Da' and 'Pravir Da' and informed that the Superintendent of Police has been shot at. All the extremists thereafter fled away towards the jungle by raising slogans. The injured police men were sent to Rinchi Hospital from where they were referred to Sadar Hospital, Dumka.

In his cross-examination on behalf of Pravir Da, he has stated that he had not witnessed the occurrence.

**16.** **P.W.10** (Dr. Ramesh Prasad Verma) was posted as a Medical Officer on 02.07.2013. A Medical Board was constituted comprising of this witness, Dr. Dilip Keshri and Dr. A.K. Singh to conduct autopsy on the dead body of Amarjit Balihar, Superintendent of Police, Pakur. The following antemortem injuries were found over the body of the deceased:

- (i) Wound of entry of bullet  $1 \frac{1}{2}$ " x  $\frac{1}{2}$ " over the left infra scapular region and on dissection left lung was found lacerated and there was collection of blood in thoracic cavity.
- (ii) One wound of exit of bullet below left infra calvicular region  $3"$  x  $\frac{1}{2}$ " oval with lacerated margin which was averted.
- (iii) One wound circular  $\frac{1}{2}"$  x  $\frac{1}{2}"$  oval in front of right arm in middle with charring. Right humerous was found fractured. It was wound of entry on back

of right arm exit wound 3" x 2" with laceration margin averted.

(v) Abrasion on forehead 3/4" x 1/2" on dissection under line bone was intact.

In their opinion the death was caused by injury no. (i) and (ii) due to shock and hemorrhage. Weapon used was firearm. Time elapsed since death within twelve hours.

The postmortem report was written and signed by this witness and also bears the signature of the members of the Medical Board and which has been marked as Exhibit-2.

This witness has also proved the postmortem report of Ashok Kr. Shrivastava which has been written by Dr. Dilip Kr. Keshri and signed by him as well as this witness and which has been marked as Exhibit-3.

**17.** **P.W.11** (Ranjit Minj) has stated that on 02.07.2013 he was working in the post of Officer-in-Charge of Amrapara P.S. He has stated that he had escorted the Superintendent of Police, Pakur till Kathikund P.S. The Superintendent of Police had instructed him that when he will call, the escort party should be there at Kathikund P.S. At about 2:32 P.M. he received a call from Amarjit Balihar on his mobile urging him to come fast as he has been trapped. While on the way this witness had received two distress calls on his mobile from the Superintendent of Police, Pakur. He reached Gopikandar P.S. and the force from Gopikandar P.S. also followed this witness. The Officer-in-Charge of Pakuria P.S., Benedict Marandi also started for the place of occurrence with his force. He has stated that the place of occurrence is situated between Amtalla village and J.P.R. Camp. The vehicle of the Superintendent of Police was seen in a stationary condition in the middle of the road and three doors were open. When they reached near the vehicle adopting all precautions, they found the Superintendent of Police lying dead in a ditch besides the road. The Superintendent of Police had gunshot wounds on the left side of the head, left side of the chest and on the elbow. The front glass of

the vehicle had numerous holes due to shots having been fired. In the middle seat of the vehicle was lying the dead body of the bodyguard of the Superintendent of Police, Chandan Kumar with his head badly mutilated. In the Bolero vehicle the driver was lying dead in his seat. In the middle seat the dead bodies of two police personnel were lying. One of the police men was found injured in the middle seat, while besides the road the driver of the Scorpio vehicle and another police personnel were lying in an injured condition. The injured persons were sent for treatment but one of them died on the way to the Hospital. The arms and ammunitions were looted by the extremists and they had also taken away a bullet proof jacket.

He has stated that in course of search from the right side of the road empty cartridges of AK 47, insas rifle and SLR along with shoes, slippers, camouflage dress and cap were found. The seizure list was prepared by the Officer-in-Charge of Kathikund P.S. which was signed by the police personnel accompanying him. This witness claimed that since the area where the incident had taken place is the active area of operation of Pravir Da, Sanatan Baski, Daud @ Vimal Hembrom, Sahdeo Rai @ Tala Da, Kiran @ Duku Tudu, Dewan Kisku, Aakash Da and others, they were the persons who were involved in the encounter.

This witness had apprehended Sanatan Baski and Daud @ Vimal Hembrom after the occurrence. He has identified Sanatan Baski through V.C but he has not been able to identify the other accused persons.

**18.** **P.W.12** (Bablu Murmu) has stated that on 02.07.2013 he was doing his duty as a constable in the house of Superintendent of Police, Pakur. He was in the escort party of the Superintendent of Police. He has stated that they had gone to Dumka to attend a meeting and after the meeting they had gone to the Circuit House. He and the other members of the force had taken lunch while Chandan stayed with the Superintendent of Police. After having lunch, they went back to the Circuit House. It was raining and once the rain stopped, they had left for Pakur. This witness has

stated that once they reached the jungle firing had started. All the police personnel had received gunshot injuries including this witness. He was treated at Dhanbad and Ranchi.

He had not witnessed anything but had only heard the sound of firing. He had heard shouting and abusive languages directed at them. He does not remember what happened thereafter since he had become unconscious.

This witness was declared hostile by the prosecution.

He has denied to have given statement that the extremists were shouting and taking the name of Tala Da, Joseph, Daud, Pravir Da and urging them to loot the arms and ammunitions.

**19.** **P.W.13** (Dr. Ajay Kr. Singh) was posted at Sadar Hospital, Dumka and on 02.07.2013 a Medical Board was constituted on the direction of Superintendent, Sadar Hospital comprising of Dr. Ramesh Pd. Verma, Dr. Dilip Kr. Keshri and this witness. The Medical Board conducted autopsy on the dead body of Rajeeva Kumar Sharma and had found the following injuries on his person:

- (i) Entry wound  $1/2" \times 1/2"$  posterior aspect of middle of forearm, track passing back with inverted margin. Exit wound  $4" \times 4"$  with laceration of muscles tissue and vessels with fracture of ulna margin inverted.
- (ii) Entry wound  $1/2" \times 3/4"$  oval shaped at the front of the chest left side, margin inverted. Exit wound  $2" \times 2"$  at left Axila with inverted margin on opening the thoracic cavity and tracing the path of entry, puncturing the left side of heart and left lung found lacerated. Thoracic cavity found full of blood. There is fracture of third rib left side in front and 4<sup>th</sup> and 5<sup>th</sup> of the back side at no Axillary line.
- (iii) Lacerated wound charring over right hand  $2" \times 2"$  muscle deep.

The death was due to shock and hemorrhage, as a result of above injury, which was caused by fire arms.

The postmortem report is in the handwriting of this witness and bears his signature as well as the signatures of the other Board Members and which has been marked as Exhibit-4.

**20.** **P.W.14** (Dr. Nishit Kr. Jha) was posted at Sadar Hospital, Dumka and on 02.07.2013 a Medical Board was constituted comprising of this witness, Dr. Rajiv Kr. Singh and Dr. Ajay Kr. Singh and headed by the Superintendent of the Hospital. They had conducted autopsy on the dead body of Manoj Hembrom and had found the following antemortem injuries:

- (i) About 1" wound was present in the back at thoracolumbar area that entry wound.
- (ii) About 4" exit wound was present in the lower axilla. Mark of the gun powder present around the wound. Face was avulsed and cranium was also avulsed on right side due to fire arm injury. Brain matter and other structure herniated from the remaining skull and face. Further dissection of abdomen shows that Peritoneal Cavity was filled with blood as a result of firearm injury, causing injury of internal organs and blood vessels.

The cause of death was opined to be due to shock and hemorrhage, as a result of firearm injury.

The postmortem report was written by this witness and bears his signature as well as the signatures of Dr. Rajiv Kr. Singh and Dr. Ajay Kr. Singh and which has been marked as Exhibit-5.

**21.** **P.W.15** (Ram Kishun Yadav) was posted as Officer-in-Charge of Dumka Town P.S. and on 02.07.2013 on receiving information about the encounter in which some police personnel had died and some were injured who were being brought to Sadar Hospital, Dumka, this witness had gone to Sadar Hospital, Dumka. He had prepared the requisition for injury report of Dhanraj Maraiya, Lebenius Marandi, constable Bablu Murmu and Santosh Kumar Mandal which have been marked as Exhibits- 6, 6/1, 6/2 and 6/3 in

S.T. No. 232/2013 and Exhibits- 1, 1/1, 1/2 and 1/3 in S.T. No. 94/2015.

He had also prepared the inquest report of Superintendent of Police, Pakur, Amarjit Balihar, Police 118 Rajeeva Kumar Sharma, Police 199 Ashok Kumar Shrivastava, Police 40 Chandan Kumar Thapa, Police 143 Manoj Hembrom and Police 90 Santosh Kumar Mandal which were in his handwriting and carried his signature and signed by separate witnesses which were marked as Exhibits- 7, 7/1, 7/2, 7/3, 7/4 and 7/5 in S.T. No. 232/2013 and Exhibits- 2, 2/1, 2/2, 2/3, 2/4 and 2/5 in S.T. No. 94/2015. He had also prepared the dead body challan which has been marked as Exhibits- 8, 8/1, 8/2, 8/3, 8/4 and 8/5 in S.T. No. 232/2013 and Exhibits- 3, 3/1, 3/2, 3/3, 3/4 and 3/5 in S.T. No. 94/2015.

**22.** **P.W.16** (Arun Kumar Hembrom) was posted as a Police in Kathikund P.S. and on 02.07.2013 he had gone to Sadar Hospital, Dumka along with Police Inspector, Chonas Kr. Minj. He has proved his signature in the seizure list of two empty magazines of AK 47 rifle, 12 round live cartridges, two misfired cartridges and a pouch smeared with blood which has been marked as Exhibit- 9 in S.T. No. 232/2013 and Exhibit- 4 in S.T. No. 94/2015.

He has also proved his signature in the seizure list of blood samples collected from the Bolero vehicle which has been marked as Exhibit-9/1 in S.T. No. 232/2013 and Exhibit-4/1 of S.T. No. 94/2015.

**23.** **P.W.17** (Baiju Baraik) was the Officer-in-Charge of Gopikandar P.S. He has stated that at about 2:35 P.M. he had received an information that firing was going on near Karudih More. He called back Assistant Sub Inspector of Police, Mustafa Khan who had gone for investigating a case. In the meantime, a call came from the Officer-in-Charge of Amrapara P.S. directing him to go for assistance to the beleaguered Superintendent of Police. While he was making preparation to go to the spot the Officer-in-Charge of Amrapara P.S. came on his vehicle. On the way they met the Officer-in-Charge of Pakuria P.S. and his force. They proceeded for the place

of occurrence and stopped their vehicles about 100 meters from the place of occurrence and went towards the place of occurrence on foot. By that time the firing had stopped. The Officer-in-Charge of Kathikund P.S. and Police Inspector, Chonas Kr. Minj were already present at the spot. Near the culvert a white-coloured Scorpio vehicle was standing and three of its tyres were found punctured. In the middle seat the dead body of Chandan Kumar Thapa was lying. About 20 feet towards the north of the vehicle in a ditch the dead body of Superintendent of Police, Pakur was lying.

In the Bolero vehicle on the seat of the driver the dead body of Ashok Kumar Srivastava was lying. The dead bodies of Rajeeva Kumar Srivastava and Manoj Hembrom were found in the middle row of seat. On the ground constable Bablu Tudu, private driver Dhanraj Maraiya and Police Santosh Kumar Mandal were lying in an injured condition. Lebenius Marandi was also injured and they were sent to the Hospital for treatment. In course of treatment Santosh Mandal had died.

At the place of occurrence, one shoe, one slipper, one camouflage cap, a water container wrapped with a *gamcha*, empty cartridges and misfired cartridges were found scattered. All the articles were seized and a seizure list was prepared.

This witness has stated that the Scorpio vehicle was found riddled with bullets and so was the Bolero vehicle. The head of the deceased Chandan Kumar Thapa was blown off due to a bullet striking his head. In the area where the incident had occurred Pravir Da @ Pravil Da @ Hiren, Zonal Commander C.P.I. extremists organization and Sahdeo Rai @ Tala Da held sway and their group comprised of Daud @ Bimal Soren, Joseph Soren, Sudhir Kisku @ Emmanuel Hansda, Deepak Dehri, Sonu Dehri, Kiran Tuddu, Papku Tudu, Sanatan Baski, Satan Besra, Wakil Hembrom, Vijay, Mahashay, Loin, Sunita, Bharat Singh Kisku, Emmanuel Murmu S/o Sundar Murmu, Stephen, Som Baski, Emmanuel Murmu S/o Raisen Murmu, Hopna Hembrom and Suresh Bhagat. He has full belief that those persons by hatching a conspiracy in order to strike

at the democratic fabric of the country committed the incident. Later on, he came to know from the Investigating Officer that from Sanatan Baski the looted bullet proof jacket of the slain Superintendent of Police was recovered.

In the cross-examination on behalf of Wakil Hembrom and Shivchandra Mohli he has stated that when he reached the place of occurrence none of the accused were found present nor were any of the accused seen on the way.

**24.** **P.W.18** (Dr. Debasish Rakshit) has deposed that on 02.07.2013 a Medical Board comprising of this witness, Dr. Paul Hansda and Dr. Sudeep Kachhap had conducted postmortem on the dead body of constable Santosh Kumar Mandal and the following antemortem injuries were detected:

- (i) Entry wound of fire arm injury 3/4" of diameter, circular inverted margin found on left mid axillary line over lateral side just below last rib.
- (ii) The exit wound of fire arm injury 1" diameter, circular in shape, inverted margin found on right lumber region.
- (iii) On opening of abdomen by dissection, huge collection of blood found inside of abdominal cavity. On tracking from entry wound to exit wound left kidney found lacerated, part of small intestine falling in the track of fire arm found lacerated in track of firearm found lacerated in about 6" in length.

The cause of death was due to hemorrhage and shock caused by firearm injury. The postmortem report was prepared by this witness and had his signature as well as the signature of other members of the Medical Board and which has been marked as Exhibit-10 in S.T. No. 232/2013 and Exhibit-5 in S.T. No. 16/2015.

**25.** **P.W.19** (Chonas Kr. Minj) has deposed that on 02.07.2013, he was posted as Inspector of Kathikund Police Circle. He was entrusted with the investigation of Kathikund P.S. Case No. 55/2013. He has proved the seizure list of an empty black magazine,

a black-coloured magazine having 12 live cartridges of AK 47 rifle and 02 bullets embedded within the rifle which has been marked as Exhibit-11. In course of investigation, he had recorded the statements of Police Hasnain, Police Arun Kumar Hembrom and Police Ashok Kumar Mishra who have supported the occurrence. He has stated that the Officer-in-Charge of Dumka Town P.S. Ramkishun Yadav had after perusal issued the requisition for injury reports of injured constable Bablu Murmu, driver Dhanraj Maraiya and Police Lebenius Marandi. The Officer-in-Charge of Dumka Town P.S. Ramkishun Yadav had also prepared the inquest reports of Superintendent of Police, Pakur, Amarjit Balihar, Police Rajiv Kumar Sharma, Police Ashok Kumar Srivastava, Police Chandan Kumar Thapa, Police Manoj Hembrom and Police Santosh Kumar Hembrom.

He had recorded the restatement of the Officer-in-Charge Kathikund P.S., Ashok Kumar Singh at 10: 00 P.M. who had supported the allegations. On the same night he had also recorded the statements of constable Arun Kumar Jha, Babu Ram Kisku and constable Vijay Kumar Singh who have also led credence to the incident.

On 03.07.2013 at Kathikund P.S. he had recorded the statements of Police Darbari Soren, Police Manjit Kisku, Officer-in-Charge of Gopikandar P.S. Baiju Baraik, Police Nagendra Kumar Bhatt, Police Ganga Ram Choure, Police Jira Lal Hembrom, Police Prem Kumar Hansda, Police driver Sarfaraz Alam who all have supported the narration made in the First Information Report. Thereafter he had recorded the statements of Sub Inspector Mahesh Prasad Singh, Police Indradeo Mandal, Sub Inspector Benedict Marandi who was the Officer-in-Charge of Pakuria P.S. and Sub Inspector Ranjit Minj, Officer-in-Charge of Amrapara P.S. who all have supported the allegations made in the First Information Report. This witness had inspected the place of occurrence at 6:30 A.M. which is situated in the metaled road going from Dumka to Pakur in a culvert between Jamni and Amtalla. In the north and south of the place of occurrence are dense forests and the place is uninhabited.

About 20 feet towards the west from the culvert lies an unmetalled road and a ditch is on the road and from the ditch is a 03 feet elevation which goes towards the culvert. About 05 feet from the culvert a white-colored Scorpio vehicle without having any registration number was found standing. The front tyres as well as the back tyre on the left side were found punctured. In the wind screen 13 bullet holes were detected. On the right side of the vehicle there were 10 bullet holes. One bullet hole in the number plate, on the left side 07 bullet holes and in the back portion 04 bullet holes were found. The glass in the back side of the vehicle was fully shattered and so was the glass near the driver and the glass besides the driver. The glass on both sides of the middle seat as well as the side mirror were also found shattered. In the seat of the driver as well as in the middle seat blood and brain matter were found scattered. About 20 feet north from the Scorpio vehicle between two trees was a 03 feet ditch where the body of the Superintendent of Pakur was found. There were blood stains in the ditch. About 12 feet towards the south from the Scorpio vehicle the driver Dhanraj Maraiya and bodyguard Police Lebenius Marandi were said to have been lying in an injured condition. On both sides of about 08 feet the road was under construction and it was not filled up with earth. About 70 feet from the culvert on the north side a diversion was made which touches the main road. The diversion was found obstructed by placing of big boulders. About 86 feet from the Scorpio vehicle the silver colour Bolero vehicle without any registration number was found standing. On the Bolero vehicle 12 bullet holes were detected. The wind screen had a long crack. The glasses on the left and right side from the seat of the driver were found shattered. Both side glasses on the middle seat were also found shattered. The left side glass on the back seat was found shattered. In the back door the glass was shattered and a hole was also detected. On the driver's seat the driver Ashok Kumar Srivastava was found dead and beside him constable Bablu Murmu was found in an injured condition. In the middle seat the dead bodies of Police Raju Kumar Sharma, Police

Manoj Kumar Hembrom were found as well as Santosh Kumar Mandal in an injured state. In the inside of the vehicle pieces of glass and blood were found. At about a distance of 100 meters from the culvert on the south a jungle road winds up and touches the main road. Empty cartridges, misfired cartridges, a black-coloured shoe, a plastic slipper, a camouflage cap, a plastic jerrycan wrapped in a *gamcha* were found scattered. This witness has drawn a conclusion that the extremists had hid themselves on the southern side in ditches and bushes and when the vehicles approached, they had made indiscriminate firing. On the southern side of the place of occurrence above the tree signs of firing was detected which according to this witness indicates that a counter firing was made by the police force. A broken piston grip of an AK 47 rifle was found at the place where the Superintendent of Police lay dead. In course of firing the Superintendent of Police, Pakur had taken shelter in the 03 feet deep ditch and had called Officer-in-Charge of Amrapara P.S. Ranjit Minj at 02:30 P.M., 02:36 P.M. and 02:39 P.M. urging him to come immediately as he was in a tight spot. On the eastern side of the place of occurrence is an unmetalled road, after half of a kilometer is Amtalla village, on the south is a metalled road and at a distance of about 800 meter is GBR Jamni Crusher Plant and on the northern and southern side were jungles.

The blood and other samples were collected from the Scorpio as well as Bolero vehicle of which a seizure list was prepared by Sub Inspector Parsuram Rai which bears the signature of this witness and which has been marked as Exhibit- 12. The map of the place of occurrence was prepared by him which is in his handwriting and which has been marked as Exhibit-13.

This witness has deposed that on 07.07.2013 he had arrested Satan Besra and on 08.07.2013 his confessional statement was recorded in which he had admitted his involvement and had also disclosed the name of his accomplices. On 08.07.2013 accused Wakil Hembrom was arrested and on 09.07.2013 his confessional statement was recorded. Both the accused were forwarded to the

court. On 09.07.2013 the statement of Lakhi Ram Baski and Mangal Murmu were recorded at village Amraior. On 10.07.2013 the injury reports of Constable Bablu Murmu, Police Lebenius Marandi and Dhanraj Maraiya were obtained. On 10.07.2013 the samples of blood were collected from the seats of both the vehicles. On 12.07.2013 he had obtained the postmortem reports of Amarjit Balihar, Manoj Hembrom, Chandan Kumar Thapa, Rajiv Kumar Sharma and Santosh Mandal. From the office of Superintendent of Police, Pakur the details of the arms and ammunitions were received.

On 15.07.2013, he had recorded the statement of injured Constable Bablu Murmu at Apollo Hospital, Ranchi. Bablu Murmu in his statement had disclosed that from 23.05.2013 he was posted in the official residence of Superintendent of Police, Pakur as In-charge of the guards. On 02.07.2013 at about 06:30 A.M. it was informed through phone to get ready. At this, Police 90 Santosh Kumar Mandal, Police 118 Rajiv Kumar Sharma, Police 143 Manoj Kumar Hembrom got ready and Bablu Murmu as well as the others boarded a Bolero vehicle with arms and ammunitions. The Superintendent of Police, Pakur boarded a Scorpio vehicle along with Police 40 Chandan Kumar Thapa and Police 51 Lebenius Marandi. The Scorpio vehicle was being driven by a private driver Dhanraj Maraiya. The escort vehicle was being driven by Police 199 Ashok Kumar Srivastava. Bablu Murmu had stated that at about 10:00 A.M. they reached Circuit House, Dumka. The Superintendent of Police, Pakur attended the meeting in the D.I.G. Office at 11:00 A.M. and the meeting lasted for an hour. On conclusion of the meeting, they returned back to the Circuit House and at about 02:00 P.M. they proceeded from Dumka to Pakur. The escort vehicle was following the vehicle of Superintendent of Police, Pakur and as soon as the vehicles reached the place about 05:00 kilometers from Kathikund P.S. indiscriminate firing started from the jungle. The driver of the escort party and two police men sustained bullet injuries and they died inside the vehicle itself. Bablu Murmu had sustained two bullet injuries while Santosh Kumar Mandal was lying inside the vehicle in

a pool of blood. The extremists were abusing the police and were directing them to surrender. In the meantime, he heard shouting by the extremists informing Tala Da, Joseph, Pravir Da that all have died and to loot the arms and ammunitions. Bablu Murmu had further disclosed that somebody shouted that the Superintendent of Police has been shot dead. One of the miscreants urged Tala Da, Joseph and Daud to loot the arms and ammunitions. At this about 30-35 extremists looted arms and ammunitions, bullet proof jacket, magazines and mobile and by raising slogan "*Maowadi Zindabad*" fled away towards the jungle. After sometime the anti-land mines vehicle reached from Kathikund P.S. and Bablu Murmu and the others were sent for treatment. Bablu Murmu had further disclosed to this witness that he can identify the extremists.

He has stated that after recording the statement of Bablu Murmu he had recorded the statements of the injured witnesses Lebenius Marandi and driver Dhanraj Maraiya. On 31.07.2013 the owner of the Scorpio vehicle namely, Shakuntala Devi had appeared with her husband and produced the papers pertaining to the vehicle. On 03.08.2013 the Scorpio vehicle was released on the orders of the court. On 05.08.2013 the confessional statement of Jivan Hansda @ Boniface Hansda was obtained who had disclosed about the name of the extremists who were involved in the occurrence. On 09.08.2013 forensic report and C.D. of the F.S.L. were received. The report sent through Memo No. 1006/2 dated 20.07.2013 in 10 sheets was marked as Exhibit-14 while the F.S.L. Report No. 1124/13 dated 21.12.13 in 05 sheets has been marked as Exhibit-15 with objection. The signature of Sri H.K. Sinha, Assistant Director and Sri R.S. Singh, In-charge, Director of F.S.L. has been marked as Exhibit 15/1.

On 22.08.2013 an application was given to the Additional Chief Judicial Magistrate, Dumka for permission to add Sections 332, 333, 353, 396/120B of the I.P.C. On 28.08.2013 he had recorded the statement of Police 281 Shripat Kumar, Police 80 Sonu Kumar Yadav and Police 292 Ranjan Yadav. On 31.09.2013 the

confessional statement of Sanatan Baski recorded in Maheshpur P.S. Case No. 250/2013 was obtained and which has been marked as 'X' for identification. On the confession of Sanatan Baski, a bullet proof jacket was recovered from Dumka and the seizure list was obtained which has been marked as 'Y' for identification. He had taken the statements of Sashi Bhushan Tiwari and A.S.I. Surendra Pd. Singh. On 07.09.2013 an application was given before A.C.J.M., Dumka for remand of Sanatan Baski who had been arrested in connection with Maheshpur P.S. Case No. 250/2013. On 04.10.2013 charge-sheet was submitted against Satan Besra and Wakil Hembrom. He had filed an application before A.C.J.M., Dumka praying for police remand of Sanatan Baski for 48 hours which was allowed. Sanatan Baski was taken to the place of occurrence. This witness has stated that he had obtained the notification of the Home Department, Government of Jharkhand by virtue of which the State Government had put a ban on Krantikari Kisan Committee, Nari Mukti Sangh, Jharkhand, A-One Group and Krantikari Sanskratik Manch. This notification has been marked 'Z' for identification.

On 19.01.2014, the notification of the Government of Jharkhand was obtained and which was marked Z/1 for identification. On 20.01.2014, the Circle Officer, Kathikund Sri Gyan Shankar Jaiswal had conducted a Test Identification Parade of the recovered bullet proof jacket. On 20.01.2014 this witness had submitted charge-sheet against Sanatan Baski @ Tala. On 20.02.2014 an application was given to A.C.J.M., Dumka for adding Sections 16 (1A)/18 U.A.P. Act. The further investigation was handed over to Sri Anil Kumar Srivastava, Dy. Superintendent of Police, Dumka and all the papers were transferred to him. This witness has proved the recovery of broken piston of AK 47 marked as material Exhibit-I, a black coloured shoe marked material Exhibit-01/01, a plastic slipper marked material Exhibit-01/02, one camouflage cap marked as material Exhibit-01/03, one *Gamcha* marked as material Exhibit-01/04, a two liter empty jerrycan marked as material Exhibit-01/05, a black coloured empty magazine marked as material Exhibit-

01/06, a black coloured magazine having twelve bullets and two bullets embedded within marked as Exhibit-01/07 and a bullet proof jacket marked as Exhibit-01/08. The material exhibits of the cartridges were to be produced after receipt of the forensic report. He has proved the written requisition which is in the handwriting of Sub Inspector Nistaur Kerketta and signed by him and which has been marked as Exhibit-16.

In his cross-examination he has stated that the material exhibits produced in court were in the custody of Nistaur Kerketta, the Officer-in-Charge, Kathikund P.S. The material Exhibits brought by him were neither sealed nor did they bear any number.

In the cross-examination on behalf of Wakil Hembrom he has stated that he had conducted the Investigation systematically. He had written down the notes of his investigation in his own diary. Till 04.10.2013, he had not conducted the Test Identification Parade of any of the accused. In course of investigation, he could not find even a solitary independent witness.

In the cross-examination on behalf of Manwel Murmu and Manvel Murmu he has stated that between the period he took charge of the investigation and till he handed over charge he had not conducted Test Identification Parade. He could not find a single eye-witness.

In course of investigation this witness came to know that Shakuntala Devi is the owner of the Scorpio vehicle. The Scorpio vehicle was not registered and it was being used by the Superintendent of Police with the permission of the authorities of Panem Coal.

**26.** **P.W.20** (Ashok Kumar) was the Officer-in-Charge of Kathikund P.S. and on 02.07.2013 at about 02:28 P.M. he received information over phone that firing is going on near the jungle besides the metalled road. After making a station diary entry he along with Inspector Chonas Kr. Minj, three constables and six police men proceeded in an anti-land mines vehicle towards the place of occurrence. When he reached near the culvert at 02:45 P.M. he saw a

Bolero and a Scorpio without any registration number lying stationary on the road. When they carefully reached the Bolero vehicle, they found two Police personnel lying dead and two police men in an injured condition who were groaning. He directed the other police personnel to shift both the injured persons to the anti-land mines vehicle. On reaching the Scorpio they found another dead body inside whose head was mutilated. About 10-12 feet from the Scorpio in a ditch one police personnel was lying dead and on verification the dead body was found to be that of Superintendent of Police, Pakur, Amarjit Balihar. Near the Scorpio was an unmetalled road where one police personnel and a person in a civil dress were lying in an injured condition. They disclosed their names as Lebennius Marandi and Dhanraj Maraiya. They were also got shifted in the anti-land mines vehicle. The injured person in the Bolero vehicle disclosed his name as Constable Bablu Murmu and that of the other injured as Police Santosh Kumar Mandal. Bablu Murmu had disclosed that after attending a meeting with the D.I.G., the Superintendent of Police, Pakur, Amarjit Balihar was returning to Pakur and when they reached the newly constructed culvert indiscriminate firing started from the jungle which resulted in the death of Ashok Kumar Srivastava, Manoj Hembrom, Rajeeva Kumar Sharma and Santosh Kumar Mandal became injured. He further disclosed that after the firing stopped some of the extremists approached his vehicle and thinking Bablu Murmu to be dead sounded out Pravir Da and wanted to know the fate of the other vehicles to which response came that Superintendent of Police, Pakur has been shot dead. The extremists near the vehicle of Bablu Murmu urged Tala Da, Joseph and Daud to loot the arms and ammunitions pursuant to which the extremists looted rifles including AK 47 rifles, bullets and thereafter by raising slogan "*Maowadi Zindabad*" all fled away towards the jungle.

In the meantime, the police force from Gopikandar P.S., Pakuria P.S. and Amrapara P.S. reached the place of occurrence. All the injured were sent to the Hospital for treatment. This witness has stated that a search operation was conducted at the

place of occurrence and in the nearby jungle from where empty cartridges, misfired cartridges, a broken piston grip of AK 47 rifle, one black shoe, one plastic slipper, a water container wrapped with a *gamcha* were recovered and a seizure list was duly prepared. The seizure list is in his handwriting and bears his signature and which has been marked as Exhibit- 17.

According to this witness the place of occurrence, the seized articles and the topography of the place clearly speaks of the occurrence having been orchestrated by Zonal Commander Pravir Da, Tala Da, Daud, Joseph, Deepak Dehri, Sonu Dehri and some local supporters. After returning to Kathikund P.S. the First Information Report was instituted. The written report is in the handwriting of this witness and bears his signature and which has been marked as Exhibit-18. The formal First Information Report is in the handwriting of literate Police Nagendra Kumar Singh which was recognized by him.

In the cross-examination on behalf of Prabir Da, he has stated that in his restatement he had taken the name of Pravir Da, Tala Da, Daud, Joseph, Deepak Dehri, Sonu Dehri, Sanatan Baski, Satan Besra, Kiran Tudu, the brother of Pravir Da, Vijay, Wakil Hembrom and local supporters Manvel Murmu, Stephen, Shivchandra Mohli, Suresh Bhaghat, Rashid Marandi and others but he had not taken the name of these accused in the written report since he came to know about their involvement later on.

In the cross-examination on behalf of Manvel Murmu and Manwel Murmu he has stated that the disclosure was made by one of injured and not by the others.

**27.** **P.W.21** (Gyan Shankar Jaiswal) was posted as a Circle Officer, Kathikund on 20.01.2014 when the Inspector had apprised him of the order of A.C.J.M., Dumka for conducting a Test Identification Parade.

He has stated that there were 08 camouflage jackets. At 2:30 P.M. the Test Identification Parade was held and Lebenius Marandi had identified the bullet proof jacket. A T.I. chart was

prepared which contained the signature of this witness and Lebenius Marandi which were identified and proved as Exhibit-19/1 and 19/2. He has stated that Constable Bablu Murmu had identified the camouflage bullet proof jacket. A T.I. chart was prepared which contains the signature of this witness as well as Bablu Murmu and which have been marked as Exhibit-19 and 19/3.

In his cross-examination he has stated that all the 08 jackets were brought in a big bag. The bag was not sealed. Out of 08 jackets the suspected jacket was identified. This witness had put a sticker on the suspected jacket to enable him to identify it. All the 08 jackets were brought by the Police.

**28.** **P.W.22** (Dr. Rajiv Kumar Singh) who was posted as a Medical Officer has stated that on 02.07.2013 a Medical Board was constituted by the Civil Surgeon, Dumka which comprised of this witness, Dr. N.K. Jha, Dr. D.K. Kesri. The Medical Board conducted the autopsy on the dead body of Chandan Kumar Thapa and had found the following antemortem injuries on his person:

- (i) Whole right half of face and skull avulsed, brain matter protruding outside.
- (ii) Entry wound of bullet present on right side of neck, measuring 1/4" x 1/4".
- (iii) Entry wound of bullet present on left side of neck, measuring 1/2" x 1/4".
- (iv) Exit wound of bullet present on back of neck, measuring 2" x 2".
- (v) Lacerated wound right lower leg 5" x 2" x bone deep.
- (vi) Entry wound of bullet above left, middle malleolus 1/1" x 1"/2" with fracture of lower one third of left tibia and fibula with lacerated wound 10" x 4" through which bullet comes out.

The cause of death was opined to be due to shock and hemorrhage and destruction of brain due to injury No. (i), (ii), (iii) and (iv) caused by firearms.

The postmortem report is written by this witness and bears his signature as well as the signatures of Dr. D.K. Kesri and Dr. N.K. Jha.

**29.** **P.W.23** (Dr. Dilip Kumar Keshri) was posted as a Medical Officer, Sadar Hospital, Dumka. A Medical Board was constituted by the Civil Surgeon, Dumka which comprised of this witness, Dr. R.P. Verma, Dr. A.K. Singh. The Medical Board conducted autopsy on the dead body of Ashok Kumar Srivastav and the following antemortem injuries were noted:

- (i) On lateral side of abdomen 2" x 1" on the side of above wound 1/2" x 1/4" size. Black burn mark.
- (ii) Right side of hip 4" x 4" size deep wound. On opening the abdomen and exploring the wound, liver was found lacerated and huge collection of blood in abdominal cavity.
- (iii) On left medial of knee 3" x 3" size bleeding wounds. Three in number 1/2" each around burn mark near wounds.

The cause of death was due to shock and hemorrhage as a result of injury No. (i) and (ii).

The postmortem report has already been marked as Exhibit-3.

**30.** **P.W.24** (Dr. Kumar Abhay Prasad) was posted as a Medical Officer at Sadar Hospital, Dumka and on 02.07.2013 he had examined Dhanraj Maraiya and he had found the following injuries:

- (i) Four penetrating wound with black margin near right scapula.
- (ii) Two penetrating wound with black margin on right lower posterior-Latro abdominal wall.
- (iii) Lacerated wound on right lower part of the leg. Size 3" x 2" x 1".
- (iv) Mark of identification- Mole on Left side of nose.
- (v) Age of injury- Within 06 hrs.
- (vi) Nature and cause of injury- Should be reserved

for till radio logical report.

On the same day he had examined Lebenius Marandi and had found the following injuries:

- (i) Two penetrating wound with black margin near left arm post lateral aspect.
- (ii) Lacerated wound on right foot, size 1/2" x 1" x 1/2".
- (iii) Mark of identification- Mole on Right upper chest wall.
- (iv) Age of injury- Within 06 hrs.
- (v) Nature and cause of injury - Should be reserved for till radio logical report.

He had also examined constable Bablu Murmu and had found the following injuries:

- (i) Bandage of both thigh with left leg at Rinchi Hospital, Dumka with Reference no. 2646, dated 02-07-2013. Patient was unconscious.
- (ii) Age of injury- Within 06 hrs.
- (iii) Nature and cause of injury - Should be reserved for till radio logical report.

All the three injury reports were written by him and had his signature which have been marked as Exhibit-21, 22 and 23.

In his cross-examination on behalf of Pravir Da he has stated that he had not mentioned the weapon which caused the injury.

**31.** **P.W.25** (Dr. Paul Hansda) was posted as a Medical Office, Sadar Hospital, Dumka. A Medical Board was constituted by the Civil Surgeon, Dumka which comprised of this witness, Dr. D. Rakshit, Dr. Sudeep Kashyap. The Medical Board had conducted autopsy on the dead body of Santosh Kumar Mandal. The postmortem report was prepared by Dr. Debashish Rakshit and this witness has identified the writing and signature of himself as well as that of Dr. Debashish Rakshit. The postmortem report has been marked as Exhibit-10 while the signature of this witness has been

marked as Exhibit-10/1.

**32.** **P.W.26** (Mahesh Pd. Singh) was posted as a Sub Inspector and the force he was heading comprised of 03 constables and 16 Police guard. On 02.07.2013 at 2:25 P.M. firing started in Pakur-Dumka Road and the matter was immediately informed to Kathikund P.S. and subsequent thereto the force had arrived which had reached the place of occurrence. The extremists had resorted to firing and while the Superintendent of Police and 05 Police men were injured, some had died. This witness has been declared hostile by the prosecution.

In his cross-examination he has deposed that he had disclosed the names of Pravir Da and Tala Da in his statement before Police. He had also stated that the extremists were 30-35 in number who had made indiscriminate firing upon the Police party due to which the Superintendent of Police, Pakur and few police officials died while some were injured. He had also stated that the extremists had looted arms and ammunitions of the police officials.

In his cross-examination on behalf of Pravir Da, he has stated that the place of occurrence is at a distance of 01 K.M. from the Police Picket. The place of occurrence was not visible from Picket. He had gone to the place of occurrence with the Officer-in-Charge of Kathikund P.S.

In the cross-examination on behalf of Manvel Murmu and Manwel Murmu, he has stated that he is not an eyewitness to the occurrence.

**33.** **P.W.27** (Sachidanand Mishra) was posted at Jamni Picket and along with him were one Officer, 03 constables and 16 Police guards. On 02.07.2013 he was on Sentry duty, when at about 2:30 P.M. he had heard the sound of blasting emanating from a jungle near the road situated at some distance from the Picket. The matter was relayed to the Officer-in-Charge of Kathikund P.S. after which several police personnel in an anti-land mines vehicle arrived and had gone to the place of occurrence. On their return it came to his knowledge that on account of the firing resorted to by the

extremists, Superintendent of Police, Amarjit Balihar and five persons from the escort party had died and some police personnel had suffered injuries for which they were shifted to the Hospital.

In the cross-examination on behalf of Pravir Da he has stated that he had not gone to the place of occurrence.

**34.** **P.W.28** (Indradeo Mandal) had deposed that on 02.07.2013 he was on Sentry duty at Jamni Picket and at around 2:30 P.M. he had heard indiscriminate sounds of firing. At this, all the police personnel took position. The Kathikund P.S. was informed and the police personnel came in anti-land mines vehicle. At the place of occurrence some police men were found dead while some were in an injured condition. The Superintendent of Police, Pakur, Amarjit Balihar and some police men of the escort party had died.

In his cross-examination on behalf of Pravir Da, he had deposed that he had not gone to the place of occurrence and the place of occurrence is not visible from the Picket.

**35.** **P.W.29** (Benedict Marandi) was doing his duty as Officer-in-Charge of Pakuria P.S. on 02.07.2013. He has stated that the incident had occurred in a small culvert situated between Jamni and Amtalla which comes under the jurisdiction of Kathikund P.S. At around 01:25 P.M. he had received a call on his mobile from the Officer-in-Charge, Maheshpur P.S. informing him that the Superintendent of Police, Pakur who had gone to attend the meeting with the D.I.G., Dumka was returning via Pakuria P.S. and this witness was directed to provide escort to Superintendent of Police, Pakur. After taking permission from the Inspector this witness who was at Maheshpur returned to Pakuria and left with the escort party comprising of 01 constable and 04 police guards. The escort party stationed themselves near Bara Pathar village waiting for the impending arrival of the Superintendent of Police, Pakur. When after 40 minutes the Superintendent of Police did not reach, he became anxious and started proceeding towards Dumka with the force. When they were about to reach village Dalahi the Officers-in-Charge of Amrapara P.S. and Gopikandar P.S. reached along with their force to

the place of occurrence and stopped their vehicles about 100 meters away from the place of occurrence. The officers of Kathikund P.S. had already reached by an anti-land mines vehicle. On reaching the place of occurrence he saw the Scorpio vehicle of the Superintendent of Police with two tyres punctured lying near the culvert. On having a close inspection of the vehicle, he found it riddled with 30-35 bullets. On the right side of the road the bodyguard of the Superintendent of Police and his driver were lying in an injured condition. Inside the Scorpio in the middle seat the dead body of the bodyguard of the Superintendent of Police, Chandan Thapa was lying. At about 15-20 feet distance from the vehicle was a ditch of 03 feet in which the dead body of Superintendent of Police, Pakur, Amarjit Balihar was lying. On inspection of the Bolero vehicle which was escorting the Superintendent of Police, Pakur 03 dead bodies were found. The injured persons were immediately sent for treatment. The place of occurrence was inspected and several empty cartridges, shoe, water container, camouflage cap were found which were seized and a seizure list was prepared by the Officer-in-Charge, Kathikund P.S.

On inspecting the place of occurrence and the recovery of empty cartridges according to this witness clearly revealed that the ambush was the handiwork of C.P.I. extremist organization members including the Commander of Santhal Pargana Zonal Committee Pravir @ Pravir Da @ Harendra Murmu, Tala Da @ Sahdeo Rai, Sanatan Baski, Pakku Tudu, Dhiran Tudu, Bimal Soren, Joseph Soren, Wakil Hembrom, Mahasay Soren, Deepak Dehri, Sonu Dehri and 30-40 other extremists.

He has identified in the dock Wakil Hembrom though he had failed to identify Sanatan Baski.

In his cross-examination, he has stated that he had not witnessed the occurrence. He has also stated that when the encounter was going on Amarjit Balihar had called on telephone the Officer-in-Charge of Amrapara P.S.

**36.** **P.W.30** (Lebenius Marandi) has stated that the incident is of 02.07.2013 at about 02:30 P.M. which occurred in a

culvert situated between Jamni and Amtalla. He was the bodyguard of Superintendent of Police, Pakur on that day. Since there was a meeting in the office of the D.I.G., he had come with Amarjit Balihar, Superintendent of Police, Pakur to Dumka. The meeting ended at 12:45 P.M after which they went to Circuit House. At about 02:00 P.M. they left for Pakur. This witness has deposed that he was in the car in which the Superintendent of Police was traveling and it was being driven by Dhanraj Maraiya. The Superintendent of Police was sitting in the front seat on the left-hand side besides the driver and this witness was sitting just at the back. In the middle seat Chandan Kumar Thapa was sitting. After about 25-30 minutes they reached near a culvert situated between Jamani and Amtalla. Since the culvert was newly constructed the vehicle became slow. The moment the vehicle slowed down indiscriminate firing had started from the right side. In front of his vehicle a truck was slowly moving along blocking the road. He has deposed that when the firing started the vehicle became stationary at which the Superintendent of Police, Pakur ordered the driver to drive fast but the driver disclosed that he has been incapacitated by a bullet which has struck his leg. At this, the Superintendent of Police asked this witness to give him the firearm and start firing at which this witness told to start firing after getting down from the vehicle. In course of getting down he sustained a gunshot injury on his right leg. He somehow crawled and managed to get inside in a ditch. He and the Superintendent of Police both hid in the ditch. The Superintendent of Police had directed him to call for reinforcements through phone. He has stated that the Superintendent of Police was firing from the weapon belonging to this witness. When in spite of repeated efforts, no connection could be made the Superintendent of Police had given his own private phone and while this witness was busy on the phone a bullet struck him on his left arm. From the right side of the road from where firing was being made the persons present were abusing and directing them to surrender. At this, the Superintendent of Police ordered his force to fire. When the Superintendent of Police had a talk with the Officer-in-

Charge he asked this witness for his arms. In the meantime, this witness became senseless and on regaining consciousness he changed the magazine of the rifle on the direction of the Superintendent of Police. The extremists were shouting and taking the name of Tala Da, Joseph, Pravir Da and were goading each other to loot the arms and ammunitions. The extremists shot at the Superintendent of Police and left them thinking that they were dead. By raising slogans, they fled away. This witness has identified Pravir da @ Pravir Murmu in the dock while he could not identify the others.

In the cross-examination on behalf of Manwel Murmu and Manvel Murmu, he has stated that in spite of informing the Officer-in-Charge of Amrapara P.S. reinforcement did not arrive. He has stated that the firing had continued for 5-7 minutes. At about 03:30 P.M. he has come to Kathikund and thereafter to Sadar Hospital, Dumka. His statement was taken for lodging an FIR in between 08-08:30 P.M. at Dhanbad. He has stated that the vehicle was riddled with 70-80 bullets but even then, the driver managed to survive. He has denied the suggestion that he had become unconscious and had not seen the occurrence.

In his cross-examination on behalf of the other accused persons barring Manwel Murmu, Manvel Murmu, Satan Besra, Sanatan Baski, Wakil Hembrom and Loin Soren he has stated that his vehicle was running at the speed of 80 KMPH. The escort vehicle was following them at a distance of about 50 feet. In the vehicle in which this witness was present the first bullet had struck the driver. After getting down from the vehicle he had dragged himself for about 10 feet before reaching the ditch. Before the occurrence he had not seen any of the accused. The extremists had resorted to firing from the *jungle* where they were hiding. When he was hiding in the ditch, he could only hear the sound of firing and the other side was not visible. He had fired about 5-6 rounds from his AK 47 rifle. This witness has further stated that when he was in the ditch he was in his senses and at that point of time no one had come near the ditch otherwise he would have fire. In the ditch there were

no one else except he and the Superintendent of Police. His statement was recorded at Dhanbad and after 3-4 days he was referred to Apollo Hospital where after a month or two he fully recovered. He has stated that he was not taken to the Test Identification Parade.

**37.** **P.W.31** (Dharmraj Maraiya @ Dhanraj Maraiya) has deposed that the incident had occurred on 02.07.2013 at about 02:00-03:00 P.M. in between Jamni and Amtalla. On that day he was driving the vehicle of the Superintendent of Police, Pakur. A meeting was scheduled in the office of the D.I.G. and they had gone to attend the meeting. In one vehicle the Superintendent of Police, two bodyguards as well as this witness were traveling while the other vehicle had the escort party. After having lunch, they had left for Pakur at about 02:00 P.M. Between Amtalla and Jamni indiscriminate firing had started and one bullet had struck his leg which got severed from his body. The vehicle could not move forward. On being directed he had handed over the Superintendent of Police his mobile phone. He has stated that he was sitting on his seat when a bullet struck his back. The Superintendent of Police had ordered his force to commence firing at which the encounter started. In course of the encounter the door on his side opened and he fell on the ground. The Superintendent of Police was shot at and he died. All the miscreants had come near his vehicle and looted the arms and ammunitions. He had become unconscious and regained conscious in the Hospital. This witness had identified Shivcharan Mohli as Pravir Da. This witness had identified Tala Da whose alias name is Sanatan. He however could not identify the rest accused persons.

In his cross-examination on behalf of Wakil Hembrom he has stated that he had not taken part in the Test Identification Parade. The Police had not taken his statement.

On the cross-examination on behalf of Manwel Murmu and Manvel Murmu he has stated that the Scorpio vehicle which he was driving belongs to Panem Company. He had told the Police that he could recognize some of the accused. He has deposed that he was initially treated at Dhanbad and thereafter at Ranchi.

**38.** The appellants were examined u/s 313 Cr.P.C. in which they claimed their innocence.

**39.** It has been submitted by Mr. Jitendra S. Singh, learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 1378 of 2018 that the appellant has been convicted without there being any material on record to sustain such conviction. He has submitted that admittedly there are no eye-witnesses on the record and even the purported circumstantial evidence does not indicate the presence of the appellant at the time of the encounter. Mr. Singh, while referring to the evidence of P.W.30 has submitted that his evidence is full of contradictions and infirmities. In his cross-examination he has stated that the extremists were firing from a forest cover and he had not seen anyone. Mr. Singh, has submitted that P.W.30 had not disclosed as to when he regained consciousness and on account of these infirmities it was necessary for the Investigating Officer to have conducted a Test Identification Parade as identification for the first time in the dock is a weak piece of evidence. Such identification has not been supported even by P.W.31 as in dock he has identified accused Shivcharan Mohli as the appellant. Relying on the evidence of the Investigating Officer (P.W.19), Mr. Singh, has argued that he has stated that the arms and ammunitions were handed over to Ashok Kumar Mishra by P.W.30 but P.W.30 has not stated likewise. P.W.30 has stated that he was with the Superintendent of Police when the encounter was in progress but the place of occurrence suggests otherwise. Mr. Singh, has further submitted that the Investigating Officer had systematically tried to develop the case against the appellant as on 07.07.2013 he had arrested Satan Besra and recorded his confessional statement on 08.07.2013 while on 08.07.2013 Wakil Hembrom was arrested and on the next day his confessional statement was recorded and subsequent thereto the statements of Bablu Murmu, Lebenius Marandi and Dhanraj Maraiya were recorded in order to co-relate their statements with the confessional statements of Satan Besra and Wakil Hembrom. Mr. Singh, has once

again drawn the attention of the Court to the evidence of P.W.30 who has deposed that his statement was recorded by the police but the statement has never been brought on record. He has also submitted that P.W.19 has categorically stated that the material exhibits were not sealed and the seizure list did not contain the signature of the witnesses. The *Malkhana* register was also not produced before the Court.

Mr. Jitendra S. Singh, learned counsel for the appellant has submitted that initially the prosecution had relied upon the evidence of P.W.12, P.W.30 and P.W.31 and since P.W.12 has turned hostile the entire case of the prosecution, therefore, hinges upon the evidence of P.W.30 and P.W.31. Adverting back to the evidence of P.W.30, Mr. Singh, has submitted that his evidence is not at all trustworthy and reliable. P.W.30 was with the Superintendent of Police as per his deposition at the time of the encounter but the Investigating Officer (P.W.19) has categorically stated that the Superintendent of Police was found at a distance of 20 feet from the vehicle and P.W.30 was 12 feet further away which according to Mr. Singh, rules out P.W.30 as a person who had identified the miscreants. Mr. Singh adds that P.W.30 has deposed that the encounter had taken place for a duration of 5-7 minutes and he had also become unconscious though he has not specified as to after how much time he had regained consciousness which also puts a spanner on his purported identification of the appellant in the dock. Learned counsel adds that the identification of the appellant is further doubted by the fact that P.W.30 has stated that when he was in the ditch in a conscious state none of the persons had come near him. It has further been submitted that the identification of the appellant in the dock is not supported by any corroborative piece of evidence and whether on the basis of such weak piece of evidence can the appellant be convicted since the other eye-witness P.W.31 had identified a wrong person as the appellant and there is a marked difference in the manner of firing at the Superintendent of Police as stated by P.W.30 and P.W.31. In support of his contention that

identification in the dock for the first time is a weak piece of evidence, learned counsel has relied upon the cases of "*Dana Yadav @ Dahu & Others versus State of Bihar*", reported in (2002) 7 SCC 295 and "*Lal Singh and Others versus State of U.P.*", reported in (2003) 12 SCC 554.

**40.** Mr. S.K. Murty, learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 1363 of 2018 has submitted at the outset that Sahdeo Rai @ Tala Da and Sanatan Baski are two different persons but the prosecution has tagged them and made them a single entity and in support thereof he has referred to the evidence of P.W.17 who had disclosed the name of Sahdeo Rai @ Tala Da and not Sanatan Baski as one of the extremists active in the area in which the incident had taken place. Mr. Murty, has submitted that the seizure list witnesses were not examined. He has stressed much upon the T.I. charts (Exhibit-19 and 19/1) to indicate that the Test Identification Parade of the bullet proof jacket was not conducted in accordance with law. He has referred to column 5 of the T.I. chart which does not indicate that the jacket identified was mixed with other similar jackets. In fact, according to Mr. Murty, the recovery of the bullet proof jacket was effected in another case. The manner of identification also puts a cloud of suspicion since neither the jacket was sealed nor the *Malkhana* register produced and even the jackets which were brought for the Test Identification Parade were dumped in one big bag. He has submitted that P.W.12 and P.W.30 who had identified the bullet proof jacket have not stated about the Test Identification Parade in their evidence. Regard being had to the recovery of the bullet proof jacket the appellant was not confronted with such recovery as well as the Test Identification Parade in his statement recorded u/s 313 Cr.P.C. thereby depriving the appellant of giving a suitable answer to such query. It has been submitted that though P.W.31 has identified the appellant in the dock but P.W.30 has failed to identify him and in absence of any corroboration such identification becomes a doubtful piece of evidence and accordingly the benefit of doubt should accrue to the appellant.

**41.** Mrs. Priya Shrestha, learned Spl. P.P. in Cr. Appeal

(D.B.) No. 1378 of 2018 and Mr. Vineet Kr. Vashistha, learned Spl. P.P. in Cr. Appeal No. (D.B) No. 1363 of 2018 have appeared on behalf of the State.

Mrs. Priya Shrestha, learned Spl. P.P. has submitted that there are overwhelming materials on record indicating the full-scale participation of the appellants in the grotesque and diabolical murder of the Superintendent of Police, Pakur and five other police personnel. She has drawn the attention of the Court to the confessional statement of Sanatan Baski (appellant in Cr. Appeal (D.B.) No. 1363 of 2018) marked 'X' for identification in which a vivid description of the encounter has been spelt out which incriminates him as well as Sukhlal Murmu (appellant in Cr. Appeal (D.B.) No. 1378 of 2018). Referring to the evidence of P.W.30 and P.W.31 she has submitted that both are injured eye-witnesses and have witnessed the encounter from close quarters and have also identified both the appellants in the dock which puts beyond any doubt the hope the defence was harboring with respect to their identification. She has also referred to the evidence of P.W.17 who has categorically stated that during the period in which the incident had taken place the extremist unit of the appellants was very much active in the area and such evidence co-relates to what has been stated by P.W.30 and P.W.31. According to her although P.W.12 has turned hostile but P.W.20 has stated about the disclosure made to him by P.W.12 that the extremists were calling each other by name which fact has also been stated by some of the other witnesses. The cascading effect of the disclosure made by P.W.12 before others would certainly impact the case of the defence. Countering the assertions of the learned counsels for the appellants that the doubt regarding the identification of the appellants could have been set at rest had the Test Identification Parade been held Mrs. Priya Shrestha has submitted that the same could not be held as the eye-witnesses who are also injured eye-witnesses had to undergo treatment for a considerable length of time. As per the alternative argument advanced by her since the appellants have been named in the First Information Report there

was no requirement of holding the Test Identification Parade. Learned Spl. P.P. has added that the bullet proof jacket of the Superintendent of Police, Pakur was recovered at the instance of Sanatan Baski (appellant in Cr. Appeal (D.B.) No. 1363 of 2018) and which was identified in Test Identification Parade by P.W.12 and P.W.30.

**42.** Mr. Vineet Kr. Vashistha, learned Spl. P.P. has submitted that the injuries suffered by P.W.12, P.W.30 and P.W.31 were opined by P.W.24 to have occurred within six hours which coincides with the time of the occurrence. There is no reason to disbelieve the evidence of the injured eye-witnesses. He has submitted that the circumstantial evidence enhances the eye-witnesses account and therefore the judgment of conviction need not be interfered with.

**43.** Mrs. Priya Shrestha, learned Spl. P.P. has also submitted a written note of argument especially on the point of death sentence which according to her was correctly imposed and has referred to a catena of judgments on the issue which I shall deal with as and when the occasion arises.

**44.** I have given my anxious consideration to the submissions advanced by the respective counsels and have also perused the Lower Court Records.

**45.** An ambush followed by a massacre carried out as per the prosecution by extremists left a trail of destruction by way of loss of six human lives including that of the then Superintendent of Police, Pakur. The appellants have been convicted on the basis of eye-witnesses account, recovery as well circumstantial evidence which according to the prosecution has spruced up the direct evidence. The First Information Report was instituted by Ashok Kumar (P.W.20) against four named accused including the appellants and 25-30 unknown extremists. The basis for implicating the named accused persons seems to be the disclosure made by Bablu Murmu as to how the incident had unfolded. According to Bablu Murmu the extremists were taking the name of each other and such names included that of the appellants. Bablu Murmu had suffered gunshot injuries and

thinking him to be dead the extremists had left him. Bablu Murmu in his disclosure made to P.W.20 had not stated about seeing the extremists or identifying them but has merely disclosed about the names being taken by the other extremists. This witness however in course of his evidence as P.W.12 did not support the prosecution case and accordingly was declared hostile by the prosecution. He has stated about not witnessing the incident though he had heard the firing and subsequently he had become unconscious. This witness did not depose of having identified the bullet proof jacket of the Superintendent of Police, Pakur and no question in that respect were also put to him. Though P.W.3, P.W.9, P.W.19 and P.W.20 have stated about the disclosures made to them by Bablu Murmu but the same has become insignificant considering the evidence of Bablu Murmu who as stated above had become hostile.

**46.** We now focus on the evidence of P.W.30 and P.W.31 as their evidence seems to have assumed greater dimension in the face of P.W.12 having been declared hostile by the prosecution. Lebenius Marandi (P.W.30) was the bodyguard of the Superintendent of Police who as per his own version was with the Superintendent of Police in his final moments. He has identified Pravir Murmu @ Pravir Da in the dock which signifies that he had witnessed the presence of the appellant in Cr. Appeal (D.B.) No 1378 of 2018 at the time of the incident. The identification, therefore, has to be considered in the backdrop of his entire evidence. It would be significant to note that he had not identified the other appellant Sahdeo Rai in the dock.

**47.** P.W.30 was sitting just behind the Superintendent of Police, Pakur in the middle seat of the Scorpio. As the vehicle reached the culvert firing had started. In spite of the orders of the Superintendent of Police to speed up the vehicle the driver Dhanraj Maraiya (P.W.31) was prevented by sufficient cause to obey such order, firstly, because of the culvert having been newly constructed, secondly, because of the fact that the driver was hit on the leg by a bullet and thirdly, on account of a truck which was slowly moving in front encompassing the entire road. P.W.30 has deposed that the

Superintendent of Police asked him to give him his (P.W.30's) fire arm and to start firing. Since there was some difficulty in firing from inside the vehicle, he had asked the Superintendent of Police to come out from the vehicle and start firing. In course of getting down from the vehicle P.W.30 had suffered a gunshot injury on his right leg. He dragged himself towards the ditch and hid himself along with the Superintendent of Police. While the Superintendent of Police was returning the fire P.W.3 was shot on his left arm. When the Superintendent of Police asked him for the arms P.W.30 became unconscious and on regaining consciousness he had changed the magazine of the rifle of the Superintendent of Police. In the meantime, he had heard the names of Tala Da, Joseph, Pravir being taken by the other extremists goading them to loot the arms and ammunitions. In his cross-examination P.W.30 has stated that the extremists were firing by taking shelter in a forest cover. This witness was in the ditch from where the other side of the vehicle was not visible. P.W.30 has admitted that when he was conscious and hiding in the ditch no persons had come near him.

**48.** The evidence of P.W.30 attracts incongruities and contradictions and the basis for identification of the appellant Pravir Murmu @ Pravir Da in the dock seems to be non-existent and such identification gets diluted in view of the Investigating Officer having failed to conduct a Test Identification Parade. It has been admitted by P.W.30 that he had not seen any of the accused previously and his evidence does not give any inkling of having seen the appellant Pravir Murmu @ Pravir Da taking part in the encounter P.W.30 had already received two gunshot injuries, one on the leg and one on the hand, was hiding himself in a ditch and while battling the hopeless situation had become unconscious also. He does not even whisper about seeing the appellants at the place of occurrence. What remains, therefore, is of the extremists taking the name of the appellants as well as Joseph and the identification in the dock of Pravir Murmu @ Pravir Da by P.W.30 which in absence of any corroborative piece of evidence cannot be taken cognizance of.

**49.** The other appellant Sahdeo Rai @ Sanatan Baski @ Tala Da seems to have been identified by P.W.31 in the dock for the first time though he had failed to identify the other accused persons. This witness had also suffered two gunshot injuries on his leg and back. He was driving the Scorpio vehicle in which the Superintendent of Police, Pakur was present. His examination-in-chief seems to suggest that he had seen the extremists from close quarters when they had looted the arms and ammunitions. This witness though had identified Tala Da @ Sanatan Baski in the dock but had wrongly identified Shivcharan Mohli as the appellant Pravir. P.W.31 has deposed that while he received two gunshot injuries the door of his vehicle opened and he fell outside. At the same time, the Superintendent of Police was shot at and he died. This version of P.W.31 clearly appears to be doubtful when we consider the evidence of the Investigating Officer (P.W.19). While describing the place of occurrence P.W.19 has deposed that the ditch in which the body of the Superintendent of Police was found was at a distance of 20 feet from the Scorpio vehicle on the northern side while P.W.30 and P.W.31 were found in an injured condition about 12 feet away from the Scorpio vehicle on the southern side. The description of the place of occurrence and the positions in which the dead and injured persons were found is suggestive of the fact that P.W.31 had also not witnessed the participants of the ambush.

**50.** The Hon'ble Supreme Court in the case of "*Dana Yadav @ Dahu & Others versus State of Bihar*", reported in **(2002) 7 SCC 295**, while considering the various facets of a Test Identification Parade has laid down certain guidelines and since para 38(e) is relevant for this case the same is quoted hereinunder:

**38. (e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test**

*identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.*

**51.** In the case of “*Sheo Shankar Singh versus State of Jharkhand*,” reported in (2011) 3 SCC 654, it has been held as follows:

**“46.** *It is fairly well settled that identification of the accused in the court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the witness in the court who claims to identify the accused persons otherwise unknown to him. Test identification parades, therefore, remain in the realm of investigation.”*

**“47.** *The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the court. As to what should be the weight attached to such an identification is a matter which the court will determine in the peculiar facts and circumstances of each case. In appropriate cases the court may accept the evidence of identification in the court even without insisting on corroboration.”*

**52.** Both the appellants are named in the First Information Report based on the disclosure made by Constable Bablu Murmu who did not assert having seen them but had heard their names being taken by the other extremists. In fact, the evidence of P.W.20 who was the Officer-in-Charge of Kathikund P.S. and who was amongst the first persons to reach the place of occurrence in an anti-land mines vehicle had seen P.W.30 and P.W.31 lying injured adjacent to each other in the unmetalled road near the Scorpio vehicle. P.W.30 who claimed that he had become unconscious during

the encounter though the duration of his unconsciousness has not been spelt out by him but at the same time he had heard the extremists taking the name of the appellants though P.W.31 who was lying injured besides him did not disclose about hearing any names. In the dock P.W.30 identified appellant Pravir Murmu @ Pravir Da while failing to identify any of the others whereas P.W.31 identified appellant Tala Da while wrongly identifying Shivchandra Mohli as appellant Pravir.

**53.** Neither P.W.12 nor P.W.30 or P.W.31 has stated about having seen the appellants at the place of occurrence. The harbinger of the case against the appellants did not disclose any incriminating circumstances against them in his evidence as P.W.12, hence he was declared hostile. The evidence of P.W.30 and P.W.31 does not inspire confidence as even though they were in the same vehicle but both seem to have given different versions of the encounter. P.W.31 who was the driver of the Scorpio vehicle had become unconscious after the extremists had looted arms and ammunitions which would suggest that he had witnessed the entire occurrence but he has not stated about the extremists taking the name of the appellants but P.W.30 who had also become unconscious claims to have heard the names of the appellants being taken by the extremists. Therefore, the contradiction evinced by the defence in the evidence of P.W.30 and 31 inexplicably leads to a conclusion that P.W.30 and P.W.31 though, without doubt were eye-witnesses to the occurrence but had not seen the actors participating in the mayhem. If we consider the scenario which unfolded as per the version of the eye-witnesses the same would indicate that as soon as the Scorpio vehicle reached the culvert indiscriminate firing had started and the Bolero vehicle following the Scorpio also came under heavy fire. The firing continued for 5-7 minutes as has been stated by P.W.30. Both the vehicles were riddled with bullets and their windscreen, side glasses and back screen were found damaged and shattered. The attack was so sudden that some of the police personnel died in the vehicle itself. Others under a spurt of heavy fire tried to save

themselves but there was not a single person who could escape the bullets. In the mayhem which was unleashed and which was encountered by the passengers of the vehicle and which lasted for a short duration it would have been well-nigh impossible to have witnessed the countenance of the assailants and that to when P.W.30 and P.W.31 had suffered two gunshot injuries though, we must reiterate that neither P.W.30 nor P.W.31 have claimed to have seen the assailants.

**54.** In the backdrop of such fact circumstances the identification of the appellants in the dock by P.W.30 and P.W.31 is tainted with grave doubt and could not have been used as a fulcrum for indicting the appellants. Here it would be profitable to quote the observation made by the Hon'ble Supreme Court in the case of "*Ashish Batham versus State of M.P.*," reported in (2002) 7 SCC 317, which is quoted hereinunder:

**“8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between “may be true” and “must be true” and this basic and golden rule only helps to maintain the vital distinction between “conjectures” and “sure conclusions” to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.”**

**55.** P.W.31 is the only witness who has stated about the extremists taking the name of the appellants as well as of one

Joseph. The same has not been corroborated by P.W.30 as he has not disclosed the name of any of the assailants. Mere calling out someone by name and in absence of any concrete evidence such evidence would not be of any substantial value to the prosecution.

**56.** The other notable feature of the case is the identification of the bullet proof jacket of the Superintendent of Police, Pakur which was recovered at the instance of the appellant Sanatan Baski [appellant in Cr. Appeal (D.B) No. 1363 of 2018] in connection with Maheshpur P.S. Case No. 250 of 2013. In the Test Identification Parade P.W.12 and P.W.30 had identified the same as that of the Superintendent of Police, Pakur.

**57.** For scrutinizing the veracity or otherwise of the Test Identification Parade we have carefully perused the Test Identification Charts which have been marked as Exhibit-19 series. The Test Identification Charts contains some glaring inadequacies which perhaps escaped the attention of the learned trial court. Column (2) of the said chart is with respect to the name of the person who is to identify the person (in this case it is with respect to an article i.e. bullet-proof jacket) while column (3) contains the details of the article which is to be put up for identification. The place where the Test Identification Parade should be held shall be depicted in column (4) and the manner of identification is to be spelt out in column (5). Column (6) is concerned with the name and signature of the witnesses in the presence of whom the process of identification is carried out. Column (7) and (8) are related to the specifications of the identification.

**58.** In Exhibit-19 and 19/1 the manner of identification of the camouflaged bullet proof jacket as depicted in column (5) seems to suggest that it was mixed with seven similar looking articles. It does not indicate that the article in question was mixed with similar looking bullet proof jackets. P.W.21 who had conducted the Test Identification Parade in his examination-in-chief has stated that P.W.30 had identified the bullet proof jacket. In para 3, he has stated that P.W.12 had identified the jacket though as an

afterthought, as it seems, he has stated about the presence of eight bullet proof jackets in the Test Identification Parade. In his cross-examination he admits that in column (5) of the chart he had not mentioned about bullet proof jackets. He has further stated that all the jackets were in a bag which was not sealed.

**59.** In the case of "Ashish Batham" (supra) the identification of the chain was shrouded in doubt since it was not placed along with similar looking things and it was held as follows:

**"13.** *The identification test said to have been conducted by the Tahsildar (PW 8) and the so-called identification of the same by PW 2 and his wife of the chain said to have been worn by the deceased Nidhi does not carry the case of the prosecution any further. It is stated that the said chain placed for identification had iron wire in place of hook and it was not said to have been mixed with similar chains having such iron wire in place of hook. The criticism that, nothing much could be relied upon the so-called identification cannot be lightly brushed aside. Even as to the recovery of the chain claimed from the appellant after his arrest on 12-4-1999 at Shajapur, serious doubts surround recovery claim to render the said claim itself a suspect one. PW 9 is the only panch witness examined for the recovery but the panchnama does not corroborate any recovery in his presence and the other witness to the recovery was not examined at all. It is hard to believe that the appellant was carrying the chain in his pocket from the date of occurrence till he met Inspector Gaur that the said Inspector who allegedly got the diary and a photo could not have noticed it at Bhopal and the same was carried by him even when he was brought to Shajapur till it was claimed to have been recorded by PW 27. Though it was said to have been worn by the deceased Nidhi before her death, no bloodstains were found on the chain in spite of her neck being cut and she bled profusely from the neck. The non-examination of Inspector Gaur, who brought the appellant from Bhopal, also cast serious and reasonable doubts about this part of the prosecution case. The same appears to be the position with reference to the story about the disclosure statement Ext. P-23 and the recovery panchnama Ext. P-24 relating to the recovery of the bloodstained knife and clothes recovered from the bushes near Hanuman temple. Apart from the story striking to be stale, unnatural and unbelievable that after the occurrence*

*the appellant had gone to the temple area to hide these two things though he was said to have been going towards the bus-stand, is suggestive of the fact that he was only leaving for Bhopal. The delayed recovery that too after the second remand of the appellant casts serious doubts about the said circumstance itself to be true or accepted to have been proved. Though PW 10, the panch witness would claim that the appellant signed the disclosure statement Ext. P-23 in his presence, the same really does not bear any signature of the appellant. This fact taken together with the deposition of PW 10 that the appellant was found handcuffed and his face was covered and the non-examination of the other witness in spite of such doubtful version, the credibility of the so-called disclosure statement as well as the alleged recovery becomes seriously doubtful.”*

**60.** The other and most important aspect appears to be the absence of any independent witnesses while holding the Test Identification Parade. Column (6) of the charts are filled up with the signature and name and address of P.W.30 and P.W.31 though the same should have contained the signature and name of independent witnesses. The Test Identification Parade, therefore, appears to be totally flawed and speaks of blatant ignorance of the procedure to be followed.

In the context of the above we may copiously refer to Rule 236 (b) of the “Jharkhand Police Manual” which reads as follows:

*“(b) Identification of suspected articles.- In this connection, the following instructions shall be followed word by word:-*

*(1) For identification of one article three or four articles of similar nature shall be mixed up.*

*(2) No Mark shall be put on a suspected article. If it is essential to give a mark similar marks shall be placed on unsuspected articles.*

*(3) Care shall be taken to see that witnesses have not seen the suspected articles before the identification. Hence the witnesses shall not go with that officer who carries the articles before magistrate.*

*(4) Where any special mark has been given on articles from before and their descriptions have been noted in first information report and*

*in the statement of witnesses, the investigator shall fully scrutinise it after the article has been recovered and if from descriptions given, those articles are established, it shall not be necessary to get identification done. Only at the time of trial, the witnesses concerned shall identify these articles before courts.*

*(5) For the sake of identification it will be proper if articles, similar to suspected articles are made available.*

*(c) The identification parade shall be conducted as far as possible before a Magistrate but if for any reason, a Magistrate can not be available then before any other responsible officer, such as the services of Deputy Registrar shall also be admissible.*

*(d) The witnesses shall have to certify in the prescribed columns of the chart that the method in which the identification has been carried, was correct.*

*(e) Suspects who are to be subjected to an identification parade shall be informed about it at the time of their arrests to enable them to take necessary precautions by way of keeping their faces covered and a request should be made to the Magistrate to record a note in the remand papers regarding such precautions having been taken by him so as to eliminate any subsequent defence by the suspects that they had been shown to the witnesses before identification parade was held.”*

**61.** Another significant feature seems to be the silence adopted by P.W.30 and P.W.20 with respect to the Test Identification Parade. P.W.21 has stated about the presence of the Inspector (P.W.19), Officer-in-Charge Ashok Kumar (P.W.20), Lebenius Marandi (P.W.30) and Bablu Murmu (P.W.12) at the time of the Test Identification Parade. P.W.12 has already turned hostile as such his evidence is of no consequence. P.W.20 and P.W.30 have not uttered a word about such Test Identification Parade. Only P.W.19 has stated about the Test Identification Parade having been held and a bullet proof jacket identified by the witnesses. Except such fleeting

reference he has not elaborated on the holding of the Test Identification Parade.

**62.** The Test Identification Parade, therefore, seems to have been a farcical exercise in order to somehow spruce up the case of the prosecution. Such Test Identification Parade in the face of glaring irregularities cannot be considered at all as the basis for conviction of the appellant in Cr. Appeal (D.B.) No. 1363 of 2018.

**63.** Viewed thus in the backdrop of the Test Identification Parade of the bullet proof jacket we now venture to consider the 313 Cr.P.C. statement of the appellant Sanatan Baski wherein omissions have been pointed out as strenuously argued by Mr. Murty. Before a glance at the 313 Cr.P.C. statement of the appellant Sanatan Baski the safeguards which have been put in place for recording such statements and the consequences of not putting relevant question to an accused have been considered by the Hon'ble Supreme Court and it has been summarized in the case of "*Nar Singh versus State of Haryana*", (2015) 1 SCC 496 and which reads as follows:

**“11.** *The object of Section 313(1)(b) CrPC is to bring the substance of accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. The provisions of this section are mandatory and cast a duty on the court to afford an opportunity to the accused to explain each and every circumstance and incriminating evidence against him. The examination of the accused under Section 313(1)(b) CrPC is not a mere formality. Section 313 CrPC prescribes a procedural safeguard for an accused, giving him an opportunity to explain the facts and circumstances appearing against him in the evidence and this opportunity is valuable from the standpoint of the accused. The real importance of Section 313 CrPC lies in that, it imposes a duty on the court to question the accused properly and fairly so as to bring home to him the exact case he will have to meet and thereby, an opportunity is given to him to explain any such point.*

**16.** *Undoubtedly, the importance of a statement under Section 313 CrPC, insofar as the accused is concerned, can hardly be minimised. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being*

put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 CrPC statement is taken at the earliest stage, the court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 CrPC statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 CrPC, failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the court to question the accused on any incriminating circumstance would not *ipso facto* vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Insofar as non-compliance with mandatory provisions of Section 313 CrPC is concerned it is an error essentially committed by the learned Sessions Judge. Since justice suffers in the hands of the court, the same has to be corrected or rectified in the appeal.

**17.** So far as Section 313 CrPC is concerned, undoubtedly, the attention of the accused must specifically be brought to inculpable pieces of evidence to give him an opportunity to offer an explanation, if he chooses to do so. A three-Judge Bench of this Court in *Wasim Khan v. State of U.P. and Bhoor Singh v. State of Punjab* held that every error or omission in compliance with the provisions of Section 342 of the old CrPC does not necessarily vitiate trial. The accused must show that some prejudice has been caused or was likely to have been caused to him.

**20.** The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance with Section 313 CrPC has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under Section 313 CrPC, it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that the accused has suffered some disability or detriment in relation to the safeguard given to him under Section 313 CrPC. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to

*him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice. The facts of each case have to be examined to determine whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstances being put to the accused.”*

**64.** The courses available to the appellate court on omission to put a question to the accused has been dealt with in the following manner:

**30.1.** *Whenever a plea of non-compliance with Section 313 CrPC is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer.*

**30.2.** *In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.*

**30.3.** *If the appellate court is of the opinion that non-compliance with the provisions of Section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 CrPC and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.*

**30.4.** *The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.”*

**65.** It is no doubt true that the learned trial court had failed to put the question of identification of the bullet proof jacket of the Superintendent of Police, Pakur recovered at his instance to the

appellant Sanatan Baski but in the peculiar facts and circumstances of the case though some prejudice has been caused to the appellant Sanatan Baski but when I have already held that the Test Identification Parade itself was flawed I do not deem it fit to direct the learned trial court to rectify the irregularity and examine the appellant afresh. Even the inability of the appellant Sanatan Baski to give a reasonable explanation would not give a new dimension to the Test Identification Parade and/or make the prosecution case more believable so far as the appellant Sanatan Baski is concerned.

**66.** Here, I must hasten to add that the role of the Police in the investigation into the carnage of such magnitude in which five of their brethren had died leaves much to be desired. The learned trial court though having convicted the appellants had also taken note of the inadequacy in the investigation and had made scathing remarks. I do not intend to make any further observation but at the same time I am tempted to quote a few lines from the case of "*Sunil Kundu & Another versus State of Jharkhand*" reported in (2013) 4 SCC 422.

**“29.** We began by commenting on the unhappy conduct of the investigating agency. We conclude by reaffirming our view. We are distressed at the way in which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored. In this case, the lapses are very serious. PW 5 Jaldhari Yadav is a pancha to the seizure panchnama under which weapons and other articles were seized from the scene of offence and also to the inquest panchnama. Independent panchas have not been examined. The

*investigating officer has stated in his evidence that the seized articles were not sent to the court along with the charge-sheet. They were kept in the malkhana of the police station. He has admitted that the seized articles were not sent to the forensic science laboratory. No explanation is offered by him about the missing sanha entries. His evidence on that aspect is evasive. Clothes of the deceased were not sent to the forensic science laboratory. The investigating officer admitted that no seizure list of the clothes of the deceased was made. Blood group of the deceased was not ascertained. No link is established between the blood found on the seized articles and the blood of the deceased. It is difficult to make allowance for such gross lapses. Besides, the evidence of eyewitnesses does not inspire confidence. Undoubtedly, a grave suspicion is created about the involvement of the accused in the offence of murder. It is well settled that suspicion, however strong, cannot take the place of proof. In such a case, benefit of doubt must go to the accused. In the circumstances, we quash and set aside the impugned judgment and order. The appellant-accused are in jail. We direct that the appellants A-1 Sunil Kundu, A-2 Bablu Kundu, A-3 Nageshwar Prasad Sah and A-4 Hira Lal Yadav be released forthwith unless otherwise required in any other case.”*

**67.** I therefore, come to the conclusion that the prosecution has miserably failed to prove its case beyond all reasonable doubt against the appellants.

**68.** As a sequel to the discussions made hereinabove, I set aside the judgment and order of conviction and sentence dated 06.09.2018 (sentence passed on 26.09.2018) by Md. Taufiqul Hassan, learned Additional Sessions Judge-IV<sup>th</sup>, Dumka in S.T. No. 232/2013, S.T. No. 31/2014, S.T. No. 146/2014 and S.T. No. 16/2015 whereby and whereunder the appellants have been convicted for the offences under Section 148, Section 302 read with Section 149 and a fine of Rs. 10,000/- each, Section 302 read with Sections 120(B) and 109 and a fine of Rs. 10,000/- each, Section 396 read with Section 149 and a fine of Rs. 10,000/- each, Section 396 read with Sections 120(B) and 109 and a fine of Rs. 10,000/- each, Section 307 read with Section 149, Section 307 read with Sections

120(B) and Section 109, Section 333 read with Section 149, Section 353 read with Section 149, Section 427 read with Section 149 of the Indian Penal Code, Section 27 of the Arms Act and Section 17 of the C.L.A. Act and have been sentenced to death for the offences u/s 302 read with Section 149 of the Indian Penal Code, Section 302 read with Section 120B/109 of the Indian Penal Code, Section 396 read with Section 149 of the Indian Penal Code, Section 396 read with Section 120B/109 of the Indian Penal Code, Sentenced to R.I. for three years along with a fine of Rs. 3000/- for the offence u/s 148 of the Indian Penal Code, R.I. for life and a fine of Rs. 5000/- each for the offences u/s 307 read with Section 149 of the Indian Penal Code, R.I. for life and a fine of Rs. 5000/- each for the offence u/s 307 read with Section 120B and Section 109 of the Indian Penal Code, R.I. for 10 years and a fine of Rs. 5000/- each for the offence u/s 333 read with Section 149 of the Indian Penal Code, R.I. for two years and a fine of Rs. 2000/- each for the offence u/s 353 read with Section 149 of the Indian Penal Code, R.I. for two years u/s 427 read with Section 149 of the Indian Penal Code, R.I. for two years along with a fine of Rs. 1000/- each, R.I. for life and a fine of Rs. 10,000/- each for the offence u/s 27(2) of the Arms Act and R.I. for three years and a fine of Rs. 3000/- each for the offence u/s 17 of the C.L.A. Act.

**69.** These appeals stand allowed.

**(Rongon Mukhopadhyay, J.)**

**HIGH COURT OF JHARKHAND AT RANCHI**

Dated, the 17<sup>th</sup> day of July, 2025.

A. Sanga/-

**Later on**

**17<sup>th</sup> July, 2025**

**Per Sanjay Prasad, J.**

**70.** I have the privilege from going through the judgment of My Esteemed Brother Hon'ble Mr. Justice Rongon Mukhopadhyay.

However, this Court respectfully differs with the view taken by My Esteemed Brother and hence, this Court wishes to pass its own Judgment separately.

**71.** These Criminal Appeals have been preferred by the appellants challenging the judgment of conviction dated 06.09.2018 and sentence dated 26.09.2018 passed by Md. Taufiqul Hassan, learned Additional Sessions Judge-IV, Dumka in S. T. No. 16 of 2015 and S. T. No. 31 of 2014, S.T No. 46 of 2014, S.T No. 232 of 2013 whereby both the appellants have been convicted and sentenced as follows:-

(i) Both the convicts namely Pravir Da @ Pravil Da @ Harendra Da @ Sanat Da @Marang Da @ Amrit @ Sukhlal and Sanatan Baski @ Sahdeo Rai @ Tala Da are convicted for having committed the offence Under Section 148 I.P.C. and are sentenced to undergo R.I. for three years each and are ordered to pay a fine of Rs.3,000/- each. In default of payment of fine, they are sentenced to undergo further R.I. for three months each.

(ii) Both the convicts namely Pravir Da @ Pravil Da @ Harendra Da @ Sanat Sessy Da @Marang Da @ Amrit @ Sukhlal and Sanatan Baski @ Sahdeo Rai @ Tala Da are convicted for having committed the offence punishable Under Section 302 read With section 149 I.P.C. and are sentenced to death and are further ordered to pay a fine of Rs. 10,000/- each and in default of payment of fine they are further sentenced to undergo R.I. for three years each. Both the convicts shall be hanged by

their neck till death.

(iii) Both the convicts, are further convicted for having committed the offence punishable Under Section 302 read with section 120B/109 I.P.C. and are sentenced to death and are further ordered to pay a fine of Rs.10,000/-each and in default of payment of fine they are further sentenced to undergo R.I. for three years each. Both the convicts shall be hanged by their neck till death.

(iv) Both the convicts are further convicted for having committed the offence punishable Under Section 396 read with section 149 I.P.C. and are sentenced to death and are further ordered to pay a fine of Rs.10,000/-each and in default of payment of fine they are further sentenced to undergo R.I. for three years each. Both the convicts shall be hanged by their neck till death. Both the convicts shall be hanged by their neck till death.

(v) Both the convicts, are further convicted for having committed the offence punishable under Section 396 read with section 120B/109 I.P.C. and are sentenced to death and-are-further ordered to pay a fine of Rs.10,000/-each and in default of payment of fine they are further sentenced to undergo R.I. for three years each. Both the convicts shall be hanged by their neck till death.

(vi) Both the convicts are further convicted for having committed offence u/s 307 read with section 149 I.P.C. and are sentenced to undergo rigorous imprisonment for life and are ordered to pay a fine of Rs.5,000/- each. In default of payment of fine, they will have to undergo further R.I. for three years each.

(vii) Both the convicts are further convicted for having committed the offence u/s 307 read with section 120B and 109 I.P.C. and are sentenced to undergo rigorous imprisonment for life and are ordered to pay a fine of Rs.5,000/- each. In default of payment of fine, they are sentenced to

undergo further R.I. for three years each.

(viii) Both the convicts are further convicted u/s 333 read with section 149 I.P.C. and are sentenced to undergo rigorous imprisonment for 10 years and are ordered to pay a fine of Rs.5,000/- each. In default of payment of fine, they are further entenced to undergo further R.I. for two years each.

(ix) Both the convicts are further convicted for having committed the offence under Section 23 read with section 149 I.P.C. and are sentenced to undergo R.I. for two years and are ordered to pay a fine of Rs.2,000/- each. In default of payment of fine, they are sentenced to undergo further R.I. for three months each.

(x) Both the convicts are further convicted for having committed the offence under Section 27 read with section 149 I.P.C. and are sentenced to undergo R.I. for two years each and are ordered to pay a fine of Rs.1,000/- each. In default of payment of fine, they will have to undergo further R.I. for two months each.

(xi) Both the convicts are also convicted for having committed the offence u/s 27 (2) Arms Act and are sentenced to undergo rigorous imprisonment for life ancl are ordered to pay a fine of Rs.10,000/- each. In default of payment of fine, they are sentenced to undergo further R.I. for three years each.

(xii) Both the convicts are further convicted for having committed offence u/s 17 C.L.A. Act and are sentenced to undergo R.I. for the three years and are ordered to pay fine of Rs.3,000/- each. In default of payment of fine, they will have to undergo further R.I. for three months each.

72. My Esteemed Brother has given details of order taking cognizance, charge-sheet and regarding framing of charge-sheet and has referred the arguments of the learned counsel for the appellants as well

as the State hence, the same are not being repeated here as it will amount to repetition.

73. It is evident that the occurrence had taken place during returning of the S. P. Pakur Amarjeet Balihar after attending the meeting in the office of DIG, Dumka on 02.07.2013 and when they had arrived near newly culvert (pulia) at 2.30 P. M. situated between the Amartala and the Jamuni Picket, then indiscriminate firing started from the right side of the jungle and it would appear that the S.P. had hide himself in the ditch, but the driver had remained in the vehicle due to gun shot injury in his legs and back side. It is also evident that P. W. -30, Lebenious Marandi then bodyguard of late Amarjeet Balihar, S. P. Pakur, had sustained gun shot injury on his right leg and as such he was not in a position to fire. It is further evident that even S. P. Pakur had informed the then Officer In-charge of Amartala P. S. that he has been trapped for his encounter by the Extremists and he was asking for help and thereafter, the Officer In-charge immediately informed the Police Inspector, P. W.-20, Ashok Kumar and other person P. W. -19, Chonas Kumar Minj, the I. O. of this case to proceed along with their armed forces and when they had arrived they had seen that firing had been stopped and the two vehicles i.e. Bolero Vehicle and Scorpoio Vehilce were lying and several bullets and khokha and sandals etc. wer also seized from the place of occurrence by preparing the seizure lists.

74. From scrutinizing the evidence of the prosecution side, it is evident that apart from P. W.-12, Bablu Murmu, P. W. -30, Lebenius Marandi, P. W. -31, Dhanraj Maraiya, there are eye witnesss of the occurrence. However, P. W.-12 has been declared hostile by the prosecution and he has not identified any of the miscreants including these appellants during the trial.

75. So far as the P. W. -30, Lebenious Marandi and P. W.-31,

Dhanraj Maraiya are concerned, it is evident that they had identified the accuse Pravir Da @ Pravir Murmu and Tala Da @ Sanatan @ Sanatan Baski before the Trial Court.

It would also appear that P. W.-31, Dhanraj Maraiya has identified the Pravir Da as Shivcharan Mahli and he intends to say the name of Pravir Da as an accused for committing the offence, therefore, the Trial Court has convicted both the appellants for the charges punishable Sections 148, 302/149, 302 read with 120B and 109, 396/149, 396 read with 120 B of the Indian Penal Code and 109, 307/149, 307 read with 120B and 109, 333/149, 353/149, 427/149 of the Indian Penal Code, Section 27 of the Arms Act and Section 17 of the Criminal Law Amendemtn Act.

76. During trial, in order to bring home the charges, the prosecution had got examined the following thirty one (31) witnesses, who are as follows:-

- (i) P.W.1 is Arun Kumar Jha,
- (ii) P.W.2 is Ganga Ram Choure, Constable No. 604,
- (iii) P.W.3 is Prem Kumar Hansda, Constable No. 583,
- (iv) P.W.4 isJialal Hembrom, Constable No. 701,
- (v) P.W.5 is Narendra Kumar Bhatt, Constable No. 167,
- (vi) P.W.6 is Pramod Kumar, Constable No. 1483,
- (vii) P.W.7 is Md. Sarfaraz Alam, i.e. Driver- Constable,
- (viii) P.W.8 is Manjit Kisku, Constable No. 228,
- (ix) P.W.9 is Darbari Soren, Constable No. 616,
- (x) P.W.10 is Dr. Ramesh Prasad Verma, i.e. M. O.,
- (xi) P.W.11 is Ranjit Minj, then O/C Amarapara P. S.,
- (xii) P.W.12 is Bablu Murmu, Hawaldar (eye witness),
- (xiii) P.W.13 is Dr. Ajay Kumar Singh, i.e. M. O.,
- (xiv) P.W.14 is Dr. Nishit Kumar Jha, i.e. M. O.,

- (xv) P.W.15 is Ram Kishun Yadav, Sub-Inspector,
- (xvi) P.W.16 is Arun Kumar Hembrom, Constable No. 764,
- (xvii) P.W.17 is Baiju Baraik, J. S. I.,
- (xviii) P.W.18 is Dr. Debasish Rakshit, i.e. M. O. ,
- (xix) P.W.19 is Chonas Kumar Minj, i.e. the I.O.
- (xx) P.W.20 is Ashok Kumar (i.e. the Informant),
- (xxi) P.W.21 is Gyan Shankar Jaiswal, BDO-cum- Circle Officer,
- (xxii) P.W.22 is Dr. Rajiv Kumar Singh, i.e. M. O.,
- (xxiii) P.W.23 is Dr. Dilip Kumar Keshari, i.e. M. O.,
- (xxiv) P.W.24 is Dr. Kumar Abhay Prasad, i.e. M. O.,
- (xxv) P.W.25 is Dr. Paul Hansda, i.e. M. O.,
- (xxvi) P.W.26 is Mahesh Prasad Singh, Retired ASI,
- (xxvii) P.W.27 is Sachidanand Mishra, Constable No. 471,
- (xxviii) P.W.28 is Indradeo Mandal, Constable No. 292,
- (xxix) P.W.29 is Benedict Marandi, Inspector,
- (xxx) P.W.30 is Lebenius Marandi, i.e. (Bodyguard of then S.P. Pakur),
- (xxxi) P.W.31 is Dharmraj Maraiya @ Dhanraj Maraiya, i.e. the Driver of S. P., Pakur now working as Staff in Health Department.

77. Besides the oral evidence, the prosecution has proved the following documents:-

- (i) Ext. 1 is Seizure list dated 10.07.2013 of samples of blood collected from different portions of Scorpio and Bolero Vehicles,
- (ii) Ext. 2 is P. M. report of the deceased Amarjit Balihar, the S. P. Pakur,
- (iii) Ext. 3 is P. M. report of the deceased Ashok Kumar Srivastava,
- (iv) Ext. 4 is P. M. report of the deceased Rajiv Kumar Sharma,
- (v) Ext. 5 is P. M. report of the deceased Manoj Hembrom,

(vi) Ext. 6 is Requisition slip for injury of the injured Danraj M-  
raiya,

(vii) Ext. 6/1 is Requisition slip for injury of the injured Levenius  
Marandi,

(viii) Ext. 6/2 is Requisition slip for injury of the injured Bablu  
Murmu, and

(ix) Ext. 6/3 is Requisition slip for injury of the deceased Santosh  
Kr. Mandal,

(x) Ext. 7 is Inquest report of the deceased Amarjit Balihar,

(xi) Ext. 7/1 is Inquest report of the deceased Rajeev Kr. Sharma,

(xii) Ext. 7/2 is Inquest report of the deceased Ashok Kr. Srivasta-  
va,

(xiii) Ext. 7/3 is Inquest report of the deceased Chandan Kr.  
Thapa,

(xiv) Ext. 7/4 is Inquest report of the deceased Manoj Hembrom,  
and

(xv) Ext. 7/5 is Inquest report of the deceased Santosh Kr. Mandal,

(xvi) Ext. 8 is Dead body Challan of the deceased Amarjit Balihar,  
the S. P. Pakur,

(xvii) Ext. 8/1 is Dead body Challan of the deceased Rajeev Kr.  
Sharma,

(xviii) Ext. 8/2 is Dead body Challan of the deceased Ashok Kr.  
Srivastava,

(xix) Ext. 8/3 is Dead body Challan of the deceased Chandan Kr.  
Thapa,

(xx) Ext. 8/4 is Dead body Challan of the deceased Manoj Hem-  
brom, and

(xxi) Ext. 8/5 is Dead body Challan of the deceased Santosh Kr.  
Mandal,

(xxii) Ext. 9 is Signature of Arun Kr. Hembrom on Ext.1,

(xxiii) Ext. 9/1 is Signature of Arun Kr. Hembrom on Ext.11,

(xxiv) Ext. 10 is Post-mortem of the deceased Santosh Kr. Mandal,

(xxv) Ext. 10/1 is Signature of P. Hansda on post-mortem report of the deceased Santosh Kumar Mandal,

(xxvi) Ext.11 is Seizure list of cartridge and magazine etc. dated 02.07.2013,

(xxvii) Ext.12 is Seizure list dated 10.07.2013(wrongly exhibited twice vide Ext. 01),

(xxviii) Ext.13 is Map sketched by I.O. C. K. Minj of the place of occurrence, Paragraph No. 79 of the case diary,

(xxix) Ext. 14 is SFSL report of bullet holes on the Scorpio and Bolero submitted by Office of the Director, State Forensic Science Laboratory, Jharkhand, Ranchi vide Memo No. 1006/Go dated 20.07.2013 in 10 sheets,

(xxx) Ext. 15 is S.F.S.L. report no. 1124/13 dated 21.12.12 in 05 sheets of various empty shells continuing from C1 to C 41 and B1 to B 15 etc. respectively.

(xxxi) Ext. 15/1 is Signature of Director R. S. Singh, Asst. Director and Dr. H. K. Sinha of State Forensic Science Laboratory, Jharkhand, Ranchi on the examination of blood.

(xxxii) Ext. 16 is Signature and writing on written report of S.I. Sitor Kerketa, Kathikund Malkhana

(xxxiii) Ext. 17 is Search-cum-Seizure list of 41 empty shells of SLR, 15 empty shells of AK-47 etc.

(xxxiv) Ext. 18 is Written report (F.I.R.) dated 02.07.2013.

(xxxv) Ext. 19 to 19/3 are T.I.P. Chart no. 19/1,19/2 & 19/3

(xxxvi) Ext. 20 is Postmortem report of the deceased Chandan Kumar Thapa

(xxxvii) Ext. 21 is Injury report of Dhanraj Maraiya.

(xxxviii) Ext. 22 is Injury report of Levenius Marandi.

(xxxix) Ext. 23 is Injury report of Hawaldar Bablu Murmu.

(xl) Ext. 24 is Certified Copy of seizure list (of country made pistol) dated 30.08.18, Ext. 1 and 2 of S.T. 99/17.

(xli) Ext. 25 is Certified Copy of confessional statement of Sanatan Baskey and Ext. 3 of S.T. 99/17.

78. The Prosecution has also got the documents marked for identification:-

(i) Mark of Identification 'X' is photo copy of confessional statement of Sanatan Baskey

(ii) Mark of Identification 'Y' is photo copy of seizure list of bullet proof jacket in Pakur in S.T. No. 99/2017

(iii) Mark of Identification 'X' is photo copy of notification no. 12/05 Aa. Su. (51) 22/14 dated 08.11.2013 of Grah Bibhag, Jharkhand Government.

(iv) Mark of Identification 'Z/1' is photo copy of notification dated 19.01.2014 of Jharkhand Government.

79. The following Materials have also been exhibited as Material Exhibits in evidence as follows:-

(i) Material Ext. I is Broken Grip of A. K. 47 Rifle,

(ii) Material Ext. I/1 is A shoe of black colour,

(iii) Material Ext. I/2 is One piece Plastic sleeper,

(iv) Material Ext. I /3 is Hat of pinto colour,

(v) Material Ext. I/4 is One Gamchha,

(vi) Material Ext. I/5 is One empty Jerry Can,

- (vii) Material Ext. I/6 is One empty Magazine of black colour,
- (viii) Material Ext. I /7 is Black colour Magazine, 12 cartridges, 2 cartridges and
- (ix) Material Ext. I/8 is One bullet proof Jacket (said to be looted from S. P., Pakur)

80. After closure of prosecution evidence, the above named accused persons-appellants had been examined under Section 313 of the Cr. P. C. on 19.01.2018 and to which they have denied the circumstances put forth before them.

81. However, neither any defence witnesses was examined nor any document was proved as the Exhibits by the defence side.

82. Hence, appreciation of his evidence of prosecution witnesses is necessary.

83. P.W. 1- Arun Kumar Jha is a Constable and who has stated during evidence that on 02.07.2013, he was informed by Officer In-charge Kathikund, Ashok Kumar Singh to proceed of once alongwith Anti Land Mines Vehicle as an Encounter is going on and thereafter they went Jamuni Picket, where he found that Vehicle was obstructed from both the sides, but no sound of firing was coming and on instruction of Kathikund Police, when they arrived near the vehicle along with Officer In-charge, C. K. Minz and the police personnel Ganga Ram Choure, Narendra Kumar Sah, Manjit Kisku, Prem Kumar Hansda, Zialal Hembrom and the driver Sarfaraj Alam and they heard the sound of groaning from the vehicle, who was Hawaldar Bablu Murmu and they got him seated in Anti Mines Vehicle. Thereafter they inspected both the vehicles and he found white colour Scorpio Vehicle without having any number and there was one silver colour Bolero far at a distance of 20 to 25 metre and thereafter the persons were taken to Sadar Hospital, Dumka by Ambulance and then he returned to the

police station. He had seen Bolero in damaged condition.

84. During cross-examination he has stated that firstly he received information at 2.25 P.M. and he also stated that the distance between police station to place of occurrence is five kilometres and it took about half an hour and in arriving of where he found S.P. was in dead condition and two others police personnel in the injured condition and he had also stated that he had seen S.P. in ditch in dead condition and vehicles were damaged on account of firing from right side. He had received order from Officer In-charge to take the injured Hawaldar Bablu Murmu to Jamuni Picket and Bablu Murmu disclosed in the way that one more person is alive, who had sustained bullet in his ribs. Thereafter Bablu Murmu was sent to Rinchi Hospital in small private vehicle where he was treated and then he was referred to Sadar Hospital, Dumka and thereafter Bablu Murmu was again taken back to Rinchi Hospital, Dumka.

Thus from scrutinizing the evidence of P.W.-1, it is evident that he had found that Bablu Murmu (i.e. P.W-12) was accompanying S.P. Pakur in another Bolero Vehicle as an Escort Vehicle and was found there in unconscious condition. He has also disclosed that one person is alive and this witness had also seen S.P., Pakur in a ditch at a distance of 10-12 feet from the road.

85. P.W.-2, Gangaram Choure is a constable and stated during examination in-chief that on the order of Ashok Kumar Singh Officer In-charge Kathikund, they arrived at the place of occurrence in Anti Mines Vehicle along with other police personnel and Inspector near Jamuni Picket, then he noticed that firing was going on. This fact was stated by one constable of JAP and thereafter they went slowly approx. one kilometre where there was a bridge, where they found one Bolero and one Scorpio and where they saw that all the persons have sustained

bullet injuries and Bolero was of silver colour and Scorpio was of white colour and both the vehicles were not having number plate. He further stated in para-3 that taking command, he called on Hawaldar Bablu Murmu, who was seated in a vehicle and then he arrived at Jamuni Picket and after sending Bablu Murmu in small vehicle, he again came back to the place of occurrence where he saw several persons had assembled and he had seen S.P. Balihar in dead condition. Thereafter they went to Rinchi Hospital and from where they went to Dumka Hospital. He stated to have seen nothing except the dead body and injured and vehicles.

This witness was not cross-examined on behalf of the accused, Sanatan Baski and Satan Besra.

However on being cross-examined by the accused Manwel he had stated in para-6 that he had brought the S.P. Saheb and the injured police personnel to the hospital and except this he knows nothing. He has further stated in cross-examination on behalf of Wakil Hembrom that the distance between Kathikund and place of occurrence is five kilometers.

86. P.W.-3, is Prem Kumar Hansda, who stated during examination in-chief that by that time, he was posted in Kathikund Police Station and was present in the barrack and then Officer In-charge told that extremists had started firing near Jamuni Picket and then on the instruction of the then Officer In-charge, he along with police personnel and Police Inspector and driver of Anti Mines Vehicle reached to Jamuni Picket with rifle and bullet and where he learnt that sound of firing was coming and on proceeding further, he found two vehicles i.e. Bolero and Scorpio vehicle in damage condition without having number plate. Thereafter after taking position on the instruction of Officer In-charge, he arrived near the Bolero vehicle and noticed that one police

personnel Bablu Murmu was in injured condition, but he was not aware about the name of the driver. On proceeding further, he noticed that in right side, one police personnel and S.P. Pakur were lying in dead condition in the ditch. He further stated in para-4 that injured Bablu Murmu disclosed them that they along with S.P. had gone in the meeting of DIG, called by DIG, Dumka and he came to the place of occurrence, then firing started from the right side and he i.e. Bablu Murmu had also disclosed that extremists came near the vehicle and found all of them dead and one extremists told that “work has done Praveen Da”. Thereafter other extremists uttered that ‘Tala Da’ carry all the rifles and cartridges and thereafter the naxal raised alarm that the police will arrive. The extremists before went from there, raised slogan of Maobadi. He further stated that the injured persons were taken to the hospital.

87. During cross-examination he stated that he arrived at the place of occurrence at about 2.45 P.M. He further stated that he had not seen the movement of vehicle and no person of the village.

Thus by scrutinizing the evidence of P.W.-3, it is evident that he learnt about the co-accused i.e. the appellant Tala Da and Pravir Da from the injured Bablu Murmu, who was alive. Thus, P.W-3 has fully supported the prosecution case.

88. P.W.-4 is Jialal Hembrom, during examination in-chief, he has stated that on the direction of the then Officer In-charge of Kathikund that the encounter is going on, they arrived at Jamuni Picket by Anti Land Mines vehicle and learnt near the place of occurrence and found near a culvert, a Bolero and a Scorpio without number plate were lying there. He had noticed that firing was made from the right side and one person pointed out his hand then the said person was seated in Anti Mines Vehicle, who disclosed his name as Bablu Murmu and who

was brought to Rinchi Hospital and Bablu Murmu also disclosed that there is another police personnel lying in injured condition and then other injured were also taken to hospital.

During cross-examination, he stated that he arrived at the place of occurrence between 2.00 P.M. to 2.30 P.M. for the first time and he arrived at Rinchi Hospital at about 3.30 P.M.

Thus from scrutiny of P. W. -4, it is clear that he had disclosed the name of Bablu Murmu, who was lying injured and was informed that other persons were also injured and who were taken to hospital.

89. P. W. -5, Narendra Kumar Bhatt, during examination in-chief, stated that he boarded in Anti Mines Vehicle on instruction of Officer In-charge along with 10-15 constable, Inspector, Officer In-charge and had proceeded towards Jamuni Picket and then he saw that route of the vehicle was closed and also found that two vehicles i.e. Bolero and Scorpio having without number plate in damaged condition. Then he alighted from the vehicle and take their position and then he heard the sound of groaning one person, who was Bablu Murmu Hawaldar and was in injured condition and then he was brought to Rinchi Hospital. He also stated that he had seen the S.P. in dead condition at the distance of 2-4 feet from the road. It has also stated in para-7 that Bablu Murmu asked for water and he gave water and then Bablu Murmu had disclosed that he has heard the sound of firing from the right side. He has also stated that he had seen 5-6 persons in dead condition.

During cross-examination, he has stated that he had not identified any persons, who were dead.

During further cross- examination he has also stated that he arrived at the place of occurrence in approximately half an hour.

Thus, P. W. -4 and 5 have also seen Bablu Murmu in conscious condition and this P.W.-5 is witness for giving water to him in injured

condition.

90. P. W. -6, Pramod Kumar, who was posted in Kathikund Police Station, has stated that on that day S. P. Pakur was going. The place of occurrence is 4-5 K.M. from the police station and he had received information that all the police personnel had gone to the place of occurrence and brought the dead body. He stated that he had not gone to the place of occurrence. He is witness of seizure list prepared by C. K. Minz in his writing and signature, which has been marked as Ext.-I.

During cross-examination, he stated that occurrence took place at about 2.30 P. M. and seizure list was prepared at Kathikund Police Station and not at the place of occurrence and seizure list were prepared in the evening. He further stated that firstly injured were come and thereafter vehicle came there. The seizure listed was prepared in front of him. He has put signature on the instruction of Inspector.

Thus, P.W. -6 is a formal witness and proved the signature of C. K. Minz on the seizure list.

91. P. W. -7 is Md. Sarfaraj Alam, driver of the Anti Land Mines Vehicle and has stated during examination in-chief that when they arrived near the Jamuni Picket then he found that two vehicles i.e. one is silver colour Bolero and another white colour Scorpio standing without having number plate. He had further stated that he had brought the injured to the Sadar Hospital, Kathikund.

During cross-examination, he has stated that he arrived at the place occurrence after half an hour of the incident. Thus, P.W-7 is a witness after the occurrence but had brought the injured to Sadar Hospital.

92. P. W. -8 is Manjit Kisku, during examination-in-chief, he stated that on 02.07.2013 at about 2:30 P.M., then officer-in-charge of Kathikund P.S. asked them to become ready to go to Jamuni Picket by

Anti Land Mines vehicle as it has been informed that firing is going on near Jamuni Picket. Then he along with the Office In-charge and the Inspector went to Jamuni Picket by Anti Land Mines Vehicle and they reached Jamni Picket then they were informed that firing was going on ahead them. Thereafter they reached the place of occurrence and saw the damaged Scorpio and the Bolero vehicles. He saw the dead body of constable inside the vehicles and on the direction of the Officer In-charge, he alighted from the vehicle and took their position. In the meantime, he heard that a constable was groaning and calling them. Thereafter, they brought the injured to Jamni Picket and then he was taken to Rinchi Hospital by another vehicle. He again came back to the place of occurrence. He also stated that the police officer of Gopi Kandar had also arrived, but he had not seen any of the accused.

Thus, P. W. -8 is the witness on the point of arrival on place of occurrence after the occurrence and had seen the injured Bablu Murmu in injured condition.

93. P. W. -9 is Darbari Soren and police constable during examination in-chief, he has stated that the then officer-in-charge of Kathikund Police Station informed that something was going on at Jamuni Picket, on which he alongwith other police personnel went to Jamuni Picket by Anti Land Mines vehicle and where he learnt that at a distance of 100-150 metre, firing was going on. Then he proceeded further and then he found that one Scorpio or white colour and one Bolero of silver colour without having number plate was near the place of occurrence and one constable was groaning and his name is Bablu Murmu. He also stated that any other vehicle one Dhananjay Maraiya and Selvenius Hembrom were lying there and dead bodies were lying in back seat. On proceeding further, he had seen S. P. Pakur in dead condition and thereafter injured police personnel were brought in other

vehicle and then they asked Hawladar Bablu Murmu, who disclosed that when they were returning from meeting of DIG Dumka and when they arrived at jungle near the Jamuni Picket, suddenly indiscriminate firing had started there from the right side and they could not do anything and almost all the police personnel have sustained injuries. He also stated that 30-35 extremists came from the bushes and looted all the arms and ammunitions of the police and someone called down "Prabir Da, Tala Da and shouted that Scorpio Mein S.P. Saheb Baithe Hain, Unko Goli Lag Gayi Hai" and lastly they shouted their slogans and after looting arms and ammunition, they fled away. Thereafter the injured police personnel were taken to Rinchi Hospital. He has also stated that the police officer of Gopi Kandar had also arrived.

During his cross-examination, he has stated that the police has not recorded his statement.

Thus, the P.W.-9 is also the eyewitness on the point of narrative of Bablu Murmu in conscious condition. He had disclosed the name of Prabir Da, Tala Da also.

94. P.W.10 is Dr. Ramesh Prasad Verma, Medical Officer, Dumka. He has conducted the post-mortem of the deceased Amarjeet Balihar, S.P., Pakur aged about 50 years and has found the following anti-mortem injuries:

(i) wound of entry of valet  $1\frac{1}{2}$ " x  $\frac{1}{2}$ " oval in left infra scapular region and deception left king was lacerated and deception left kind was lacerated and there was confliction of goateed in thoracic cavity.

(ii) one wound of exit of vavel below left infra calvicular region  $3"$  x  $\frac{1}{2}$ " oval with lacerated margin which was averted.

(iii) one wound circular  $\frac{1}{2}"$  x  $\frac{1}{2}"$  oval in in front of right arm in middle with charring, right humrous was found fractured. It was wound of entry.

(iv) on back of right arm exit.

Doctor's Opinion:- The death was caused by Injury No. 1 and 11 due to shock and haemorrhage. Weapon used was fire arms. Time lapsed since death with 12 hours.

95. Thus, P.W-10 has proved the Post-Mortem Report of the deceased Superintendent of Police marked as Exhibit-2 and had given opinion that death was due to fire arms injury.

P.W-10 had also proved the Post-Mortem Report of Ashok Kumar Srivastava which was marked as Exhibit-3.

96. P. W. 11 is Ranjit Minz, Officer In-charge and during evidence, he has stated that on the date of occurrence, he was posted as Officer In-charge of Amrapara Police Station and on that day, there was meeting of S.P., Pakur with DIG, Dumka and as per the order of S.P., he had escorted the S.P. and left him at Kathikund. Thereafter S. P. Amarjit Balihar told him that if necessary, after the meeting he would inform and ask him to escort again. He was in a ready position at the police station along with constables. In the meantime at about 2.32 P.M. S.P., Pakur Amarjit Balihar informed over telephone that he was trapped and asked him to come soon ("Jaldi Aana"). Thereafter he along with armed forces boarded on the vehicle and again he received another call from the S.P. to come soon and he further received 3<sup>rd</sup> call when he crossed Amrapara market, S. P. Saheb called to arrive at the earliest. When he reached Gopikandar police station, he found that officer in-charge Baiju Baraik was also ready alongwith his armed forces and then proceeded with him and they came to proceed then in the meantime further Pakuria Officer In-charge also accompanied then they proceeded towards the place of occurrence. He further stated in para-3 that when they arrived at the place of occurrence at village Aamtula, then he saw that the vehicle of S. P. was lying on the road and three gates were

found opened. Then they cautiously hiding themselves arrived at the place of occurrence and where he had also seen S.P. Amarjeet Balihar in dead condition in the north side of road in a ditch and he had sustained one bullet injury at left side of his head and one bullet injury in the left side of the chest and one bullet injury in the right elbow. He had seen the vehicle of S. P. in completely damaged condition and had also seen the dead body of one Bodyguard Chandan Kumar, who had sustained head injury. He had also seen the dead body of the driver on the driving seat. He further stated that on another Bolero vehicle, he had seen injured Bablu Murmu and who were also seen one constable in the injured condition and had also seen the two persons in injured condition. Then all the persons were taken to hospital and one died on the way. He also stated that the extremists have looted two A. K. 47 and four Insas Rifle from the police personnel and one bullet proof jacket was also taken by the extremists. He has also seen blank cartridges of A. K. 47, Insas, SLR, 303, a shoe, a sleeper and pinto uniform and hat were recovered. All the articles were seized and a seizure list was prepared. He also stated that the area belongs to the extremists namely Prabir Da, Sanatan Baski, Daud @ Bimal Hembrom, Sahdeo Rai @ Tala Da, Kiran @ Tuku Tudu, Dewan Kisku, Akash Da etc., therefore, they have committed the crime. He further stated that he had arrested Sanatan Baski and Daud Hembrom after the occurrence and he had identified the Sanatan Baski through video conferencing, but he has claimed not to identify other accused.

97. During cross-examination, he stated that he had arrested Sanatan after 5-6 months of the occurrence, but he had stated that he had not arrested any of the extremists from the place of occurrence.

During cross-examination on behalf of the accused Prabir Da, he has stated that distance between the place of occurrence and Amrapara

police station is about 2.5 KM. and it took about 25-26 minutes to arrive at the place of occurrence.

Thus, from the evidences of P.W.-11, it is evident that he had received three calls from the S. P., Pakur i.e. the deceased Amarjeet Balihar to arrive at the earliest. However, on his arrival to the place of occurrence, he had noticed that S. P. Pakur was already dead, but he had found that Hawaldar Bablu Murmu in injured condition, who had also disclosed that one person was also injured.

98. P.W. -12 is Bablu Murmu i.e. eye witness and the injured witness. During evidence, he stated that on the date of occurrence he was posted in S. P. Kothi at Pakur as Hawaldar and he along with escort accompanied the S. P. Balihar and they left the residence of S.P. at 7-7.30 A.M. in the morning. He alongwith other police personnel accompanied him. He further stated that they came to Dumka along with Superintendent of Police and arrived at Circuit House and taken there tea, then went for meeting and after meeting was over, they left circuit house and thereafter the S. P. asked them to return. However, he alongwith constable Chandan Kumar Thapa remained with S. P. Saheb. He further stated in that after attending meeting, it started raining and when rain had stopped, then they proceeded for Pakur. However, when they entered into the Jungle, suddenly firings had started. Vehicle of S.P. was ahead and escort vehicle was following the said vehicle. He further stated that all the constable included he himself sustained bullet injuries and he sustained injuries on thigh and eye and his treatment was done at Dhanbad and Ranchi. He further stated that constable namely Rajeev Sharma, Santosh Mandal, driver and S. P. Saheb were killed at the place of occurrence. However, he had seen nothing and only seen firing and hearing noise that they were abused by extremists. Thereafter, what happened, he could not see as his eyes were closed and

he became unconscious.

This witness was declared hostile by the prosecution on the point of identification of accused-appellants.

99. During cross-examination made on behalf of the prosecution, he has denied to have stated before the police that Tala Da, Josheph and Pravir Da had come and told that all the police personnel had died and the extremists had looted their arms and ammunitions. He has denied to have stated before the police that the S.P. had received bullet injury and one extremist was shouting as Tala Da, Daud, Josheph, looted all the arms and ammunitions and thereafter, 30-35 extremists in their dress had come and looted all the arms and ammunitions and bullet proof jacket and by raising slogans of Maoist, left away from the place of occurrence from the diversion side. After some time, Kathikund Anti Mines Vehicles came and had taken him for treatment. He had denied that all the naxals were speaking in Hindi, Santhali, Khortha and extremists were wearing green colour of dress and he can identify the naxals if he will see them again. He has denied for giving false statement and not having identified the accused persons deliberately.

100. This witness i.e. P.W-12 was not cross-examined on behalf of the any accused persons and the cross-examination of this witness was declined by the defence side on behalf of the accused persons.

101. Thus, from the scrutinizing the evidence of P.W.-12, it is clear that he has deliberately refused to take name of the accused persons, although the basis of the FIR was the statement of injured Bablu Murmu, therefore this witness has deliberately not identified and supported the prosecution case and this witness was not examined by the defense side. Although, P.W-3 and P.W-4 namely Prem Kumar Hansda and Jialal Hembrom have stated that P.W-12 had disclosed the name of the appellants Pravir Ji and Tala Da.

102. Non-cross-examination of the witness by the defense side would amount to admitting the occurrence and corroboration of evidence of P. W.-1, P. W.-2, P. W.-3, P. W.-4, P. W.-5, P. W.-9.

Thus, it is evident that this witness has tried to falsify the evidence of P.W.1- Arun Kumar Jha, P.W.2-Ganga Ram Choure,P.W.3-Prem Kumar Hansda, P.W.4-Jialal Hembrom, P.W.5-Narendra Kumar Bhatt, P.W.7-Md. Sarfaraz Alam,P.W.8 Manjit Kisku, P.W.9-Darbari Soren, and they had clearly stated that Bablu Murmu (P.W.-12) had disclosed the name of the accused persons namely Pravir Ji & Tala Da.

103. The P.W. 13 is Doctor Ajay Kumar Singh, who has stated that the Medical Board, comprising of him, Dr. D.P. Verma and Dr. Dilip Kumar Keshri was constituted and all the medical board officers of Sadar Hospital, Dumka conducted post-mortem on the dead body of police -118 Rajiv Kumar Sharma, aged about 30 and has found the following:-

- (i) Entry would  $\frac{1}{2}$ " x  $\frac{1}{2}$ " posterior aspect of middle of it fore-arm, track passing back with inverted margin. Exit wound-4" x4" with laceration of muscles tissue and vessels with fracture of ulna margin inverted.
- (ii) Entry would  $\frac{1}{2}$ " x  $\frac{3}{4}$ " oval shaped at the front of the chest left side, margin inverted . Exit would -2" x 2" at left Axila with inverted margin. On opening the thoracic cavity and tracing the path of entry. Piercing the left side of heart and left lung found lacerated. Thoracic cavity found full of blood. There id fracture of third rib left side in front and 4<sup>th</sup> and 5<sup>th</sup> of the back side at no Axillary line.
- (iii) Lacerated wound charring over right hand 2" x 2" muscle deep.

The death was due to shock and haemorrhage , as a result of above injury , which was caused by firearms. Time elapsed since death within 24 hours. He has proved the post-mortem report as Ext. 2.

104. The P.W. 14 is Doctor Nishit Kumar Jha, a member of Medical Board comprising of Dr. R.K. Singh , Dr. A.K. Singh and himself and all the Medical Board officer of Sadar Hospital, Dumka conducted post-mortem on the dead body of police-143 Manoj Hembrom, aged about 25 and the members have opined to have found the following:-

- (i) About 1" wound was present in the back at thoracolumbar area that entry wound.
- (ii) About 4" exit wound was present in the lower axilla , Mark of Gun powder present around the wound. Face was avulsed and cranium was also avulsed on right side due to fire arm injury. Brain matter and other structure herniated from the remaining skull and face.
- (iii) Further dissection of abdomen shows that peritoneal cavity, was filled with blood, as a result of fire arm injury, causing injury of internal organs and blood vessels.  
Cause of death was opined to be due to shock and haemorrhage, as a result fire arm injury. Time of injury less than 24 hours, as rigor mortis was present in all the forelimbs. The post-mortem report has been identified and proved as Ext.4.

105. P. W. -15 is Ramkishun Yadav and during his evidence, he

stated that he was posted as Officer In-charge at Dumka Police Station on 02.07.2013 and he had received information around 3.00 P.M. that vehicle of Amarjeet Balihar, S. P. Pakur was attacked due to which some persons sustained injuries and some of them have died, who were taken to Dumka Sadar hospital and he also arrived at Sadar Hospital Dumka where he found three police personnel and one driver in injured condition and had issued injury requisition for the said four injured persons for their treatment at Sadar Hospital and he has put his signature. He had identified his signature and writing on those four injuries requisition, marked as Ext. 6, 6/1, 6/2, 6/3 respectively in S. T. No. 232/13 and Ext. 1, 1/1, 1/2 and 1/3 in S. T. No. 94 of 2015. He has also identified his writing and signature in the inquest report of the deceased Amarjeet Balihar, S. P., Pakur, deceased Rajeev Kumar Sharma-police no.-118, deceased Ashok Kumar Srivastava-Police No.199, deceased Chandan Kumar Thapa-Police No. 40, deceased Manoj Hembrom-Police No. 143, deceased Santosh Kumar Mandal-Police No. 90 (who is said to have died during course of treatment). He has identified the signature of other witnesses and the inquest report, which have been marked as Ext. 7, 7/1, 7/2, 7/3, 7/4 and 7/5 respectively in S. T. No. 232/13 and Ext. 2, 2/1, 2/2, 2/3, 2/4 and 2/5 in S. T. No. 94 of 2015 (with objection). He further stated that he had also prepared the dead body challan by adopting carbon method and sending the same in hospital, which has been marked as Ext. – 8, 8/1, 8/2, 8/3, 8/4 and 8/5 respectively in S. T. No. 232 of 2013 and Ext. 3, 3/1, 3/2,3/3, 3/4 and 3/5 respectively.

106. During cross-examination made on behalf of the accused Wakil Hembrom of S. T. No. 232 of 201 and accused Shivcharan Mohli of S. T. No. 94 of 2015, he has stated that he does not remember the sanha number, but he had arrived at Sadar Hospital, Dumka at 3.05 P.M. and

had returned after 12.00' O Clock in the night. He had prepared all the papers on the direction of his superior officers. He also stated that his statement was never recorded and he is giving statement for the first time in Court.

107. Cross-examination of this witness was declined on behalf of the accused Pravir @ Sukhlal Murmu of S. T. No. 232 of 2013.

During cross-examination made by accused Manvel and another accused Manwel Murmu, he has stated that he had arrived there in hospital on direction of Senior Officer, Anil Kumar Srivastava, Dy.S.P. He had prepared all the papers by carbon method and original of all the papers were sent to Sadar Hospital, Dumka. Other accused Satan Beshra, Sanatan Beshra and Robin Mumu of S. T. No. 232 of 2013 had declined to cross-examination.

108. During Court question put forward by Presiding Officer on 04.01.2016, he has stated that he was acquainted with Amarjeet Balihar, S. P., Pakur prior to the occurrence, but acquaintance of other five deceased were disclosed to him by the police force at Pakur.

109. Thus from the evidence of P. W.-15, it would emerge that this witness mainly on the point of preparing the inquest report and the dead body and challan of all the deceased including the Amarjeet Balihar, S. P., Pakur. He arrived at the Sadar Hospital, Dumka on the direction of Anil Kumar Srivastava, Dy. S. P., Dumka.

110. P. W. -16 is Arun Kumar Hembrom and during his evidence, he has stated that he along with Chonas Kumar Minz, Police Inspector had arrived at Sadar Hospital, Dumka and where two constables namely Ashok Kumar Mishra and Husnain had come from I. G. Office, Dumka and who handed over two blank magazine of AK-47 rifle and 12 round live cartridges and also given two missed bullet and one blood stained pouch of keeping the magazine to the police Inspector, who had

prepared the seizure list and he has put his signature on the seizure list marked as Ext. 9 in S. T. No. 232 of 2013 and Ext. 4 in S. T. No. 94 of 2015. He has further proved the second seizure list for taking sample of blood from Bolero vehicle and he has identified his signature on seizure list as Ext. 9/1 in S. T. No. 232 of 2013 and Ext. 4/1 in S. T. No. 94 of 2015.

111. Cross-examination of this witness was declined on behalf of the accused Wakil Hembrom, Shivchandra Mohli, Pravir @ Sukhlal Murmu, Manvel, Manwel Murmu, Satan Beshra, Sanatan Beshra and Robin Murmu.

During cross-examination made by Manwel and Manwel Murmu, he has stated that he cannot say, who has prepared the seizure list and he has put his signature on the seizure list at Kathikund police station relating to recovery of blood of Bolero Vehicle.

This P. W.-16 is the mainly witness of seizure list of seized articles mentioned above.

112. P.W.-17 is Baiju Baraik and during examination in -chief, he has stated that while he was posted Officer In-charge on 02.07.2013 at Gopikandar Police Station then at around 2.35 P.M. in the afternoon, he received an information that firing has taken place towards Karudih More and at that time ASI. Mushtafa Khan had gone for investigation, then he was called immediately to police station and in the meantime, he received the information from the Officer In-charge Amarapara to arrive immediately for help as S. P., Pakur has been trapped. Thereafter ASI Mustafa Khan came to the police station, then he proceeded and in the meantime Officer In-charge of Armrapara police station had also arrived by his vehicle and on way, Officer In-charge, Pakudia police station also joined with police force and then they went to the place of occurrence and also proceeded to the place of occurrence on foot along

with the armed forces by keeping their vehicle 100 metre ahead of the place of occurrence, but by that time firing was closed. In the meantime, Officer In-charge Ashok Kumar and Police Inspector Chaunhash Minz of Kathikund Police Station had also arrived there. He has also found their one while colour Scorpio near the culvert and its both front tyre and rear of the left side tyres were punctured. In the middle seat, Chandan Kumar Thapa was dead and 20 feet towards the north side of vehicle near the tree of wood apple, the dead body of late Amarjeet Balihar, S.P. Pakur was lying in three feet ditch. He further stated that one silver colour bolero was also standing at the distance of 7 to 8 steps where he had seen the dead body of Ashok Kumar Srivastava, Rajeev Kumar Srivastava and Manoj Hembrom. He had also seen the injured Hawaldar Bablu Tudu, Dhanraj Mariya, Private Driver and one Santosh Kumar Mandal (died during treatment) and Labonius Marandi in injured condition to whom he was sent for treatment. He further stated that seizure list of one black shoe, one sandal, one cap of speckled colour and plastic gallon of two litre wrapped with gamcha and 41 blank cartridges of SLR, 15 blank cartridges of A. K. -47, two of .303 and to misfire cartridges and one blank cartridge of Insas was prepared in presence of Ashok Kumar, Officer, In-charge Kathikund Police Station, Hawaldar Vijay Kumar Singh, Police Manjit Kisku. He has further stated that he had seen signs of 13 bullets from the front in Scorpio Vehicle of S. P. Saheb and signs of 10 bullets from the right side and signs of 7 bullets at the left side and sign of 5 bullet at the back side of the number plate and its nearby places. He had seen bullet injuries in the head of Chandan Kumar Thapa and vehicle was in pool of blood. He had also seen the sign of 12 bullets in the right side in the white Bolero Vehicle and door of both the vehicles were opened and their glass were broken. He further asserted

that Prabir Da @ Prabil Da, Zonal Commandar of CPI Maoist Group and its members Sahdeo Rai @ Tala Da were active in that Area and in the said group Daud @ Vimal Soren, Josheph Soren, Sudhir Kisku @ Imanuvel Hansda, Deepak Dehri, Sonu Dehri, Kiran Tudu, Paku Tudu, Sanatan Baski, Satan Besera, Wakil Hembrom, Vijay, Mahasay, Lobin, Sunita, Bharat Singh Kisku and other active members namely Imanuvel Murmu S/o Sundar Murmu, Stephen, Som Baski, Imanuvel Murmu, S/o Raisan Murmu, Hopna Hembrom, Suresh Bhagat were member of the said organization. He has stated that they i.e. the Accused Persons have committed the said act in conspiracy with each other by committing murder of police personnel and have looted two AK-47 rifle, four Insas rifle, bullet proof jacket of Superintendent of Police and mobile etc. Later on he learnt from the Investigating Officer that bullet proof jacket of S. P. Amarjeet Balihar was recovered from Sanatan Baski son of Kisto Baski.

113. During cross-examination on behalf of the accused Wakil Hembrom and Shivchandra Mohli, he stated that he had left the police station at 2.40 P.M and arrived at the place of occurrence before 3.00 P.M. and at that time police force was there with him. He further stated that he was not acquainted with the other deceased except Superintendent of Police, Balihar Saheb and he learnt about their names at the place of occurrence and at that time, neither any miscreants were present at the place of occurrence and nor in the way. His statement was recorded on the date of occurrence in the evening, but he does not remember the time of the seized articles and those seized articles have not been produced before him in the Court today. He further stated that the names, which were disclosed earlier, were not acquainted with him and no case was instituted earlier against Wakil Hembrom and Shivchandra Mahali, but he asserted that they people had committed

this occurrence. However, he stated in para-14 of his cross-examination that he learnt that bullet proof jacket looted from S. P. late Balihar were recovered from Sanatan Baski S/o Kisto Baski.

114. He was further cross-examined on behalf of the accused Pravir @ Sukhlal Murmu and in which he stated that after giving information by him, Mustafa Khan had arrived after 3-4 minutes and no case was pending against Pravir @ Sukhlal Murmu in his police station.

On being further cross-examination by Manvel and Manwel Murmu, he stated that he was posted in Gopikandar Police Station from 2011 to 20<sup>th</sup> February, 2014 and during this period, he had not seen any papers regarding MCC Maoist Group and also had not seen any papers at the place of occurrence.

Cross-examination of the accused Satan Beshra, Sanatan Besha and Robin Murmu were declined.

115. Thus, from scrutinizing the evidence of P.W.-17, it is evident that looted bullet proof jacket of S.P. Balihar was recovered from Sanatan Baski.

116. P. W. -18 is the Dr. Debashis Rakshit, who had conducted post-mortem on the dead body of Constable No. 90 Santosh Kumar Mandal aged about 33 year along with other members of the Medial Board namely Dr. Paul Hansda and R. Sudeep Kachhap and have found the following:-

On external examination, we found that the deceased was average body built, rigor mortise present in lower limbs and further fund following ante-mortem injuries on the person of deceased average body built, post-mortem blisters present over right upper limb, maggots present over face and groin. I further found following ante-mortem injuries on the dead body of the deceased.

- I. Entry wound of firearm injury 3/4" of diameter, circular inverted margin found on left mid axillary line over lateral side just below last rib.
- II. The exit wound of firearm injury 1" diameter, circular in shape, everted margin found on right lumber region.

On opening of abdomen by dissection, huge collection of blood found inside of abdominal cavity. On tracking from entry wound to exit wound left kidney found lacerated, part of small intestine falling in the track of firearm found lacerated.

As per our joint opinion death of deceased caused due to haemorrhage and shock caused by firearm injury. Time elapsed since death is within 24 hours. I prepared this post-mortem in presence of all the Medical Board Members by my own pen and signature and also bears signature of other two doctors members of Medical Board namely Dr. Sudeep Kachhap and Dr. Paul Hansda. This is the original, marked the same Ext.10 in S.T No. 232/2013 and Exhibit-5 in S.T No. 94/2015.

117. During his cross-examination on behalf of the accused Wakil Hembrom and Shivchandra Mahli, he has stated that they have not found any tattooing and blackening mark over the entry wound injury. Such injury is sufficient to cause instant death.

In his cross-examination on behalf of the accused Pavir @ Sukhlal Murmu, he has stated that no one appeared for cross-examination on his behalf.

Cross-examination on behalf of the accused Manvel, Manwel Murmu and Satan Beshra, Sanatan Beshra and Robin Murmu were declined.

118. P. W.-19, Chohnash Kumar Minj, who is the Investigating Officer of the case. During examination in-chief, he has stated that he had recorded the statement of the witnesses, and had

inspected at the place of occurrence and prepared the seizure list of the Exhibits, which were seized by the Officer In-charge. He further stated that during course of investigation, he had prepared the seizure list of two blank magazine of the black colour, one magazine of black colour having 12 live bullets of AK-47 and two bullets of AK-47 forcibly inserted into the cartridges and seizure list was prepared in his signature and writing, which is marked as Ext. 11.

During investigation, statement of the Police No. 87, Arun Kumar Hembrom and Police No. 19, Ashok Kumar Mishra were taken and who had supported the occurrence. He stated that officer in-charge Ramkishun Yadav had issued injury requisition slip of the injured Hawaldar Bablu Murmu, driver Dhanraj Mariya (PW-31) and the police Levenius Marandi (PW-30) on perusal of their injuries. He has also stated that Officer In-charge Ramkishun Yadav of Nagar P. S. Dumka had prepared the inquest report of the deceased Amarjeet Balihar, S. P. Pakur, the police personnel namely Rajeev Kumar Sharma, Ashok Kumar Srivastava, Chandan Kumar Thapa, Manoj Hembrom and Santosh Kumar Hembrom respectively. He further stated that he has recorded the statement at 10 P.M. on the same day of Ashok Kumar Singh, Officer In-charge Kathikund Police Station, who has supported the occurrence and thereafter he has also recorded the statement of Hawaldar Arun Kumar Jha, Hawaldar Babu Ram Kisku, Hawaldar Vijay Kumar Singh and all of them supported the occurrence.

119. He i.e. P.W-19 further stated that he had recorded the statement of police personnel namely Darbari Soren, Manjit Kisku, Nagendra Kumar Bhatt, Ganga Ram Choubey, Jeera Lala Hembrom, Prem Kumar Hansdar, police driver Sarfaraj Alam and Baiju Badai, Officer In-charge of Gopikandar Police Station on 03.07.2013 and all

of them supported the FIR and thereafter he came to Jamuni Crusher Plant where he recorded the statement of the witnesses Sub-Inspector, Mahesh Prasad Singh, Police Indradeo Mandal, Sub-Inspector-Benetique Marandi (Officer In-charge Pakuria Police Station), Sub-Inspector- Ranjeet Minz (Officer In-charge Amarpara Police Station). All of them have supported the FIR and the occurrence. Thereafter on 03.07.2013 at 6.30 PM again, he came to the place of occurrence situated between Jamuni and Amtala and inspected the place of occurrence. He has described the place of occurrence, which is a pitch road going from Dumka to Pakur, which is situated near under constructed culvert pulia by the JBR Company. There is dense forest at the north and south side of the place of occurrence and it is a lonely place and road has gone from West to East and there is Dirt track (Kachchi Sadak) situated at 20 ft. from culvert pulia and thee was holes on the road and there is three feet upward road upto culvert pulia from the road and he had found one white colour Scorpio without having number plat at the distance of five feet from the culvert pulia and found that both the tyres of the front side of the vehicle are punctured and left tyre of the rear side was also punctured. He had also found 13 holes at the front window screen of the Vehicle and 10 holes at various places of the right side of the vehicle, one hole on the number plate and 7 holes on the left side of the vehicles and 4 hole on the rear side (back side of the vehicle) and rear glass of the vehicle was totally found broken and also found glasses of the driver sheet and glasses of nearly sheet fully broken. He also found the glass of right side and left side of middle sheet were fully broken and glasses of side mirror was also broken. He had also found flex of mine scatter on the seat where the police Chandan Kumar Thapa was found to be dead. He further stated

that there is ditch of three feet between one wood apple tree and one jungle tree, which were situated at the distance of about 20 feet north from the Scorpio Vehicle and there is one ditch before this ditch, which is Nala of culvert and between the wood apple tree and juncle tree and dead body of the deceased Martyr late Amarjeet Balihar, S. P. Pakur was said to be found in the ditch and blood was found to be trampled/crushed in the ditch. He has stated that driver of Scorpio Vehicle Dhanraj Mariya and bodyguard Levenius Marandi (P.W. 30) were said to be found at the last corner in south flying at a distance of 12 feet from the Scorpio Vehicle. He further noticed that road was under-construction and 8 feet in left and right side of the road had not been filled with soil. He noticed that diversion was constructed from pulia in north side at a distance of about 7 feet and to proceed further from culvert at a distance about 25 feet i.e. meeting at the main road was found to be blocked by putting several big boulders on its mouth. He further found one silver colour Bolero without having number plate at a distance of about 86 feet from the Scorpio Vehicle and found 12 holes at the right side of Bolero Vehicle and one long hole in the front wind screen of the said vehicle and also found glasses of the said vehicle is broken from the left side of the driver sheet and glasses of right side of the door were found to be broken and glasses of right and left side of the middle side were found to be broken. However, he found glass intact at the right side of the rear seat of the said vehicle, but found broken glasses of left side and total glasses of rear door of the vehicle were broken and one hole was found. He also stated that driver Ashok Kumar Srivastava was found dead on the driver sheet of the Bolero Vehicle and left side Hawaldar Bablu Murmu was found in injured condition. He had also seen that in middle seat, police personnel Raju Kumar Sharma, Manoj Kumar

Hembrom were found to be in dead condition and Santosh Kumar Mandal was found in injured condition.

120. He has further stated that he had recovered black cartridges of bullet, misfire bullet and one black colour shoe, plastic sandal, one dappled colour cap, one plastic jerkin wrapped with Towel (Gamcha) were also found and from the seized articles recovered from the southern side of the place of occurrence, it seems that the naxals had hide themselves by taking their position in the ditch and jungli bushes from the southern side. He had also noticed the signs of bullets at the branch of Jungli Tree at the northern side of the place of occurrence, which showed that the police force had also made encounter firing. He further stated that one pistol grip of AK-47 rifle was also found from the place where the dead body of the S. P. Pakur was recovered. It also appeared to him that in course of firing, firstly Superintendent of Police, Pakur had alighted from the vehicle and came into the ditch of three feet at northern side and had informed Ranjeet Minz, Officer In-charge of Amarapara Police Station at about 2.30 PM, 2.36 PM and 2.39 PM respectively by asking Minz (i.e. P.W.-11, Ranjeet Minz) to come soon as they have been trapped and therefore it was clear that at that time he i.e. S. P. Pakur was alive. He has also narrated the surroundings of place of occurrence, which is not being discussed here. He further prepared the seizure list of the sample of bloods, which were found at Scorpio Vehicle and Bolero Vehicle at the place of occurrence, were prepared and the seizure list was in hand writing of Sub-Inspector, Parshuram Rai and he has put signature on the seizure list, which is marked as Ext. -12. He has also proved the MAP of the place of occurrence, which is marked as Ext.-13 and which is mentioned at para-79 of the case diary.

121. He further stated that he had arrested the accused Satan Beshra on 07.07.2013 and on 08.07.2013, confessional statement of the accused Satan Beshra has been taken and in which who has confessed his guilt in the crime and had also disclosed the name of his associates. Thereafter 08.07.2013, he had arrested the accused Wakil Hembrom in Pakuria Bazar, Pakur and thereafter on 09.07.2013, he had recorded the confessional statement of co-accused Wakil Hembrom, who had confessed his guilt and for participation in the said crime and has also disclosed the name of his associates and forwarded the accused Satan Beshra before the Court 09.07.2013.

122. He had recorded the statement of witnesses Lukhi Ram Baski and Munna Murmu were taken. On 10.07.2013, injury report of Hawaldar-Bablu Murmu (P.W.-12), Police Lebunius Marandi (P.W.-30 i.e. bodyguard of S. P., Pakur) and injured Dhanraj Mariya (P.W.-31) were received and on 10.07.2013, he had also seized the sample of blood from the white colour Scorpio Vehicle without having any number plate and silver colour Bolero Vehicle without having any number plate. Thereafter on 12.07.2013, he obtained post-mortem report of the deceased, Amarjeet Balihar, S.P., Manoj Hembrom, Chandan Kumar Thapa, Rajeev Kumar Sharma and Santosh Mandal. He also obtained the details of arms and bullets looted by the Maoists from the office of S.P. Pakur and also obtained the residential address of all the deceased from the office of S.P. Pakur and also obtained the report relating to Government property, Mobile and vehicle from the office of S.P. Pakur.

123. Thereafter on 15.07.2013, he had recorded the statement of injured Hawaldar Bablu Murmu in APPOLLO Hospital, Ranchi and who had fully supported the FIR and has stated during his statement, he was posted in Pakur district force as Hawaldar and from

23.05.2013, he has been deputed as In-charge of Guard at S.P. Kothi, Pakur and where 02-13 police forces are posted. He has stated that on 02.07.2013 about 6.30 AM in the morning he was informed on phone to get ready and thereafter he also got prepared. The police no. 90- Santosh Kumar Mandal, deceased, police no. 118-Rajeev Kumar Sharma (deceased), police no. 143-Manoj Kumar Hembrom (deceased) and sat along with Insas rifle, butt no. 182, Aslan No. 18111514, 100 round bullet, 5 magazines and police no. 143-Manoj Kumar Hembrom sitting with Insas rifle, butt no. 208, aslan no. 18111716, 60 round bullets, three magazines, 118-Rajeev Kumar Sharma having butt no. 142, aslan no. 18111358, 100 round bullets, five magazines and police no. 90-Santosh Kumar Mandal having butt no. 116, aslan no. 18110018, 100 round bullets, five magazines along with one bullet proof jacket in one Bolero Vehicle without having any number.

124. P.W-12 also disclosed him (i.e. P.W-19) Superintendent of police was sitting in white colour Scorpio Vehicle without having any number plate along with police no. 40, Chandan Kumar Thapa and Police no. 51, Lebenius Marandi (P.W.-30) and private driver Dhanraj Mariya was driving the vehicle of S.P. and his escort vehicle was driven by the drive i.e. police no. 119, Ashok Kumar Srivastava and he was sitting in the left side of the driver and right side of the middle seat, police no. 90- Santosh Kumar Mandal and left side of the middle seat, police no. 143, Manoj Hembrom and in the middle, police no. 118, Rajeev Kumar Sharma were sitting and about 10.00 AM in the morning, they arrived at Circuit House, Dumka following the vehicle of S.P. and thereafter about 11.00 AM, S.P. had attended the meeting in the office of DIG and meeting continued for about one hour and then they came again in the Circuit House and after taking

meal, they proceeded from Dumka to Pakur at about 2.00' O Clock noon and the vehicle of S.P. was in front and his escort vehicle was following the vehicle of S.P. and as soon as vehicle of S.P.(i.e. Scorpio) and his vehicle (i.e. Bolero) proceeded about five kilometre from Kathikund P.S. then suddenly indiscriminate firing started by pointing out both the vehicles from the right side of the jungle and in the meantime, bullet hit the driver of Escort Vehicle and also hit the police no. 90- Santosh Kumar Mandal, police no. 118, Rajeev Kumar Sharma and police no. 143, Manoj Hembrom sitting in the middle and due to which driver police no. 199-Ashok Kumar Srivastava, police no. 118-Rajeev Kumar Sharma and police no. 143-Manoj Hembrom had died inside the vehicle and he i.e. P.W.-12 had also sustained two bullet injuries in the thigh and he along with another injured Santosh Kumar Mandal were lying in pool of blood in the vehicle and naxals were abusing them in filthy languages and talking of them to surrender or will face dire consequences. In the meantime, he has heard the sound that Tala Da, Joseph, Daud, Pravir Da came because all of them died and heard sound that loot all the arms and ammunitions by cutting pouch. Thereafter he again heard sound that S.P. Saheb has been fired by bullet and again one extremist was shouting by taking the name of Tala Da, Daud, Joseph, looted the arms and ammunitions of all the people. Thereafter about 30-35 naxal after looting their arms, bullet proof jacket, magazine and mobile and went to jungle in the north side through diversion by raising the slogans of 'Maoist Jindabad'.

125. After some time, Anti Land Mines Vehicle arrived from Kathikund P.S. and he was sent to Hospital for their treatment. Naxals were speaking in local languages Hindi, Santhali and Tota and most of the naxals were wearing green colour dress and he can identify the

naxalite. However, this statement of identification of naxalite was objected by the learned defence counsel.

Thereafter he recorded the statement of injured Lebenius Marandi (P.W.-30) and Dharmraj Maraiya(P.W.-31) and all of them supported the FIR and thereafter on 31.07.2013, one Shakuntala Devi claiming to be owner of the white Scorpio Vehicle having without number plate had come along with her husband and produced the papers of the vehicle and by the order of the Court, the said Scorpio Vehicle having without number place was released in favour of its owner on 03.08.2013. Thereafter on 05.08.2013, he had obtained the confessional statement of naxal Jeevan Handa @ Bone Phash Hansda, who had disclosed the name of the naxalites involved in the occurrence.

On 09.08.2013, he (i.e. P.W-19) had received the report and C.D. from Shri R. S. Singh, In-charge Director, State Forensic Science Laboratory, Jharkhand, Ranchi. He has proved the report of FSL report, which was in ten pages having signature of R.S. Singh, In-charge Director, which is marked as Ext.-14. He had further received the report of FSL, which was in five pages on 21.12.2013 having signature of Assistant Director, H. K. Sinha, which is marked as Ext.-15 with objection.

126. Thereafter, on 08.10.2013, he conducted raid alongwith armed forces at Bada Selva Pani, Nadganj Ghatchauda etc. to arrest the accused persons. Thereafter, on 13.08.2013, he along with armed forces obtained the supervision note of S.P. Pakur. Thereafter, he along with armed forces also conducted raid on several places on 17.08.2013 to nab the accused persons. Thereafter, he perused the case records of Pravir Da, Sahdev Rai and Daud Hembrom in Kathikund P.S. Thereafter on 18.08.2013, he recorded the statement

of Officer In-charge, Ram Kishan Yadav. Thereafter, on 20.08.2013, he had submitted the application before the Additional Chief Judicial Magistrate, Dumka to send the seized articles of this incident to Forensic Science Laboratory, Ranchi and after obtaining the order of the Court, he sent the same to FSL. He has proved the FSL report as dated 16.01.2014 under the signature of Assistant Director, H. K. Sinha and In-charge Director, R. S. Singh, which is marked as Ext.-15/1. Thereafter on 22.08.2013, he filed an application in the Court of Additional Chief Judicial Magistrate to add Sections 332, 333, 353, 396/120B of the Indian Penal Code and on 28.08.2013, he came to Pakur and recorded the statement of police no. 281, Shreepat Kumar and had demanded the Memo No. 770/Ga of D.I.G. and obtained the photocopy of the same and from which it revealed to him that there is a meeting with D.I.G. on 03.07.2013. Thereafter, he recorded the statement of the police personnel Pappu Kumar Yadav. Thereafter he obtained the confessional statement on 31.09.2013 of the accused-Sanatan Baski, who had been arrested in Maheshpur P. S. No. 250 of 2013 dated 30.08.2013 under Sections 25 (1-B)/A/26 Arms Act, Section 17 of the CLA Act and his confessional was recorded and he has proved the confessional statement of Sanatan Baski (with objection), which are in 11 pages.

127. Thereafter on the basis of confessional statement of the accused Sanatan Baski, he i.e. P.W-19 went to Dumka and had recovered one bullet proof jacket, which was prepared in the seizure list, which was marked as 'Y' for identification. Thereafter recorded the statement of witness, Shashi Bhushan Tiwary, Maheshpur, Pakur and ASI, Surendra Prad Singh, Pakuria in Pakuria police station. Thereafter he conducted the raid along with raiding team at various places under Shikaripada Police Station. Thereafter on 07.09.2013, he

filed an application before the Additional Chief Judicial Magistrate, Dumka to remand the accused- Sanatan Baski, who was arrested in Maheshpur P. S. Case No. 250 of 2013 on 07.09.2013 and had obtained production warrant of accused-Sanata Baski from the Court of Additional Chief Judicial Magistrate and production warrant was sent to Jail Superintendent, Pakur and sent a report to the Officer In-charge Shikarpada, Ramgarh to arrest the accused persons in this incident.

128. Thereafter on 04.10.2012 (wrongly recorded as it should be 04.10.2013), he had submitted the charge-sheet against the accused Sanatan Baski and Wakil Hembrom under Sections 147/148/332/333/324/326/307/302/396/353/27/20B/412 of the Indian Penal Code and Section 27 of the Arms Act and Section 17 of the CLA Act. Thereafter he submitted an application before the Additional Chief Judicial Magistrate on 20.10.2013 for issuance of warrant of arrest and came to Dumka in the Court of Additional Chief Judicial Magistrate, Dumka on 29.10.2013 and remanded Sanatan Baski in this case on 26.10.2013. Thereafter he again came to the Court of Additional Chief Judicial Magistrate, Dumka on 06.11.2013 and had filed an application before him for obtaining remand of 48 hours of the accused Sanatan Baski and Additional Chief Judicial Magistrate, Dumka had allowed the police remand of 48 hours of the accused Sanatan Baski and thereafter he came to Kathikund police station alongwith the accused Sanatan Baski from Central Jail Kathikund. Thereafter on 07.11.2013, he had taken the accused Sanatan Baski to the place of occurrence and the accused Sanatan Baski had disclosed about the place of occurrence. Thereafter he obtained notification of Government of Jharkhand, Home Department, being Memo No. 12/5 (A0 SU0) 51 22/2004 by which

the State Government has declared Bha0 K0 (Maoist) organization, (i) Krantikari Kishan Committee, (ii) Nari Mukti Sangh, Jharkhand, (iii) A-one Group and (iv) Krantikari Sanstikritik Manch as illegal organization from the date of its constitution and the said notification has been marked as Z (with objection) after identification.

129. Thereafter on 20.11.2013, he had obtained the warrant of arrest of the accused persons and he had sent the warrant of arrest of the accused Pravir Da for its execution to Pirtand Police Station, District-Giridih. Thereafter on 19.01.2014, he again got received notification marked for identification as Z/01. Thereafter on 21.01.2014, he got conducted T.I. Parade of the recovered bullet proof jacket in the presence of the witnesses through Sri Gyan Shankar Jaiswal, Circle Officer, Kathikund and the witnesses had identified the same i.e. the bullet proof jacket and he obtained the original copy of the same. Thereafter he submitted charge-sheet against the accused Sanatan Baski @ Tala Son of Kisto Baski under Sections 147/148/149//324/326/307/332/337/302/ 396/ 353/ 412/427/120B of the Indian Penal Code and Section 27 of the Arms Act and Section 17 of the CLA Act.

130. Thereafter on 20.02.2014, P.W-19 filed an application before the Additional Chief Judicial Magistrate, Dumka for addition of Section 16(1A)/18 of the UA (P) Act and further investigation of this case was handed over to Dy.S.P. Anil Kumar Srivastava along with all the papers. He has further identified the material Ext.-01, which is of the broken pistol grip of AK-47, which was seized by the Ashok Kumar, Officer In-charge, Kathikund Police Station and also identified one shoe of Black colour marked as Material Ext. 01/01, one plastic piece material marked as Material Ext. 01/02, cap of chitkarba colour marked as Material Ext. 01/03, one gamcha marked

as Material Ext. 01/04, blank jerkin of two litre marked as Material Ext. 01/05, one black colour blank magazine, marked as Material Ext. 01/06, one magazine of 12 bullets and two another bullets inserted inside the material marked as Material Ext. 01/07 and one bullet proof jacket marked as Material Ext. 01/08 respectively. He further stated that he had sent these materials namely 41 pieces of Khokha of SLR, 15 piece khokha of AK-47, one piece Khokha of Insas, one live cartridge of AK-47, two piece misfire bullet, two piece live cartridges of 303 for Forensic Report, but the same has not yet received and which would be produced by Mistor Kerketta Sub-Inspector and Officer In –charge of Kathikund Malkhana. He has further proved the written report in writing and signature of Sub-Inspector Nistor Kerketta marked as Ext-16. He has identified the accused Satan Besra, Sanatan Baski, Wakil Hembrom in the Court against whom he has submitted the charge-sheet.

131. During cross-examination made on behalf of the defence'side, he i.e. P.W-19 has stated that material exhibits, which were produced by him before the Court, were in custody of Officer In-charge, Nistore Kerketta, Kathikund P.S. and prior to him Ashok Kumar, Officer In-charge was there. He also stated that material, which were brought him were neither in sealed condition nor any case number was mentioned on the said articles nor contain signature of any Officer on the seized articles nor contain the signature of any witnesses on the seized articles. He also stated that sandal and shoe are available in local Bazar. Bullet proof jacket is also available in some police station and magazines are available in the name of police personnel. However, he asserted that he had seized two magazine of black colour and one of which contains 12 live cartridges of AK-47 and two cartridges were inserted and one cartridge was blank and he

has seized these articles in the Sadar Hospital and these articles were produced by Md. Has Nayan before him and he had handed over the same to the Officer In-charge Kathikund by preparing seizure list and sent to Kathikund Malkhana.

During cross-examination made on behalf of Sanatan Baski and Satan Besra, he has stated that apart from Exhibits in this case, there are several articles in Malkhana. He does not remember as to whether the AK-47 is written in pistol grip and magazine.

132. During cross-examination made on behalf of Wakil Hembrom, he has stated that he had taken charge of investigation of this case on 02.07.2013 at 16.10 A.M. at the place of occurrence. He learnt about the occurrence while he was in Kathikund P.S. and he left police station at 14.20 hours for going to the place of occurrence, but he had not taken the case diary. However, he has mentioned Sanha no. 31 dated 02.07.2013 when left police station. He arrived at the place of occurrence on the same day at 14.45 hours and had returned to Kathikund police station on 02.07.2013 at 22.00 hours and he had made all investigation as per the seriatum from leaving to the police station till returning back to the police station and all the places where he had visited. He had mentioned the same in his personal diary and while coming back to the police station, he had written case diary from his personal diary. He submitted written case diary at 22.00 hours in the police station. He was not present at the time of preparation of Inquest Report. He further stated that co-accused Wakil Hembrom was not named in the FIR and he had not filed any application for obtaining his warrant and he was not acquainted with Wakil Hembrom from earlier and the accused Wakil Hembrom has no criminal antecedent in Kathikund Police Station. However, the accused Wakil Hembrom was arrested in Pakur. Wakil

Hembrom was not arrested on the basis of any eye witness, rather Wakil Hembrom was arrested on the identification of Officer In-charge Pakuria, but he has not mentioned this fact in the case diary and no article was recovered from the accused Wakil Hembrom at the time of his arrest and he also stated that he had submitted first charge sheet on 04.10.2013 and till 04.10.2013, he had not got conducted T.I. Parade of any accused. Thereafter he handed over investigation of this case on 20.02.2014 to one Anil Kumar Srivastava, Dy. S. P. No independent witness was found by him. He has also not mentioned the distance of place of occurrence from the police station (Kathikund Police Station). He had denied suggestion for not having done proper investigation.

133. During cross-examination on behalf of both the accused namely (i) Manve Murmu (ii) and Manve Murmu, he stated that he has firstly recorded the statement of Officer In-charge Ashok Kumar. He had not got conducted T. I. Parade of any accused from time of his starting the investigation to handing over the investigation. He had neither found any eye witnesses at the place of occurrence nor during entire investigation. He was posted on the post of Inspector in Kathikund Police Station from 2010 to 2014. He had not found any criminal antecedent of both the accused Manve Murmu (i) and Manve Murmu (ii). Neither any naxal literature nor any objectionable articles were seized from their house and he had not arrested both the accused during course of investigation.

During course of further investigation, he found that white colour Scorpio Vehicle was registered in the name of one Shakutala Devi and Registration of White Scorpio was not done, but the same was being used S.P. and on the direction of some person of Panem Coal, the said vehicle was given to S.P. Saheb. He had recorded

statement of Driver Dhanraj Mariya of the Scorpio Vehicle and had searched about his criminal antecedent, but the same has not been mentioned in the case diary. However, the Registration Number of the said vehicle was JH-18C- 6713, which was released by the order of the Court. He had not seized the mobile number of both the accused namely Manve Murmu (i) and Manve Murmu (ii). He had not participated in inspection of dead body. All the dead bodies were inside the vehicle and the dead body of the S. P. Saheb was in ditch outside the vehicle. He has not seized the scattered blood found near the dead body. He further stated in para-24 that there is no mountain in the north side of the place of occurrence and there are dense forest of all four corners. He had arrived at the place of occurrence at 14.45 hours and remained there till 22.00 hours, but he had not recorded the statement of anyone at the place of occurrence and stated that he recorded the statement on the same date at 22.00 hours. Firstly he came to Sadar Hospital Dumka and where he issued requisite steps for injuries and had obtained copies of the Inquest Report and thereafter he recorded the statement of Ashok Kumar (i.e. P.W-20).

He denied the suggestion in para-25 that he used to call some people for the political reasons and later on they were let off. He also stated that confessional statement of co-accused Jeevan Hansda @ Phesh Hansda was recorded in Pakur District and the accused Jeevan Hansda @ Phesh Hansda had admitted his guilt in this case. He stated that because he was the Investigation Officer of this case, he had taken the confessional statement of co-accused Jeevan Hansda on 05.08.2013 but he could not give information to the Officer In-charge, Sundar Pahari. He had denied the suggestion in para-26 that he had falsely made Manve Murmu accused in this case due to political reasons that his wife is Mukhia of the villager

Choudhar and has submitted charge sheet against wrong persons.

During cross-examination made by the co-convict Pravir Da, he stated that he has not mentioned in the case that as to what distance and at what time, he had conducted the raid. He has also not seized anything from the injured P.W.30- Lebenius Marandi from the place of occurrence. He has not mentioned in the case diary that as to what and how many days, S. P. Saheb had not used his Government Vehicle and who was driver of the Departmental Driver of the S.P. Pakur before the incident. He also stated that Eescort Bolero Vehicle of S.P. was Government Vehicle, his registration was not done. He had denied the suggestion for conducting perfunctory investigation.

On further cross-examination made on behalf of accused Sanatan Baski and Satan Besra, he stated that he had arrested Satan Besra on 07.07.2013 from Pakuria and had arrested Sanatan Baski on 08.07.2013 from Pakuria Bazar, District- Pakur. Later on he said that Officer In-charge, Maheshpur Police Station had arrested the Sanatan Baski. He knew the Satan Besra before the incident because he was accused in naxal activities, but he was not Investigating Officer of that case and he was not aware with regard to the incident. However, he stated that he had seen the name of co-accused Sanatan Besra in criminal directory with regard to naxal activity. He further says that two cases being Kathikund P.S. Case No. 68/08 and 21/09 were instituted earlier prior to this case against the accused Sanatan Besra. Officer In-charge mentioned part-II of the crime directory, but IO name is not mentioned. He has given the name of Officer In-charge of Maheshpur P.S. in this case. He also stated that accused Jeevan Hansda is not an accused in this case. He has not mentioned as to in which case Jeevan Hansda was made in the accused. Confessional statement of co-accused Jeevan Hansda dated 05.08.2013 was not

given to him by Litti Para Police Station Pakur, which was recorded by Tesh Lal Ram, Officer In-Charge. He does not know as to where confessional statement of co-accused Jeevan Hansda was recorded and he had inquired the accused Jeevan Hansda.

Thus, It is evident that P. W.-19 is I.O. of the case and who had supported the prosecution case.

134. P.W.-20 is one Ashok Kumar, Inspector and who was posted as the then Officer In-charge Kathikund P.S. During his evidence, he stated that on 02.07.2013, he received information from Jamuni Crusher S. Plant situated police picket on 02.07.2013 at about 14.28 hours i.e. 2.28 pm. that there was on firing on the pitch road near jungle ahead of Crusher plant and upon when he entered Sanha in the Police Station and then he along with Police Inspector Chanhosh Kumar Minz of Kathikund P.S. and armed forces of three Hawaldar and six Police Personnel along with Anti Land Mines and its driver Md. Sarfaraj Alam proceeded for necessary action to verify news.

By crossing the police picket, he arrived at under constructed Pulia in the middle of village Jamuni and Amantala at about 14.45 hours i.e. 2.45 P.M., then he found there that one Bolero Vehicle without number plate and also saw one Scorpio Vehicle without having number plate ahead at distance of 20-25 metre of Bolero Vehicle. Thereafter they alighted from the vehicle and came near the Bolero Vehicle and found there were riddles of bullets in right side of vehicle and glasses were broken. He also found that one police personnel of driver seat and two police personnel in the middle of seat were lying dead in a pool of blood and also two police personnel in injured conditions, who were groaning then he directed his forces to board the police personnel on the Anti-Mines Vehicle. Thereafter

he arrived near Scorpio Vehicle situated at newly constructed pulia where he also found riddles of bullets in the right side of the Vehicle at various places and glasses were broken and also found one police personnel dead in the middle of the seat lying in the pool of blood. He also saw one police personnel dead in ditch in left side of 10-20 feet of the vehicle. On going there, he found that the said police personnel was deceased Amarjeet Balihar, then Superintendent of Police, Pakur having signs of several bullets on his dead body.

He further stated that he had found one person in police dress and one person in civil dress were found in injured conditions. Person in police dress has disclosed his name as Lebenius Marandi(i.e. P.W.30) and injured person in civil dress disclosed his name as Dharmraj Maraiya @ Dhanraj Maraiya (i.e. P.W.31).

Thereafter he boarded both the injured persons on the Anti-Mines Vehicle and the persons, who had earlier boarded in the Anti Mines Vehicle also disclosed their names as Hawaldar Bablu Murmu and police personnels Santosh Kumar Mandal and Hawaldar Bablu Murmu stated that they were returning to Pakur with S.P. Pakur, Amarjeet Balihar after attending the meeting of D.I.G. on 02.07.2013 and while they were returning then continuous firing were made from the right side of the Jungle near newly constructed Pulia and due to which Ashok Kumar Srivastava, Manoj Hembrom, Rajeev Kumar Sharma died and Santosh Kumar Mandal became injured and injured further disclosed after closure of firing also some extremists arrived at near his vehicle (i.e. Bolero Car) and they presumed them to be dead and then the accused persons shouted “Pravir Da what happened to the ahead next vehicle”, then other side shouted “ S.P. Saheb has been shot dead”. Thereafter he again heard Tala Da, Joseph, Daud looted the arms of all. P.W.-20 further disclosed that P.W.-12, Babloo Murmu has stated

that his Insas rifle and three other personnel and bullet were looted by the extremists. Thereafter, P. W.-12 had also stated before him that he had heard voice that further two AK-47 and bullets were found from the vehicle. Thereafter extremists shouted to flee away as the police had arrived and then about 30-35 extremists after raising Maoist slogans, fled away north side of the Jungle. P.W.-20 has stated that in the meantime, the police party of Gopi Kandar P. S., Pakuria P. S., Amarapada P.S also arrived there. He further stated that the police parties of Pakuria and Amarapara P.S. had also identified the deceased on the basis of their names plates and of the same district of the deceased Chandan Thapa, deceased Manoj Hembrom, deceased Ashok Kumar Srivastava, deceased Rajeev Kumar Sharma. Thereafter, they searched the entire jungle of nearby areas, then they recovered 41 Khokhas of SLR, 15 Khokha of AK-47, one Khokha of Insas, Two misfire live bullet of AK-47, two khokha of .303 and one live misfire bullet of .303 and broken piston grip of AK-47, one black colour shoe and one plastic chappal, two litres gallon tied in gamcha and which were seized by Hawaldar Vijay Kumar Singh and Constable Manjeet Kisku by preparing seizure list, which is in his writing and signature of P.W-20, Ashok Kumar marked as Ext. -17.

He further stated that it appeared to him that incident has been committed by Zonal Commander Pravir Da and its active member Kala Da, Daud, Joseph, Deepak Dehri, Sonu Dehri and local supporters and thereafter he handed over the investigation of this case to the Police Inspector Kathi Kund Sri Chouhansh Kumar Minz and he registered an FIR of this incident after returning Kathikund Police Station. He has proved his writing and signature in written report marked as Ext.-18. He has also proved the formal FIR in the writing of literate constable Nagendra Kumar Singh, which is marked as Ext ( number not entered

by P.O.).

135. On being cross-examined by the accused Santan Baski, Satan Besra and Lobin Murmu, he stated that he is not aware as to how many bullets were sustained by the injured Hawaldar Bablu Murmu. He has denied the suggestion that Bablu Murmu had sustained three bullets and as such, he was not in a position to speak but his subsequent statement was recorded. He also stated that the another name of Tala Da is Sahdeo Ray, which has been entered in the case diary at para-21. However, there is no second name of the accused Sanatan Baski. He had denied the suggestion that fardbeyan is imaginary and the Bablu Murmu i.e. P.W.-12, has not disclosed to him anything as he was in unconscious condition.

On being further cross-examined on behalf of Pravir Da, i.e. accused- appellant. he has stated in para-13 that he had taken the name of accused Pravir Da, Tala DA, Daud, Joseph, Dipak Dehri, Sonu Dehri, Sanatan Baski, Satan Besra, Kiran Tudu, Vijay (brother of Pravir Da), Wakil Hembrom and local supporters namely Manve Murmu, Stephin, Shiv Chand Mohli, Suresh Bhagat, Rashik Marandi etc. but he had not written their names in his written application as he learnt their names later on and he had written their names on his own. He is also not aware of the address of all those accused persons, which was named by him in his subsequent statement. He has also described as to the mobile phones of how many persons were looted and he has not also disclosed as to how mobile of those persons were looted.

He had denied the suggestion that none of the police personnel, who were found at the place of occurrence, were not in the position to give the statement. He has denied the suggestion for not recording the statement of any persons at the place of occurrence and as such he has given his self-statement in the form of FIR.

136. On being cross-examined on behalf of Manwel Murmu, he has stated that none of the accused relating to this case are present before him in the Court. He asserted that he received information of this incident at 14.28 hours i.e. 2.28 PM from the phone of the police picket and Sanha of this incident was instituted, but he cannot say that Sanha number is mentioned in the case diary or not. He further asserted that he arrived at the place of occurrence at 14.45 hours (i.e. 2.45 P.M.) and he had recorded his self-statement at 16.10 hours (i.e. 4.10 P.M.). He stated that he had not seen the occurrence. He has denied the suggestion for recording fardbeyan as hearsay, rather he asserted that he recorded the fardbeyan on the basis of occurrence disclosed by the injured. He further stated that he remained Kathikund Police Station at around one and quarter hours, but during this period he had not met any naxalite directly. He also stated that articles, which were seized by him, are not produced him before the Court. He further asserted in para-19 that apart from one injured, no-one has stated anything about this fact. He also staed that when he arrived at the place of occurrence, then he found that the S.P. was in the ditch in the north side at the distance of 10-12 feet in ditch from the left side of Scorpio Vehicle, but he cannot say as to how many injuries were sustained by the S.P. and he had not taken him to the Hospital as he had died. At the place of occurrence, he was present till 10 P.M.

On being further cross-examined on behalf of the accused Wakil Hembrom, he stated that he was posted in Kathikund Police Station from the year 2012 to February, 2014. The distance of place of occurrence from the police station is approx. six kilometres and he received information about the incident at 14.25 hours (i.e. 2.25 P.M.) and he arrived at the place of occurrence 14.45 hours (i.e. 2.45 P.M.) and by that time he arrived at the place of occurrence, no miscreants or

the accused were present and by that time four persons had died and four persons were in injured conditions. He had stayed at the place of occurrence for about 5-6 house then returned to the police station.

137. He recorded his self-statement at the place of occurrence at 16.10 hours. However, he had not sealed the articles, which were seized by him and the seized articles of the place of occurrence were found at a distance of 100-150 Metres. There was no water near the culvert pulia ad he is not aware to the height of culvert pulia, but the width of road is approx. forty feet. He had not gone to the hospital on the date of occurrence.

On being cross-examined on behalf of the Shiv Chandra Mohli, he stated that he does not identify the accused Shiv Chandra Mohli and he had heard the name of Shiv Chandra Mohli from the spy that he is the supporters of extremists, but Shiv Chandra Mohi was not arrested during his presence.

138. Thus from the scrutinizing the evidence of P.W.-20, it is evident that he was Officer In-charge of Amarapara P.S. on the date of occurrence and he arrived at the place of occurrence around 17 minutes where he found that Amarjeet Balihar, S.P. Pakur in dead condition and also found four police personnel in dead condition and four persons including P.W.-12, Bablu Murmu, P.W.-30, Lebinious Marandi and P.W.-31, Dhanraj Mariya in injured condition and one injured Santosh Kmar Mandal, who later on died. He has denied the suggestion to arrive at the place of occurrence at later, rather after receiving information of firing at 14.28 hours by covering a distance of six kilometres on a road of forth feet width, which also appears to be a factor.

139. It is surprising that P.W.-20 did not even make attempt to take the dead body of the deceased Amarjeet Balihar, S.P., Pakur to the Hospital even for the sake of his last treatment by giving reason that he

was found dead. P.W.-20 and other police personnel ought to have been taken the deceased Amarjeet Balihar, S. P. Pakur to the Hospital for his last treatment as the Doctor had found that Amarjeet Balihar, S. P. Pakur had sustained only two bullet injuries and one abrasion injury on his head.

140. P.W. -21 is Gyan Shankar Jaiswal, BDO-cum-CO, Nala, district- Jamtara and during in his examination in-chief, he has stated that he was posted as Anchal Adhikari, Kathikund on 20.01.2014 and on that day, the police inspector had come with the order of ACJM, Dumka for conducting T. I. Parade. He also stated that there were eight jackets of speckle colour and the said jacket was identified by the police personnels Labonious Marandi, P.W.-30 at 14.30 hours and he had also identified the said bullet prove jacket. After T.I.P, T.I.Parade chart was prepared on which he and Labonious Marandi, P.W.-30 had put their signature and the said T.I.Parade Chart, which have been marked as Ext.-19/1 and 19/2 respectively. He further stated that another witness Hawaldar Bablu Murmu, P.W.-12, was also produced at 20.01.2014 at around 15.00 hours and he had also identified on buller proof jacket and of suspected old eight bullet proof jacket and after T.I.Parade, T. I. Parade chart was prepared, which was signed by him and witness Bablu Murmu (i.e. P.W.-12) and which was marked 19/2 and 19/3 respectively.

141. During cross-examination made on behalf of the accused Pravir Da, he stated that he had identified the seized articles on the Verandah to the Office of Achal Adhikari and other outsider do not visit there and at that time Officer In-charge, Ashok Kumar, Bablu Murmu, Levonious Marandi and other police officials were also present with the Inspector. The seized articles were kept inside one big bag and those eight jacket were brought in big bag. However, he admitted that he has not

mentioned bullet proof jacket in Column-5 in T.I. Parade chart. However, he does not remember as to when for the first time Inspector had come with the order of ACJM on 20.01.2014, but on the same day, the Inspector had arrived at 2.00 P.M. during the day. He had denied the suggestion for not conducting T. I. Parade as per rule and prepared the T. I.P. chart in a wrong manner.

During his cross-examination on behalf of the Sanatan Baski, Satan Besra and Lobin Murmu, he stated that the bag, in which total eight jackets were kept inside and brought, were not sealed, but the suspected jacket was identified out of eight jacket. He had also put one sticker inside the suspected jacket out of those eight jacket, for his own identification and all eight jackets were brought by the police and proceeding was conducted for about one hour. He had denied the suggestion that bullet proof jackets were available in the market or not.

On being further cross-examined on behalf of both the accused Manvel Murmu, he stated that total eight bullet proof jackets were brought and no other jackets was mixed with them, but he has not mentioned in the T. I. Parade Chart as to where, the said eight jackets were brought.

Thus from scrutinizing the evidence of P.W.-21, it is clear and evident that he was posted as Anchal Adhikari and during his presence, one suspected bullet proof jacket out of eight bullet proof jackets was identified. He has proved the identification of bullet proof jacket, which belongs to the deceased Amarjeet Balihar, S. P. Pakur.

142. P. W. -22 is Dr. Rajeev Kumar Singh, who had conducted post-mortem examination of deceased Hawaldar Ramji Prasad Mandal and he had found following injuries on the dead body:-

1. Hole right of face and skull avulsed, Brain matter protruding outside.

2. Intery wound of bullet present on right side of neck. Measuring 01/04"X01/04".
3. Intery wound of bullet present on left side base of neck. Measuring 01/02"X 01/04".
4. Exit wound of bullet present on base of neck measuring 02"X 02".
5. Lacerated wound right lower leg 05"X02"X bone deep.
6. Intery wound of bullet above left middle malleoles 01/01"X 01/02" with fracture of lower one third left tibia and fibuia with lacerated wound 10"X 04" through which bullet comes out.
7. Opinion- In opinion cause of death is back is shock and haemorrhage and distraction of brain due to injury no-01,02,03 and 04. Cause by fire arms.
8. Time elapses death- since rigor motis present in all four libs it is less than 24 hrs.
9. This post-mortem report is written by him bears his signature and Boards Members signature Dr. D. K. Kesri and Dr. N.K. Jha, which is marked Ext. no.-20.

During cross-examination on behalf of the accused Pravir Da, he stated that he has not mentioned Blacking in mark on the post-mortem report. However, he stated in para-11 that such type of injury is sufficient for death.

During cross-examination by both the accused Manwel Murmu, he has stated that cause of death is possible due to above injury.

This witness was not cross-examined on behalf of Sanatan Besra and Sanat Besra and as such cross-examined of this witness were declined.

Thus P.W.-22 is the Doctor, who has conducted the post-mortem of the deceased Rajeev Prasad Mandal and stated that the

deceased died due to bullet injuries.

Thus, P.W-21 proved post-mortem which was marked as Ext-20.

143. P.W.-23 is Dr. Dilip Kumar Keshri and who had also conducted the post-mortem of the deceased Hawaldar Ramji Prasad Mandal and stated the post-mortem of the dead body of deceased done by Rajeev Kumar Singh i.e. P.W.-22 and he was the member of the Medical Board and he identified the signature on the same, which was marked as Ext. 20/01.

He further stated that he has conducted the post-mortem of deceased driver Ashok Kumar Srivastav and even the following Anti-mortem injuries were found on the dead bodies:-

01. On lateral side of abdomen 02''X 01'' on side of above wound 01/02''X one four'' size. Black burn mark.

02. Right side of hip 04''X04'' size deep wounds. On opening the abdomen and exploring the wound liver was fund lacerated and huge collection of blood in abdomen cavity.

03. On left knee midial of knee 03''X03'' size bleeding wounds. Three in number  $\frac{1}{2}$ '' each round burn mark near wounds.

Opinion- In our opinion dead was caused due to injury 01 or 02 shock haemorrhage. Weapon is used fire arms.

Time elapse death- within 12 hours.

04. This injury report is written by him bears my and medical board members signature, which is marked as Ext.-03 already done by the court.

He has proved the injury report (it would be post-mortem report) marked as Ext.-3 earlier by the Court.

During cross-examination made on behalf of the accused persons, he has stated that injuries caused on the injured is instantaneous

death and the injury may be caused due to profuse (bleeding) of blood.

Thus from scrutinizing the evidence of P.W.-23, it is evident that he has proved the post-mortem of the deceased Ramji Prasad Mandal and also proved the post-mortem of the deceased Driver Ashok Kumar Srivastav.

144. P.W.-24 is Dr. Kumar Abhay Prasad. He has stated during evidence that on 02.07.2013, he was posted as Medical Officer at Sadar Hospital, Dumka and on that day, he had examined Dhanraj Maraia i.e. P.W.-31, who is the son of Baijnath Maraia aged about 23 years village-Gosipur, P.S.-Pakur, District-Pakur at 4.25 P.M. and he had obtained the injuries, which are as follows:-

01. Four penetrating wound with black measuring near right scapula.
02. Two penetrating wound with black measuring on right lower posetro latra abdominal wall.
03. Lacerated wound on right lower part of the leg. Size 3''X2''X1''
04. Mark of identification- Mole on Left side of nose.
05. Age of injury- Within 06 hrs.
06. Nature and cause of injury – Should be reserved for till radiological report.

He further stated that on that day he also examined Levinus Marandi S/o Manesh Marandi, age about 32 years, R/o vill- Police Kent, Pakur, P.S-Pakur, Dist-Pakur, at 04:20 P.M and he had found following injury-

- 01- Two penetrating wound with black measuring near left arms posetto lateral.

- 02- Lacerated wound on right foot. Size 01 and half"X01 x 01/02".
- 03- Mark of identification- Mole on Right upper chin wall.
- 04- Age of injury- Within 06 hrs.
- 05- Nature and cause of injury- should be reserved for till radulas report.

He further stated that on that day he also examined Hawaldar Bablu Murmu (i.e. P.W.-12) age about -28 year Vill- Police kent, Pakur, P.S- Pakur, Dist- Pakur, at 06:35 P.M. and he had found following injuries-

- 01- Bandage both thigh and left leg at Rinchi Hospital, Dumka. Ref no- 2646, dt 02-07-2013. Patient was unconscious.
- 02- Age of injury- Within 06 hrs.
- 03- Nature and cause of injury- Should be reserved for till radio-logical report.

All the three injury (i.e. Post-Mortem Report is written by him bears his signature, Which were marked as Ext.- 21,22,23 respectively.

During cross-examination made on behalf of accused Pavir da, he stated that he has not mentioned the weapon by which injury caused and he has not mentioned the cause of injury but opinion was reserved, but during cross-examination made on behalf of both Accused Manwel Murmu, he stated that the paper issued from Rinchi Hospital, Kathikund, is not available in regard to Bablu Murmu. He also stated that radiological report was not received to him due to which he could not produce the same. He also stated that who brought the injured persons for treatment, he has not mentioned in the report. Cross-examination of this witness was declined on behalf of the accused Sanatan Besra and Sanat Besra.

Thus, from scrutinizing the evidence of P.W.-24, Dr. Kumar Abhay Prasad, it is evident that he had treated firstly injured Levinus Marandi (i.e. P.W.-30) at 04.20 P.M. on 02.07.2013 and thereafter he examined injured Dhanraj Maraia, (i.e. P.W.-31) at 04.25 P.M. on 02.07.2013 and thereafter he examined injured Hawaldar Bablu Murmu at 6.35 P.M. on 02.07.2013, but paper issued from Rinchi Hospital, Kathikund is not made available. He has also stated that even radiological report of the injured persons were not made available to him.

145. P.W. 25, Dr. Pal Hansda along with Dr. D. Rakshit, Dr. Sudeep Kashayap had conducted the post-mortem of the deceased Santosh Kumar Mandal and by Hawaldar Ramji Prasad Mandal and proved his signature on the said post-mortem report, which is marked as Ext.-10 and 10/1 respectively.

Thus, cross-examination of this witness was declined on behalf of the accused Sanatan Besra and Sanat Besra and not cross-examined by any of the accused persons.

146. P.W.-26 is Mahesh Prasad Singh, retired ASI, JAP and during examination in-chief, he stated that on 02.07.2013, he was posted as Sub-Inspector, Armed Force and there were three Hawaldar and sixteen Police Personnel and on 02.07.2013 at about 2.25 P.M. at Pakur Dumka Road, sudden firing started in the bridge at Pakur Dumka Road and our force has taken command and morcha and immediately he sent the information by phone to In-charge of Kathikund P. S. and they also along with police force came to the place of occurrence. He has stated that extremists were firing and late S. P. and five personnel were injured and some of them died on the spot. He also stated that the police has taken his statement, but

he does not remember, where he had disclosed the name of the accused persons involved in the occurrence.

147. This witness i.e. P.W.-26 was declared hostile by the prosecution and on being further cross-examination on behalf of the prosecution, he stated that he had disclosed the name of two accused Pravir Da and Tala Da statement before the police and apart from this, he had also disclosed that number of extremists were between 30-35 and who were making indiscriminate firing on the police personnel and its escort due to which, the then S.P. Pakur and some the police personnel had died due to sustaining the bullet injuries and some became injured. He also stated that naxal had looted arms and bullets of the police.

148. During cross-examination made on behalf of the accused Pravir Da, he stated that the distance of place of occurrence from the police picket was one kilometre and he could not see the incident at a distance of one kilometre and he had arrived at the place of occurrence with the Officer In-charge, Kathikund P.S.. Officer In-charge had arrived at their picket at 2.25 P.M. and he had informed P.S. had 2.25 P.M. He further stated in para-6, distance of Jamuni Picket from the Kathikund P.S. is about two to two and half kilometre . He had denied the suggestion for giving false statement.

On being further cross-examined on behalf of the both the accused Manwal Murmu, he stated that the picket in which they had lived, there is Jamuni villages and its nearby place, which is close to road and its distance from picket is also 50 Yard. He also stated that the distance of place of occurrence from the picket is about one kilometre and the distance from picket to the police station is 2 to 2.5 kilometres. He also stated that he had not seen the occurrence from his eyes. However, stated in para-10, they had proceeded towards

place of occurrence 2.28 P.M. and they arrived at the place of occurrence in five minutes, but they had not seen any persons of the village. He also stated in para-11, he had taken the injured and the deceased police personnel to his picket at around 3.15 P.M. and they went to Dumka. Cross-examined of this witness was declined on behalf of the accused Shiv Charan Mahli.

149. Thus, from scrutinizing the evidence of P.W.-26, it is evident that he has been declared hostile by the prosecution. He has not disclosed the name of any accused persons as he could not remember. During cross-examination made on behalf of the accused persons, he described the distance of Jamuni picket to Kathikund police station 2 to 2.5 kilometre in para-6 and 8 of his cross-examination. He has also stated distance from Jamuni picket to place of occurrence is around 2 Km. in para-3 and 8 of his cross-examination.

150. P.W. -27, Sachidanand Mishra, JAP Police 471 and during his evidence, he stated on 02.07.2013 at about 2.30 P.M. occurrence took place at Jamuni Village near the towards of Kathikund P.S. and at that time he was at Jamuni Picket along with one Officer, three Hawaldar and 16 sepoys and he was in sentry duty. He heard sound of explosion at around 2.30 P.M. after ahead of Jamuni Picket at Pakur road near the jungle and they presumed that the firing is taken place, but nothing was seen and only heard the sound of explosion. Thereafter he gave the information of explosion to his superior officer and had also informed to the Officer In-charge Kathikund Police Station. Thereafter Officer In-charge along with armed forces and Anti Land Mines Vehicle came to Jamuni Picket and police arrived at the place of occurrence. When the police returned then he learnt that due to firing made by maoist ground deceased Amarjeet

Balihar, the then S. P. Pakur and five others of escort party were shot dead and 1 and 2 persons got injured, who were sent for treatment and arms and articles of the police was looted.

During cross-examination made on behalf of the accused Pravir Da, he stated that he had not gone to the place of occurrence and he had not seen as to what were the articles belonging to the S.P. Balihar and his escort party.

On being cross-examined on behalf of both the accused Manwel Murmu, he stated that he had seen S. P. Balihar Saheb in Ranchi during his duty, but he does not remember the year, thereafter he never met him. He had not seen anything on the place of occurrence.

Cross-examination of this witness was declined by the other accused.

Thus, from scrutinizing the evidence of P.W.-27, it is evident that this witness had heard the sound of explosion while he was posted Jamuni picket along with one officer, three Hawaldar and sixteen sepoys, but he had not gone to the place of occurrence. However, he stated that firing has taken place and sound of explosion were being heard.

151. P.W.-28 is Indradev Mandal, Constable 292 and during examination in-chief, he stated that occurrence took place on 02.07.2013 at around 2.30 P.M. and place of occurrence village Jamuni, which is ahead at a distance of approx. three kilometre from Kathikund P.S. and at that time he was in picket and he was in Santri duty between 1.00 to 3.00 P.M. and suddenly heard the sound of firing. Thereafter he got alerted all the guard and the entire force had taken Morcha and Kaman. On being informed by his Officer to Kathikund P.S., they arrived alongwith Anti Land Mines

Vehicle near the picket. He went to the place of occurrence and found that some police personnel were injured and some police personnel had died and then S. P. Pakur, Amarjeet Balihar and his escort police personnel had also died and the occurrence was caused by the extremists.

152. During cross-examination made on behalf of the Pravir Da, he stated that he was in duty and Jumuni Picket and on that day around 1.00 P.M. to 3.00 P.M. He had not gone to the place of occurrence and the place of occurrence is not visible from the picket. On being further cross-examined by both the accused Manwel Murmu, he stated that he had not seen the occurrence from his eyes and he cannot say as to S.P. was brought to which vehicle and he does not remember the name of sepoy, who had died. This witness was not cross-examined by the remaining accused persons.

From scrutinizing the evidence of P.W.-28, it is clear that this witness is on the point of firing and he had not gone to the place of occurrence and he was on duty at the Santri at police picket between 1.00 to 3.00 P.M.

153. P.W. -29, Benedikat Marandi, the Police Inspector and during examination in-chief, he stated that the occurrence took place on 02.07.2013 at around 2.00 P.M. to 3.00 P.M. and at that time he was posted as Officer In-charge Pakuria in the district Pakur and the occurrence took place between Jamuni and Amartala at culvert pulia, which goes towards to Kathikund P.S. on 02.07.2013. He had attended the crime meeting of Inspector at Maheshpur reason and on that day, he received a call on his mobile at 13.25 hours from the Officer In-charge Maheshpur by which he informed that S. P. Pakur had gone to DIG Dumka for attending the meeting. He i.e. the S.P. Saheb had left from Dumka. He had to cross his P.S. Pakuria to ar-

rive at Pakur he had to escort him. Thereafter after taking the permission from the Inspector, he came to Pakuria P.S. from Maheshpur and where he arranged  $\frac{1}{4}$  force having one Hawaldar and four Sepoys and proceeded with Government Vehicle and they were waiting at place Bada Pathar village from Kharauni from Pakur waiting for arrival of Superintendent of Police and after waiting for about 40 minutes when the Escort had not arrived, then they became apprehended as to whether the vehicle of S. P. had not gone out of the order, then they along with armed forces proceeded towards Dumka main road and while they were proceeded to Dumka and those arrived at village Dalahi in the jurisdiction of Kathikund P.S. then the Office-in-Charge Amarapara and Office-in-Charge Gopikandar along with armed forces, had arrived at the place of occurrence and they got stopped their vehicle 100 metre ahead of the place of occurrence as precautionary measure and while they were walking by foot and when they arrived their then he found Officer In-charge Kathikund P.S. armed forces and Anti Mines Vehicle had already arrived and further arriving there, he saw the Scorpio Vehicle of S. P. nearby small culvert pulia and both tyres of the Scorpio Vehicle had got punctured and he had also noticed that in front and rear and glass of the vehicle 30-35 bullet sign were found. He found the bodyguard of S.P. and Personal Driver, Dhanraj Mariya in injured condition in the right side of road at southern side and had also found Sandeep Thapa Bodyguard of S.P. in died condition. He also found dead body of S.P. Amarjeet Balihar in the 3ft. ditch situated at a distance around 15-20 feet. From the vehicle where dead body of S.P. Amarjeet Balihar was found. He also found escort vehicle of Bolero and on going near, noticed that Government Driver in the driving seat and two police personnel in the middle seat were found

dead. Thereafter Officer In-charge Kathikund Police Station, Police Inspector had sent the injured person in their treatment to the hospital. On inspection of the place of occurrence, he noticed the Khokha of SLR Rifle, A. K. -47, Insas, .303 in bulk numbers, which was seized by the Officer In-charge Kathikund P.S. by preparing the seizure list. Even one black colour shoe of Speckle Topi, one plastic gallon of two litre wrapped in gamcha were seized to Kathikund P.S. by preparing the seizure list. He also stated that it was evident from seeing the recovered khokha near the place of occurrence that occurrence has caused by C. P. I. Maoist Extremists Group, Santhal Paragana Zonal committee commander Pravir @Pravir Da @ Harendra Murmu, Tala Da @ Sahdeo Rai, Sanatan Baski, Pakku Tudu, Kiran Tudu, Bimal Soren, Joseph Soren, Wakil Hembrom, Mahasoy Soren, Dipak Dehri, Sonu Dehri alongwith 30-40 extremists and after committing the murder of police officials, the extremists had looted two AK-47, four Insas Rifle and on bullet proof jacket and some mobile and fled from the place of occurrence towards north direction. This witness had identified the accused Wakil Hembrom in the Court. However, he could not identify the accused Sanatan Baski.

154. During cross-examination made on behalf of the accused Satan Besra, Sanatan Baski, Wakil Hembrom and Lobi Soren, he stated that he had given his statement on the basis of information known to him, but he cannot produce any document. He further stated in para-5 that he had identified the accused Wakil Hembrom as he had earlier got him arrested. He also stated that he was not present at the place of occurrence when the occurrence had taken place, but Dhanraj Maraia (i.e. P.W.-31) had informed him that the accused persons had fled away towards north after committing occurrence.

During further cross-examination made on behalf of the other accused persons, he stated that Labonius Marandi (i.e. P.W.-30), who was bodyguard of S.P. is sitting behind in the Court. He stated that he had not seen the occurrence from the eyes. However, he had arrived at the place of occurrence within half and one hour, after the occurrence had taken place.

He also stated in para-9 that he was aware of the accused Wakil Hembrom as villagers prior to the occurrence and he had met with the accused Wakil Hembrom before 4-5 days of the occurrence, but he had not got him arrested. He also stated that he had not met the accused persons before the occurrence and he had met earlier the accused persons, whose names were disclosed by him, but he was not aware of their names. He stated that Amarjeet Balihar, S. P. Pakur had informed the Officer In-charge Amarapara P.S. by phone during the occurrence. He denied the suggestion that they had deliberately not arrived at the place of occurrence and allowed the incident to take place.

Thus scrutinizing of P.W.-29, it is evident that he had not gone to the place of occurrence and he was waiting for arrival of S. P. Pakur to escort him for taking him to Pakur.

155. P.W.-30, Lebenius Marandi, Constable No. 174 and during his examination in-chief, he stated that occurrence took place near the small pulia i.e. culvert situated between Jamuni and Amantala and on that day, there was the bodyguard S.P., Pakur and on that he was a meeting in Dumka. He had accompanied S. P., Pakur (i.e. the deceased Amarjeet Balihar) in the office of DIG, Dumka. The meeting concluded at 12.45 P.M. Thereafter they had gone to Circuit House and from there, they had arrived 2.00 P.M and they left for Pakur and the officer (the deceased) had two vehicle and he was sit-

ting with the S.P. in white Scorpio Vehicle and its driver was Dhanraj Mariaya (i.e. P.W.-31) and the deceased S.P. was sitting in the left side of the seat of the driver and he was sitting in middle seat of the vehicle and the back side behind Chandan Kumar Thapa was sitting and they arrived between Jamuni and Amartala after 25-30 mines wher there is small culvert, which was newly constructed and therefore, the speed of their vehicle became slow and as soon as speed became slow then firing started from right side at both the vehicles and even the Truck was moving with slow speed ahead of pulia due to which the road was blocked. He further stated that when the firing started then his vehicle stopped there and thereafter the deceased S.P. asked the driver to run the vehicle speedily, but the driver Dhanraj Maraia (i.e. P.W.-31) informed that he sustained bullet in his leg and as such vehicle could not go further and thereafter S.P. asked him "as Marandi give arms and start firing", but he told "Sir firing could not be done from the vehicle, get alighted and start firing". However, in course of alighting vehicle, he sustained bullet injuries in his right leg and then after crawling came near ditch at the corner of the road and they (he and deceased S.P.) got hided and S.P. asked him to get informed someone by the phone and call them immediately. He also stated that S.P. was also firing from his arms. He also stated that after making even from some time when phone was not connection for some time then S.P gave him private phone while S.P. was firing and he was directrd to make a phone call when at that time he also sustained one bullet injuries near the left arms. People were abusing from the right side of the road and asking them to surrender otherwise they will be killed upon which S.P. stated before them not to fear and start firing bullet. In the meantime when the S.P had talked with Amarpara P.S. then he saw that he i.e. P.W.-

30 had sustained bullet injuries and then S.P. demanded arms from him so that he may also start firing. However, in the meantime he became senseless and on gaining conscious he said that the S.P. had got changed the magazine of rifle. Thereafter naxalite Tala Da, Josheph, Pravir Da etc. were shouting that all have died and they have looted the arms of all. He also stated that naxalite came near S.P. and shot bullet at him and they left him by presuming him to be dead. Thereafter he fled away by raising the slogan of Maoist. He also stated by naxalite were wearing green dress and were spoken in Hindi and Santhali language. He also identified the accused Pravir Murmu @ Pravir Da in the Court. However, he refused to identify the remaining the accused persons.

156. During cross-examination made on behalf of both the accused persons (names not mentioned by the Trial Court), but he stated at para-4 that the S.P. had got connected mobile phone of Officer In-Charge Amarapara P.S. and had talked with him. However, even after phone the police force Amarapara P.S. had not arrived at the place of occurrence when firing was taken place for around 5-7 minutes. He further stated during cross-examination that he reached directly around 3.30 P.M. Kathikund and from where he had gone to Sadar Hospital, Dumka and Daroga ji Officer In-charge had come for recording the FIR in connection with the occurrence, but he stated that his beyan (i.e. informant) from taken 8.00 and 8.30 hours i.e. in Dhanbad. He had sustained injuries in his right leg and left arm and the driver has sustained injuries on his right leg and back and he remained in the vehicle. The vehicle was firing at 70-80 rounds bullets. However, driver survived. He denied the suggestion for becoming unconscious at the time of occurrence and had not

seen the occurrence as he was in ditch and had not seen the occurrence.

Cross-examination of this witness was declined on behalf of Satan Besra and Sanatan Baski, Wakil Hembrom, Labin Soren.

157. This witness was further cross-examined on behalf of the remaining accused persons( however, their names are not mentioned by the trial Court) and he has stated about the vehicle by stating in para 10-12 that there were two seats in front, one seat in the middle and two seats were behind the vehicle and he was sitting in the middle seat and there was light black colour glass was fixed in the vehicle. His vehicle was moving at the speed of 80 Km/h. However, there was no vehicle in front of his vehicle, but escort vehicle was behind him and the said escort vehicle was behind at a distance of 15 feet. from his vehicle and apart from him, there was a private driver Dhanraj Maria i.e. P.W.-31 and one another bodyguard deceased Chandan Kumar Thapa and while he moved towards east direction, then firing was made from the southern direction and he and S.P. were sitting in the northern direction. He further stated in para-13 and 14 that first of all first bullet injury was caused to the driver on his vehicle, but the vehicle did not skid and had stopped. He had sustained bullet injuries in his right leg while he was alighting from the north side of the vehicle and he sustained bullet injuries at the thumb of right leg, but he was wearing shoe, but he was not aware what happened with his shoe and he also stated that after alighting from the vehicle, he went in a ditch by crawling situated at a distance around 10 feet. He further stated in para-15 that he does not remember phone number from which he had rang and he is not aware as to what happened of that mobile phone which he had made a mobile call. He also stated in para-16 that he had become uncon-

scious at the place of occurrence and his statement was not recorded there. There is dense forest at the both sides of the road at the place of occurrence and his vehicle was situated at a distance 15-20 metre from the jungle. He also stated in para-17, 18, 19 and 20 that he had not seen any accused persons before the occurrence and extremists were firing or concealing themselves in the jungle and while there was ditch he has not been able to see the otherside of the vehicle and was hearing sound of firing. He had fired 5-6 round of AK-47. However, while he was in ditch in conscious condition then no one had arrived at him and had any persons came before him then he should have fired at him. However, he had made firing from ditch and apart from him deceased Balihar, the then S. P. Pakur there was no one in the ditch. He further stated in para-21 that police has recorded his statement at hospital in Dhanbad and from there he was referred to APPOLLO Hospital after 3-4 days and where he became health in two months. He has also stated that the police had not taken him to T. I. Parade. He has denied the allegation of giving false evidence.

158. Thus, from scrutinizing the evidence of P.W.-30, it is evident that on the date of occurrence, he was the bodyguard of the martyr Amarjeet Balihar, then S. P. Pakur and he has accompanied him to attend the meeting in the office of DIG, Dumka. He had also accompanied the deceased Amarjeet Balihar, then S.P. while returning from Dumka to Pakur and on way they met with an encounter and extremists had started firing near small culvert pulia situated between Amarapara and Jamuni villager where S.P was fired by the accused while he and S.P. Amarjeet Balihar was in ditch. He identified only the accused Pravir Da and refused to identify the remaining accused persons.

Thus, P.W.-30 is the eye witness of the occurrence and has supported the prosecution case also on the point of occurrence.

159. P.W. -31, Dharamraj Maraiya @ Dhanraj Maraiya was private driver of while Scorpio Vehicle of then S. P., Pakur on the date of occurrence. P.W.-31 during evidence has stated that occurrence took place on 02.07.2013 and the occurrence had took place between the village Jamuni and Aamtala and on that day, he was driver of then S. P. Pakur. There was meeting in Dumka with D.I.G. Madam and on that day, they had gone to Dumka to attend the meeting and in one vehicle he along with two bodyguard and the S. P. was there and escort party in the other vehicle and meeting concluded at 1.30 P.M. and thereafter they had asked to take food and then around 2.00 P.M. they proceeded to Pakur. He further stated that when they arrived Aamantala and Jamuni towards of Kathikund P.S. firing started suddenly and due to discriminate firing, he sustained bullet in his leg and due to which his leg separated from the body and the vehicle stopped and could not proceed further. Thereafter S.P. came outside and demanded mobile phone then he handed over the mobile phone to the then S.P. and he was sitting on his feet, then he again sustained injury on his back and thereafter S.P. asked all the police personnel to start firing and firing started from both the sides. However, during course of firing door of his vehicle got opened due to which, he fell down and at that time. S.P. Saheb was shot by bullet and he become Martyr at that time and all the miscreants came near his vehicle and looted their entire arms and then he became unconscious and he again conscious in the Hospital and firing were being done by the Maoists. Witness P.W.-31 also identified the Shiv Charan Mohli as Pravir Da. He also identified the accused

Tala Da whose second name is Sanatan. However, the witness could not identify the remaining accused persons.

160. During cross-examination made on behalf of Satan Besra, Sanatan Baski, Lobin Murmu, he stated that the police has taken his statement in the hospital. However, he has not stated before the police that he had identified only two persons.

On being further cross-examined on behalf of Wakil Hembrom, he stated that he had not participated in T.I.Parade and the police has not recorded his statement separately and he has given evidence for the first time before the Court.

161. Cross-examination of this witness was declined on behalf of the accused Pravir Da.

On being further cross-examined on behalf of both the accused Manual, P.W-31 has stated that the person who was driver of Scorpio vehicle, belongs to Panem Company. He was not appointed as a Government Driver and he was driving vehicle of Panem Company. He further stated that he was not kept after police verification, rather police knew him from earlier and as such he was kept there and he stated before the police that he can identify the miscreants. He asserted in para-14,15,16 that when S.P.Saheb had demanded mobile, then he had given mobile phone to him and also stated before the police that he sustained bullet injury in his back and also stated before the police that when the vehicle arrived then it had taken him and treatment was done in Dhanbad and thereafter his treatment was done in Ranchi. He has denied the suggestion that on sustaining bullet injuries, he became unconscious and then he was brought to the hospital and denied the suggestion for giving false evidence.

162. Thus, scrutinizing the evidence of P.W.-31, it is clear that he is also an eye witness of the occurrence as he was driver of the vehicle of deceased Amarjeet Balihar, then S. P. Pakur and he stated that he has identified the accused Shiv Chander Mahli as Pravir Da, but he had fully identified the accused Tala Da, whose name is Sanatan Baski, but could not identified the other accused persons.

Thus, it is evident that he has identified two accused persons i.e. Pravir Da and Tala Da. Thus, P. W.-31 has fully supported the prosecution case vividly described the incident and as such his evidence can be treated as credible evidence.

163. So far as documentary evidence is concerned Ext. 1 is the seizure list showing seizure of blood sample from the middle seat of the Scorpio Vehicle and also at the right side of the middle seat and blood sample of seat of driver of Scorpio Vehicle, one white towel in the nearby seat of the Scorpio Vehicle of the blood stained.

Another seizure list is also showing the seizure of blood sample in the middle seat of the Bolero Vehicle and the right side and left side and blood sample of the driver seat of the Bolero Vehicle and blood sample of the left of the seat of the driver of the Bolero Vehicle.

This seizure list Ext. I, was prepared by Chonas Kumar Minj, P.W.-19. The said seizure list is marked as Ext.-12 in S. T. No. 232 of 2013.

164. Ext.-20 is the post-mortem report of the deceased Ramji Prasad Mandal, Hawaldar in S. T. No. 232 of 2013 and also marked as Ext. 13 in S. T. No. 94 of 2014 and also marked as Ext. I in S. T. No. 18/18.

165. Ext.-3 is the post-mortem report of the deceased Ashok Kumar Srivastava (driver).

166. Ext.-4, is Post mortem report Rajiv Kumar Sharma the police force 118 Pakur in S. T. No. 232 of 2013 and it was marked as Ext.-14 in S.T. NO. 94/15 and also marked as Ext. 2 in S. T. No. 78 of 2018 on 04.05.2018.

167. Ext.-5 is the post-mortem report of the deceased Manoj Hembrom, the police 143 in S.T. No. 232 of 2013 and also marked as Ext. 4 in S. T. No. 78 of 2018. Ext. 15 in S. T. No. 94 of 2015 on 12.06.2018.

168. Ext.-6 in S. T. No. 232 of 2013 is enclosed requisition slip of Dharmraj Maraiya (P.W.-31) issued on 02.07.2013 by the Dumka Officer Incharge Nagar P.S. Dumka and it shows that injured Dhanraj Maraiya had sustained bullet injuries on the back side at the right side and blood were found floating from three places and injuries below knee of the right leg and it was marked as Ext.I S.T. No. 94 of 2015 both of the same date i.e. on 04.01.2016.

169. Ext. 6/1 in S.T. No. 232 of 2013 is injury requisition slip of Lebenius Marandi (P.W.-30) issued by ASI and Officer In-charge Dumri P. S. on 02.07.2013 showing injury (i) on the elbow of his land hand showing bloodstained wound on elbow and (ii) bleeding found between two fingers in the middle of his right leg.

170. Ext. 6/2 in S. T. No. 232 of 2013 requisition slip of Hawaldar Bablu Murmu showing injuries as follows:

- (i) bandage and wound in left thigh.
- (ii) bandage found on the wound below knee in right leg.
- (iii) bandage over wound over right thigh.

This requisition was also issued by ASI, by Nagar P.S. Dumka on 02.07.2013.

This was also marked As Ext. ½ in S. T. No. 94 of 2015 on 04.01.2015.

171. Ext. 6/3 is another requisition slip issued on 02.07.2013 by ASI, Nagar P.S. Dumka showing injury of the injured police force Santosh Kumar Mandal showing injuries as follows: (i) Blood profusing from right side back (ii) blood bleeding in left side of abdomen, which is marked as Ext. 6/3 in S. T. No. 232 of 2013 and also Ext. 1/3 in S. T. No. 94 of 2015 on 04.01.2016 by PO.

However, said Santosh Kumar Mandal later on died.

172. Ext.7 in S. T. No. 232/2013 and also in S. T. NO. 94/15 prepared on 14.01.2016 by the Officer In-charge Nagar P. S. Dumka, which is Inquest report of the deceased Amarjeet Balihar then S. P. Pakur aged about 50 years and was prepared at Sadar Hospital Dumka premises on 02.07.2013 at 18.25 P.M. showing injury bleeding on his forehead, deep bleeding injury in left chest, bleeding injury in left chest, bleeding injury in the right side of the ribs a whole bullet injuries at elbow of right hand and in the middle of shoulders of both the sides.

It would appear from the Inquest Report of the deceased Amarjeet Balihar then S. P. Pakur that he had sustained four bullet injures and one injury on his forehead.

173. Ext-7/1 in S. T. No. 232 of 2013 is Inquest Report of the deceased Police Rajeev Kumar Sharma prepared in the premises of Sadar Hospital Dumka at 02.07.2013, this has also marked as Ext.2/1 in S. T. No. 94 of 2015. This shows that the deceased was done to death due to firearm injuries caused by bullet.

174. Ext. 7/2 in S. T. No. 232 of 2013 and Ext. 2/2 in S.T. No. 94 of 2015 is Inquest Report of the another deceased Ashok Kumar Srivastava, driver of the Bolero Vehicle.

175. Ext. 7/3 in S. T.No. 232 of 2013 is also marked as Ext. 2/3 in S. T. No. 94 of 2015 is the Inquest report of the another deceased

Chandan Kumar Thapa showing gunshot injury on several part of the body, forehead, chick, neck, right leg, left leg.

176. Ext. 7/4 is the Inquest report in S. T. No. 232 of 2013, Ext. 2/4 in S.T. No. 94 of 2015 is another Inquest report of the deceased Manoj Hembrom, the police force no. 143 showing death of the accused gun shot bullet injuries at the various parts of the body.

177. Ext. 7/5 in S. T. No. 232 of 2013 is Inquest of another deceased Santosh Kumar Mandal, which is marked as Ext. 2/5 in S. T. No. 94 of 2015.

178. Ext. 8, 8/1, 8/2, 8/3 and 8/4 and 8/5 respectively are body challan of the deceased Amarjeet Balihar then, S. P. Pakur, deceased Rajiv Kumar Sharma, deceased Ashok Kumar Srivastava, deceased Chandan Kumar Thapa and deceased Manoj Hembrom and Santosh Kumar Mandal and marked in S. T. No. 232 of 2013, these are marked as 3,3/1,3/2,3/3, 3/4 and 3/5 respectively in S. T. No. 94 of 2015.

179. Ext.-9 is production cum- seizure list showing recovery of one blank magazine of black colour. Although live cartridges of AK-47 two misfire bullet of AK-47 and it was also marked as Ext.-4 in S.T. No. 94 of 2015.

180. Ext. 3 is the post-mortem report of the deceased Santosh Kumar Mandal in S. T. No. 78 of 2018 and it was marked as Ext.-10 in S. T. No. 232 of 2013 and also marked as Ext. 5 in S. T. No. 94 of 2015.

181. Ext. -13 is marked in S. T. No. 232 of 2013, which is map of Place of occurrence prepared by IO showing description of the vehicle, jungle, names of villages and the places where the deceased Amarjeet Balihar, the then S.P. Pakur and injured Lebenious Ma-

randi, injured Dhanraj Maraiya, Scorpio Vehicle, north pulia, Jungle, Bolero Vehicle have been shown.

182. Ext.-14 in S. T. No. 232 of 2013 is dated 20.07.2013, preliminary FSL report sent by R. S. Singh, In-charge Director State Forensic Science Laboratory, Jharkhand, Ranchi addressed to the Superintendent of Police, Dumka by which he has enclosed the Test Report along with photograph sketch map of both the vehicle relating to one Scorpio Vehicle and one Bolero Vehicle without number plate which was marked on 19.05.2016 by the trial Court in S. T. No. 232 of 2013.

183. Ext.-15 is another SFSL report dated 28.12.2013 sent by the Director State Forensic Science Laboratory, Jharkhand, Ranchi to Additional Chief Judicial Magistrate, Dumka showing report after examining the bloodstained white towel, bloodstained earth, envelop glass pieces.

184. Ext. 15-SFSL report dated 21.12.2013 sent by the Director SFSL of ACJM, Dumka giving its report on live cartridges and khokha of AK-47, Insas Rifle and 0.303 calibre gun.

185. Ext. 15/10 is another SFSL report sent to ACJM, Dumka on 16.01.2014 showing human blood was found marked as Ext. A/7, A/8, A/9, A/10, B/16, B/17, B/18, B/18 again marked in S. T. No. 232 of 2016 on 20.10.2016 by the trial Court.

186. Ext.16 is the information given by Shikarpara P. S. to learned ACJM-IV, Sadar Court Dumka showing signature requisition 14 in number were seized in PO, which are as follows:

1. Khokha of S. L. R.- 41 pieces
2. Khokha of AK-47-15 pieces
3. Khokha of Insas -01 piece

4. One piece live cartridge of AK-47- one piece misfire- two piece
5. Khokha of .303 -02 pieces
6. Live cartridge misfire of .303 -01 piece
7. Broken pistol grip of AK-47 - 01 piece
8. Shoe of black colour -01 piece
9. Chappal of plastic -01 piece
10. One Speckle cap -01 piece
11. Gallon of two litre tieing by one gamcha-01 piece
12. Blank magazine of black colour -01 piece
13. Magazine of black colour -12 bullet live cartridges of AK-27 rifle and two bullet of AK-47 rifle in which bullet is inside
14. One bullet proof jacket -01 piece

187. Ext.16 in S.T. No. 232 of 2013 dated 20.07.2016 by the Trial Court.

188. Identification Mark No. 21 dated 20.07.2016 by A.D.J is notification dated October, 2008 Memo dated 15.10.2008 issued by the Home Department, Government of Jharkhand by which, it has been informed that the State Government has declared (Bha K P Maoist) ke Agra Sangtan (i) Krantikari Kishan Committee, (ii) Nari Mukti Sangh (iii) Jharkhand Abhar group and Krantikari Shaskritik Manch have been declared illegal and any person becoming member giving donation and publishing any article will be illegal.

189. Document marked as X for identification and certified copy is confessional statement of the accused Sanatan Baski, aged about 52 years marked as Ext.-25 in Maheshpur P. S. on 30.08.2013 although the said confessional statement is in photocopy and has been marked in Maheshpur P. S. Case No. 250/2013 but the same has

been brought on record in the present case Kathikund P. S. Case No. 53 of 2013 at the instance of P. W. 20 and P.W.21. Even certified copy of said confessional statement is marked as Exhibit-25.

190. It transpires from Ext.-25, the confessional statement of Sanatan Baskey, who is appellant before this Court, it reveals that he along with several extremists including the persons facing trial before the learned Court below, had committed several incident in the month of April, 2009 and also on 21.06.2019 and 21.05.2012 and 29.11.2012 and had committed several incident by resorting to firing, terrorizing the people putting several vehicles like crusher machines, truck dumber machine by firing and creating parts. However, the same are not discussed here as the same are not relevant for the present case, but so far as incident of the present case is concerned, his confession is being discussed here.

He further stated during confessional statement before the Maheshpur P.S. on 29.06.2013 that a meeting was being held in Sarva Pani Juncle in leadership of the accused Pravir Da, Tala Da, and in which he along with Daud, Kiran Tudu, Joseph Soren, Dipak Tehri, Pradeeep Kanchan Da, Deval Singh, Satan Besra, Suneeta, Santi Di, Rajesh, Nimai Da, Simal, Kalam Mian, Rinku, Manish Santosh Ji, Bablu etc. assembled and were discussing for expansion of their organization and during end of this meeting he received information from one police sepoy i.e. constable from Pakur that on 02.07.2013 Pakur S. P. will attend a meeting on 02.07.2013 and when this S.P. was in Latehar on the post of Dy.S.P. then at that time, the accused Pravir Da was expanding the organization in Latehar and during that time one relation of the accused Pravir Da was killed in the police encounter and as such they decided to take revenge and again his meeting was held in Jamuni Jungle on

01.07.2013 and in the meantime on 30.06.2013, he was given duty to keep vehicle in proper condition and to arrange the vehicle for going to Bognadih thereafter he gave responsibility to arrange of two vehicles on rent to distant relieve and he had arranged two vehicles for attending the Hool Diwas and after attending the meeting he returned back. Later on 01.07.2013, he along with other accused persons started facing trial in the learned Court below and other accused, had assembled in jungle on 01.07.2013 and it was decided that while the S.P. Pakur will be returning from the meeting on 02.07.2013 from Dumka, then there was a road in bad condition in village Jamuni and Amartala near north pulia and where then decided for doing encounter. He also stated that the accused Hembrom was given responsibility that when the vehicle of S. P. Pakur will cross Amartala Village for Dumka then he will inform and S. P. Pakur will be returning from Dumka then whistle will be blown by Satan Besra and as per the planning the accused will (acquitted by the trial Court) waited at village Amartala in arrival of S. P. Pakur on 02.07.2013 for proceeding to Dumka when S.P. Pakur along with Escort vehicle proceeded for Dumka then the accused Wakil Hembrom gave this information to the hiding dusta hidden in the jungle thereafter he alongiwith the accused Pravir Da, Tala Da, (Joseph, Daud acquitted by the trial Court) and all the Dipak Dehri, Sonu Dehir, Paku Tudu, Kiran Di, Sudhir Kisku, Devan Singh, Kisku, Shantu Di, Maaray Soren, Bhagat Singh Kisku, Marshal @ Rulen, Sidhu Nimaia Da, Pradan, kanchan Da, Siman, Manish Di, Rinku Di, Sunneta, Neelu Di, Santoshi Rajesh Chhotu, Kalamya etc. had hide themselves having armed with deadly weapon along with members of their organization and started waiting in the southern side of the jungle from 10 A.M. in the morning itself and started

waiting for S. P. Pakur. Satan Besra was waiting on the road near Shaldaha place. He also stated that in the meantime as soon as the vehicle of S. P. Pakur and escort vehicle departed from Dumka then this information was given by sepoy i.e. constable sitting in the police vehicle on the mobile phone of the accused Daud (acquitted by the trial Court) on his mobile phone and at around 2 to 2.30 P. M. in the afternoon as soon as the vehicle of S. P. Pakur arrived then the accused Satan Besra (acquitted by the trial Court), blown the whistle. Vehicle of S. P. was moving and escort vehicle was following him as soon as both the vehicles arrived near the culvert pulia then they started indiscriminate firing due to which both the vehicles stopped. He also stated that even some firing was made from the side of police. However, some time after the firing when he arrived near the vehicle, then he found that S.P. was hiding in the ditch in the north side of the pulia i.e. culvert and who was shot fired by the accused Daud (acquitted by the Trial Court) and Tala Da and due to which he died. He also stated that sepoy i.e. the constable who had informed about the arrival of the S.P. was standing there and he had raised both his hands then the accused Daud stated that this sepoy is there person (i.e. extremists side) and he i.e. sepoy had informed about the arrival of the S.P. and as such he should not be killed and he could identify that sepoy i.e. constable seeing him. Thereafter one member of the organization asked from the accused Pravir Da by going in Bolero Vehicle as to what happened in the front vehicle and then the accused Pravir Da told that S.P. has been shot fired at by the bullet and directed Kala Da, Daut, Joseph to loot all the arms and bullets of all the armed forces then, the looted the arms and bullets of the police personnel and mobile and one bullet proof jacket was also looted and fled away in the northern side of jungle by rais-

ing slogans of Maoist and hide themselves in jungle Thal Pahari where he had seen that they had looted four Insas Rifle, 2 AK-47 Rifle, 500 bullets, 7-8 mobile phone and one bullet proof jacket. He also stated that looted all the arms, bullets are with the extremists organization and one looted mobile is with the accused Daud and kept other members of the organization. Looted bullet proof jacket of police and laptop. He also stated that on 30.08.2013 while he was caught to village Maheshwar in Rolagramd village this towards of Maheshpur P.S. then, he was trapped by the police, although he was trying to flee away, but he was caught by the police personnel and one looted Desi pistol loaded with bullets, 5 live cartridges, two purcha of extremists etc. were seized by the police. He can also recover bullet proof jacket of the police and his NOKIA mobile bearing no 7872444291 was also seized.

191. Thus from perusal of the confessional statement of Sanatan Baski, it is clear that he has given description of the occurrence.

192. Another document is photocopy of the seizure list showing recovery of one laptop, one printer and one bullet proof jacket of Speckle colour on 30.08.2013 signature of accused Satan Besra and one Surendra Prasad Singh, ASI Pakuria P. C.

193. Ext. -7 is another production-cum-seizure list dated 02.07.2013 showing the recovery of articles at the place of occurrence.

194. Ext.-17 is S. T. No. 232 of 2013 showing recovery of 41 empty shells of SLR, 15 empty shelles of AK-47 etc. this Ext. was marked as Ext. 6 in S. T. NO. 94 of 2015 on 05.01.2017 by the Trial Court.

195. Ext. -19/1 is another T. I. Parade Chart showing identification of bullet proof jacket of Speckle Colour by Bablu Murmu be-

fore the Anchal Adhikari on 20.01.2014, this was also marked as Ext. 8/1 in S. T. No. 94 of 2015 on 05.01.2017.

196. Ext. 20 is the post-mortem of the deceased Chandan Kumar Thapa in S. T. No. 232 of 2013, which has also been marked as Ext9. Signature of the doctor was marked as Ext. 5 in S. T. No. 78 of 2018 on 12.04.2017 and 02.06.2018.

197. Ext. 21 is the injury report of the injured Dhanraj Maraiya (i.e. P.W.31) prepared by Dr. K. A. Prasad Medical Officer, Sadar Hospital Dumka on 02.07.2013 at 4.25 P.M. As per the report, two penetrating wound on their right post. He also found lacerated wound on right lower. This was Ext. 10 in S. T. No. 94 of 2015.

198. Ext.-22 is the injury report of the injured Levenious Marandi (P.W.-30) prepared by Dr. K. A. Prasad Medical Officer, Sadar Hospital Dumka on 02.07.2013 at 4.20 P.M. and he had found two penetrating wound black margin near left arm and also found one lacerated wound on right. This was Ext.11 in S. T. No. 94 of 2015.

199. Ext.-23 is the injury report of the Hawaldar Bablu Murmu prepared by Dr. K. A. Prasad Medical Officer, Sadar Hospital Dumka on 02.07.2013 at 6.35 P.M. and he was found bandage on both thigh and left leg at Rinchi Hospital, Kathikund Dumka. The opinion was reserved awaiting radiological report. This was Ext.12 in S. T. No. 94 of 2015.

200. Ext.-25 is another confessional statement of the accused Sanatan Baski, who was earlier marked document for identification. This Ext. was marked as Ext.-25 by the trial Court on 23.03.2018 in S. T. NO. 232 of 2013. This Ext.-25 was marked as Ext-3 in S. T. No. 99 of 2017 in another case on 21.01.2018.

201. Apart from this going through the statement of all these accused persons namely Satan Besra, Manuwel Murmu, Labin Mur-

mu, Sukhlal @ Prabir, Sanatan Baski, Wakil Hembrom and Manual Murmu, it also reveals that the Court below was highly negligent in recording in examination the accused persons under Section 313 of the Cr.P.C. and several important pertaining questions were not asked, which is also a grave lacuna on the part of the learned Court below while examining the accused persons examined under Section 313 of the Cr.P C. However, this has also not caused any prejudice to the appellants as they were all aware of the facts of this case.

202. From perusal of the impugned judgment passed by the learned Court below, it would appear that the learned Court below acquitted the five accused persons (i) Wakil Hembrom, (ii) Satan Besra, (iii) Manwel Murmu, (iv) Lobin Murmu and (v) Manvel Murmu and had convicted the appellants Sukhlal @ Prabir Murmu@ Pravir Da @ Pravil Da@Harendra Da@Sanat Da @Marang Da@Amrit and Sanatan Baski @ Tala Da.

203. It also reveals that the learned Court below apart from impeaching the prosecution side and the police personnel and the State machinery did nothing on its own to ascertain the truth before delivering the judgment. The Trial Court could have asked for some evidence while he was in seisin of the trial, but he failed to do so.

204. From perusal of the impugned judgment, it would appear that the judgment has been written in 55 pages, however, learned Court below has discussed merely evidence of the witnesses and documents of the parts up to page-40 and is partly in page-41, the Court below has convicted both the appellants mainly on the evidence of P. W.-30, Levinious Marandi and P. W. -31, Dhanraj Mariya and has acquitted the other accused as they have not identified by the witnesses.

205. The Court below ought to have called for the injury report and treatment reports of the injured persons Hawaldar Bablu Murmu and P. W.-30, Levinious Marandi and P. W. -31, Dhanraj Mariya from Dhanbad as well as Appollo Ranchi, but he had failed to do so.

206. Apart from this, it is further evident that P. W.-30, Levinious Marandi and P. W.-12, Bablu Murmu have denied that they had attended T. I. Parade and they had not supported the prosecution case on this aspect. However, their signature had been found at the T.I. P. Chart, marked as Ext. 19 to 19/3 respectively. It is further evident that the learned Court below had failed to look into the evidence of material witness and failed to appreciate the evidence properly.

207. P. W. 26, P. W.-27 and P.W.-28 are all the point of arrival of police picket near Jamuni Picket and they have hear the sound of firing and they have also claimed to send information of the encounter the police side and the extremists side.

The learned Court below should have meticulously evaluated the evidence of P.W.-12, injured Hawaldar Bablu Murmu before giving benefit of doubt to the other accused by acquitting them.

208. Although, learned counsel for the appellants have taken the plea that arms were not sealed at the place of occurrence and which is admitted by P.W-19 and P.W-20 namely Chonas Kumar Minj and Ashok Kumar respectively. However, this Court finds that it was a state of an emergency situation in general where five persons including the Martyr Superintendent of Police, Pakur and constables had lost their lives and fifth constable Santosh Kumar Mandal succumbed to injury while coming to hospital and further, whereas three injureds i.e. P.W-12 Bablu Murmu, P.W-30 Lebenius Marandi and P.W-31 Dhanraj Maraiya were taken to hospital and blood had spread in the police vehicles and thus, even if the informant P.W-20 and the I.O i.e. P.W-19 had not

seized the arms, it may not be fatal to the prosecution case as at the post-mortem report of all the six deceased and two injured persons clearly proved that they are sustained gun shot injuries and all the injuries were caused by firearms in their respective vehicles except P.W-12 Bablu Murmu who had merely seen bandage in his both thighs and left leg.

209. This Court further finds that even the F.S.L experts were not examined during trial.

210. P.W-19 Chonas Kumar Minz marked as Exhibit-15/1 which was issued by the signature of the Assistant Director H.K Sinha and In-Charge Director R.S Singh. The learned Court below ought to have called for the competent authority from S.F.S.L Ranchi to prove the said F.S.L Report marked as Exhibit-15/1.

211. It is further evident that P.W-19 has also proved the confessional statement of appellant Sanatan Baski marked as 'X' for identification (with objection). P.W-19 further proved the seizure list for the recovery of one Buller Proof Jacket marked as 'Y' for identification, and the said recovery was made on the basis of confessional statement of the appellant Sanatan Baski. Later on certified copy of confessional statement was proved as Exhibit-25.

212. However, he also stated that he had not received the F.S.L report of 41 pieces of SLR Cartridges, 15 cardtridges of AK 47, 2 pieces of .303 cartridges and one piece of misfire live cartridges of .303. However, the trial may not vitiate even the expert witnesses from F.S.L have not been examined as the F.S.L Report marked as Exhibit-15/1 have been proved without any objection by the defence side (i.e. the appellants side).

213. From perusal of the impunged judgment, I find that the learned Trial Court has rightly observed that the carcade of the deceased S.P. Amarjit Balihar was moving towards to Pakur but the present convicts along with other 25-30 naxalites, by hatching a nefarious criminal conspiracy laid an ambush in an inconspicous and untrodden place near

a culvert, having so many cleavage and rifts beside the same, and when the vehicles used by the deceased were slowed down due to the rifts in the road near the culvert, intercepted the carcade, confined the same from three sides and riddled the vehicles with bullets by using lethal prohibited arms to such a needle point precision and with such an exactitude of time that all the six police personnel got no time to defend themselves and in a jiffy all the six deceased got their martyr in a totally hapless, helpless and defenceless state, though they had no personal enmity, animosity and any sort of feud with the convicts. The convicts did not stop even after the brutal assassination of six police personnel. They closed on to them and as it has surfaced on the record, they mutilated the dead bodies of the deceased Chandan Kumar Thapa and Manoj Hembrom and blew off their skull, scattering their brain materials and at the same time they committed dacoity and looted all the regular arms and ammunitions in the possession of the deceased and the surviving police personnel, who had fortunately succeeded in escaping narrowly from being killed at the same time who have given evidence in this case.

**214.** It is well settled from the judgment of the Hon'ble Supreme Court that identification of accused for the first time in Court will not be illegal if an exceptional circumstances have been shown.

215. It has been held in the judgment rendered in the case of *Dana Yadav @ Dahu and Ors. Versus State of Bihar* reported in (2002) 7 SCC 295 at Para- 38 and 39 as follows:-

“**Para-38:-** In view of the law analysed above, we conclude thus:

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

(b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him

and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini-inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case the court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same *ipso facto* cannot be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in court.

(d) Identification parades are held during the course of investigation

ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.

**Para-39:** In view of the foregoing discussion, in our opinion, the High Court has not committed any error in upholding convictions of Appellants 1, 2, 4, 6 and 7 and sentences awarded against them, consequently their appeals fail and the same are dismissed. Appeal of Appellant 3 is allowed, his convictions and sentences are set aside and he is acquitted of all the charges. This appellant is directed to be released forthwith, if not required in connection with any other case.”

Thus, this is the case of an exceptional circumstances as discussed in para- 38 (e) and 38 (f) of the above judgment and P.W-30 and P.W-31 have identified the appellants in Court.

216. The above judgment is also followed in the case of Deepak @ Wireless Versus State of Maharastra reported in (2012) 8 SCC 785 at para-11 and also followed in the case of State of Rajasthan Versus Daud Khan reported in (2016) 2 SCC 607 at para-44.

217. It has been held in the case of "*Sheo Shankar Singh versus State of Jharkhand*," reported in (2011) 3 SCC 654, para-46 and 47 as follows:

**"Para-46:-** It is fairly well settled that identification of the accused in the court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the witness in the court who claims to identify the accused persons otherwise unknown to him. Test identification parades, therefore, remain in the realm of investigation."

**Para-47:-** The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the court. As to what should be the weight attached to such an identification is a matter which the court will determine in the peculiar facts and circumstances of each case. In appropriate cases the court may accept the evidence of identification in the court even without insisting on corroboration."

218. It has been held in the judgment rendered in the case of Deepak @ Wireless Versus State of Maharashtra reported in (2012) 8 SCC 785 at Para- 16, 17 and 18 as follows:-

“Para-16:- As far as the decision relied upon by the learned counsel for the appellant in *Mohd. Abdul Hafeez* [(1983) 1 SCC 143 : 1983 SCC (Cri) 139] , it was held therein that the identification of the accused by the victim in the absence of a test identification parade cannot be believed. While holding so, this Court noted that though no fault can be found with the said witness in not mentioning the names as the accused were not known to him, the failure to give some description of the accused who were said to have removed cash from his pocket coupled with the non-holding of the test identification parade was such that his evidence cannot be relied upon. The said decision was in the peculiar facts of that case. On the other hand, the decisions relied upon by the High Court for accepting the statement of PW 9 even in the absence of test identification parade fully supports the case on hand. Those decisions referred to by the High Court in *Dana Yadav v. State of Bihar* [(2002) 7 SCC 295 : 2002 SCC (Cri) 1698] , *Simon v. State of Karnataka* [(2004) 2 SCC 694 : 2004 SCC (Cri) 646] and *Daya Singh v. State of Haryana* [(2001) 3 SCC 468 : 2001 SCC (Cri) 553 : AIR 2001 SC 1188] are apposite on the point. Therefore, the said decision relied upon by the learned counsel is of no assistance to the appellant.

Para-17:- In *Suraj Pal* [(1995) 2 SCC 64 : 1995 SCC (Cri) 313] at SCC p. 71, para 14 of the said judgment while insisting on holding the test identification parade, it was held that the same would enable the “identification of the accused at the earliest possible opportunity after the occurrence by such witnesses is of vital importance with a view to avoid the chance of his memory fading away by the time he is examined in the court after some lapse of time”.

There can be no two opinions about the principle laid down in the said decision relating to the importance of holding of test identification

parade.

**Para-18:-** In the case on hand, we have elaborately stated as to how PW 9 who was a victim at the hands of the appellant and the other accused and who suffered grievous injuries which disabled her movements for quite a long time and who had the opportunity of witnessing the involvement of the appellant and the other accused in the gruesome act of killing her brother-in-law by beating him severely and after successfully beating him to death also assaulted her so severely which according to PW 1 disabled her movements for quite sometime. In fact, the Presiding Officer of the trial court has observed descriptively as to how PW 9 was placed in a situation where she was able to observe the conduct of the appellant and the other accused so closely giving no scope for any doubt as to her unhesitant identification of the appellant made in his presence at the time of trial. PW 9 also in her evidence gave the description of all the accused and the clothes worn by them as well as their physical features. Therefore, the decision relied upon by the learned counsel for the appellant is of no assistance on this aspect while the decision relied upon by the High Court fully supported the case of the prosecution.”

219. Even if the other five accused persons namely Wakil Hembrom, Satan Besra, Manwel Murmu, Lubin Murmu and Manvel Murmu were acquitted by the learned Trial Court still conviction can be made of the appellant under Section 396 of I.P.C.

220. It has been held in the judgment rendered in the case of Manoj Giri Verus State of Chhattisgarh reported in (2013) 5 SCC 798 at Para-15 and 16 as follows:-

“**Para-15:-** With regard to the appellant's conviction under Section 396 IPC for the murder of Domara Sahu in the case of dacoity, it was contended by the learned counsel for the appellant that since the other four accused who have been similarly charged were acquitted of the offence of dacoity, it would not be legal and proper to convict the

appellant of the said charge. The argument is based on the presupposition that a conviction for dacoity with murder can be maintained only when five or more persons are convicted. Section 396 IPC reads as follows:

**“396. Dacoity with murder.**—If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, everyone of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

This contention cannot be upheld in view of the observations made by this Court in *Raj Kumar v. State of Uttarakhand* [*Raj Kumar v. State of Uttarakhand*, (2008) 11 SCC 709 : (2008) 3 SCC (Cri) 888] which read as follows: (SCC p. 715, para 21)

“21. It is thus clear that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the *factum* of five or more persons is either not disputed or is clearly established, but the court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons—or even one—can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity.”

(emphasis in original)

**Para-16:-** The observations in *Raj Kumar case* [*Raj Kumar v. State of Uttarakhand*, (2008) 11 SCC 709 : (2008) 3 SCC (Cri) 888] squarely apply to this case. Domara Sahu was killed in the assault by the five accused. The evidence against the other four was not sufficient to convict them. There is no doubt, the murder was committed during the conjoint commission of dacoity. If properly convicted each one of them were liable to be punished with death vide Section 396 IPC. Since that has not happened the conviction of five persons—or even one—can

stand. We have, therefore, no hesitation in maintaining the conviction of the appellant for the incident in which there was a gang rape, dacoity and a wanton murder of the hapless father-in-law.”

221. It is well settled that due to lapses on the part of the I.O, the accused persons cannot be acquitted, if there is enough evidence on record to establish his guilt beyond reasonable doubt.

222. It has been held in the judgment rendered in the case of Kashinath Mondal Versus State of West Bengal reported in (2012) 7 SCC 699 at Para- 19 and 20 as follows:-

“Para-19:- There is some substance in the grievance of the learned counsel for the appellant that the investigating agency also did not obtain fingerprints from the place of incident. But, it is well settled that remissness and inefficiency of the investigating agency should be no ground to acquit a person if there is enough evidence on record to establish his guilt beyond reasonable doubt.

Para-20:- It is said by this Court in a number of cases that irregularities or deficiencies in conducting investigation by the prosecution is not always fatal to the prosecution case. If there is sufficient evidence to establish the substratum of the prosecution case, then irregularities which occur due to remissness of the investigating agency, which do not affect the substratum of the prosecution case, should not weigh with the Court.”

223. It is well settled that if a statement is made by the accused in police custody and which reveals some information leading to recovery or discovery of any fact concerning the alleged offence, such statement can be framed under Section 27 of the Evidence Act.

224. It has been held in the judgment rendered in the case of Raju Manjhi Versus State of Bihar reported in (2019) 12 SCC 784 at Para- 13 to 16 as follows:-

“Para-13:- The other ground urged on behalf of the appellant is that the so-called confessional statement of the appellant has no evidentiary value

under law for the reason that it was extracted from the accused under duress by the police. It is true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Evidence Act provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning the alleged offence, such statement can be proved against him. It is worthwhile at this stage to have a look at Section 27 of the Evidence Act:

**“27. How much of information received from accused may be proved.—** Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

**Para-14:-** In the case on hand, before looking at the confessional statement made by the appellant-accused in the light of Section 27 of the Evidence Act, may be taken into fold for limited purposes. From the aforesaid statement of the appellant, it is clear that he had explained the way in which the accused committed the crime and shared the spoils. He disclosed the fact that Munna Manjhi was the Chief/Head of the team of assailants and the crime was executed as per the plan made by him. It also came into light by his confession that the accused broke the doors of the house of the informant with the aid of heavy stones and assaulted the inmates with pieces of wood (sticks). He categorically stated that he and Rampati Manjhi were guarding at the outside while other accused were committing the theft. The recoveries of used polythene pouches of wine, money, clothes, chains and bangle were all made at the disclosure by the accused which corroborates his confessional statement and proves his guilt. Therefore, the confessional statement of the appellant stands and satisfies the test of Section 27 of the Evidence Act.

**Para-15:-** As regards the claim of the appellant that non-identification of the accused by the witness would not substantiate the prosecution case, admittedly no prosecution witness has identified the appellant-accused

which does not mean that the prosecution case against the accused is on false footing. As a general rule, identification tests do not constitute substantive evidence. The purpose of identification test is only to help the investigating agency as to whether the investigation into the offence is proceeding in the right direction or not. In our view, non-identification of the appellant by any prosecution witness would not vitiate the prosecution case. It is evident from the confessional statement of the accused that at the time of occurrence he and another accused Rampati Manjhi were guarding outside the informant's house while other accused were committing dacoity inside. We do not think that there is any justification to the argument that as none of the prosecution witnesses could be able to identify the appellant, he cannot be termed as accused. In our view, such non-identification would not be fatal to the prosecution case in the given facts and circumstances.

**Para-16:-** The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration (see *Kanta Prashad v. Delhi Admn.* [Kanta Prashad v. Delhi Admn., AIR 1958 SC 350 : 1958 Cri LJ 698] and *Vaikuntam Chandrappa v. State of A.P.* [Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340 : 1960 Cri LJ 1681] ).

225. It has been held in the judgment rendered in the case of *Mehboob Ali and Another Versus State of Rajasthan* reported in (2016) 14 SCC 640 at Para- 13, 16, 19 and 20 as follows:-

“**Para-13:-** For application of Section 27 of the Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence

and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the police before disclosure statement of the accused is recorded, is admissible in the evidence.

**Para-16:-** This Court in *State (NCT of Delhi) v. Navjot Sandhu* [*State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] has considered the question of discovery of a fact referred to in Section 27. This Court has considered plethora of decisions and explained the decision in *Pulukuri Kottaya v. King Emperor* [*Pulukuri Kottaya v. King Emperor*, 1949 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] and held thus : (*Navjot Sandhu case* [*State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , SCC p. 704, paras 125-27)

“125. We are of the view that *Kottaya case* [*Pulukuri Kottaya v. King Emperor*, 1949 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] is an authority for the proposition that ‘discovery of fact’ cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.

126. We now turn our attention to the precedents of this Court which followed the track of *Kottaya case* [*Pulukuri Kottaya v. King Emperor*, 1949 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] . The ratio of the decision in *Kottaya case* [*Pulukuri Kottaya v. King Emperor*, 1949 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] reflected in the underlined passage extracted supra was highlighted in several decisions of this Court.

127. The crux of the ratio in *Kottaya case* [*Pulukuri Kottaya v. King Emperor*, 1949 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] was explained by this Court in *State of Maharashtra v. Damu* [*State of Maharashtra v. Damu*, (2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : AIR 2000 SC 1691] . Thomas, J. observed that : (SCC p. 283, para 35)

‘35. ... The decision of the Privy Council in *Pulukuri Kottaya v. King Emperor* [*Pulukuri Kottaya v. King Emperor*, 1949 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] is the most quoted authority for

supporting the interpretation that the “fact discovered” envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.’

In *Mohd. Inayatullah v. State of Maharashtra* [*Mohd. Inayatullah v. State of Maharashtra*, (1976) 1 SCC 828 : 1976 SCC (Cri) 199] , Sarkaria, J. while clarifying that the expression ‘fact discovered’ in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in *Pulukuri Kottaya case* [*Pulukuri Kottaya v. King Emperor*, 1949 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] . The learned Judge, speaking for the Bench observed thus : (SCC p. 832, para 13) ‘13. ... Now it is fairly settled that the expression “fact discovered” includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see *Pulukuri Kottaya v. King Emperor* [*Pulukuri Kottaya v. King Emperor*, 1949 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] ; *Udai Bhan v. State of U.P.* [*Udai Bhan v. State of U.P.*, AIR 1962 SC 1116 : (1962) 2 Cri LJ 251 : 1962 Supp (2) SCR 830] ).”’

**Para-19:-** In *Subedar v. King Emperor* [*Subedar v. King Emperor*, 1923 SCC OnLine All 83 : AIR 1924 All 207] it was held that a statement made by the accused implicating himself and others cannot be called “first information report”. However it was held that though it could not be treated as first information report but could be used as information furnished under Section 27 of the Evidence Act. It was held thus : (SCC OnLine All para 3)

“3. ... The approver and one of the appellants were arrested practically red-handed. They made statements to the officer who arrested them involving admissions of guilt. They went further and gave a list of the other members of the gang. Thereupon the officer made a report in writing to his superior, containing the information which he had received, including the names of those other persons received from the two men arrested. Somehow or other, the learned Judge has described this police report, which is merely the report of a confession, as ‘the first information report.’ Now the first information

report is a well-known technical description of a report under Section 154 of the Criminal Procedure Code, giving first information of a cognizable crime. This is usually made by the complainant, or by someone on his behalf. The language is inapplicable to a statement made by the accused. The novelty of a statement by an accused person being called the first information report was to me so strange, that when counsel for the appellants addressed his argument to me attacking the Judge's use of the first information report, I took no notice of the argument. The learned Judge realised that he was dealing with a confession, but he momentarily failed to appreciate that the document itself was inadmissible, and that the only way in which the information relied upon could be used was by Section 27. That is to say, with regard to the other accused, the officer giving evidence might say: 'I arrested them in consequence of information received from Narain and Thakuri. When I arrested them they made a statement to me which caused me to arrest these people'. The use which can legitimately be made of such information is merely this, that when direct evidence is given against the accused at the trial and there was evidence against the accused, it is open to the defence to check such evidence by asking whether the name of a particular accused was mentioned or not at the time."

**Para-20:-** Considering the aforesaid dictums, it is apparent that there was discovery of a fact as per the statement of Mehmoond Ali and Mohd. Firoz. Co-accused was nabbed on the basis of identification made by accused Mehboob and Firoz. That he was dealing with fake currency notes came to the knowledge of police through them. Recovery of forged currency notes was also made from Anju Ali. Thus the aforesaid accused had the knowledge about co-accused Anju Ali who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the police hence the statements of the accused persons leading to discovery of fact are clearly admissible as per the provisions contained in Section 27 of the Evidence Act which carves out an exception to the general provisions about inadmissibility of confession made under police custody contained in Sections 25 and 26 of the Evidence Act."

226. It has been held in the judgment rendered in the case of Pawan Kumar @ Monu Mittal Versus State of Uttar Pradesh and Another with analogous cases reported in (2015) 7 SCC 148 at Para- 29, 30 and 31 as follows:-

“**Para-29:-** It is settled principle of law that statements made by an accused before a police official which amount to confession is barred under Section 25 of the Evidence Act. This prohibition is, however, lifted to some extent by Section 27 which reads thus:

“**27. How much of information received from accused may be proved.**— Provided that, when any fact is deposited to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

In the light of Section 27 of the Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information (see *State of Maharashtra v. Damu* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] ).

**Para-30:-** The “fact discovered” as envisaged under Section 27 of the Evidence Act embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

**Para-31:-** In the present case, Accused 4 and 7 disclosed the names of their co-accused at whose instance various incriminating materials including pistols, cartridges, bullets, bloodstained articles were recovered. Simply denying their role without proper explanation as to the knowledge about

those incriminating materials would justify the presumption drawn by the courts below as to the involvement of the accused in the crime. The confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act.”

227. It has been held in the judgment rendered in the case of Rumi Bora Dutta Versus State of Assam reported in (2013) 7 SCC 417 at Para- 16 to 21 as follows:-

“Para-16:- In this context, we may refer with profit to the ruling in *State of Maharashtra v. Damu* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] wherein it has been observed that : (SCC pp. 282-83, para 35)

“35. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.”

Thereafter, the two learned Judges proceeded to state as follows : (SCC p. 283, para 35)

“35. ... It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section [Section 27]. The decision of the Privy Council in *Pulukuri Kotayya v. King Emperor* [*Pulukuri Kotayya v. King Emperor*, (1946-47) 74 IA 65 : AIR 1947 PC 67] is the most quoted authority for supporting the interpretation that the ‘fact discovered’ envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.”

Para-17:- In *State of Punjab v. Gurnam Kaur* [(2009) 11 SCC 225 :

(2009) 3 SCC (Cri) 1311] it has been laid down that : (SCC p. 228, para 14)

“14. If by reason of statements made by an accused some facts have been discovered, the same would be admissible against the person who had made the statement in terms of Section 27 of the Evidence Act.”

**Para-18:-** In *Aftab Ahmad Anasari v. State of Uttaranchal* [(2010) 2 SCC 583 : (2010) 2 SCC (Cri) 1054] , after referring to an earlier decision in *Pulukuri Kotayya* [*Pulukuri Kotayya v. King Emperor*,(1946-47) 74 IA 65 : AIR 1947 PC 67] , a two-Judge Bench opined in the context of the said case that when the accused was ready to show the place where he had concealed the clothes of the deceased, the same was clearly admissible under Section 27 of the Evidence Act because the same related distinctly to the discovery of the clothes of the deceased from that very place.

**Para-19:-** In *Bhagwan Dass v. State (NCT of Delhi)* [(2011) 6 SCC 396 : (2011) 2 SCC (Cri) 985 : AIR 2011 SC 1863] , relying on the decisions in *Aftab Ahmad Anasari* [(2010) 2 SCC 583 : (2010) 2 SCC (Cri) 1054] and *Manu Sharma v. State (NCT of Delhi)* [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385 : AIR 2010 SC 2352] , the Court opined that when the accused had given a statement that related to discovery of an electric wire by which the crime was committed, the said disclosure statement was admissible as evidence.

**Para-20:-** In the case at hand, both the accused have led to discovery of the knife and the skipping rope used in the crime. It was within their special knowledge. The medical evidence corroborates the fact that the deceased died because of strangulation and further there was a stab injury on his chest. Thus, the weapon and the other articles have direct nexus with the injuries found in the post-mortem report.

**Para-21:-** At this juncture, as mentioned earlier we proceed to advert to the issue pertaining to falsehood. In this context we may fruitfully refer to the authority in *State of Maharashtra v. Suresh* [State of Maharashtra v. Suresh, (2000) 1 SCC 471 : 2000 SCC (Cri) 263] , wherein it has been held that a false answer offered by the accused when his attention is drawn to the circumstances, it renders the circumstances to be of inculpating nature. In such a situation a false answer can also be counted as

providing “a missing link” for completing the chain. In the case at hand, the factum of recovery through the witnesses has been proven that the accused persons had led to recovery. When it was put to them they had given an answer in the negative in a nonchalant manner. The incriminating materials were concealed and they were discovered being led by the accused persons.”

228. It has been held in the judgment rendered by the Hon’ble Supreme Court in the case of Perumal Raja alias Perumal Versus State, Rep. By Inspector of Police reported in 2024 SCC Online SC 12 at para- 19 to 24, 27 to 34 and 37 to 46 as follows:-

“Para-**19**:- The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 1872<sup>8</sup>, a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27<sup>9</sup> of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events - a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person accused of the offence can be relied.

Para-**20**:- In *Pulukuri Kottaya v. King Emperor*<sup>10</sup>, the Privy Council held that the fact discovered embraces the place from which the physical object

is produced and the knowledge of the accused as to this, and the information given, must distinctly relate to this fact.

**Para-21:-** In *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru*<sup>11</sup>, this Court affirmed that the fact discovered within the meaning of Section 27 of the Evidence Act must be some concrete fact to which the information directly relates. Further, the fact discovered should refer to a material/physical object and not to a pure mental fact relating to a physical object disassociated from the recovery of the physical object.

**Para-22:-** However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In *Mohmed Inayatullah v. State of Maharashtra*<sup>12</sup>, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word ‘distinctly’ is used to limit and define the scope of the information and means ‘directly’, ‘indubitably’, ‘strictly’ or ‘unmistakably’. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

**Para-23:-** The facts proved by the prosecution, particularly the admissible

portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

**Para-24:-** Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

**Para-27:-** Elaborating on this aspect, a three judge Bench of this Court in *Aghnoo Nagesia v. State of Bihar*<sup>16</sup> has held that if the FIR is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence, except to the extent that the ban is lifted by Section 27 of the Evidence Act. While dealing with the admission of part of confession report dealing with motive, subsequent conduct and opportunity, this Court rejected the severability test adopted by some High Courts. The statement can, however, be relied upon and admitted to identify the accused as the maker, and the portion within the purview of Section 27 of the Evidence Act is admissible. *Aghnoo Nagesia* (supra) has been applied and followed by this Court in *Khatri Hemraj Amulakh v. State of Gujarat*.<sup>17</sup>

**Para-28:-** The words “person accused of an offence” and the words “in the custody of a police officer” in Section 27 of the Evidence Act are separated by a comma. Thus, they have to be read distinctively. The wide and pragmatic interpretation of the term “police custody” is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the

contours of Sections 25 to 27 of the Evidence Act. Thus, in our considered view the correct interpretation would be that as soon as an accused or suspected person comes into the hands of a police officer, he is no longer at liberty and is under a check, and is, therefore, in “custody” within the meaning of Sections 25 to 27 of the Evidence Act. It is for this reason that the expression “custody” has been held, as earlier observed, to include surveillance, restriction or restraint by the police.

**Para-29:-** This Court in *Deoman Upadhyay* (supra), while rejecting the argument that the distinction between persons in custody and persons not in custody violates Article 14 of the Constitution of India, observed that the distinction is a mere theoretical possibility. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. A person giving word of mouth information to police, which may be used as evidence against him, may be deemed to have submitted himself to the “custody” of the police officer. Reference can also be made to decision of this Court in *Vikram Singh v. State of Punjab*<sup>18</sup>, which discusses and applies *Deoman Upadhyay* (supra), to hold that formal arrest is not a necessity for operation of Section 27 of the Evidence Act. This Court in *Dharam Deo Yadav v. State of Uttar Pradesh*<sup>19</sup>, has held that the expression “custody” in Section 27 of the Evidence Act does not mean formal custody, but includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time of giving information, the accused is, for all practical purposes, in the custody of the police and the bar *vide* Sections 25 and 26 of the Evidence Act, and accordingly exception under Section 27 of the Evidence Act, apply. Reliance was placed on the decisions in *State of A.P. v. Gangula Satya Murthy*<sup>20</sup> and *A.N. Vekatesh v. State of Karnataka*<sup>21</sup>.

**Para-30:-** However, evidentiary value to be attached on evidence produced before the court in terms of Section 27 of the Evidence Act cannot be codified or put in a straightjacket formula. It depends upon the facts and circumstances of the case. A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence.

Para-31:- When we turn to the facts of the present case, the body parts of the deceased Rajini @ Rajinikanth were recovered on the pointing out of appellant - Perumal Raja @ Perumal in his disclosure statement. Rajini @ Rajinikanth had been missing for months and was untraceable. In the present case, as discussed above, the homicidal death of Rajini @ Rajinikanth, the disclosure statement marked Exhibit P-37, and the consequent recovery as elucidated above have been proved beyond doubt and debate.

Para-32:- In *State of Maharashtra v. Suresh*<sup>22</sup>, this Court in the facts therein held that recovery of a dead body, which was from the place pointed out by the accused, was a formidable incriminating circumstance. This would, the Court held, reveal that the dead body was concealed by the accused unless there is material and evidence to show that somebody else had concealed it and this fact came to the knowledge of the accused either because he had seen that person concealing the dead body or was told by someone else that the dead body was concealed at the said location. Here, if the accused declines and does not tell the criminal court that his knowledge of the concealment was on the basis of the possibilities that absolve him, the court can presume that the dead body (or physical object, as the case may be) was concealed by the accused himself. This is because the person who can offer the explanation as to how he came to know of such concealment is the accused. If the accused chooses to refrain from telling the court as to how else he came to know of it, the presumption is that the concealment was by the accused himself.

Para-33:- The aforesaid view has been followed subsequently and reiterated in *Harivadan Babubhai Patel v. State of Gujarat*<sup>23</sup>, *Vasanta Sampat Dupare v. State of Maharashtra*<sup>24</sup>, *State of Maharashtra v. Damu S/o Gopinath Shinde*<sup>25</sup>, and *Rumi Bora Dutta v. State of Assam*<sup>26</sup>.

Para-34:- Our reasoning, which places reliance on Section 106 of the Evidence Act, does not in any way dilute the burden of proof which is on the prosecution. Section 106 comes into play when the prosecution is able to establish the facts by way of circumstantial evidence. On this aspect we shall delve upon subsequently.

Para-37:- In *Sharad Birdhichand Sarda v. State of Maharashtra*<sup>29</sup>, this Court referred to *Hanumant v. State of Madhya Pradesh*<sup>30</sup>, and laid down the five golden principles ('panchsheel') that should be satisfied before a case based on circumstantial evidence against an accused can be said to be fully established:

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established;
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) they should exclude every possible hypothesis except the one to be proved; and
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Para-38:- This Court in *Sharad Birdhichand Sarda* (supra) rejected the contention that if the defence case is false it would constitute an additional link as to fortify the case of the prosecution. However, a word of caution was laid down to observe that a false explanation given can be used as a link when:

- (i) various links in the chain of evidence laid by the prosecution have been satisfactorily proved;
- (ii) circumstance points to the guilt of the accused with reasonable definiteness; and
- (iii) the circumstance is in proximity to the time and situation.

Para-39:- If these conditions are fulfilled only then the court can use the false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. Thus, a distinction has to be drawn between incomplete chain of circumstances and a circumstance after a chain is complete and the defence or explanation given by the accused is found to be false, in which event the said falsehood is added to reinforce the

conclusion of the court.

**Para-40:-** This Court in *Deonandan Mishra v. State of Bihar*<sup>31</sup> has laid down the following principle regarding circumstantial evidence and the failure of accused to adduce any explanation:

“It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.”

**Para-41:-** The appellant - Perumal Raja @ Perumal in his statement under Section 313 of the Criminal Procedure Code, 1973 plainly denied all accusations without furnishing any explanation regarding his knowledge of the places from which the dead body was recovered. In this circumstance, the failure of the appellant - Perumal Raja @ Perumal to present evidence on his behalf or to offer any cogent explanation regarding the recovery of the dead body by virtue of his special knowledge must lead to a reasonable adverse inference, by application of the principle under Section 106 of the Evidence Act, thus forming an additional link in the chain of circumstances. The additional link further affirms the conclusion of guilt as indicated by the prosecution evidence.

**Para-42:-** The whereabouts of Rajini @ Rajinikanth were unknown. The perpetrator(s) were also unknown. It is only consequent to the disclosure statement by the appellant - Perumal Raja @ Perumal, that the police came to know that Rajini @ Rajinikanth had been murdered and his body was first dumped in the sump tank and after some months, it was retrieved, cut

into two parts, put in sack bags, and thrown in the river/canal. The police, accordingly, proceeded on the leads and recovered the parts of the dead body from the sump tank and sack bags from the river/canal. It has been also established that Rajini @ Rajinikanth was murdered. In addition, there have been recoveries of the motorcycle and other belongings at the behest of the appellant - Perumal Raja @ Perumal. These facts, in the absence of any other material to doubt them, establish indubitable conclusion that the appellant - Perumal Raja @ Perumal is guilty of having committed murder of Rajini @ Rajinikanth. The presence of motive reinforces the above conclusion.

Para-43:- It has been contended before us that the appellant - Perumal Raja @ Perumal had been acquitted in the case arising out of crime No. 204 of 2008 relating to the murder of Rajaram. The judgment passed by the trial court<sup>32</sup> has been taken on record as additional evidence. However, we do not find this judgment in any way relevant or negating the prosecution evidence, which we have referred to and elucidated earlier in the prosecution case against the appellant, because the murder trial of Rajaram was primarily based upon an entirely different set of evidence. The evidence we have mentioned in the present case is not relevant and directly connected with the murder of Rajaram. The two occurrences are separate, *albeit* the appellant - Perumal Raja @ Perumal was accused of the murder of Rajaram and his son Rajini @ Rajinikanth. The murders certainly were committed on two different dates - 23.11.2007 (or thereabout) and 21.04.2008 respectively, approximately five months apart. Except for the fact that the appellant - Perumal Raja @ Perumal was taken into custody during the course of investigation in FIR No. 204 of 2008 for murder of Rajaram and thereupon on 25.04.2008 his disclosure statement (Exhibit P-37) was recorded, there is no connection between the two offences. The conviction of the appellant is, therefore, sustainable in view of the evidence placed on record in the present case. The judgment of acquittal would not qualify as relevant and of evidentiary value so as to acquit the appellant - Perumal Raja @ Perumal in the present case.<sup>33</sup>

Para-44:- Acquittal of the co-accused, as noticed in paragraph 4 above,

again is for want of evidence against them. At best, they were found in possession of the articles connected with the crime on the basis of the disclosure statement (Exhibit P-37) dated 25.04.2008 made by the appellant - Perumal Raja @ Perumal. Section 27 of the Evidence Act could not have been applied to the other co-accused for the simple reason that the provision pertains to information that distinctly relates to the discovery of a 'fact' that was previously unknown, as opposed to fact already disclosed or known. Once information is given by an accused, the same information cannot be used, even if voluntarily made by a co-accused who is in custody. Section 27 of the Evidence Act does apply to joint disclosures, but this is not one such case.<sup>34</sup> This was precisely the reason given by the trial court to acquit the co-accused. Even if Section 8 of the Evidence Act is to apply, it would not have been possible to convict the co-accused. The trial court rightly held other co-accused not guilty. For the same reason, acquittal of co-accused Chella @ Mukundhan, who was earlier absconding, is also of no avail.

**Para-45:-** As far as acquittal of the juvenile is concerned, reference can be made to the provisions of Sections 40 to 43 of the Evidence Act.

**Para-46:-** In view of the above discussion, we have no difficulty in upholding the conviction of the appellant - Perumal Raja @ Perumal. The appeal is dismissed.”

229. So far as the evidence of prosecution witnesses is concerned, it is evident that P.W.-12, Bablu Murmu, who has been declared hostile on the point of identification, but he is also injured witness, who has sustained severe injuries on his person, but despite all his injury report for the treatment conducted at Dumka, Dhanbad and Apollo Hospital, Ranchi have not been brought on record. P.W.-12, Bablu Murmu has stated during his evidence that the extremists started firing upon them, even the vehicle of S.P., Pakur and his vehicle were crossing through jungle and he had sustained injuries on thigh and he was groaning in pains when the informant had first met with him after incident. He declined to identify the accused persons including the appellant on the

point of identification although he has stated during his statement recorded under Section 161 of the Cr. P. C. that made from the right side of the Jungle near newly constructed Pulia and due to which Ashok Kumar Srivastava, Manoj Hembrom, Rajeev Kumar Sharma died and Santosh Kumar Mandal became injured and injured further disclosed after closure of firing also some extremists arrived near his vehicle (i.e. Bolero Car) and they presumed them to be dead and then the accused persons shouted "Pravir Da what happened to the ahead next vehicle", then other side shouted " S.P. Saheb has been shot dead". Thereafter he again heard Tala Da, Joseph, Daud looted the arms of all. P.W.-20 further disclosed that P.W.-12, Babloo Murmu stated that his Insas rifle and three other personnel and bullet were looted by the extremists. Thereafter, P. W.-12 had also stated to have heard voice that further two AK-47 and bullets were found from the vehicle. Thereafter extremists shouted to flee away as the police then arrived about 30-35 extremists shout Maoist slogans, fled away north side of the Jungle. P.W.-20 has stated that in the meantime, the police party of Gopi Kandar P. S., Pakuria P. S., Amarapada P.S also arrived there. He further stated that the police parties of Pakuria and Amarapara P.S. had also identified the deceased on the basis of their names plates and of the same district of the deceased Chandan Thapa, deceased Manoj Hembrom, deceased Ashok Kumar Srivastava, deceased Rajeev Kumar Sharma. Thereafter, they searched the entire jungle of nearby areas, then they recovered 41 Khokhas of SLR, 15 Khokha of AK-47, one Khokha of Insas, Two misfire live bullet of AK-47, two khokha of .303 and one live misfire bullet of .303 and broken piston grip of AK-47, one black colour shoe and one plastic chappal, two litres gallon tied in gamcha and which were seized by Hawaldar Vijay Kumar Singh and Constable Manjeet Kisku by preparing seizure list, which is in his

writing and signature of P.W-20, Ashok Kumar marked as Ext. -17.

The evidence of P.W.-12 is supported on this aspect from the evidence of P.W.-20, Ashok Kumar, the informant of this case and P.W.-19, Chonas Kumar Minj, I. O of this case.

Therefore, it can be presumed that the evidence of P.W.-12 on the aspect of identification is deliberately in favour of the accused persons, who has impeached the Senior Police Official i.e. P.W.-19, Chonas Kumar Minj, I. O of this case and P.W.-20, Ashok Kumar, the informant of this case and as such, the conduct of the P.W.-12- Bablu Murmu is highly deprecated, although he is a Government Servent and his life was saved by the P.W.-19, Chonas Kumar Minj, I. O of this case and P.W.-20, Ashok Kumar, the informant of this case by promptly taking him into the hospital, but he has deliberately impeached them or out of fear, he had refused to recognize the convicts or any person, but the occurrence is fully established by him and proved by him and his evidence on the point of identification may also be read in line of P.W.-19, Chonas Kumar Minj, I. O of this case and P.W.-20, Ashok Kumar, the informant of this case as well as P.W.-30, Lebenius Marandi and P.W.-31, Dhanraj Maraiya.

Even the injury report of P.W.-12, Bablu Murmu is doubtful because only bandage is shown in his both thigh and left leg and no bullet injury is seen on 02.07.2013.

230. At this stage, this Court further directs that the action against such persons should be taken by the Police Departement and the Competent Authority of the Police Department may direct for initiation of departmental proceeding against him within specific time period as he has let down the image of Police Department and the sacrifice made by Six Martyers including then S.P. Pakur, late Amarjeet Balihar.

231. So far as other direct witness on the point of occurrence is concerned P.W.-26, Mahesh Prasad Singh, retired ASI, JAP and he is also stated that on 02.07.2013 at about 2.25 P.M. at Pakur Dumka Road, sudden firing started in the bridge at Pakur Dumka Road and his force had taken command and morcha and immediately he sent the information by phone to In-charge of Kathikund P. S. and they also along with police force came to the place of occurrence. He stated that extremists were firing and S. P. Saheb and five personnel were injured and some of them died on the spot.

During cross-examination on behalf of the prosecution, he stated that he had disclosed the name of two accused Pravir Da and Tala Da statement before the police and apart from this, he had also disclosed that number of extremists were between 30-35 and who were making indiscriminate firing on the police personnel and its escort due to which, then S.P. Pakur and some the police personnel had died due to sustaining the bullet injuries and some became injured. He also stated that naxal had looted arms and bullets of the police.

Thus, it is evident from the evidence of P.W.-26 that he has also supported the prosecution case on the point of involvement of Pravir Da and Sanatan Baski @ Tala Da i.e. the appellants.

232. It is further evient that P.W.-28, Indradev Mandal has also supported the prosecution case by stating that while he was in Santri duty between 1.00 to 3.00 P.M. and suddenly heard the sound of firing. Thereafter he got alerted all the guards and the entire force had taken Morcha and Kaman. On being informed by his Officer to Kathikund P.S., they arrived alongwith Anti Land Mines Vehicle near the picket. He went to the place of occurrence and found that some police personnel were injured and some police personnel had

died and the then S. P. Pakur, Amarjeet Balihar and his escort police personnel had also died and the occurrence was caused by the extremists. P.W.-28, Indradev Mandal has fully supported the prosecution case on the point of occurrence.

233. Most important is the evidence of P.W.-30, Lebenius Marandi, who has fully supported the occurrence and has stated that while they had arrived near small culvert, speed of the vehicle became slow due to moving of a Truck ahead of it and as soon as speed became slow then firing started from right side at both the vehicles and even the Truck was moving with slow speed ahead of pilia due to which the road was blocked. He further stated that when the firing started then his vehicle stopped there and thereafter the deceased S.P. asked the driver to run the vehicle speedily, but the driver Dhanraj Maraia (i.e. P.W.-31) informed that he had sustained bullet in his leg and as such vehicle could not go further and thereafter S.P. asked him “ as Marandi give arms and start firing”, but he told “Sir firing could not be done from the vehicle, get alighted and start firing”. However, in course of alighting vehicle, he sustained bullet injuries in his right leg and then after crawling he came near ditch at the corner of the road and they (he and deceased S.P.) got concealed and S.P. asked him to get informed someone by the phone and call them immediately. He also stated that S.P. was also firing from his arms. He also stated that after making even from some time when phone was not connection for some time then S.P gave him private phone while S.P. was firing and he was directed to make a phone call when at that time he also sustained one bullet injuries near the left arms. People were abusing from the right side of the road and asking them to surrender otherwise they will be killed upon which S.P. stated before them not to fear and start firing bullet. In

the meantime when the S.P had talked with the officials of Amarpara P.S. then he saw that he i.e. P.W.-30 had sustained bullet injuries and then S.P. demanded arms from him so that he may also start firing. However, in the meantime he became senseless and on gaining conscious, he saw that the S.P. had got changed the magazine of rifle. Thereafter naxalite Tala Da, Josheph, Pravir Da etc. were shouting that all have died and loot the arms of all and the Naxalite came near S.P. and shot bullet at him and they left him by presuming him to be dead. Thereafter he fled away by raising the slogan of Maoist. He also stated that the Naxalites were wearing green dress and were speaking in Hindi and Santhali languages. He has also identified the accused Pravir Murmu @ Pravir Da in the Court. However, he refused to identify the remaining the accused persons.

Even during his cross-examination he stated that he had sustained bullet injuries in his right leg while he was alighting from the north side of the vehicle and he sustained bullet injuries at the thumb of right leg, but he was wearing shoe, but he was not aware what happened with his shoe and he also stated that after alighting from the vehicle, he went in a ditch by crawling situated at a distance around 10 feet and the extremists fired upon the martyer then S.P., Pakur, Amarjeet Balihar. It is evident that P.W.-30, has fully identified the one appellant-Pravir Da. From perusal of the Ext.-25, it is evident that on the confession of the appellant Sanatan Baski @ Tala Da, the bullet proof jacket of S. P. Amarjeet Balihar was recovered from the residence of his sasural situated in the village which has been mared as Ext. -25 and which was also identified during T.I. Parade in the presence P.W.-21, Gyan Shankar Jaiswal, BDO-cum-CO, Nala, District-Jamtara.

234. From the evidence of P.W.-30, Lebenius Marandi, it is clearly evident that the Naxalites came near the S.P and fired upon him and due to which S. P. Amarjeet Balihar became Martyr.

However, when he was confronted during his cross-examination by the appellant- Pravir Da @ Pravir Murmu on the point of becoming unconscious, then he denied the suggestion and asserted that he has not become unconscious during para-8 of his cross-examination. He also again claimed to be, but again in para-16 of his cross-examination, he has stated to have become unconscious.

Thus, it is evident that even P. W.-30, Lebenius Marandi was under fear by the appellants and others and there is prima facie evidence and hence there may be some lapses while giving evidence on his part, but he has clandestinely identified the appellant -Pravir Da @ Pravir Murmu during his evidence and as asserted in para-21 again that the appellants recorded the statement under Sections 161 of the Cr. P.C. at Dhanbad Hospital and after 3-4 days he was referred to Apollo, in Ranchi and he got cured 1-2 months thereafter.

235. Although, P.W.-30, Lebenius Marandi has fully supported the prosecution case and has identified one of the appellant- Pravir Da and also not identified the another appellant-Sanatan Baski @ Tala Da but the same is of no consequence as appellant-Sanatan Baski @ Tala Da has himself admitted that he also fired upon the S.P., Pakur, Amarjeet Balihar. This fact has been completely ignored by the learned Court below.

It is further evident that even P.W.-30 had impeached the evidence of P.W.-21 namely Gyan Shankar Jaiswal, who was the B.D.O-cum-Circle Officer and got conducted the T.I. Parade of bullet proof jacket of the martyr S.P., Pakur, Amarjeet Balihar by submitting that the signature was taken place on the blank paper in

T.I. Parade This aspect is not appreciated by this Court putting that the public servant and bodyguard of the then Superintendent of Police, Pakur was duty bound to protect the deceased Amarjeet Balihar, the then S. P. Pakur and to give evidence, but he can be suspected to be an Informer of the Naxalites in view of the confessional statement of appellant-Sanatan Baski @ Tala Da (Ext.-25).

Therefore, the Competent Authority of the Police Department may examine this aspect also and may take necessary disciplinary proceeding against him if his role is found and should record his statement as to how the late Amarjeet Balihar, then, S.P. Pakur, who had shot to death by the Extremists and the P.W.-30, Lebenius Marandi escaped himself. It found necessary, then a proceeding may be drawn against him by giving a time limit and the final outcome of such proceeding should be examined by the highest level of Police officials i.e. DGP/ADG of the Police Department. If the P.W.-30, Lebenius Marandi is found the informer of the extremists giving rise to the incident, then the Department must take stern necessary action against such erring person.

236. P.W.-31, Dharmraj Maraiya @ Dhanraj Maraiya has also supported the prosecution case and he is also an eye witness and was driving the vehicle of then S.P., Pakur, Amarjeet Balihar and had stated that when they arrived Aamantala and Jamuni towards of Kathikund P.S. firing started suddenly and due to discriminate firing, he sustained bullet injury in his leg and due to which his leg separated from the body and the vehicle stopped and could not proceed further. Thereafter S.P. came outside and demanded mobile phone then he handed over the mobile phone to then S.P. and he was sitting on his feet, then he again sustained injury on his back and thereafter S.P. asked all the police personnel to start firing and firing

started from both the sides. However, during course of firing door of his vehicle got opened due to which, he fell down and at that time late S.P. was shot by bullet and he became Martyr at that time and all the miscreants came near his vehicle and looted their entire arms and then he became unconscious and he gained conscious in the Hospital. This witness P.W.-31 has also identified the Shiv Charan Mohli as Pravir Da. He has also identified the accused Tala Da whose second name is Sanatan i.e Appellant of Criminal Appeal (DB) No. 1363 of 2018) as he had clearly stated that the Naxalites had arrived near his vehicle.

237. From scrutinizing the evidence of P.W.-31, it is evident that he has also identified the another appellant- Sanatan Baski and stated in para-3 of his evidence that all the Naxalites came near his vehicle and had fired at S.P., Pakur and due to which S.P. Amarjit Balihar became Martyr. Thereafter he had become unconscious, but he became conscious in Hospital.

Thus, Dr. Kumar Abhay Prasad i.e. P.W.-24 while examined his injury found conscious and not mentioned about his conscious is wrong.

P.W.-31, Dhanraj Maraiya again asserted and admitted in para-6 during his cross- examination at para- 12, 14, 15 and 16 that he had stated before the police, who had identified some Naxalites and during his encounter he had handed over the mobile phone to the Superintendent of Police.

Thus, P.W.-31, Dhanraj Maraiya was also not unconscious when the Naxalites had arrived there near his case and had fired upon the S. P. Pakur.

238. P.W.-3, Prem Kumar Hansda, who was the witness just arriving at the place of occurrence after the incident had stated that when he along with police personnel and Police Inspector and

driver of Anti Mines Vehicle reached to Jamuni Picket with rifle and bullet and where he learn that sound of firing was coming and on proceeding further, he found two vehicles i.e. Bolero and Scorpio vehicle in damage condition without having number plate. On proceeding further, he noticed that in right side, one police personnel and S.P. Pakur were lying in dead condition in ditch. He further stated in para-4 that injured Bablu Murmu disclosed them that they along with S.P. had gone in the meeting of DIG, called by DIG, Dumka and he came to the place of occurrence, then firing started from the right side and he i.e. Bablu Murmu had also disclosed that extremists came near the vehicle and found all of them dead and one extremists told that “work has done Praveen Da”. Thereafter other extremists uttered that ‘Tala Da’ carry all the rifles and cartridges and thereafter the naxal raised alarm that the police will arrive.

Thus, it is evident that P.W.-3 also corroborated the evidence of P. W.- 12, Bablu Murmu, P.W.-30, Lebenius Marandi and P.W.-31, Dhanraj Maraiya on the point of occurrence and which has also supported by P.W.-9, Darbari Soren.

239. P.W.-9, Darbari Soren has also supported the prosecution case by stating that when he aloghwith other police personnel went to Jamuni Picket by Anti Land Mines vehicle and where he learnt that at a distance of 100-150 metre, firing was going on. He also stated that any other vehicle one Dhananjay Maraiya and Lebenius Marandi were lying there and dead bodies were lying in back seat. On proceeding further, he had seen S. P. Pakur in dead condition and thereafter injured police personnel were brought in other vehicle and then they asked Hawladar Bablu Murmu, who disclosed that when they were returning from meeting of DIG Dumka and when

they arrived at jungle near the Jamuni Picket, suddenly indiscriminate firing had started there from the right side and they could not do anything and almost all the police personnel have sustained injuries. He also stated that 30-35 extremists came from the bushes and looted all the arms and ammunitions of the police and someone called down “Prabir Da, Tala Da and shouted that Scorpio Mein S.P. Saheb Baithe Hain, Unko Goli Lag Gayi Hai” and lastly they shouted their slogans and after looting arms and ammunition, they fled away.

Thus, the P.W.-9, Darbari Soren also corroborates the evidence of P.W.-3 Prem Kumar Hansda, P.W.-30, Lebenius Marandi and P.W.-31, Dhanraj Maraiya and supported the prosecution case on the point of occurrence and evidence of P. W.- 12, Bablu Murmu.

240. P.W.-2, Ganga Ram Choure, P.W.-4, Jialal Hembrom, P.W.-5, Narendra Kumar Bhatt, P.W.-6, Pramod Kumar, P.W.-7, Md. Sarfaraz Alam and P.W.-8, Manjit Kisku have also supported the prosecution case and also corroborated the evidence of P.W.-3 Prem Kumar Hansda, P.W.-9, Darbari Soren, P.W.-19, Chonas Kumar Minj, P.W.-20, Ashok Kumar, P.W.-30, Lebenius Marandi, P.W.-31, Dhanraj Maraiya and P. W.- 12, Bablu Murmu respectively.

241. The another set of witnesses are the Officer In-charge of various police stations, who either at the place of occurrence arrived just after the occurrence or watching for travel of the then S.P. Pakur, Amarjeet Balihar after attending the meeting.

242. P.W.-11 is Ranjit Minj, Officer In-charge of Amarapara P. S. and he was the person with whom the deceased S.P. Pakur, Amarjeet Balihar was in constant touch on mobile phone while being before succumbing to his injuries caused by firearm, caused by the Naxalites. He has stated that on the date of occurrence at about 2.32 P.M. S.P., Pakur Amarjit Balihar informed over telephone that he was

trapped and asked him to come soon (“Jaldi Aana”). Thereafter he along with armed forces boarded on the vehicle and again he received another call from the S.P. to come soon and he further received 3<sup>rd</sup> call when he crossed Amrapara market, S. P. Saheb called them to arrive at the earliest. When he reached Gopikandar police station, he found that officer in-charge Baiju Baraik was also ready alongwith his armed forces and then proceeded with him and they came to proceed then in the meantime further Pakuria Officer In-charge also accompanied then they proceeded towards the place of occurrence. He further stated in para-3 that when they arrived at the place of occurrence at village Aamtula, then he saw that the vehicle of S. P. was lying on the road and three gates were found opened. He had also seen S.P. Amarjeet Balihar in dead condition in the north side of road in a ditch and he had sustained one bullet injury at left side of his head and one bullet injury in the left side of the chest and one bullet injury in the right elbow. He had also seen the dead body of the driver on the driving seat. He further stated that on another Bolero vehicle, he had seen injured Bablu Murmu and who were also seen one constable in the injured condition and had also seen the two persons in injured condition.

243. P.W.-11, Ranjit Minz had arrested the appellant-Sanatan Baski @ Tala Da and one another Daud Hembrom (who was acquitted by the learned Court below). However, this witness was not cross-examined on the point of identification by both the appellants i.e. Pravir Da and Sanatan Baski @ Tala Da.

244. P.W.-17 is Baiju Baraik was posted as the then Officer In-charge, Gopikandar Police Station and stated that on receiving an information that firing has taken place towards Karudih More and in the meantime, he received the information from the Officer In-charge Amarapara to arrive immediately for help as S. P., Pakur has been

trapped. Thereafter ASI Mustafa Khan came to the police station, then he proceeded and in the meantime Officer In-charge of Armrapara police station had also arrived by his vehicle and on way, Officer In-charge, Pakudia police station also joined with police force and then they went to the place of occurrence and also proceeded to the place of occurrence on foot along with the armed forces by keeping their vehicle 100 metre ahead of the place of occurrence, but by that time firing was closed. He further asserted that Prabir Da @ Prabil Da, Zonal Commandar of CPI Maoist Group and its members Sahdeo Rai @ Tala Da were active in that Area and in the said group Daud @ Vimal Soren, Josheph Soren, Sudhir Kisku @ Imanuvel Hansda, Deepak Dehri, Sonu Dehri, Kiran Tudu, Paku Tudu, Sanatan Baski, Satan Besera, Wakil Hembrom, Vijay, Mahasay, Labin, Sunita, Bharat Singh Kisku and other active members namely Imanuvel Murmu S/o Sundar Murmu, Stephen, Som Baski, Imanuvel Murmu, S/o Raisan Murmu, Hopna Hembrom, Suresh Bhagat were member of the said organization. He has stated that they i.e. the Accused Persons have committed the said act in conspiracy with each other by committing murder of police personnel and have looted two AK-47 rifle, four Insas rifle, bullet proof jacket of Superintendent of Police and mobile etc. Later on he learnt from the Investigating Officer that bullet proof jacket of S. P. Amarjeet Balihar was recovered from Sanatan Baski son of Kisto Baski.

He had seen the dead body of Hawaldar Chandan Kumar Thapa and also dead body of the deceased Amarjeet Balihar, the then, S. P. Pakur and the dead body of further five constable namely Ashok Kumar Srivastava, Rajeev Kumar Srivastava, Manoj Hembrom and also seen the injured Hawaldar Bablu Tudu, Dhanraj Maraiya and Santosh Kumar Mandal (died during treatment) and Labonius Marandi.

Thus, P.W.-17 also corroborated and supported the prosecution

case and P.W.-17 further corroborated the evidence of P.W.-3 Prem Kumar Hansda, P.W.-9, Darbari Soren, P.W.-19, Chonas Kumar Minj, P.W.-20, Ashok Kumar, P.W.-30, Lebenius Marandi, P.W.-31, Dhanraj Maraiya and P. W.- 12, Bablu Murmu respectively.

245. P.W.-19, Chonash Kumar Minj is I. O. of this case and has also corroborated the evidence of P.W.-3 Prem Kumar Hansda, P.W.-9, Darbari Soren, P.W.-20, Ashok Kumar, P.W.-30, Lebenius Marandi, P.W.-31, Dhanraj Maraiya and P. W.- 12, Bablu Murmu respectively and he also stated that on 15.07.2013, he had recorded the statement of injured Hawaldar Bablu Murmu in APPOLLO Hospital, Ranchi and who had fully supported the FIR. He has also learnt from P.W.-12, Bablu Murmu that Superintendent of police was sitting in while colour Scorpio Vehicle without having any number plate along with police no. 40, Chandan Kumar Thapa and Police no. 51, Lebenius Marandi (P.W.-30) and private driver Dhanraj Mariya was driving the vehicle of S.P. and his escort vehicle was driven by the drive i.e. police no. 119, Ashok Kumar Srivastava and he was sitting in the left side of the driver and when they proceeded from Dumka to Pakur at about 2.00' O Clock noon and the vehicle of S.P. was in front and his escort vehicle was following the vehicle of S.P. and as soon as vehicle of S.P.(i.e. Scorpio) and his vehicle (i.e. Bolero) proceeded about five kilometre from Kathikund P.S. then suddenly indiscriminate firing started by pointing out both the vehicles from the right side of the jungle and in the meantime, bullet hit the driver of Escort Vehicle and also hit the police no. 90- Santosh Kumar Mandal, police no. 118, Rajeev Kumar Sharma and police no. 143, Manoj Hembrom sitting in the middle and due to which driver police no. 199-Ashok Kumar Srivastava, police no. 118- Rajeev Kumar Sharma and police no. 143-Manoj Hembrom had died inside the vehicle and he i.e. P.W.-12 had also sustained two bullet

injuries in the thigh and he along with another injured Santosh Kumar Mandal were lying in pool of blood in the vehicle and naxals were abusing them in filthy languages and asking them to surrender or will face dire consequences. In the meantime, he heard the sound that Tala Da, Joseph, Daud, Pravir Da came because all of them died and heard sound that loot all the arms and ammunitions by cutting pouch. Thereafter he again heard sound that S.P. Saheb has been fired by bullet and again one extremist was shouting by taking the name of Tala Da, Daud, Joseph to loot the arms and ammunitions of all the police personnel.

246. Thus, P.W.-19, Chonash Kumar Minj has conducted the investigation and found the case true agains the appellant-Pravir Da and the appellant- Sanatan Baski @ Tala Da and also against five other accused persons namely Wakil Hembrom, Satan Besra, Manwel Murmu, Lubin Murmu, Manvel Murmu, although five other accused persons namely Wakil Hembrom, Satan Besra, Manwel Murmu, Lubin Murmu, Manvel Murmu were acquitted by the learned Court below.

247. It is evident from the evidence of P.W.-21, Gyan Sankar Jaiswal that TIP of several materials includug bullet proof jacket of S. P. was conducted on 20.01.2014. i.e after delay of six months as the injured witnesses, P.W.-30, Lebenius Marandi and P.W.-31, Dhanraj Maraiya were admitted in Apollo Hospital and have found injury on his legs and have remained in Hospitals for around two months and hence there was delay of around six months. However, P.W.-21 clearly stated that P.W.-30, Lebenius Marandi had identified the bullet proof jacket on 20.01.2014 at around 2.30 P.M. and he has put his signature in TIP Chart. Similarly P.W.-12, Bablu Murmu has also identified the bullet proof jacket and P.W.-12 also put his signature in T.I. P. Chart. Even the said Bablu Murmu i.e. P.W.-12 had remained in Hospital at Ranchi as he himself stated to have sustained firearm injury on his thigh and he was treated at Dhanbad and

also at Ranchi.

248. Thus, in view of the evidence of P.W.-21, Gyan Sankar Jaiswal i.e. BDO -cum- Circle Officer, it is evident that mere denial of P.W.-12, Bablu Murmu and P.W.-30, Lebenius Marandi, T.I. Parade is not correct and it appears to be in fear of Naxalites including the appellants.

249. From the confessional statement of the appellant Sanatan Baski @ Tala Da, it is evident that during his presence one Daud (acquitted by the learned Court below) and Tala Da i.e. Sanatan Baski had also fired upon the police party including upon deceased Amarjeet Balihar, S. P. Pakur which led to his immediate death on the spot.

250. Apart from this, on the basis of his confessional statement of Sanatan Baski [Cr. Appeal (DB) No. 1363 of 2018], the bullet proof jacket of S.P., Pakur, Amarjeet Balihar was recovered from the house of his Sasural situated in village-Paliyadaha (Mochiyapara) at P.S. -Pakuria of the appellant –Sanatan Baski @ Tala Da marked as Ext.-25.

251. The appellant-Sanatan Baski @ Tala Da (Cr. Appeal (D.B) No. 1363 of 2018) has stated during his confessional statement marked as Ext.-25 that he arrived near the deceased S.P. Amarjeet Balihar and fired at him. He had received the information from the constable that he raised his hand and he had duly informed regarding programme of S.P. Pakur, Amarjeet Balihar. Although the prosecution has not cared to identify the said sepoy or constable, but the evidence of P.W.-30, Lebenius Marandi, it would appear that only he was alongwith S.P., Pakur, Amarjeet Balihar while the Naxalites had fired upon him including the appellant –Sanatan Baski.

252. Although learned counsel has argued that vital questions have not been asked from the appellants, which can be prejudiced. However, this Court finds

that both the appellants have been convicted merely on the basis of identification of the appellants-Pravir Da @ Pravir Murmu by P. W.-30, Lebenius Marandi and the accused- Sanatan Baski @ Tala Da was convicted on the basis of identification of P.W.-31, Dhanraj Maraiya.

253. This Court finds that the accused- Pravir Da @ Pravir Murmu was identified by P. W.-30, Lebenius Marandi in Court while the said appellant - Pravir Da @ Pravir Murmu was in custody during trial.

Similarly P.W.-31, Dhanraj Maraiya has also identified the appellant- Sanatan Baski @ Tala Da while he was also in custody.

Thus, no serious prejudice is caused to the appellants because they were all aware of their identification during trial before the learned Court below.

254. Similarly the learned Court below has not put forth both the appellants on the questions of recovery of bullet proof jacket of Martyr S. P. Pakur Amarjit Balihar while examining them under Section 313 of the Cr. P. C.

255. However, this Court finds that bullet proof jacket marked as Material Ext. 01/08 has been proved by P.W.-21, Gyan Shankar Jaiswal, BDO-cum-Circle Officer in presence of the appellant- Pravir Da @ Pravir Murmu and the another appellant- Sanatan Baski @ Tala Da while they were in custody and hence no serious prejudice was caused to both the appellants as they had seen that the prosecution has proved the bullet proof jacket of Martyr S. P. Pakur, Amarjit Balihar in their presence.

256. Therefore, the Hon'ble Supreme Court has also observed in the judgment rendered in the case of Nar Singh v. State of Haryana, reported in (2015) 1 SCC 496 if some important/vital questions were not put forward to the accused persons, then it cannot be a ground to acquit the accused persons on this ground alone.

257. The Hon'ble Supreme Court has remanded the matter to the learned Trial Court below to examined the accused persons once again under Section 313 of the Cr. P. C. and had held that on this ground alone, the trial

cannot be vitiated.

258. It has been held in the case of *Nar Singh v. State of Haryana*, Reported in (2015) 1 SCC 496, at para 34 and 35 as follows:-

“Para-34:- In our view, the accused is not entitled to acquittal on the ground of non-compliance with the mandatory provisions of Section 313 CrPC. We agree to some extent that the appellant is prejudiced on account of omission to put the question as to the opinion of the ballistic expert (Ext. P-12) which was relied upon by the trial court as well as by the High Court. The trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under Section 313 CrPC cannot enure to the benefit of the accused.

Para-35:- The conviction of the appellant under Section 302 IPC and Section 25(1-B) of the Arms Act by the trial court in Sessions Case No. 40 of 2005 and the sentence imposed on him as affirmed by the High Court is set aside. The matter is remitted back to the trial court for proceeding with the matter afresh from the stage of recording statement of the accused under Section 313 CrPC. The trial court shall examine the accused afresh under Section 313 CrPC in the light of the above observations and in accordance with law. The trial Judge is directed to marshal the evidence on record and put specific and separate questions to the accused with regard to incriminating evidence and circumstance and shall also afford an opportunity to the accused to examine the defence witnesses, if any, and proceed with the matter. Since the occurrence is of the year 2005, we direct the trial court to expedite the matter and dispose of the same in accordance with law preferably within a period of six months from the date of receipt of this judgment.

259. It has been held in the case of *Sunil v. State (NCT of Delhi)*, Reported in 2023 SCC OnLine SC 1203, at para 45 and 46 as follows:-

Para-45:- Building on the observations of this Court in *Shobhit Chamar*<sup>22</sup>,

which have been extracted above, in *Satyavir Singh Rathi, ACP*<sup>18</sup>, it was observed:

“77. ... These observations proceed on the principle that if an objection as to the Section 313 statement is taken at the earliest stage, the court can make good the defect and record an additional statement as that would be in the interest of all but if the matter is allowed to linger on and the objections are taken belatedly it would be a difficult situation for the prosecution as well as the accused.

78. In the case before us, as already indicated, the objection as to the defective 313 statements had not been raised in the trial court. We must assume therefore that no prejudice had been felt by the appellants even assuming that some incriminating circumstances in the prosecution story had been left out. We also accept that most of the fifteen questions that have been put before us by Mr. Sharan, are inferences drawn by the trial court on the evidence. The challenge on this aspect made by the learned counsel for the appellants, is also repelled.”

(Emphasis supplied)

Para-46:- From the decisions noticed above, the legal position that emerges, *inter-alia*, is that to enable an accused to explain the circumstances appearing in the evidence against him, all the incriminating circumstances appearing against him in the evidence must be put to him. But where there has been a failure in putting those circumstances to the accused, the same would not *ipso facto* vitiate the trial unless it is shown that its non-compliance has prejudiced the accused. Where there is a delay in raising the plea, or the plea is raised for the first time in this Court, it could be assumed that no prejudice had been felt by the accused.”

260. In the present case, the appellants were all along in custody and they had heard the statements of the prosecution witnesses during trial at the time of recording the evidence of the prosecution witnesses.

Thus, no prejudice has been caused to the appellants even if

vital questions were not drawn to their attention and the Trial will not be vitiated.

261. It is well settled that even the evidence of the hostile witness can be relied upon to the extent to which it supports the prosecution case.

262. It has been held in the case of *C. Muniappan v. State of T.N.*, reported at (2010) 9 SCC 567, at para- 81, 82 and 83 as follows:-

“Para-81:- It is settled legal proposition that:

“6. ... 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 is found to be dependable on a careful scrutiny thereof.”

(Vide *Bhagwan Singh v. State of Haryana* [(1976) 1 SCC 389 : 1976 SCC (Cri) 7 : AIR 1976 SC 202] , *Rabindra Kumar Dey v. State of Orissa* [(1976) 4 SCC 233 : 1976 SCC (Cri) 566 : AIR 1977 SC 170] , *Syad Akbar v. State of Karnataka* [(1980) 1 SCC 30 : 1980 SCC (Cri) 59] and *Khujji v. State of M.P.* [(1991) 3 SCC 627 : 1991 SCC (Cri) 916 : AIR 1991 SC 1853] , SCC p. 635, para 6.)

Para-82:- In *State of U.P. v. Ramesh Prasad Misra* [(1996) 10 SCC 360 : 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra* [(2002) 7 SCC 543 : 2003 SCC (Cri) 112] , *Gagan Kanojia v. State of Punjab* [(2006) 13 SCC 516 : (2008) 1 SCC (Cri) 109] , *Radha Mohan Singh v. State of U.P.* [(2006) 2 SCC 450 : (2006) 1 SCC (Cri) 661] , *Sarvesh Narain Shukla v. Daroga Singh* [(2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188] and *Subbu Singh v. State* [(2009) 6

SCC 462 : (2009) 2 SCC (Cri) 1106] .

**Para-83:-** Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.”

263. It has also been held in the judgment in the case of *Selvamani v. State*, reported at 2024 SCC OnLine SC 837 at para- 9 and 10 as follows:-

**Para-9:-** A 3-Judge Bench of this Court in the case of *Khujji @ Surendra Tiwari v. State of Madhya Pradesh*<sup>6</sup>, relying on the judgments of this Court in the cases of *Bhagwan Singh v. State of Haryana*<sup>7</sup>, *Sri Rabindra Kuamr Dey v. State of Orissa*<sup>8</sup>, *Syad Akbar v. State of Karnataka*<sup>9</sup>, has held 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. It was further held that 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 is found to be dependable on a careful scrutiny thereof.

**Para-10:-** This Court, in the case of *C. Muniappan v. State of Tamil Nadu*<sup>10</sup>, has observed thus:

“81. It is settled legal proposition that : (*Khujji case*, SCC p. 635, para 6) ‘6. ... 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 is found to be dependable on a careful scrutiny thereof.’

82. In *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543], *Gagan Kanojia v. State of Punjab*, (2006) 13 SCC 516], *Radha Mohan*

*Singh v. State of U.P.*, (2006) 2 SCC 450], *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360] and *Subbu Singh v. State*, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide *Sohrab v. State of M.P.*, (1972) 3 SCC 751, *State of U.P. v. M.K. Anthony*, (1985) 1 SCC 505, *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217, *State of Rajasthan v. Om Prakash*, (2007) 12 SCC 381, *Prithu v. State of H.P.*, (2009) 11 SCC 588, *State of U.P. v. Santosh Kumar*, (2009) 9 SCC 626 and *State v. Saravanan*, (2008) 17 SCC 587”

264. Although, P.W.-24, Dr. Kumar Abhay Prasad has stated that at the time of examination Bablu Murmu was unconscious on 02.07.2013 at 6.35 P.M. However, he had seen only bandage on thigh and left leg of patient.

265. Thus, this Court is of view that .W.-30, Lebenius Marandi and P.W.-31, Dhanraj Maraiya were conscious at the time of examination by P.W.-24, Dr. Kumar Abhay Prasad.

266. Although, at the time of occurrence P.W.-30, Lebenius Marandi was unconscious for some moments, but he because again conscious and had seen the S. P. by changing the Magazines of Rifle.

267. The learned Trial Court has mentioned in the impugned judgment at pages- 35, 36 and 37 that both the vehicles Scorpio and Bolero were riddled with several bullets and even given the details of the description regarding the same.

268. This is one of those cases, there is gruesome and ghastly murder of an IPS Officer as well as Constables/ Hawaldar/Driver of the IPS in lonely place while then S. P. alongwith his police force were returning after attending meeting in discharge of his Official Duties and responsibility.

The place of occurrence was arranged at such a place where vehicles become automatically slow on account of Culvert –Pulia and this was in a planned manner, which has been stated by P.W.-12, Bablu Murmu, P.W.-30, Lebenius Marandi and P.W.-31, Dhanraj Maraiya, who were Bodyguard of S. P. and driver of the vehicle of the S. P. and a Truck was slowly moving ahead of the vehicles and as a result of which vehicles become slow and indiscriminate firing had started. It is not expected that there can be any independent witness at such a lonely place, rather witnesses P.W.-26, P.W.-27 and P.W.-28, who were at a distance of around one Kilometre at Jamunia Picket from the place of occurrence had not even come to rescue the police personnels and S.P. Pakur.

269. Even the State has not filed Acquittal Appeal against the acquittal of the five persons namely Wakil Hembrom, Satan Besra,

Manwel Murmu, Lubin Murmu and Manvel Murmu and this also shows the negligent approach of the concerned District Administration as well as the Top Police Officials of the State that they remained as a mute spectators on the findings of the learned Trial Court.

270. In the present case, admittedly as the convoy of S.P. Pakur comprising two vehicles without any number was moving towards Pakur without any prior intimation, there could arise no question of identification of the vehicles by the miscreants. The place of occurrence was near a culvert under construction and both the sides of the culvert were rough and a diversion was there and due to which each and every vehicle had to be slowed down there and the accused chose the said place to execute their sinister design. The place of occurrence is also surrounded by dense forest in one side, where the accused had gathered clandestinely the deceased Amarjit Balihar and had riddled both the vehicles with bullets.

271. I am also well aware of the judgments passed in the case of Madan v. State of Uttar Pradesh reported in (2023) 15 SCC 701, in the case of Navas alias Mulanavas v. State of Kerala Reported in 2024 SCC Online SC 315 and in the case of Abdul Nassar v. State of Kerala and Another reported in 2025 SCC Online SC 111 in which the Hon'ble Supreme Court has commuted the death sentence of the convicts to life imprisonment.

272. However, I am of the view that the present case warrants affirmation of death punishment in view of the fact that the public servant i.e. the police officer at the rank of Superintendent of Police and five (5) constables (Sepoys) have been murdered in broad day light by indiscriminate firing while they were performing official duties and they were returning from Dumka to Pakur District on the way. If the Capital Punishment is commuted to life imprisonment, then it will

demoralize the morals of the police personnels in performing their duties.

273. This will also give advantage to the accused persons for committing the crime and after committing heinous crime and letting off the punishment of twenty (20) years or thirty (30) years, the morals of the prosecution and general public may also demoralized and it will tore the police officers and police personnels for performing their duties by indangering into their lifes and for safeguarding the common people. Therefore, I am of the view that in such cases of crime, no other punishment except Capital Punishment i.e. death sentence will be proper.

274. Even in the case of Ishwari Lal Yadav and Another v. State of Chhattisgarh reported in (2019) 10 SCC 423, death sentence of some of the convicts were confirmed even by the Hon'ble Supreme Court by allowing the Criminal Appeal in part by observing that this is a case, rare of rarest cases where the death sentence imposed by the learned Trial Court is rightly confirmed by the High Court.

275. It has been held in the case Ishwari Lal Yadav and Another v. State of Chhattisgarh reported in (2019) 10 SCC 423 at para-29 and 30 as follows:-

“ Para-29:- In this case it is clear from the evidence on record, the main accused, namely, Ishwari Lal Yadav and Kiran Bai have committed the murder of the two-year-old child Chirag as a sacrifice to the God. It is to be noticed, they were having three minor children at that time. In spite of the same, they committed the murder of the deceased, a child of two years of age brutally. The head of the helpless child was severed, his tongue and cheeks were also cut. Having regard to age of the accused, they were not possessed of the basic humanness, they completely lacked the psyche or mindset which can be amenable for any reformation. It is a planned murder committed by the aforesaid two appellants. The appellants herein who are

the main accused, namely, Ishwari Lal Yadav and Kiran Bai were also convicted on an earlier occasion for the offence under Sections 302/34 and Section 201 IPC in Sessions Trial No. 98 of 2011 by the learned Sessions Judge, Durg, for similar murder of a 6-year-old girl for which they were convicted and sentenced to death, but such sentence was modified on appeal in *State of Chhattisgarh v. Ishwari Lal Yadav* [State of Chhattisgarh v. Ishwari Lal Yadav, 2016 SCC OnLine Chh 1539] by the High Court of Chhattisgarh at Bilaspur and they were sentenced to undergo life imprisonment without any remission or parole. On appeal to this Court, the order of the High Court was confirmed [*Ishwari Lal Yadav v. State of Chhattisgarh*, (2019) 10 SCC 437]. Such conviction for similar offence can be considered as aggravating factor. By following the guidelines as mentioned in *Sushil Murmu* [*Sushil Murmu v. State of Jharkhand*, (2004) 2 SCC 338 : 2004 SCC (Cri) 529] we are of the view that this is a case of “rarest of rare cases” where death sentence imposed by the trial court is rightly confirmed by the High Court. As the case is proved beyond any reasonable doubt so far as the main accused are concerned, the judgment relied on by the learned counsel for the appellants in *Ronny* [*Ronny v. State of Maharashtra*, (1998) 3 SCC 625 : 1998 SCC (Cri) 859] also is not helpful to them.

**Para-30:-** For the aforesaid reasons, the appeals filed in Criminal Appeals Nos. 300-301 of 2018 and Criminal Appeals Nos. 298-99 of 2018 are allowed and conviction recorded and sentence imposed upon the appellants therein is set aside. They shall be released forthwith if their custody is not required for any other case. Criminal Appeals Nos. 1416-17 of 2017 and Criminal Appeals Nos. 1418-19 of 2017 filed by Ishwari Lal Yadav and Kiran Bai respectively are partly allowed, setting aside the conviction recorded and sentence imposed for the offence under Sections 364/34 and 120-B IPC. However, their conviction under Sections 302/34 and 201 IPC is confirmed, confirming the death sentence imposed on them for the offence under Sections 302/34 IPC. The sentence imposed on them under Section 201 IPC is also confirmed.”

276. Even in the case of *B.A. Umesh v. Registrar General*.

High Court of Karnataka reported in (2017) 4 SCC 124, the Hon'ble Supreme Court affirmed the death sentence of the convict on the ground of his criminal antecedents at para-22 and 23 of the said judgment as follows:-

**“Para-22:-** Having gone through the criminal history of the petitioner, we are of the view that age of 30 years (at the time of the incident), in the present facts and circumstances of the case cannot be a ground to show any kind of leniency on sentence. As far as the fact as to leaving PW 2 Suresh (seven year old child) unharmed is concerned, it is apparent that actually the child was left unharmed not because of any compassion on the part of the petitioner. Rather he was on a hasty retreat from the place of incident. The petitioner appears to have committed number of crimes and also escaped from the lawful custody before commission of this crime. The worst is that the petitioner has committed crimes not only before the incident, but also within two days, subsequent to the incident i.e. another robbery in connection with which he was apprehended by the public and handed over to the police. Taken together, all the above reveals that the petitioner is a menace and has become threat to the society. On overall analysis of facts and circumstances of the case, gravity of the offence, and the manner in which the crime is committed read with the antecedents of the petitioner who is an ex-police official, we do not find sufficient reason to review or modify the order of affirmation of death sentence in the present case.

**Para-23:-** Therefore, on careful comparison of aggravating and mitigating circumstances in the present case, as above, and keeping in view the principle of law laid down by this Court on the point, we are of the firm opinion that the aggravating circumstances are grave and far more serious as against the mitigating circumstances pointed out on behalf of the petitioner. As such, even after open hearing, we are not inclined to allow the review petitions or modify the judgment and order passed by this Court in *B.A. Umesh v. High Court of Karnataka* [B.A. Umesh v. High Court of Karnataka, (2011) 3 SCC 85 : (2011) 1 SCC (Cri) 801] dismissed by this Court on 1-2-2011. Accordingly, Review Petitions (Criminal) Nos. 135-36 of 2011 stand dismissed. The criminal miscellaneous petitions stand

disposed of.”

277. Even in the case of Mukesh Kumar v. Union of India and Others Reported in (2020) 16 SCC 424, and in the case of Akshay Kumar Singh v. State (NCT of Delhi) reported in (2020) 3 SCC 431, the Hon’ble Supreme Court has affirmed the death sentence of the convicts,

278. In the case of Mohd. Arif Alias Ashfaq v. State (NCT of Delhi) reported in (2023) 3 SCC 654, the Hon’ble Supreme Court has affirmed the death sentence of the convicts by dismissing the Review Petition filed by the convict.

279. Therefore, in view of the discussion made above, it is evident that the present case warrants imposition of deterrent punishment upon the convicts, who had committed the offences of terrorizing the police personnels by Naxalites powers.

280. Thus, I find that no illegality has been committed by the learned Trial Court by convicting the appellants Sanatan Baski @ Sahdeo Rai @ Tala Da and Sukhlal Murmuu @ Prabir Murmu @ Pravir @ Sukhlal @ Pravir Da @ Pravil Da @ Harendra Da @ Sanat Da @ Marang Da @ Amrit and sentenced them in different counts as mentioned in the preceding paragraphs of the judgment.

281. Thus, I affirm the judgment of conviction dated 06.09.2018 and sentence dated 26.09.2018 passed Md. Taufiqul Hassan, then learned Additional Sessions Judge-IV, Dumka in S. T. No. 31 of 2014 and S.T. No. 16 of 2015 against the appellants namely Sanatan Baski @ Sahdeo Rai @ Tala Da and Sukhlal Murmuu @ Prabir Murmu @ Pravir @ Sukhlal @ Pravir Da @ Pravil Da @ Harendra Da @ Sanat Da @ Marang Da @ Amrit.

282. Thus, in view of the above fact, this Court is of the view that the judgment of conviction dated 06.09.2018 and sentence dated 26.09.2018 passed by Md. Taufiqul Hassan, then learned Additional

Sessions Judge-IV, Dumka in S. T. No. 31 of 2014 and S.T. No. 16 of 2015 are fit to be upheld against the appellants Sanatan Baski @ Sahdeo Rai @ Tala Da and Sukhlal Murmu@ Prabir Murmu @ Pravir @ Sukhlal @ Pravir Da @ Pravil Da@Harendra Da@Sanat Da @Marang Da@Amrit.

283. Accordingly, Cr. Appeal (DB) No. 1363 of 2018 and Cr. Appeal (DB) No. 1378 of 2018 are hereby dismissed.

284. Thus, in view of the discussion made hereinabove, D. Ref. No. 04 of 2018 is answered accordingly.

284. The Government of State of Jharkhand and even the Government of Uttar Pradesh have provided employment to the family members of the Martyrs in some cases.

Hence, the State Government i.e. the Government of Jharkhand is directed to provide the compensation of Rs. Two Crore (Rs. 2,00,00,000/-) Crore to the wife and children of the Martyr Amarjeet Balihar, who was serving as the Superintendent of Police, Pakur on the date of occurrence and who had died while he was performing and discharging his official duties as the Superintendent of Police, Pakur while he was returning from the official meeting with D.I.G., Dumka on 02.07.2013 after attending the meeting and then in course of return journey, the Naxalites i.e. the appellants and several others had fired on him and as a result of which, he succumbed to death.

285. Apart from this, State Government is further directed to further provide a job in the rank of Dy.S.P./ Deputy Collector to the daughter/son of the deceased, if they are willing to accept the same, even by relaxing the age if so required.

286. The State Government i.e. the Government of Jharkhand is further directed to pay the compensation of Rs. 50,000,00/- (Rupees

Fifty Lakh) each to the family members of the five (5) police personnels/constables and to provide appointment on any suitable post i.e. Class-IV post as per their Educational Qualification in the Police Department or any Class-IV in Civil Side services in the services of the State Government on regular basis on compassionate ground, if not done so far because the above five (5) police personnels i.e (i) Rajiv Kumar Sharma, (ii) Manoj Hembrom, (iii) Chandan Kumar Thapa, (iv) Driver Ashok Kumar Srivastava and (v) Santosh Kumar Mandal had also lost their lives while they were performing their official duty with the deceased, then Superintendent of Police, Amarjit Balihar.

287. Thus, the above Cr. Appeal (DB) No. 1363 of 2018 and Cr. Appeal (DB) No. 1378 of 2018 are hereby dismissed with the aforesaid observation.

288. Thus, in view of the discussion made hereinabove, D. Ref. No. 04 of 2018 is answered accordingly.

289. Let the copies of this judgment be sent to (i) the Chief Secretary, State of Jharkhand, (ii) the Principal Secretary, Home Department, State of Jharkhand, (iii) the Director General of Police, State of Jharkhand, (iv) the Secretary, Finance Department, Government of Jharkhand, (v) the Secretary, Department of Personnel, Administrative Reforms and Rajbhava, Government of Jharkhand and (vi) the Chairman/Secretary of Jharkhand Public Service Commission for the needful.

**(Sanjay Prasad, J.)**

Kamlesh/

**Later on**

**17.07.2025:** Since there is a difference of opinion in this case, let this matter be placed before Hon'ble the Chief Justice for assigning the matter to another Bench in terms of Section 392 Cr.P.C.

**(Rongon Mukhopadhyay, J.)**

**(Sanjay Prasad, J.)**

A. Sanga/-