



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.(s) 3382 OF 2025
(@ Special Leave Petition (Crl.) No. 10889 OF 2023)**

**THE STATE OF BIHAR NOW
JHARKHAND**

.....APPELLANT(S)

VERSUS

**NILU GANJHU @ NILKANT
RAM GANJHU & ANR.**

.....RESPONDENT(S)

WITH

**CRIMINAL APPEAL NO.(s) 3381 OF 2025
(@ Special Leave Petition (Crl.) No. 10890 OF 2023)**

J U D G M E N T

PRASANNA B. VARALE, J.

1. Leave granted.
2. In both these appeals the appellant challenges the order dated 24.01.2023 passed by the High Court of Jharkhand at Ranchi in Cr. Appeal DB No. 30/1994 allowing the appeals and

quashing the judgement of the conviction dated 09.02.1994 and order of sentence dated 11.02.1994 passed by the Additional Judicial Commissioner, Khunti in S.T No. 627/1992 registered under Section 302, 307 and 436 of Indian Penal Code, 1860 (Hereinafter, 'IPC').

3. Since both these appeals arise out of the same impugned judgment they have been heard together and are being disposed of by way of this common judgment. In both these appeals, the appellant challenging the order impugned is the State of Jharkhand while the respondents are the accused persons.

BRIEF FACTS:

4. The present case is that of the tragic death of two baby girls who were killed while they were asleep at nighttime. As per the prosecution story, the informant was doing work of bus agency at bus stand, Khunti, for two years prior to the incident. He was a bus agent of Mohan bus, Mehta bus and Pradhan Travels. About 15 days prior to the occurrence, accused Nilu Ganjhu and Md. Mahboob Ansari had threatened him by saying that they would not allow him to do the work of the bus agency at Khunti as he was an outsider. Further, according to the fardbayan - he had told the aforesaid two accused persons to ask the bus owners for that

purpose and if they would tell him not to do the work of the bus agency, he would leave the said work but he would not leave on being asked by them. On that, Nilu Ganjhu caught hold of his arm and assaulted him, with silane. After one or two days, accused Mehboob Ansari had caught hold of his collar and had threatened him that he would not spare the bus agency. In spite of that, the informant continued on the bus agency and so he was threatened to be shooted or bombed. Further, according to the fardbayan, in between the night of 1st and 2nd April 1992 at about 1:45 a.m. while the informant was sleeping alongwith his wife and two children inside the room, he heard the sound of bomb blasting and got up. His wife also got up and heard the sound, they found fire in the entire house. Anyhow they came out of the room from the back door but the minor daughters who were kids remained in the room and could not be saved from the fire. The entire house was on fire and the roof was falling. The two infants ultimately died burning in the fire. As soon as the informant and his wife rushed out of the room, they saw accused Nilu Ganjhu, Mahboob Ansari, Anil Ganjhu and one more unknown person fleeing away towards east through southern lane of the house. The miscreant started laughing and said to lit fire at lower chowk. All the miscreants were

identified in the electric light. It is stated in the First Information Report (hereinafter 'FIR') itself that the fourth one could be identified if seen. On the basis of the fardbeyan, Khunti P.S. Case No.45/1992 dated 02.04.1992 was instituted for the offences under Sections 436, 307 and 302 of IPC, against the accused persons Nilu Ganjhu, Mahboob Ansari, Anil Ganjhu and others unknown and investigation was taken up. After investigation, the police submitted the chargesheet in the case.

5. Vide order dated 09.02.1994, Ld. Additional Judicial Commissioner, Khunti after considering the evidence and statements of the witnesses held all the accused persons guilty for the offences under Sections 436/34 and 302/34 of IPC and sentenced them to undergo RI for 7 years for offence under Section 436/34 of IPC and RI for life and sentence of fine of Rs. 5,000/- each and in default to undergo RI for 1 year more for the offence under Section 302/34 of IPC. Both sentences were directed to run concurrently.

6. On appeal being preferred by the accused persons, the Hon'ble HC allowed the appeal and quashed and set aside the judgment passed by the Ld. Trial Court. It was observed as under:

“15... The first and foremost thing is that as per the prosecution story, the story of explosion of bomb is there but the Investigating Officer, who rushed to the place of occurrence has not found any identification of the bomb since no remains of bomb has been found from the place of occurrence.

Therefore, the first infirmity in the impugned judgment is that the learned Trial Court has failed to appreciate this aspect of the matter that when there is sign of explosion, why no remains of the bomb has been found from the place of occurrence and, therefore, it cannot be said that the prosecution has been able to prove the charge beyond all shadow of doubt on the ground of completion of chain regarding the story of explosion of bomb which led the death of two children.

16. The other improbability is evident as per considered view of this Court that it is the specific case of the prosecution that both the informant P.W.1 Santosh Kumar Singh and his wife P.W.-5 Madhuri Devi, the parents, were sleeping on the bed along with two kids having the age of 3 years and six months but immediately after hearing the sound of explosion of bomb, they fled away leaving their children on the bed who ultimately died due to explosion of bomb, as per the prosecution story. But, the question herein is that can it be said to be acceptable that the mother and father, who were sleeping along with their two children, after hearing the explosion of bomb fled away from the room leaving their children on the bed. The normal behavior of the parents will be that while going out in any exigency whatsoever or in threat or any casualty, they will come out from the house along with their children in order to save their life but it is not the prosecution story herein...

18. It is the case of the prosecution as has come in the testimony of the prosecution witnesses that none of the accused persons have been seen at the place of occurrence committing the crime, rather they were fleeing away after explosion of the bomb, they had been seen by the people in the vapor light glowing in the street. Therefore, it is not the case of prosecution that any of the witnesses have seen the appellants committing the crime.

The other improbability is that when it has come in the testimony of the prosecution witnesses that they have seen the accused persons fleeing away then why there is no effort to get hold of them, the prosecution is silent in this regard and, as such, on this ground also the chain of incidents is not complete for holding the appellants guilty of offence based upon the circumstance proving the charge beyond all shadow

of doubt.

It has come in the testimony of the witnesses that after hearing alarm the local people have reached to the place of occurrence along with the in-laws of the informant while the case of the prosecution is that there was sound of explosion of bomb, then the question arises that when the bomb had exploded then how the people had assembled at the place of occurrence after giving call by the informant. This also suggests that the story of explosion of bomb is not being established by the prosecution.

It further requires to refer herein that no independent witnesses have been examined in this case when as per the testimony of informant P.W.1 Santosh Kumar Singh, three local persons, namely, Trilok Nath Mahto, Arvind Jaiswal and Damri Bhagat had reached to the place of occurrence but prosecution has not bothered about examining the independent witnesses.”

19. *There are other discrepancies in the prosecution story and the deposition of witnesses which are stated hereunder as :-*

The incident took place at about 12:45 a.m. and the fardbeyan was recorded at minutes. It cannot be believed that in such a short time of 1 hour 15 minutes the fire was extinguished, Police reached to the place of occurrence, dead bodies were brought out and fardbeyan was recorded. The Investigating Officer, P.W.-9 has stated in his deposition that he got the information at about 1:00 a.m. and he reached to the place of occurrence at 2:00 a.m. thereafter, police also helped in extinguishing the fire and taking out the dead bodies but in the fardbeyan the time of recording is 2:00 a.m. which is hard to believe.

The Informant, in the fardbeyan, has named only Nilu Ganjhu and Mahboob Ansari as persons who, 15 days prior to the date of occurrence, had either slapped or threatened to kill the informant by shooting or bombing and the names of accused Anil Ganjhu or Dhanushdhari Ganjhu were not mentioned in the fardbeyan either as assailant or spectator but in the deposition he has named Anil Ganjhu or Dhanushdhari Ganjhu also as the persons who have slapped/threatened the informant.

The informant, in his deposition before the court, has stated that 5 – 7 days prior to the aforesaid incident of slapping/threatening, he had a fight with Dhanushdhari also but this fact has not been mentioned in the fardbeyan where he has not identified Dhanushdhari as fourth miscreant.

In the fardbeyan the informant has stated that he does not know the fourth miscreants but if he will see him he can identify him, but in the deposition he has stated that fourth miscreant was Dhanushdhari Ganjhu who was known to him.”

7. Thus, the High Court concluded that the prosecution had not been able to prove the charge beyond all shadow of doubt and accordingly, allowed the appeal and discharged the accused from criminal liability.

8. Aggrieved by the said order of the High Court, the appellant-State is before us by way of filing appeals.

CONTENTIONS:

9. Ld. Standing Counsel for the appellant- State, Ms. Pragya Baghel vehemently argued that a strong and specific case has been

established against the accused. It was argued that the prosecution has been able to establish the genesis of the case 'motive' as well as 'opportunity' on part of the respondent to commit the crime. It was submitted that 15 days prior to the occurrence, Respondents herein had threatened the Informant, saying that they would not allow him to work as a bus agent at Khunti as he was an outsider. Thereafter, Respondent No. 1 and 3 herein had also assaulted him two days later and again threatened him of dire consequences if he didn't leave. He was threatened to be shot or bombed. This was stated by the informant in his fardbayan recorded after only two hours of the occurrence, at the spot of the occurrence, when the informant had also named the Respondents herein, having identified them in the electric light, fleeing through the southern lane; as well as deposed by him in his examination. The same fact has been supported by the P.W.3. Thus, this proves the existence of animosity between the Respondent and the informant.

10. It was argued that not only the chain of circumstantial evidence is complete but also the consistency of the ocular testimonies have been established in the present case. The act of Respondents setting the house on fire and fleeing away from the

place of occurrence has fully been established. It was further argued that credibility of a witness is not affected by being related to the parties.

11.1 Ld. Counsel Mr Subhro Sanyal, appearing for Respondent nos. 1 and 2 in SLP (Cr1.) No. 10889/2023 vehemently argued that the High Court did not err in acquitting the respondents. It was submitted that the accused met the informant but they had no grudge against his other family members. It was submitted that no police complaint was lodged by the informant of the said threats made by the accused to him 15 days prior to the date of occurrence.

11.2 Moreover, it is highly improbable to allege that informant had woken up in midst of smoke and fire and falling bamboos from the roof when his natural reaction was to secure the safety of his children who slept alongwith him and his wife instead and in place noticing the accused fleeing from a bye lane in pitch darkness. No effort was made by the prosecution to prove the source of light on the street.

11.3 It was further argued that due to smoke and noise of smoldering flames, the informant could not have either seen or

heard anything within the first 5-7 minutes and thus identification of assailants fleeing away was not possible.

11.4 It was submitted that the defence had sufficiently made out a case that it is the business of the informant to store petrol in his Gumti and his house which could have caught fire by coming in contact with the candle lit in the room. There was no case registered under Explosive Substances Act inspite of specific allegations of explosion of bomb.

11.5 It was submitted that the incident had taken place at about 12:45 AM and the FIR was recorded at 2 AM which is too short a period within which the fire was extinguished and the police reached on the spot and helped in extinguishing the fire.

12. Ld. Counsel Mr. Jayesh Gaurav, appearing for respondent in SLP (CrI.) No. 10890/2023 submitted that from 31.03.1992 the respondent-Accused was admitted in Madhuri Nursing Home and was discharged on 08.04.1992. Taking the plea of alibi, the Ld. Counsel submitted that the accused was not present at the place of incident on the date of the alleged incident i.e. 01.04.1992 as he was admitted in the nursing home during the said time.

ANALYSIS:

13. In so far as, the appeal wherein the accused-respondent Dhanushdhari Gaunjhu is concerned, the accused respondent denied the charges and pleaded not guilty. The respondent-accused Dhanushdhari Gaunjhu has taken a specific stand of alibi in his defence. It was submitted by the respondent-accused before the Trial Court that on the date of occurrence i.e. the intervening night of 1st April and 2nd April, 1992, he was admitted in the hospital i.e. Madhuri Nursing Home. Admittedly, he was admitted in the hospital on 31.03.1992 and was discharged on 08.04.1992. In support of this submission heavy reliance was placed on the admitted documents before the Trial Court. The documents exhibited and admitted before the Trial Court namely, the admission card dated 31.03.1992 and the discharged certificate issued by the doctor dated 08.04.1992. These documents are also placed before this Court by way of counter affidavit filed on behalf of the respondent-accused Dhanushdhari Gaunjhu dated 22nd December, 2023. The first document is the admission card issued by the medical officer attached to a private hospital namely, Madhuri Nursing Home. The pursual of this document shows that respondent-accused Dhanushdhari Gaunjhu was examined in the

hospital on 15.03.1992 and on 22.03.1992 he was advised for surgery of Hydrocile. The next important document is the certificate issued by the Medical Officer attached to Madhuri Nursing Home dated 08.04.1992. The perusal of this document shows that respondent-accused Dhanushdhari Gaunjhu was admitted in the hospital on 31.03.1992. He was a patient occupying bed no. 2 and was operated in the hospital till his discharge on 08.04.1992 as per the certificate dated 08.04.1992. The certificate further showed that Dhanushdhari Gaunjhu was again brought to the hospital on the next day i.e. 09.04.1992 and doctor suggested him certain tablets. Now in support of these documents Dr. Sinha was examined as defence witness no. 1. The copy of deposition of DW1-Dr. Sinha is also placed on record. The perusal of the testimony of Dr. Sinha shows that Dr. Sinha runs the hospital namely Madhuri Nursing Home. He further states that in his Nursing Home most of the surgical cases are undertaken by him. Then he further states in his deposition before the Court that respondent-accused Dhanushdhari Gaunjhu came to him for his treatment on 15.03.1992. He further states before the Court that he suggested surgery for Hydrocile to him (i.e. patient). Then he supports the contents of the documents referred

earlier, that respondent-accused Dhanushdhari Gaunjhu was admitted in his Nursing Home on 31st March, 1992 till 8th April, 1992. Dr. Sinha further admits that the discharge slip is in his handwriting and duly signed by himself. It is also important to note that Dr. Sinha stated before the Court that the distance between his Nursing Home and Khunti bus stand is nearly 38 kms. Then he identified the respondent-accused in the court and deposed before the Court that respondent-accused Dhanushdhari Gaunjhu is the very person who was admitted as a patient in his hospital. Though DW1-Dr. Sinha was subjected to a detailed cross-examination but the prosecution was unable to find out either any discrepancy in his version or any such material in the form of contradiction or omission and it can safely be said that this witness stood firm and fully supported the theory of alibi. As per the case of the prosecution the unfortunate incident took place in the intervening night of 1st and 2nd April, 1992. It is stated in the FIR lodged at the instance of PW 1 Santosh Kumar Singh that he is a resident of the area known as Dak Bungalow Road which is near to Khunti Police Station. It is also stated in the FIR that he is working as an agent for certain travel agents/agencies namely, Mohan bus, Mehta bus and Pradhan Travels and the bus stand

was his working place. Thus, considering this aspect that the place of incident is near to Kunti Bus Stand and the respondent-accused Dhanushdhari Gaunjhu was admitted in the hospital namely Madhuri Nursing Home at a distance of 38 kms. from the bus stand as stated by Dr. Sinha in his deposition and no contra material was brought by the prosecution so as to raise any doubt about this factual aspect. It was practically impossible for the respondent-accused Dhanushdhari Gaunjhu who was admitted in the hospital and was under medical treatment to travel a distance of 38 kms. in the night and again returning back to the hospital, as such, at the cost of repetition, we state that the respondent-accused Dhanushdhari Gaunjhu was successful in establishing his defence of alibi before the Trial Court. The Trial Court by not accepting this defence theory, committed a gross error in not appreciating the defence by respondent-accused Dhanushdhari Gaunjhu in its proper perspective, holding the respondent-accused Dhanushdhari Gaunjhu guilty. Whereas the High Court was justified in accepting the theory of respondent-accused Dhanushdhari Gaunjhu. As such, the appeal preferred by the State of Bihar against the acquittal of respondent-accused Dhanushdhari Gaunjhu recorded by the High Court being devoid

of any merit and deserves to be dismissed. Accordingly, the Criminal Appeal No. 3381 of 2025 against the respondent-accused Dhanushdhari Gaunjhu is dismissed.

14. In so far as, the appeal against the respondents Nilu Ganjhu, Mahboob Ansari and Anil Ganjhu is concerned, during pendency of the appeal, respondent-accused Anil Ganjhu has expired. The appeal is now limited only to the extent of respondent-accused Nilu Ganjhu and Mahboob Ansari.

15. The High Court, in our opinion, wholly erred in not appreciating the evidence in its proper perspective. It was the first and basic fallacy in the observations of the High Court that the case of prosecution rests on circumstantial evidence and that the prosecution could neither prove the circumstances against the accused nor the chain of the circumstances to hold the accused persons guilty. There cannot be any dispute on the proposition of law on appreciation of the circumstantial evidence as expressed in the judgements referred to in the judgment of the High Court, as we have observed that the High Court committed a serious error in treating the case of prosecution as the case based on only circumstantial evidence and as such the judgments are clearly distinguishable on the facts of the matter. The High Court then,

also erred in assuming that the prosecution failed to prove the explosion of a bomb. On perusal of the evidence, in the form of eye witness, the spot punchanama, it clearly reveals that it was the case of explosion of certain explosive substance and that substance may not be a substance as sophisticated as bomb in common parlance. It is an admitted position that, the FIR is not an encyclopaedia but it is a starter point for setting the Investigating Agency in motion. On the pursual of the FIR dated 02.04.1992 it reveals that in the intervening night of 1st April and 2nd April, 1992 at about 12.45 pm there was an explosion leading the complainant PW 1 Santosh Kumar Singh and his wife waking up from deep sleep. They saw the entire house was under fire and there were heavy flames in the house. In an immediate attempt to save their lives, both of them rushed towards the back side of the door as they found that wooden rafts were burning. It further revealed from the FIR that it was hutment like structure, i.e. the house was not having walls but was made of some material like mortar and thatch. This material was also subjected to fire. The complainant in his FIR clearly states that when he came out of his house he saw 3-4 persons, and he had seen them in the electricity light. He identified them as Nilu Ganjhu, Mahboob Ansari and Anil

Ganjhu. The High Court made a detailed reference to the testimony of informant PW1 Santosh Kumar Singh. The evidence on record clearly shows that the informant PW1 Sanosh Kumar Singh and his wife received burn injuries and that they made an attempt to enter in the house so as to save the babies sleeping in the house. They were unable to enter the house as by that time the house was fully set on fire.

16. It is further stated, in the testimony of PW1 Santosh Kumar Singh that on raising hue and cry by the informant the neighbours gathered at the spot. Some of them got the fire extinguished. It is stated that the police authorities were informed and, in the meantime, police also reached on the spot. Though with the help of neighbours the house fire was extinguished but unfortunately the babies could not be saved, and the dead bodies were brought out of the house. In the cross-examination PW1 Santosh Kumar Singh stood firm on the aspect that he is seen accused persons running from the spot and he had identified them in the electric lights. The version of PW1 that the house was set on fire is supported by PW2 Ashok Kumar Rai-punch witness, the articles seized under the punchanama were burnt pieces of bamboo, pieces of saree and the few pages of burnt book Ramayana.

17. PW 3 Dharmendra Singh is brother-in-law of PW1 who was sleeping in another room along with his parents and on hearing the sound of blast he immediately rushed towards the room of his brother-in-law and found that the brother-in-law and his sister were crying. He saw that the house was set on fire. He further deposed that though an attempt was made to save the babies but unfortunately the babies could not be saved. This witness was subjected to cross examination and except on aspect of presence of the accused Dhanushdhari, on all the other aspects he stood firm and supported the case of prosecution. It may be necessary for us to refer to the deposition of PW4 Dr. Kumar who had conducted the autopsy of the dead bodies i.e. two baby girl child and had also examined the informant and his wife. The deposition of this witness PW4 Dr. Kumar clearly supports the case of the prosecution on the aspect of the house being set on fire, the informant and his wife being subjected to fire injuries and the death of the babies due to the fire. PW5 Madhuri Devi, wife of informant PW1 supports the case of prosecution. PW6 Shanti Devi, mother-in-law of the informant and PW8 Girija Thakur father- in-law of the informant both of them supported the prosecution case. PW7 is another panch witness supporting on the

seizure of the articles. PW9 Dharmendra Sharma is the Investigating Officer who conducted the major investigation whereas PW10 Kailash Prasad was an officer in charge of Khunti Police Station brought by the prosecution to support its case about the station diary entries being recorded immediately. On perusal of the deposition of defence witnesses except the DW 1 Dr. Mahanand Sinha whose testimony we have referred to in detail in the earlier part of our judgment, the defence witnesses in our opinion failed to establish the theory of alibi put up by the accused persons.

18. The High Court thus committed a serious error in observing that there is no eyewitness in the present case. At the cost of repetition we may state that the informant PW1 Santosh Kumar Singh himself was an eyewitness to the incident in so far as the aspects of having explosion in the house, the house being set on fire, the informant and his wife being subjected to burn injuries, the babies in the house unfortunately died in the incident and this witness clearly stood firm on the aspect of seeing the accused persons on the spot immediately after the house was set to fire. There was also no doubt on the aspect of identity of these accused persons because PW1 was knowing these persons and he had seen

them. This witness also states about the source of light at the spot namely an electric light and identified the accused-respondents. PW4 Dr. S Kumar also supports the case of the prosecution in so far as the incident of fire is concerned in the aspects namely, the house being set on fire, PW1 and his wife being subjected to burn injuries and two babies died dying due to the fire burns.

19. As stated above, the High Court committed a serious error in recording a finding that the prosecution failed to establish the theory of explosion of the bomb as there was no identification of the bomb nor any remains of the bomb were found on the spot. At the cost of repetition, we again state that it is the case of the prosecution that the house was subjected to fire due to explosion. The informant though states it was a bomb, the material in the form of evidence brought before the court clearly show that it was some explosive substance which may not be as sophisticated as a bomb but an explosive substance causing a fire.

20. The High Court also erred in drawing an adverse inference against PW1 and PW5 observing that the mother and father would not have left the room leaving their children on hearing the explosion. The High Court thus raises a serious doubt on the conduct of the witnesses namely PW1 and his wife PW5. In our

opinion, the High Court ought not have drawn this general inference about the conduct of these witnesses. It has been observed by this Court that there cannot be a set formula about the reaction of a witness.

This Court in the case of **Lahu Kamlakar Patil & Another v. State of Maharashtra**,¹ has observed as under:

“26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded.”

(Emphasis supplied)

Thus, it can be said that on seeing some gruesome incident the witnesses may react in different ways. Some witnesses may become speechless, some may cry, some may leave the spot immediately due to fear and apprehension. Thus, the High Court ought not to have treated the version of these witnesses as

¹ (2013) 6 SCC 417

unbelievable merely because the couple immediately came out of the house to save their lives. Hence, the evidence of witnesses PW1 and PW5 clearly inspires confidence and we see no reason to discard their evidence.

21. Having regard to the oral and documentary evidence adduced by the prosecution in support of its case against the accused persons, the Trial Court rightly appreciated the same and rendered a reasoned judgment of conviction, holding the accused persons guilty. In our considered view, the High Court erred in reversing the said conviction by adopting an erroneous and unsustainable appreciation of evidence. Consequently, we are of the opinion that the judgment and order dated 24.01.2023 passed by the High Court in respect of accused persons Nilu Ganjhu and Mahboob Ansari is liable to be quashed and set aside. As a result, the judgment and order of conviction rendered by the Trial Court stands affirmed. Accordingly, Criminal Appeal No. 3382 of 2025 filed against the respondent-accused Nilu Ganjhu and Mahboob Ansari is allowed.

22. In view of the above, the Criminal Appeal No. 3381 of 2025 is dismissed and the Criminal Appeal No. 3382 of 2025 is allowed accordingly.

23. Accordingly, it is directed that the accused persons namely, Nilu Ganjhu and Mahboob Ansari shall surrender before the Trial Court within a period of two weeks from today.

24. Pending application(s), if any, shall be disposed of accordingly.

.....J.
[PANKAJ MITHAL]

.....J.
[PRASANNA B. VARALE]

**NEW DELHI;
AUGUST 6, 2025.**