



2025:CGHC:12817-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1026 of 2024

1 - Kejuram Sahu S/o Shri Tularam Sahu, aged about 72 years R/o Village - Ranbod, Tehsil and Police Station - Navagarh, District Bemetara (C.G.)

2 - Johan Sahu S/o Shri Kejuram Sahu, aged about 35 years R/o Village Ranbod, Tehsil and Police Station - Navagarh, District Bemetara (C.G.)

3 - Mohan Sahu S/o Shri Kejuram Sahu, aged about 37 years R/o Village - Ranbod, Tehsil and Police Station - Navagarh, District Bemetara (C.G.)

4 - Vishal Sahu S/o Shri Vijay Sahu, aged about 36 years R/o Village - Ranbod, Tehsil and Police Station - Navagarh, District Bemetara (C.G.)

... Appellants

versus

State of Chhattisgarh, Through Station In-Charge, Police Station - Navagarh, District Bemetara (C.G.)

... Respondent

(Cause-title taken from Case Information System)

For Appellants	: Ms. Sharmila Singhai, Senior Advocate assisted by Ms. Sareena Khan, Advocate
For Respondent/State	: Mr. Sangharsh Pandey, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, C.J.

18.03.2025

1. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 has been preferred by the accused/appellants questioning the impugned judgment of conviction and order of sentenced dated 24.02.2024 passed by the Sessions Judge, District - Bemetara (C.G.) in Sessions Trial No.33 of 2020, by which they have been convicted and sentenced with a direction to run all the sentences concurrently in the following manner :-

CONVICTION	SENTENCE
U/s 302 read with Section 34 (Thrice) of IPC	Rigorous imprisonment for Life (Thrice) along with fine of Rs. 5,000/- (Thrice) and upon failure to deposit the fine, additional R.I. for 6 months.
U/s 307 read with Section 34 of IPC	Rigorous imprisonment for 10 years along with fine of Rs. 2,000/- and upon failure to deposit the fine, additional R.I. for 3 months.

2. Case of the prosecution, in nutshell, is that the complainant Komal Sahu (PW-7) lodged a report at Navagarh Police Station that he is residing in village Ranbod along with his family. His family consists of two brothers, mother, father and both brothers' wives and their children. On 29.01.2020 he had gone to his village Tilaipar Khar to sow the gram crop with his father Santu Sahu, mother Nirmala Sahu and younger brother Khuban Sahu. When

his elder father Keju Sahu was guarding his field adjacent to his field, his younger brother Khuban Sahu told his elder father Keju that you are increasing the boundary wall of the field by cutting it every year, and a dispute arose on this matter. Shortly after this, at about 13:30 in the afternoon, Johan Sahu and Mohan Sahu came with tangia (axe) and both of them were cutting the Boir (plum) tree located on the boundary side of his field, then his father asked why are you cutting the Boir (plum) tree, then his grandfather Keju Sahu, his son Johan Sahu and Mohan Sahu said that they will cut him also along with the Boir (plum) tree, then his father Santu Sahu said them show by cutting, on this Johan attacked his father Santu Sahu's head, face and neck with the axe in his hand, due to which his father fell on the ground and blood was oozing out because of the axe injury, then his brother Khuban Sahu standing nearby shouted loudly and caught hold of his father and said bring water, then Mohan Sahu hit him with the tangia (axe) on his head, above the right ear, due to which his father Santu Sahu and brother Khuban Sahu died on the spot. After that, his brother Khuban's Tangia (axe) which was lying on the ground, his grandfather Keju Sahu picked it up and ran to hit the complainant Komal Sahu and attacked him with the Tangia (axe) with the intention of killing him, due to which he got injured in his right ear. He tried to escape and ran away and his mother Nirmala Bai who was intervening in the fight, at the same time Vishal Sahu, the son of the elder father, came and hit his mother

Nirmala Sahu on the head, above the right eye and on the face with Mohan Sahu's Tangia, due to which the mother fell down from the field boundary, due to which the mother died on the spot. Keju Sahu, Johan Sahu, Mohan Sahu and Vishal Sahu all together killed his father Santu Sahu, mother Nirmala Sahu and brother Khuban Sahu by making fatal attacks with the intention of killing them and Keju Sahu attacked him with the Tangia (axe) and injured his right ear. On the basis of said report, Dehati Nalishi (Ex.P-8) was registered.

3. Investigating Officer reached the scene of occurrence and Dehati Merg Intimations were recorded vide Exs. P-5, P-6 & P-7. Thereafter, Merg Intimations were recorded vide Exs. P-47, P-48 & P-49. Crime Details Form was filled vide Ex.P-11. Spot map was got prepared by the concerned Patwari vide Ex.P-9. On presenting by complainant Komal Sahu, one full sleeve shirt, one vest and one jeans pant containing bloodstained over it were seized vide Ex.P-10. An axe lying near the dead bodies of deceased Santu Sahu and Khuban Sahu containing bloodstains over it and one bamboo stick containing bloodstains over it were seized vide Ex.P-22. Bloodstained soil and plain soil lying near the dead body of deceased Santu Sahu was seized vide Ex.P-23. Bloodstained soil and plain soil lying near the dead body of deceased Khuban Sahu was seized vide Ex.P-24. Bloodstained soil and plain soil lying near the dead body of deceased Nirmala Sahu was seized vide Ex.P-25. After summoning the witnesses

vide Exs. P-12 to P-14, inquests over the dead bodies of deceased were prepared vide Exs. P-15 to P-17. Dead bodies of the deceased were sent to Community Health Centre, Navagarh, District – Bemetara for conducting postmortem vide Exs. P-52 to P-54, wherein Dr. L.D. Thakur (PW-21) conducted postmortem over the dead body of deceased **Santu Sahu** vide Ex.P-33 and found following injuries over his dead body :-

- (i) Cut wounds (6cm x 2 cm), (4 cm x 2 cm), (3cm x 4 cm) over the mouth caused by sharp and hard object;
- (ii) Cut wound 8 cm x 2 cm over the head with skull fracture caused by sharp and hard object;
- (iii) Cut wound 4 cm x 2 cm below the nose caused by sharp object and
- (iv) Incised wound 4 cm x 0.5 cm over forehead caused by sharp and hard object.

The doctor has opined that cause of death was severe hemorrhagic shock due to excessive bleeding and grievous injury and it was homicidal in nature.

4. Postmortem over the dead body of another deceased **Nirmala Bai** was also conducted by the same doctor i.e., Dr. L.D. Thakur (PW-21) vide Ex.P-34, who found following injuries over her dead body :-

- (i) Cut wound 6cm x 2 cm x 7 cm over the head caused by sharp and hard object;

- (ii) Cut wound 4 cm x 8 cm x 2 cm over the head caused by sharp and hard object;
- (iii) Cut wound 5 cm x 2 cm x 3 cm over the head caused by sharp and hard object;
- (iv) Cut wound 6 cm x 2 cm x 2 cm over the head caused by sharp and hard object;
- (v) Linear abrasion of size 6 cm x 0.5 cm over back caused by hard and blunt object.

The doctor has opined that cause of death was severe hemorrhagic shock due to excessive bleeding and grievous injury and it was homicidal in nature.

5. Postmortem over the dead body of another deceased **Khuban Sahu** was also conducted by the same doctor i.e., Dr. L.D. Thakur (PW-21) vide Ex.P-35, who found following injuries over his dead body :-

- (i) Incised wound 4 cm x 0.5 cm in left foot (medial side) caused by sharp and hard object;
- (ii) Incised wounds (3 cm x 0.5 cm), (6 cm x 0.5 cm) in left thigh (medial side) caused by sharp and hard object;
- (iii) Cut wound (5 cm x 5 cm), (6 cm x 9 cm), (3 cm x 4 cm) in the back of neck caused by sharp and hard object;
- (iv) Cut wound 6 cm x 5 cm in the head caused by sharp and hard object with skull fracture;
- (v) Lacerated wound between left eye & ear caused by rough and hard object;

(vi) Lacerated wound 2 cm x 1 cm over left eye caused by rough and object;

(vii) Cut wound 6 cm x 1 cm in the head caused by hard and sharp object;

(viii) Abrasion (7 cm x 0.5 cm) (8 cm x 0.5 cm) in right backside caused by rough and hard object.

The doctor has opined that cause of death was severe hemorrhagic shock due to excessive bleeding and grievous injury and it was homicidal in nature.

6. Dr. L.D. Thakur (PW-21) has also medically examined the injured Komal Sahu (PW-7) vide Ex.P-36 and found following injuries :-

(i) Lacerated wound in the right ear caused by hard and blunt object with bleeding;

(ii) Incised wound in the right ear caused by sharp and hard object with bleeding and

He opined that the aforesaid injuries are grievous injuries and referred the injured to higher center for further treatment.

7. During the course of investigation, all the four accused were taken into custody and their memorandum statements were recorded vide Ex.P-18 (Keju Sahu), Ex.P-19 (Mohan Sahu), Ex.P-20 (Johan Sahu) and Ex.P-21 (Vishal Sahu). On presenting by accused Keju Sahu, one bamboo stick containing bloodstains over it and one vest containing bloodstains at different places were seized vide Ex.P-26. On presenting by accused Johan

Sahu, one axe with bamboo handle containing bloodstains over it and one green colour full sleeve shirt containing bloodstains at different places were seized vide Ex.P-27. On presenting by accused Mohan Sahu, one axe with bamboo handle containing bloodstains over it and one light blue colour full sleeve shirt containing bloodstains at different places were seized vide Ex.P-28. On presenting by accused Vishal Sahu, one white colour full sleeve shirt containing bloodstains at different places were seized vide Ex.P-29.

8. During the course of further investigation, from one Ashok Kumar Sahu (PW-10), who was working as Data Entry Operator at Co-operative Society, Ranbod, one pen-drive and DVR of C.C.T.V camera of Hi-Focus Company were seized vide Ex.P-30 and a certificate about the said seizure was obtained vide Ex.P-31. One green colour old used Atlas Cycle at the instance of Kotwar Dashrath Singh Chouhan (PW-25) was seized vide Ex.P-32. Clothes of deceased Santu Sahu were seized vide Ex.P-43, clothes of deceased Khuban Sahu were seized vide Ex.P-44 and clothes of deceased Nirmala Sahu were seized vide Ex.P-45. Seized articles were sent for chemical analysis to Forensic Science Laboratory, Raipur through concerned Superintendent of Police vide Ex.P-64 and receipt of the same was obtained vide Ex.P-65 and after chemical analysis, FSL report was received vide Ex.P-66.

9. Statements of the witnesses Teku Ram Sahu, Dwarika Sahu, Mukesh Baghel, Majju Kumar Sonwani and Tameshwar Sahu were recorded vide Exs. P-1, P-2, P-3, P-4 & P-68 respectively. After due investigation and other proceedings in the case, the charge-sheet was presented in the Court of Judicial Magistrate First Class, Bemetara, who has committed the case to the Court of Sessions for trial, wherein, when the charges for the alleged offence were framed against the accused, read and explained to them, they denied the allegation and claimed for trial.
10. In order to bring home the offence, the prosecution had examined as many as 29 witnesses and exhibited 68 documents Exs.P-1 to P-32. On being recording the statements of the accused under Section 313, they declared themselves as innocent and stated that they have been falsely implicated. When the accused was admitted into defence, they got the statement of 02 defense witnesses i.e. Pramila Sahu (DW-1) and Ratan Ram (DW-2).
11. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 24.02.2024, convicted and sentenced the appellants as aforementioned, against which, this criminal appeal has been preferred.
12. Ms. Sharmila Singhai, learned Senior Advocate appearing for the appellants would submit that the learned trial Court is absolutely unjustified in convicting the appellants for offence under Section 302 read with Section 34 of the IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. She would further

submit that there is inconsistency in the evidence of alleged eye-witnesses which affects the prosecution case. Their evidence are liable to be disbelieved on the ground of their inconsistency. They being relatives of the deceased and interested witnesses, cannot be believed. She would also submit that Komal Sahu (PW-7), who is alleged to be an injured witness has also stated a different story of the incident with that of the FIR and 161 CrPC statement. She further argued that there is no allegation against appellant No.1 Kejuram Sahu that he had assaulted the deceased persons and the weapon of assault has also not been seized from appellant Nos. 1 and 3. She also argued that though the learned trial Court has relied upon the CCTV footage with respect to presence of the appellants at the place of incident, but the same has not been proved in accordance with law.

13. Ms. Singhai contended that the appellants have been convicted on a very extremely doubtful circumstances as there was some quarrel and sudden fight took place between the appellants and deceased. She further contended that according to Kunti Bai Sahu (PW-1), when she and her daughter-in-law Bhuvneshwari Sahu (PW-2) had gone to the field in Tilai Paar for weeding, Nirmala, Khuban and Khuban's wife Nandani were also weeding in the field in Tilai Paar. Mohan Sahu was sitting in his field with a tangia (axe). At that time, Khuban was quarrelling with Mohan saying that he has cut the Boir (palm) tree on the boundary of the field and when Mohan chased Khuban, Nandani and Nirmala with

axe, they ran towards the village. After some time, Santu, Khuban, Komal and Nirmala came to the field with axe and stick thereafter, Keju, Johan and Vishal came and then the alleged incident took place. She also submitted that as the complainant party were the aggressor on account of which sudden quarrel took place between the appellants and the deceased persons and the alleged incident took place. There was no motive or intention on the part of the appellants to cause death of the deceased persons and only on account of sudden quarrel, under heat of passion and in anger, the appellants caused injuries to the deceased persons, which caused their death. Therefore, the case of the present appellants fall within the purview of Exception 4 to Section 300 of the IPC and the act of the appellants is culpable homicide not amounting to murder, and therefore, it is a fit case where the conviction of the appellants for the offence under Section 302 of the IPC can be converted/altered to an offence under Section 304 Part-I of the IPC.

14. On the other hand, Mr. Sangharsh Pandey, learned Government Advocate, appearing for the respondent/State would support the impugned judgment and submits that that it is a case of triple murder and Komal Sahu (PW-7) is injured witness. The incident was witnessed by Kunti Bai Sahu (PW-1), Bhuvaneshwari Sahu (PW-2) who duly supported the prosecution's case. Although they are relatives of the deceased persons, but they would be the most material witness in the case. The appellants have been named in

the Dehati Nalisi Ex.-P/8. The weapon of offence have been seized from appellant No.1, 2 and 3 and clothes of the appellants have also been seized in which human blood was found in FSL examination. In the CCTV footage and the photographs, the presence of the appellants in the place of incident is proved. He would further submit that from the evidence of injured witness and the eye-witnesses, it is quite clear that the appellants were the aggressor who committed murder of three persons by giving fatal blow upon them by axe. There was dispute between the deceased persons and the appellants with respect to medh (boundary) of the field, therefore, from every angle there is sufficient evidence against the appellants that they committed murder of three deceased persons and looking to the gravity of the offence, the learned trial Court has rightly convicted and sentenced the accused / appellants. He would further submit that the prosecution has proved its case beyond reasonable doubt and the judgment of the trial Court is just and proper and does not call for any interference by this Court and as such, criminal appeal deserves to be dismissed.

15. We have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
16. **The first question for consideration would be, whether the trial Court was justified in holding that death of deceased were homicidal in nature ?**

17. The learned trial Court relying upon the statement of Dr.L.D.Thakur (PW-21), who has conducted postmortem over the body of deceased persons Santu Sahu, Nirmala Bai and Khuban Sahu vide Exs.P-33, P-34 and P-35 respectively has found aforementioned injuries over the dead bodies of the deceased persons and has opined that cause of death of all the deceased persons are severe hemorrhagic shock due to excessive bleeding and grievous injury and it was homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellant. We hereby affirm the said finding.
18. **The next question for consideration would be, whether the deceased were caused to Murder by hitting with tangia (axe) and stick and injured Komal Sahu was seriously injured by hitting with tangia (axe) and stick and attempt was made to kill him as well ?**
19. It has been argued on behalf of the appellants that as there are material inconsistency and contradictions in the judicial statements of all the three eyewitnesses and do not support each other as also they are relatives of the deceased persons and interested witnesses, therefore the evidence of these witnesses are not reliable.

20. The witness examined on behalf of the prosecution Kunti Bai Sahu (PW1) has stated in her deposition that on the date of the incident, she had gone to Tilai Paar Khar field with his daughter-in-law Bhuneshwari to weed. There, Nirmala, Khuban and Khuban's wife Nandini were weeding in Tilai Paar field. Mohan Sahu was sitting in his field with a tangia. At the same time, a quarrel was going on in Khuban's field over cutting down the Boir (palm) tree. Then Mohan ran after Khuban, Nandini and Nirmala with a tangia, then they ran towards the village. After some time, Santu, Khuban, Komal and Nirmala came. They came to the field with a tangia and stick. After that Keju, Johan and Nirmala came, Santu asked why they should cut the Boir tree, then Mohan said that they will cut him along with the Boir tree. After that Johan and Mohan strangled Santu with a tangia. After that Khuban shouted for water but they did not go due to fear. After that Mohan and Johan hit Khuban on the head with a tangia, after that Keju hit Komal with a tangia and she also got hurt. After that this witness said don't hit, she asked Johan and Mohan to raise their hands and stop, after that Keju and Vishal hit Nirmala with a tangia due to which Nirmala got hurt on the head, after that she fell in her field. Vishal hit her and ran away. After that Keju, Johan, Mohan came towards the road and threatened them to give testimony carefully or else they will kill them. In her cross-examination on being told that weeding is done while sitting in the field and the spot of incident is not visible in a sitting position, the witness said

that it is visible when one stands and she had seen it while standing. At the time when the dispute over cutting the Boir tree took place, she was present there at a distance of about 7-8 feet. She denied the suggestion that her eyesight is weak and she cannot see far. The suggestion that Vishal's farm is not at the place where the incident is said to have taken place has also been termed as correct and it has also been stated as correct that Vishal had no quarrel with Santu etc. before the incident.

21. Another prosecution witness Bhuneshwari Sahu (PW-2), who is also an eyewitness, has stated in her deposition that on the date of the incident she had gone with her mother-in-law Kunti Bai to the Tilai Paar field in the morning for weeding. There Nirmala, Khuban and Khuban's wife Nandini were weeding in the Tilai Paar field. Mohan Sahu was sitting in his field with a tangia. At the same time, Khuban was quarrelling saying that he had cut down a Boir tree on the boundary of the field. Then Mohan ran after Khuban, Nandini and Nirmala with a tangia. Then they ran towards the village. After some time Santu, Khuban, Komal and Nirmala came to the field with a Tangia and stick. After that Keju, Johan and Vishal came later. Santu asked why he should cut the Boir tree, then Mohan said that he will cut you along with the Boir tree. After that Keju, Johan and Mohan hit Santu on the neck with a Tangia. After that Khuban shouted for water, so due to fear we did not go. After that Mohan and Johan also hit Khuban on the head with a Tangia. After that Keju hit Komal with a Tangia, then

she also got hurt. After that Johan and Vishal hit Nirmala with a Tangia, due to which Nirmala got hurt on the head, after which she fell in her field. Vishal hit her and ran away. After that when Keju and Johan came towards the road, they threatened them to give testimony carefully or else they will kill them. In cross-examination, she denied suggestion that she did not see the fight taking place and the suggestion that she was not in the field on the day of the incident has also been termed as false and the suggestion that Keju and Mohan were not present at the scene of the incident has also been termed as false.

22. The main eyewitnesses of the incident were Kunti Bai (PW-1) and Bhuneshwari Sahu (PW-2), who were present at the scene of the incident and there is no significant difference in the evidence of these witnesses. The evidence of both the witnesses is almost the same and it has been clearly stated by both of them that the accused beat the deceased Santu, Khuban, Nirmala with sticks and tangia. Thus, there is no force in the argument of the defense that there is any kind of difference in the evidence of the eyewitnesses.
23. Prosecution witness (PW-7) Komal Sahu, who is an injured witness, has stated that on the date of incident 29.01.2020, he had gone to the farm with his father Shri Santu Sahu, brother Khuban and mother Nirmala to weed gram. Keju Sahu's farm is adjacent to that farm. Keju, Johan, Mohan and Vishal were in that farm. At a little distance, his elder mother Kunti and her daughter-

in-law Bhuneshwari were also weeding gram. Mohan, Johan, Vishal were cutting the plum tree in his farm, then his father said why are they cutting the stem of the plum, then the accused said that they will cut him along with the tree. His father said, show him by cutting it. Then Johan hit Santu Sahu's neck and head with the tangia held in his hand, Mohan hit Khuban in the head and ear with the tangia, snatched the tangia from Mohan and hit Nirmala Bai's head. Santu, Khuban and Nirmala started bleeding from their injuries and they fell down and all three died on the spot. Keju Sahu caught hold of the tangia of Khuban Sahu who was standing nearby and hit his ear, due to which his ear got cut, he ran away in fear and was chased towards the Society gate, then witness Komal Sahu ran towards the colony, some people were seen running towards the colony. He went to Sarpanch Paras Sahu and Kotwar Dashrath and told them about the incident, police came after calling them. In the cross-examination, the suggestion that he was injured in a dispute between his father and brother has been denied. The suggestion that he was not at the scene of the incident has also been denied and the suggestion that he is giving false testimony due to an old dispute has been denied. The suggestion that Vishal did not have any weapon or object has also been denied.

24. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the deceased, is often scrutinized. However, being a relative does not automatically render a witness

"interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the deceased. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

25. The distinction between "interested" and "related" witnesses has been clarified in *Dalip Singh v. State of Punjab, 1954 SCR 1453*, wherein the Supreme Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case.
26. Thus, it is clear that the evidence of a "related witness" cannot be discarded only on the ground of relationship. On the contrary, why a "related witness" would spare the real culprit in order to falsely implicate some innocent person? There is a difference between "related witness" and "interested witness". "Interested witness" is a witness who is vitally interested in conviction of a person due to

previous enmity. The “Interested witness” has been defined by the Supreme Court in the matter of *Mohd. Rojali Ali v. State of Assam*, reported in (2019) 19 SCC 567 as under :

“13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see *State of Rajasthan v. Kalki*; *Amit v. State of U.P.*; and *Gangabhavani v. Rayapati Venkat Reddy*). Recently, this difference was reiterated in *Ganapathi v. State of T.N.*, in the following terms, by referring to the three-Judge Bench decision in *State of Rajasthan v. Kalki* : (Ganapathi case, SCC p. 555, para 14)

“14. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be “interested”.”

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim,

whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab*, wherein this Court observed: (AIR p. 366, para 26)

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person.”

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan v. State (UT of Pondicherry)*: (SCC p. 213, para 23)

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

27. Though the eyewitnesses and injured witness, who have been examined in the present case were closely related to the

deceased persons, namely Kunti Bai (PW-1), Bhuneshwari Sahu (PW-2) and Komal Sahu (PW-7), their testimonies are consistent with respect to the accused persons being the assailants who inflicted wounds on the deceased persons. As is revealed from the sequence of events that transpired, three persons of the same family were subjected to Murder. It was thus quite natural for the other family members to rush on the spot to intervene. The presence of the family members on the spot and thus being eyewitness has been well established. In such circumstances, merely because the eyewitnesses are family members, their testimonies cannot be discarded solely on that ground.

28. Prosecution witness Tekuram Sahu (PW-3) has stated in his deposition that he works as a porter at Ranbod Society. On the date of the incident, while working in the afternoon, he saw that Komal's ear was cut and he was going from the field towards the society and towards the village, with a handkerchief tied to his ear and at the same time, Kejuram, Johan, Mohan were coming from the field towards the society. Mohan and Johan were holding axes in their hands. He saw them going towards the pond from the society side. They had no conversation with him. At that time, two women from the house of deceased Santu, named Kunti and her daughter-in-law, whose name he did not know, were going towards their homes from the society side. He could not hear what conversation they had with the accused near the society because he was at a little distance. This witness has also stated in cross-

examination that he saw Komal Sahu holding his ears and screaming, he was going towards the village, covered in blood and screaming. He has also stated in cross-examination that Keju Sahu was following Komal Sahu with a stick, Mohan Sahu and Johan Sahu were coming towards the settlement with a tangia. He has also stated that the suggestion that he saw Vishal Sahu coming towards the farm on a bicycle and running towards the settlement was correct.

29. Prosecution witness Dwarika Sahu (PW-4) has stated in his deposition that, when he had gone to village Ranbod Society to sell paddy, there was a commotion that someone had been murdered. After two-three hours, it was known that the people of Gautariha's house in village Ranbod had been murdered.
30. Prosecution witness Mukesh Baghel (PW-5) has also stated in his deposition that he works as a porter in the society of village Ranbod. While working there in the afternoon he saw that Komal had a cut near his ear. He was going from the society to the village with a handkerchief tied to his ear and pressing it with his hand. He did not see anyone else with him. At the same time Kejuram, Johan, Mohan were coming towards the society from the field. He saw them going from the society towards the pond, apart from this he did not see anything.
31. Prosecution witness Majju Kumar Sonwani (PW-6) has stated in his deposition that on the date of the incident he was working as a porter in the society of village Ranbod. While working, he came

towards the Mandi Society gate for *Disha Maidan* in the afternoon. At that time he saw that Komal was cut near the ear. He was going from the field towards the village via the society after tying a handkerchief to his ear. At the same time, Kejuram, Mohan, Johan were coming from the field towards the society. He saw them going from the society towards the pond. Devram's wife and his daughter-in-law were also going from the field. Seeing them, Johan threatened them and also abused them. This witness had heard that too. In the cross-examination, the suggestion that he did not see Keju and Johan leaving on the day of the incident has been termed as false and he has also stated wrongly that he did not see Komal running towards the field.

32. Prosecution witness Netram Sahu (PW-8) has stated in his deposition that the police had seized tangia etc. from the accused at the scene of incident and at the police station had recorded the records. This witness has also stated that the police had come to the village and had made inquiries and recorded the records. Thus, this witness has proved Ex.P. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29.
33. Prosecution witness Ramlal Sahu (PW-9) has stated in his deposition that it was discovered around 12:00 o'clock that there was a fight between Keju etc. and Santu etc. in front of Tilai Khar Paar Society. When the police came, he went to the spot with them and when he reached the spot, Santu, Khuban and Nirmala Bai were lying in the field. They had injuries on their head, face

and body and were bleeding. The police had also brought Komal from the village in a bloody condition, her ear was cut. The police had also done the proceedings of Panchnama etc. on the spot and the police had interrogated the accused and done the written record. The seizure proceedings were also done by the police.

34. Prosecution witness Ashok Sahu (PW-10) has told that he works in the Ranbod Society in the morning. CCTV camera is installed in the society. It was in the afternoon of January last year at around 1:30 he came home to have lunch. When he came to the society after eating lunch there was a crowd and the police had also come. The police came to the society and checked the CCTV cameras. He was present there at that time and he switched on the CCTV footage and showed it. In the footage the movement of the accused in front of the society was visible. CCTV, the pen drive containing the footage was saved and the DVR in which the CCTV footage is saved was confiscated by the police. Thus, this witness has certified the pen drive and DVR (Ex.P.30). A certificate (Ex.P.31) regarding the authenticity of the pen drive and DVR given to the police by him has been certified by this witness.
35. Prosecution witness Lalit Kumar Sahu (PW-11) has also stated that the police had examined the CCTV camera footage of Ranbod Seva Sahakari Samiti and had seized a pen drive and DVR of CCTV camera from the possession of Ashok Sahu. This witness has also attested to the seizure memo Ex.P.31.
36. Prosecution witness Rajkumar Sahu (PW-12) has stated that it

was around January 2020. At one o'clock in the afternoon, the sacks of paddy had fallen from the society's truck and he had gone with his colleagues to arrange them. While he was arranging the sacks, he saw Santu, his wife Nirmala, his son Komal and Khuban and Keju, Johan and Mohan and Vishal fighting among themselves at a distance of one field. Mohan chased Khuban with a tangia. After that he went back from the society. After half an hour he got the information that Khuban, Santu and Nirmala had been murdered.

37. Prosecution witness Suresh Singh (PW-20), who is an Assistant Sub-Inspector has stated that on 29.01.2020 he had gone to the spot in village Ranbod as an accompanying Police Station Incharge. The incident took place near the fields of village Tilai Khar Ranbod where dead bodies of two persons were lying at one place and the body of a woman was lying in another place on the field and one person was injured whose ear was cut and was bleeding, who told his name as Komal. Thus, this witness has supported the action taken by the prosecution witness, Investigating Officer Nasir Khan, as an accompanying witness.
38. Prosecution witness Dashrath Singh (PW-22), who is the Kotwar of the village has stated in his deposition that he knows deceased Santu, deceased Nirmala, Khuban and injured Komal Sahu. They were residents of his village. On the date of incident Ramlal and Rikun came to call him and told him that they have to go to report. When he reached near the Sarpanch's house many people were

standing there. Komal was there and his ear cut and was bleeding. Komal Sahu had said that the accused had killed her parents and brother and had also tried to kill her.

39. Prosecution witness Sushil Vaishnav (PW-28) Head Constable has stated in his deposition that, on the date of the incident, an iron tangiya which had a berth attached to it was lying near the dead bodies of Santu Sahu and Khuban and a bamboo stick was seized and blood soaked soil and plain soil were seized from the dead body. A blue and black checkered lined shirt, sando vest, blue and white colored jeans pant were seized from the injured Komal Sahu when he took them out and presented them and it was entered in the seizure register. A bamboo stick was seized from accused Kejuram Sahu, an iron tangiya with a berth attached to the bamboo stick was seized from accused Mohan Sahu and a yellow blue sky blue colored full shirt was seized from his body and an iron tangiya with a berth attached and a green colored full shirt were seized from accused Johan Sahu which were entered in the seizure register. On presentation by the accused Vishal Sahu, a white colour full shirt was brought by the police station in-charge that too was seized and entered in the seizure register. Similarly, a pen drive was collected from computer operator Ashok Sahu and CCTV footage installed in the society and the DVR model number HB-XVR-5108TL, CNO-HF1902180541 of the CCTV camera of Focus Company which was brought by the police station in-charge was entered in the seizure register. Thus,

this witness certified the original seizure register page number 62, number 4, Ex.P.67 which is in three pages and the certified copy of the seizure register Ex.P.67C.

40. The evidence of all the above witnesses remains uncontested in cross-examination. There is no material contradiction in the evidence of all the above witnesses by cross-examination.

41. Section 34 the IPC reads as under:-

“34. Acts done by several persons in furtherance of common intention.- *When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”*

42. From perusal of Section 34 of the IPC, it appears that when a criminal act is done by several persons with a common intention each of the person is liable for that act as it has been done by him alone. Therefore, where participation of the accused in a crime is proved and the common intention is also established, Section 34 IPC come into play. To attract Section 34 IPC, it is not necessary that there must be a prior conspiracy or premeditated mind. The common intention can be formed even in the course of the incident i.e. during the occurrence of the crime.

43. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a

simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offense.

44. The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion. Here may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offense. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.
45. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or

others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the Court.

46. Considering the statements of the aforementioned eyewitnesses, injured witness, seizure witnesses, independent witnesses and evidence of Dr. L.D. Thakur (PW-21), postmortem reports (Exs.P-33 to 35), FSL report (Ex.P-66), further considering the material available on record and also considering the finding recorded by the trial Court, we are of the considered opinion that the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted and sentenced the appellants as aforementioned. We do not find any illegality or irregularity in the findings recorded by the trial Court.
47. For the foregoing reasons, the criminal appeal being devoid of merit is liable to be and is hereby **dismissed**.
48. It is stated at the Bar that the appellant are in jail, they shall serve out the sentence as ordered by learned trial Court.
49. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

50. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail term, to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra

Head – Note

A "related" witness, who may be naturally present at the scene of the crime, his testimony should not be dismissed simply because of his relationship to the victim and the Court must assess the reliability, consistency, and coherence of his statement rather than labelling him as untrustworthy.