

(2006) 11 CAL CK 0059
In the Calcutta High Court
Case No : C.R.A. No. 370 of 1998

Ananta Deb Singha Mahapatra and Others	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 6
Penal Code, 1860 (IPC) — Section 147, 148, 149, 304, 323
West Bengal Estates Acquisition Act, 1953 — Section 44(2)

Citation : (2007) CriLJ 1705

Hon'ble Judges : P.S. Datta, J; P.N. Sinha, J

Bench : Division Bench

Advocate : Sekhar Basu, Joymalya Bagchi and Abhishek Sinha, for the Appellant; Swapan Kumar Mallick and Jharna Biswas, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Sinha, J.—This appeal by the appellants is directed against the judgment and order of conviction passed by the learned Additional Sessions Judge, 2nd Court, Bankura in Sessions Trial No. 1(7) 1993 (Sessions Case No. 3(8) 1992). The appellants 1 to 4 were sentenced to suffer rigorous imprisonment for eight years each and to pay a fine of Rs. 1000/- each in default to suffer further R. I. for one year each for the offence u/s 304 Part II read with Section 149 of the Indian Penal Code , (in short I. P. C.). Appellants 1 and 2 were also sentenced with appellant No. 5 to suffer imprisonment for six months and to pay a fine of Rs. 200/- each i.d. to suffer imprisonment for two months for the offence u/s 323 read with Section 149 of I.P.C., and hence this appeal.

2. The prosecution case in a nutshell, is that, on 13-9-1990 at about 2.30 p. m. the appellants accompanied by 15 others as named in the FIR started cutting paddy from the land of informant Niranjan Singha Mahapatra (P. W. 2) in plot No. 122/470 of mouza Dakshinbad within P. S. Khatra. Seeing the matter Madhusudan Singha Mahapatra (deceased) reached there and raised protest, and

over this, the accused persons assaulted on the head of the deceased with lathi and also cut the fingers of hands of deceased with sharp sickle. Hearing the alarm raised by the deceased, P. W. 2 and his mother Monorama Singha Mahapatra (P. W. 4) reached there, but the accused persons also assaulted P. W. 2 and P. W. 4 and in their presence gave further blow on the head of deceased Madhusudan Singha Mahapatra with sickle. Madhusuddan Singha Mahapatra fell down on the land and thereafter, P. W. 2 with the help of the other villagers brought his father and mother to the police station. The police officer on duty told them to go to the Khatra Hospital and as instructed they came to the Khatra PHC. After primary treatment the doctor of the said PHC sent all the injured persons to the Bankura Medical College and Hospital where parents of P. W. 2 were admitted and P. W. 2 was discharged after primary treatment. P. W. 2 sent the written complaint/FIR (Ext. 2) through his brother-in-law Dwijapada Kar (P. W. 5) to the Khatra Police Station and on the basis of such written complaint Khatra P.S. Case No. 40 dated 13-9-1990 under Sections 147 / 148 / 149 / 448 / 324 / 325 / 379 of the I.P.C. was started against the accused persons. The injured Madhusudan Singha Mahapatra succumbed to his injuries on 14-9-1990, and thereafter, Section 304 of the I.P.C. was added and after completing investigation the Investigating Officer (in short I. O.) submitted charge sheet against the accused persons under Sections 147 / 148 / 149 / 447 / 379 / 324 / 325 and 304 of the I. P. C. The trial that followed ended in the conviction and sentence of the appellants as mentioned above.

3. In order to prove its case the prosecution examined in all 16 witnesses namely, P. W. 1 Prasanta Kumar Singha Mahapatra, P. W. 2 Niranjana Singha Mahapatra (informant and son of deceased), P. W. 3 Ranjit Singha Mahapatra, P. W. 4 Smt. Manorama Singha Mahapatra (wife of deceased), P. W. 5 Dwijapada Kar, P. W. 6 Hiranani Singha Mahapatra (wife of P. W. 2), P. W. 7 Ajit Kumar Roy, P. W. 8 Anil Ranjan Dey, P. W. 9 Dr. Amiya Kumar Mondal, P. W. 10 Naliriikanta Singha Mahapatra, P. W. 11 Prabir Singha Mahapatra, P. W. 12 Kartick Muhuri, P. W. 13 Nimai Singha Roy, P. W. 14 Ardhendu Sekhar Patra, P. W. 15 Dr. G. N. De (autopsy surgeon) and P. W. 16 Prithwish Chatterjee (I. O.).

4. Out of the aforementioned 16 witnesses P. W. 1, P. W. 3, P. W. 10 and P. W. 11 were declared hostile witnesses. We shall consider their evidence later on if we find anything worth mentioning from their evidence. P. W. 7 is a formal witness who was attached to Bankura Medical College and Hospital as Ward Master on 13-9-1990 and sent information to Bankura police station on 14-9-1990 relating to death of Madhusudan Singha Mahapatra. P. W. 9 is the doctor of Khatra PHC who on 13-9-1990 examined the injured Niranjana Singha Mahapatra, Monoranjan Singha Mahapatra and Madhusudan Singha Mahapatra and referred them to Bankura Medical College and Hospital. P. W. 12 is the police officer who received the FIR lodged by P. W. 2 sent through P. W. 5 Dwijapada Kar and started the Khatra P. S. Case No. 40 dated 13-9-1990 and also filled up the formal FIR (Ext. 7). P. W. 13 is the constable who came to Bankura Hospital along with his officer and was present at the time of inquest held on the dead body of Madhusudan

Singha Mahapatra and after inquest through challan (Ext. 9) carried the dead body to Bankura morgue and identified the dead body before the autopsy surgeon. P. W. 15 is the doctor who held the post mortem examination on the dead body of Madhusudan Singha Mahapatra.

5. P. W. 8 is a police officer who was attached to Khatra police station on 13-9-1990. P. W. 14 is another police officer and is a formal witness. P. W. 16 is the police officer who conducted investigation into this case.

6. From the status of the aforementioned witnesses it is clear that the prosecution case rests on the evidence of P. W. 2, P. W. 4, and P. W. 6 who are allegedly eye witnesses and evidence of P. W. 5, and the corroborating medical evidence of P. W. 9 and P. W. 15 and the evidence of the police officers viz. P. W. 8, P. W. 12 and P. W. 16.

7. P. W. 2 in his evidence in Court stated that on 13-9-1990 at about 2.30 p. m. these appellants along with 9 others started harvesting paddy from their land of plot No. 122/470 of mouza Dakshinbad which was situated to the western side of their house at a distance of about 150 cubits. Seeing such incident his father Madhusudan Singha Mahapatra rushed to the said land and he followed his father and his mother and wife were behind him. His father asked the accused persons not to cut the ripe paddy, but the accused persons paid no heed and Anantadeb Singha Mahapatra (appellant No. 1), Giridhari Singha Mahapatra, Phani Bhusan Singha Mahapatra (appellant No. 2) assaulted on the head of his father by lathi and his father fell down on the land with profuse bleeding from head, nose and mouth. Appellant No. 2 then moved the body of his father and thereafter Subroto and Uttam Singha Mahapatra (appellants 3 and 4) assaulted his father with sickle on his head and on the fingers of both hands. Seeing the assault on his father his mother tried to save his father, but at that time the appellant No. 1 Ananta Deb, appellant No. 2 Phani Bhusan, appellant No. 5 Ardhendu assaulted his mother with lathi on her leg and other parts of body. The wearing "saree" of her mother was stained with blood of his father. His mother also fell down on the ground after the assault. Dhruba Prasad, Dhurjoti, Mrinalkanti also assaulted his father with lathi when his father was lying on the ground. He tried to rescue his father but the appellant No. 3 Subroto and other two accused persons namely, Sasadhar and Mrinalkanti assaulted him with lathi on his head and different parts of his body and also on the left side of the eye. Receiving such assault he fled away to a safer place. Seeing the condition of Madhusudan Singha Mahapatra the accused persons left the place with their lathis and sickle.

8. He stated further that after the accused persons left the place they took away his father on a "khatia" i.e. cot with the help of local people to their house and also his mother from place of occurrence to house. Subsequently, Ranjit Singha Mahapatra brought a jeep from Khatra and after his mother changed saree they went to Khatra Police Station by the said jeep and from there they went to Khatra Hospital as directed by the police. They were medically treated at the hospital and his brother-in-law Dwijapada Kar (P. W. 5) came to the hospital and

he narrated the entire incident to P. W. 5. At Khatra PHC he wrote out the complaint and handed it over to Dwijapada Kar for submitting the same to the police station. Considering their serious condition the doctor of Khatra hospital transferred them to Bankura Sammilani Medical College and Hospital and they went to Bankura hospital on the said jeep. They were treated at outdoor first and after primary treatment he was discharged, but his mother and father were admitted at Bankura Hospital. His father expired next day. They planted "kalinga" variety of paddy in plot No. 122/470 in the year of incident. He proved the written complaint/FIR written and signed by him which was marked ext. 2. He stated that in the FIR he did not give in detail the entire incident as he was mentally disturbed.

9. His cross examination reveals that the accused persons are their agnates. Plot No. 122/470 is their ancestral property which they have inherited. He expressed his inability to state about the entries of CS record of right in respect of the disputed plot. He denied the defence suggestion that plot No. 122/470 was recorded as vested into the State. The area of the disputed plot is 0.66 acres. He admitted that after death of his father one proceeding u/s 44(2) of the West Bengal Estates Acquisition Act (in short WBEA Act) was started. One certified copy of judgment of 44(2) of the WBEA Act proceeding was shown to him and it was marked Ext. A. He denied the defence suggestion that they did not cultivate the disputed plot and that, they tried to harvest the ripe paddy grown by accused persons in the said plot, and that accused Subrata Singha Mahapatra transplanted "kalinga" variety of paddy in the said plot. He also denied the defence suggestion that when accused Subrata Singha Mahapatra saw them harvesting the paddy, he raised protest and they attacked the accused Subrata and injured him. He denied the defence suggestion that when they tried to attack Subrata on his head due to his quick movement from the place the stroke of lathi fell on the head of his father. He admitted that on the same day i.e. on 13-9-1990 accused Subrata Singha Mahapatra lodged FIR against him and his father concerning the self same incident and over it Khatra P. S. Case No. 41/90 dated 13-9-1990 under Sections 448 and 324 of the I. P. C. was started. Even in cross examination he stated that before the doctor of Khatra hospital they narrated the incident and also narrated the incident to the doctor of Bankura Hospital when they were referred to Bankura Medical College and Hospital from Khatra PHC. He denied the suggestion that the FIR was actually scribed on 14-9-1990, but subsequently by overwriting on "4" they made the date 13-9-1990. He expressed his unaware-ness as to whether accused Subrata Singha Mahapatra was also treated at Khatra PHC and thereafter at Bankura Hospital.

10. P. W. 4 fully corroborated the evidence of P. W. 2. She in her evidence stated that the accused Ananta and others were cutting ripe paddy from their land of mouza Dakshinbaid. Her son (P. W. 2), daughter-in-law (P. W. 6) and she herself followed her husband towards their land. Her husband requested the accused persons not to harvest paddy from his land, but the accused persons paid no

heed and accused Ananta, Giridhari and Phani Bhusan assaulted her husband by lathi on his head. Her husband Madhusudan fell down on the paddy land with bleeding from head and thereafter accused Uttam and Subrata assaulted him on head and other parts of body. She tried to rescue her husband and her saree was stained with blood. Accused Ananta, Phani Bhusan and Ardhendu assaulted her by lathi on her right leg and other parts of body. Her right leg was swollen due to the injury and she also fell down. Her son Niranjana (P. W. 2) came there to rescue but accused Subhas, Phani Bhusan and Ardhendu assaulted her son by lathi and her son went away to safer place. The local people brought her husband to house on a cot and she was helped to come to home. Ranjit Singha Mahapatra brought a jeep and they all came to Khatra P. S. and as per direction of the police officer they came to Khatra hospital for treatment, and from Khatra Hospital they were referred to Bankura Hospital and came to Bankura Hospital on the same jeep. She and her husband were admitted at Bankura Hospital for treatment and her husband succumbed to his injuries next day. Her eldest son-in-law Dwijapada Kar came to Khatra hospital to meet them after hearing the news of incident. They grew the "kalinga" variety of paddy in the said land in that year.

11. P. W. 5 in his evidence stated that Madhusudan Babu was his father-in-law and P. W. 2 is his brother-in-law. He is a teacher of Monsaghar Adibasi High School and on 13-9-1990 after obtaining permission of the Head Master he came to Khatra. At Khatra from Ranjit Singha Mahapatra he learnt that members of his in laws house were assaulted and they were taken to Khatra Hospital for treatment. He came to Khatra Hospital and met with P. W. 2 who narrated the entire incident to him. P. W. 2 also handed over the written complaint to him for presenting the same at Khatra P. S. and he came to Khatra P. S. and submitted the written complaint (Ext. 2). From his cross examination we find that the school hours is from 10.30 a. m. to 4.30 p. m. He admitted the signature of Head Master of the school on the certificate marked Ext. B in which it was mentioned that P. W. 5 was present in the school on 13-9-1990 from 10.30 a. m. to 4 p. m. and performed his duties.

12. P. W. 6 is the wife of P. W. 2 and daughter-in-law deceased Madhusudan Singha Mahapatra. She in her evidence stated that her father-in-law was murdered on 27th Bhadra at noon. From their house they noticed that the accused persons were harvesting paddy from their land. At that time her father-in-law went to the paddy land to raise protest and she, her husband and her mother-in-law followed her father. in-law. When her father-in-law tried to restrain the accused persons, the accused Ananta, Giridhari and Phani Bhusan gave blows on the head of her father-in-law and he fell down on the paddy land with bleeding. Accused Subrata and Uttam assaulted on his head, hands and other parts of body with "dao" i.e. sickle. Her mother-in-law tried to rescue her father-in-law and at that time Ananta, Phani Bhusan and Ardhendu assaulted her mother-in-law on her right leg by lathi. Dhruva Prasad, Mohini, Nibaran and Dhurjati further assaulted her father-in-law by lathi when he was lying on the field. Her husband tried to rescue her father-in-law, but accused Sasadhar, Mrinal-

kanti and Subrata assaulted her husband by lathi on head, corner of eye and other parts of body. They raised alarm and hearing it 2/3 villagers came to the place of occurrence and Prasanta, Ranjit and Nalini brought cot from their house and her father-in-law was removed from place of occurrence on that cot. Thereafter, Ranjit brought a jeep and injured persons were taken to Khatra in the said jeep. The police came to their house at evening and they took away police personnel to place of occurrence and police officer seized blood stained earth, "kalinga" variety of paddy etc. from place of occurrence. Police also seized quilt, blood stained saree of her mother-in-law and the cot. Her father-in-law cultivated the "kalinga" variety of paddy in the said land.

13. From her cross examination we find that at the relevant time harvesting of paddy was going on in most of the adjoining lands. Cultivators used to remain present on their lands during harvesting of paddy. She denied the defence suggestion that the land in question was not visible from their residential house and also the suggestion that she and her mother-in-law did not come to the place of occurrence. Contradictions relating to her statement to the I. O. were taken during her cross examination by the defence. She stated that though she is house wife she used to come out of house for work if required. Most of the accused persons are her father-in-law, brother-in-law, nephew etc. in relation. She denied the defence suggestion that her father-in-law and her husband were cutting the ripe paddy from the land of accused Subrata Singha Mahaparata and Subrata requested them not to cut paddy and over that matter they assaulted accused Subrata. She denied the defence suggestion that at that time a scuffling ensued between her father-in-law, her husband and Subrata as a result of which her in-law sustained injury caused by her husband.

14. P. W. 9 is the doctor of Khatra PHC who on 13-9-1990 first examined the injured persons. P. W. 9 in his evidence stated that on examination he found the following injuries on the person of injured Niranjan (P. W. 2):

- (1) one scattered swollen linear marking about 4" inches in length and 1/4" inch in breadth was found throughout the whole back;
- (2) one linear swelling over the right scapula scattered throughout its length;
- (3) two circular swelling found over right frontal bone both 1/3" inch in diameter;
- (4) one circular blackish area about 1 /3" inch just below the left lower eyelid.

15. He opined that the injuries were moderate in nature and might be caused by lathi.

16. He examined Manorama Singha Mahapatra (P. W.4) and found the following:

- (1) one circular swelling on the right calf muscle which was too much tender. The patient was unable to stand and walk.
- (2) Scattered scratch mark throughout the whole body specially over palm of right hand.

17. He opined that this type of injuries might be caused by lathi blow, falling down on hard substance.

18. On the said date he examined Madhusudan Singha Mahapatra (deceased) and found the following:

(1) the patient was in a deeply comatized condition. Right pupils dilated and left pupil dilated but less than right pupil.

(2) injury over head:

(a) one sharp cut injury 5" inches x 1/2" inch over the midline of the head extending from frontal bone to parietal bone;

(b) one linear swelling 3" inches x 1/2" inch obliquely placed over the left frontal bone and parietal bone just beside the previous sharp cutting injury;

(c) another sharp cutting injury 3" inches x 1/2" inch over the terminal portion of right parietal bone extending upto the occipital bone;

(b) scattered circular swellings were found throughout the head.

Injury of upper limbs:

(i) One sharp cut injury over the tip of left index finger, one flap of the terminal portion of the finger along with nail bed was detached. The whole portion was in hanging condition by skin attachment from the left index finger;

(ii) One sharp cut injury 3" inches x 1/2" inch over palmar aspect of right index finger extending from radial aspect of the back of the finger;

(iii) Another sharp cut injury about 2" inches x 1/2" inch over palmar aspect of the right middle finger which was obliquely placed extending from radial aspect of the middle portion of the finger.

19. P. W. 9 opined that the injuries found on the person of Madhusudan Singha Mahapatra was severe in nature and the above stated injuries might be caused with any sharp cutting weapon like "dao" i.e. sickle and the swelling injuries might have been caused by lathi. He referred all the three patients to the Bankura Sammilani Medical College and Hospital for better treatment. The injury reports written and signed by him were marked Ext. 6 series.

20. From his cross examination it transpires that the patients were brought before him on 13-9-1990 at about 4.40 p. m. as it appears from the medical reports. He stated that the patients did not utter name of this assailants before him, but stated that they were assaulted by opposite parties. Madhusudan Singha Mahapatra was not conscious and the patient party stated to him that he was injured by opposite parties. He stated that the injuries found on the body of P. W. 4 might be caused by fall on the projecting blunt substance. He did not mention age of the injuries and the term "moderate" used by him indicates not severe but above than simple.

21. P. W. 15 is the autopsy surgeon who held post mortem examination on the dead body of Madhusudan Singha Mahapatra on 15-9-1990. On examination of the dead body he found the following injuries:

(1) One stitched up wound 3" inches in length over right side of the frontal region placed more or less vertically. Lower and outer end of the wound was 1 1/2 inches to the middle line of the front. Upper and inner end of the wound 1.3 1/2 inches to the right of mid line of front. On removal of the stitches it was found muscle deep.

(2) One stitched up wound 1 1/2" inches over the mid part of the forehead. It was more or less vertically placed. Both ends of the wound were at midline. On removal of the stitches it was scerated (sic) in character and muscle deep. On dissection fair amount of extravasted clotted and liquid blood was seen to have infiltrated the tissues of whole of scalp. Depressed comminuted fracture 2" inches x 1" inches x cranial cavity over right fronto parieto temporal bones with gross laceration of brain and meninges.

(3) Fissure fracture of 4" inches over mid part of the parietal bone which begins from wound No. 2.

(4) Fissure fracture of 1 1/2" inches over left parietal bone.

(5) Extradural clotted and liquid blood was seen to have infiltrated the tissues of the right fronto-parieto temporal region covering an area of 5" inches x 4" inches.

(6) Subdural clotted and liquid blood was seen to have infiltrated the tissues of both cerebral hemisphere.

(7) Comminuted fracture of right mid cranial fossa.

(8) One stitched up wound 1" inch over palmer aspect of right index finger at mid part. On removal of stitches it was scerated (serrated) in character and muscle deep.

(9) One stitched up wound over palmer aspect of right middle finger at distal phalanges. On removal of stitches it was scerated in character and muscle deep.

(10) One scerated wound over tip of left middle finger, the tip is almost separated from the finger, only a little portion was attached in the palmer aspect. Fair amount of extravasted clotted and liquid blood was seen to have infiltrated the tissues in and around the injuries and fractures described above.

22. P. W. 15 opined that the death was due to the effect of the head injuries described above which were ante mortem and homicidal in nature. The injuries found at palmer region might have been caused by sharp cutting weapon like "dao" i.e. sickle. The head injuries might have been caused by lathi and the head injuries in the ordinary course of the nature were sufficient to cause death. In cross examination he stated that the injuries found on the palmer region cannot be caused during scuffling with sharp cutting weapon like sickle. He was firm in

his opinion that these types of wounds cannot be caused with the pressure of sharp cutting weapon and these are defence wounds. He did not admit that those were not defence wounds. He admitted that in the post mortem report he did not specifically mention that these types of wounds found on palmer region were defence wounds. His evidence reveals that in case of such injuries the patient cannot survive and death is sudden in case of these types of injuries. He stated in cross examination that the head injuries found on the body of the deceased can be caused with hard and blunt weapon like lathi. Multiple head injuries cannot be caused with a single blow of lathi and it can be caused with more than one blow.

23. Evidence of P. W. 16 (I.O.) reveals that after perusing the written complaint / FIR he started investigation and visited place of occurrence. He prepared sketch map (Ext. 11) of place of occurrence with index. He found signs of blood with mark of violence at place of occurrence and it was surrounded by "aile" i.e. ridge of land. He seized blood stained earth, controlled earth, "Kalinga" variety paddy, one cot, one blood stained quilt and blood stained saree of Manorama Singha Mahapatra by preparing seizure lists (Exts. 1/6, 1/7 and 1/8). He also examined the available witnesses and came to the Khatra PHC for the patients and there he learnt that the patients were referred to Bankura Medical College and Hospital. On 14-9-1990 he received information from O. C., Bankura that Madhusudan Singha Mahapatra had expired at 1.45 p. m. He collected injury reports and after his transfer handed over the case docket to the O. C.

24. In his cross examination the defence took contradictions of different statements of the witnesses namely, P. W. 2, P. W. 4, P. W. 5 and P. W. 6 which we do not think necessary to state in detail. We would only refer to the contradictions upon which the appellants placed much" reliance. His cross examination reveals that he did not send the blood stained earth, the seized paddy, the blood stained saree and controlled earth for examination by chemical or forensic expert. He denied the defence suggestion that he suppressed the original information of the case and Ext. 2 is not the original FIR. He denied the defence suggestion that FIR was ante dated and was manufactured in collusion with P. W. 2.

25. Mr. Sekhar Basu, the learned senior counsel appearing for the appellants submitted that FIR was manufactured and antedated and it was a tampered document. He submitted that from evidence of P. W. 2 it appears that in the complaint the date was written by deleting the figure "4" and writing figure "3" making the date 13-9-1990 in place of 14-9-1990. P. W. 2 and P. W. 4 in their evidence stated that they came to police station first and as per advice of police officer they came to Khatra hospital and it gets corroboration from the police officer (P. W. 8). P. W. 2 was thereafter referred to Bankura Medical College and Hospital and so he had no scope to lodge FIR. The FIR was actually written on 14-9-1990 and when P. W. 2 learnt that accused Subrata Singha Mahapatra had already lodged one written complaint/FIR on 13-9-1990 over the incident dated

13-9-1990, he in collusion with police officers manufactured the FIR by deleting the English figure "4" and making the date 13-9-1990.

26. On the contrary, Mr. Swapan Mallick, appearing for the State submitted that FIR was not manufactured nor it was ante dated. The present case is Khatra P. S. Case No. 40 dated 13-9-1990 u/s 304 of the I.P.C. whereas the counter case is Khatra P.S. Case No. 41 dated 13-9-1990 u/s 324 of the I.P.C. P. W. 9 examined the injured persons on 13-9-1990 at Khatra hospital and P. W. 5 stated that from Khatra hospital he brought the FIR to Khatra P. S. when the same was given to him by P. W. 2. There was no question at all of lodging FIR on 14-9-1990. P. W. 2 due to his anxiety for the serious condition of his father and due to his own injury made a mistake in date and P. W. 2 himself corrected the date by making it 13-9-1990 in place of 14-9-1990. FIR was not ante-dated nor it was a tampered document.

27. Scrutinising carefully the entire oral and documentary evidence, the materials on record and considering the circumstances and the arguments advanced by the learned advocates we do not find force in the submission of Mr. Basu, and in our opinion the FIR was " not ante-dated, ante-timed nor it was manufactured. The formal FIR (Ext, 7) shows that the original written complaint / FIR was received on 13-9-1990 at 4.05 p.m. and the police officer made an endorsement on the back of the Ext. 7 to the effect that the original written complaint was attached herewith. There is endorsement of the same police officer on the reverse page or the second page of the original FIR with his signature and date 13-9-1990 which shows that he received the same on 13-9-1990 at 4.05 p. m. and started Khatra P. S. Case No. 40 dated 13-9-1990 and the said endorsement on the original written complaint is Ext. 2. The original written complaint was written by P. W. 2 in Bengali and in it the Bengali digits "14" was changed to 13 . This overwriting concerning date in Bengali in the original complaint cannot establish that FIR was ante-dated, ante-timed and manufactured.

28. Mr. Basu placed reliance on Ext. B to strengthen his contention that it was not possible for P. W. 5 Dwijapada Kar to bring the FIR into Khatra P. S. on 13-9-1990 at about 4.05 p. m. as he was in his school up to 4.00 p. m. which was mentioned in the certificate (Ext. B). We do not find force in the submission of Mr. Basu as Ext. B does not favour the appellants at all. Ext. B is a certificate dated 4-11-1994 issued by the Head Master of Masanghar Adibasi High School stating that Dwijapada Kar, Assistant Teacher of the said school was present in the school on 13-9-1990 from 10.30 a.m. to 4 p. m. and performed his duties. P. W. 5 Dwijapada Kar in his evidence in court stated that taking permission of the headmaster he came to Khatra market where he learnt about the Incident and thereafter he came to Khatra PHC and saw the injured father-in-law, mother-in-law and brother-in-law. His brother-in-law gave the FIR to him to submit it at Khatra P. S. P. W. 12, the then Officer-in-Charge of Khatra P. S. stated in his evidence that on 13-9-1990 he received the FIR through Dwijapada Kar.

Temporary absence from place of work is not uncommon in our country and this is permissible if any emergency situation arises. Ext. B was not a document produced by the prosecution before the Court and it was a document which was produced in Court by the accused persons. In order to prove the contents of Ext. B the accused persons ought to have examined the headmaster to establish that contents of Ext. B were true and P. W. 5 was in school from 10.30 a. m. to 4 p. m. and did not leave the school with his permission. The onus was on accused persons to prove it and they failed to discharge the onus due to non-examination of the Head Master to prove contents of Ext. B. Contents of a certificate cannot be considered unless the person who issued it was examined in Court. We find no ground to disbelieve evidence of P. W. 5 on oath that taking verbal permission of the Head Master he left the school and came to Khatra market towards afternoon where he learnt about the Incident. The appellants cannot take any benefit from the contents of the certificate marked Ext.B.

29. The counter case started by the accused persons was registered as Khatra P. S. Case No. 41 dated 13-9-1990. P. W. 1, though declared a hostile witness, admitted his three signatures on the three seizure lists dated 13-9-1990 and his signatures were marked Ext. 1, 1/1, and 1/2 respectively. Even in cross examination made by the defence P. W. 1 stated that he went to see Madhusudan Singha Mahapatra at hospital and there he met with Dwijapada Kar (P. W. 5). P. W. 2 clearly stated that he lodged the FIR on 13-9-1990 and wrote it at Khatra hospital and sent it to Khatra police station through P. W.5 who came to Khatra hospital to meet them. P. W. 3 was also declared a hostile witness, but stated in his evidence that on 13-9-1990 police personnel came to their village at evening and made seizures and he signed on three seizure lists and his signatures were marked Exts. 1 /3, 1 /4 and 1 /5 respectively. We have already discussed evidence of P. W. 5 who in his evidence stated that from school he came to Khatra market and from there to Khatra hospital, and he brought the FIR to Khatra P. S. from hospital. P. W. 8 is a police officer who was on duty at Khatra P. S. at the relevant time, and he in his evidence stated that on 13-9-1990 at about 3.45 p. m. one jeep came in front of police station with Madhusudan, his wife and Niranjan and he asked them to go to the Khatra PHC first. P. W. 9, the doctor of Khatra BPHC in his evidence stated that on 13-9-1990 he examined Niranjan, Manorama and Madhusudan Singha Mahapatra. His cross examination reveals that the patients were brought before him on 13-9-1990 at 4.40 p. m. P. W. 12, the then officer-in charge of Khatra P. S. stated that on 13-9-1990 he received the FIR through Dwijapada Kar (P. W. 5). P. W. 16 (I. O.) in his evidence stated that the officer-in-charge endorsed the Khatra P. S. Case No. 40 dated 13-9-1990 to him for investigation on 13-9-1990. After taking charge of the case he started investigation and on 13-9-1990 at 17-05 hours he visited place of occurrence and seized different articles through three seizure lists. The seizure lists were marked Exts. 1/6, 1/7 and 1/8 respectively. P. W. 16 further stated that on 13-9-1990 he examined available witnesses at 18.10 hours and recorded their statements. The aforesaid oral and documentary evidence clinchingly

proves that the FIR was lodged by P. W. 2 on 13-9-1990 and it was written by him at Khatra PHC and was sent to Khatra police station through P. W. 5 Dwijapada Kar. The FIR of counter case started on the basis of written complaint made by accused Subrata Singha Mahapatra was received at the police station afterwards and it was registered as Khatra P. S. Case No. 41 dated 13-9-1990. The mistake made by P. W. 2 in writing the date in the original complaint in Bengali cannot be regarded as tampering of date in the FIR, nor the same is sufficient to conclude that FIR was antedated, ante-timed and manufactured.

30. Mr. Basu next contended that the accused persons were seriously prejudiced as the case and counter case were not tried by the same Court. The settled principle of law laid down by the Supreme Court is that the case and counter case should be tried by same Court even though the counter case may not be a sessions triable case. This is necessary to avoid contrary findings and the Court which proceeds with trial of case and counter case can be the best Judged to ascertain who were the aggressors. In this case, this was most vital as possession of land of plot No. 122/470 of mouza Dakshinbaid was crucial due to the rival claim of complainant, party and accused party concerning possession over the said land and also cultivation and growing of "Kalinga" variety of paddy in the said land. As the case and counter case were not tried in same Court it caused serious prejudice to the accused persons and the trial Court failed to appreciate that which party in fact was the real aggressor.

31. We do not find force in this submission as in our opinion it was the fault of the accused persons during trial to mention before the trial Court that a counter case being Khatra P.S. Case, No. 41 dated 13-9-1990 u/s 324 of the I.P.C. was pending and this case and the counter case should be tried in same Court one after another and the judgment should be delivered by same Court one after another. The trial Court cannot be blamed for this as from defence it was not pointed to the trial Court that counter case was pending and according to the principle of law both case and counter case should be tried in same Court. The accused persons could have moved this Court in criminal revision for necessary direction upon the trial Court to hold the trial of both case and counter case one after another in the same Court. When the accused persons themselves failed to draw attention of the trial Court about pendency of the counter case, and did not prefer any application for holding trial of this case and counter case in same Court after disposal of this case the appellants cannot claim that they were seriously prejudiced.

32. Mr. Basu thereafter contended that the appellants had the right of private defence of their property as well as their person as the complainant party trespassed into the land of accused Subrata Singha Mahapatra and started harvesting paddy grown by him and when he raised protest, the deceased and P. W. 2 assaulted him. The injury suffered by the victim was caused in the exercise of right of private defence. Ext. A proves that the record of rights was corrected and the disputed plot was recorded in the name of the accused persons.

Previously by practicing fraud it was recorded in the name of a different person and the Revenue Officer after initiating a proceeding u/s 44(2a) of the W.B.E.A. Act corrected the entries of record of rights in respect of plot No. 122/470. Entries in Ext. A clearly establishes that the appellants were assaulted by the complainant's party on their own land. Suggestion was given to P. W. 2 that when accused Subrata Singha Mahapatra raised protest for harvesting his paddy the complainant's party assaulted him. These facts along with the suggestion clearly probabilise the theory of right of private defence and negates the prosecution case that the victim was subjected to assault pursuant to the formation of unlawful assembly. In support of his contention Mr. Basu cited the decision in State of Rajasthan Vs. Sughad Singh and others, .

33. Mr. Swapan Mallick for the State submitted that theory of private defence is not available to the appellants and the appellants exceeded their right of private defence. P. W. 2, P. W. 4 and P. W. 6 gave evidence in support of their possession over plot No. 122/470 of mouza Dakshinbaid. The appellants did not examine any witness and did not examine any person of BLRO Office to prove their possession over disputed land. From evidence of the witnesses it transpires that the accused persons were armed with sharp cutting weapons and lathis and they were the aggressors. The deceased was aged 76 years and after receiving the injuries he fell down on the paddy land and was lying there, but in spite of that, the accused persons assaulted him when he was lying on paddy field. After the head of the deceased was broken by lathi blow, the accused Subrata and others assaulted on his head with sickle. Accused Subrata sustained simple injury, while the deceased expired. Right of private defence cannot be extended in this case to cause death of Madhusudan Singha Mahapatra after he fell down on the paddy land with profuse bleeding.

34. After considering the submissions of the learned advocates and considering the entire evidence and circumstances we find that the accused persons were not entitled to exercise their right of private defence and if they had any such right they have clearly exceeded right of private defence. Ext. A over which Mr. Basu placed much reliance does not favour the appellants at all. We have carefully perused Ext. A which is a copy of judgment of the Revenue Officer in a suo motu proceeding u/s 44(2a) of the W.B.E.A. Act Case No. 458 of 1991. Ext. A reveals that the Revenue Officer corrected the record of rights as previously fraudulently name of a different person was recorded in respect of plot No. 122/470 of mouza Dakshinbaid within P. S. Khatra. Ext. A reveals that this plot was recorded alone in the name of Radha Krishna Singha Mahapatra. The Revenue Officer after correcting the same and removing the alleged interpolation recorded name of different co-sharers in respect of the said plot 122/470 of mouza Dakshinbaid under Khatian No. 8, J. L. No. 226 within P. S. Khatra and he recorded the names of Brajendra Nath Singha Mahapatra, Baladev Singha Mahapatra, Ramratan Singha Mahapatra, Narasingha Singha Mahapatra, Radha Krishna Singha Mahapatra, Bishnu Charan Singha Mahapatra, Madhusudan Singha Mahapatra, Bishnu Charan Singha Mahapatra, Madhusudan Singha Mahapatra and Harihar

Singha Mahapatra. It appears from Ext. A that Radha Krishna, Bishnu Charan, Madhusudan and Harihar were the sons of Sripati Singha Mahapatra. Ext. A clearly proves that Madhusudan Singha Mahapatra, the deceased was also a co-sharer in respect of that plot. P. W. 2, P. W. 4 and P. W. 6 gave evidence in support of that plot. P. W. 2, P. W. 4 and P. W. 6 gave evidence in support of their possession and growing "kalinga" variety of paddy in the said land. On the contrary, the appellants did not lead any oral and documentary evidence to prove that Madhusudan Singha Mahapatra had no possession in the said land. Evidence led by P. W. 2, P. W. 4 and P. W. 6 stands on a better footing and Ext. A corroborates that Madhusudan Singha Mahapatra was also a co-sharer. A co-sharer has his right in every inch of "ejmali" i.e. joint property land until and unless there is partition amongst the co-sharers in respect of joint property. The record of rights is not a document of title and at best it can be regarded as a document of possession. From Ext. A possession of deceased Madhusudan Singha Mahapatra in the disputed plot cannot be disbelieved. There was no evidence before us that there was partition by metes and bounds between the co-sharers in respect of the joint property including the disputed plot. There was no evidence before us relating to pendency of any civil suit for partition, There was no evidence of effecting partition through any partition deed.

35. The above discussion rather supports possession of deceased in the disputed land and it negates theory of right of private defence of appellants. The counter case started on the basis of FIR lodged by Subrata Singha Mahapatra was a case under Sections 324 and 448 of the I.P.C. Right of private defence cannot be extended to causing death of a co-sharer when the co-sharer fell down on the land receiving blows given by the appellants and the appellants having sustained minor injury. From evidence we find that Madhusudan Singha Mahapatra fell down on the land receiving the lathi blows given by accused Ananta, Phani Bhusan, Giridhari. Receiving such blows Madhusudan Singha Mahapatra fell down on paddy land with profuse bleeding and the appellant Subrata and Uttam Singha Mahapatra in spite of such serious condition of the deceased attacked him with sickle and cut fingers of both of his hands. The injuries sustained by the deceased as described by P. W. 2, P. W. 4 and P. W. 6 have been well corroborated by medical evidence of P. W. 9 and P. W. 15. When the deceased fell down on the paddy land and became unconscious there was no need of giving further blows on him, and with such serious injuries the deceased was unable to attack the appellants. The entire scenario, the evidence and the background as well as the circumstances clearly proves that the appellants exceeded their right of private defence of property as well as of their person. Evidence of the autopsy surgeon clearly proves that the injuries sustained by the deceased on fingers of both hands and palmer portion were defence wounds. We do not find any ground to disbelieve the evidence of P. W. 15 in this respect and it establishes that the injuries sustained by the deceased were not aggressive injuries or aggressive wounds.

36. Suggestions given to the witnesses were peculiar and strange, and they

further strengthen the prosecution case and demolish theory of right of private defence in favour of appellants. From defence it was suggested to P.W. 2 that when the complainant party tried to attack Subrata on his head due to his quick movement from the place, the stroke of lathi struck on the head of father of P. W. 2 . From the defence it was suggested to P. W. 6 that due to the scuffling between her father-in-law, her husband and the accused Subrata, her father-in-law sustained injury caused by her husband. These suggestions are ridiculous and baseless and the suggestions are clearly indicative of causing injury on the deceased during incident and it establishes the prosecution case and there is no ground to disbelieve the evidence of P. W. 2 and P. W. 4 and also the evidence of P. W. 6. The above discussion clearly establishes that the appellants were not all entitled to claim right of private defence and theory of right of private defence in this case being not available to them they cannot get themselves absolved from the offence. The decision in State of Rajasthan Vs. Sughad Singh and others, is not properly applicable in this case as facts and circumstances of the present case are different from the facts and circumstances of the reported decision. In the reported decision the accused was in possession of the land in question and the deceased and others were the aggressors and the appellant also sustained serious injuries. The scenario and background of the present case as we have discussed are completely different, and here in this case from evidence it was not proved that accused Subrata or any other accused was in exclusive possession of the disputed plot.

37. We intend to place reliance on some decisions of the Supreme Court which will explore how far the right of private defence can be exercised and the decisions would make it clear that in the instant case the appellants were not entitled to exercise right of private defence. In V. Subramani and Another Vs. State of Tamil Nadu, , Triloki Nath and Others Vs. State of U.P., and Triloki Nath and Others Vs. State of U.P., it was held by the Supreme Court that in order to claim right of private defence the burden of proof is on the accused. It was held, though while exercising that right a person is not expected to weigh in golden scales on the spur of the moment and in the heat of the circumstances, the number of injuries required to disarm the assailant, but the said right cannot be exceeded so as to cause more harm than necessary. The circumstances are required to be viewed with pragmatism. Failure to explain injuries of accused is not fatal to every prosecution case. In ascertaining who is the aggressor number of injuries is not always safe criterion for determining who is the aggressor.

38. In Dhaneswar Mahakud and Others Vs. State of Orissa, the Supreme Court rejected the contention of accused persons regarding right of private defence. In the reported decision, the Supreme Court held that the evidence revealed that there was no imminent danger to property or person of accused from the act of the accused and the accused was not entitled to claim right of private defence. In Ashok Kumar and Others Vs. State of Tamil Nadu, there was land dispute and dispute concerning possession of land. It was found that the deceased was in possession over the disputed land. The testimony of the eye witnesses were

truthful and their presence at spot was natural. The defence plea of right of private defence in regard to property was held by the Supreme Court not tenable in absence of evidence showing that accused persons were in possession of land. The Supreme Court negated the claim of right of private defence and held that conviction was proper. The facts of the reported decision of Ashok Kumar v. State of Tamil Nadu (supra) is almost identical with the facts and circumstances of the present case and in the present case possession over the disputed land by the accused persons were not established and the prosecution witnesses by their evidence rather stated possession of deceased over disputed plot.

39. In the present case before us Madhusudan Singha Mahapatra fell down on the paddy land receiving lathi blows on his head with profuse bleeding from head and became unconscious and P. W. 2 after assault on him went to safer place to save his life and there was none to attack the appellants. In spite of that, the appellants went on assaulting the deceased and in that process caused more harm to the deceased than was necessary and exceeded their right of private defence and the appellants were guilty for the death of Madhusudan Singha Mahapatra.

40. There is no ground to disbelieve the evidence of P. W. 6 as both P. W. 2 and P. W. 4 in their evidence stated that P. W. 6 followed them to the place of occurrence. It might be that initially P. W. 6 saw the incident of harvesting of paddy by the appellants from their house and when she found that her father-in-law, mother-in-law and husband proceeded to the place of occurrence she also followed them. She might have been late in arriving at place of occurrence, but her evidence of witnessing or seeing the injuries of her father-in-law, mother-in-law and husband cannot be disbelieved. Possibility of hearing about the incident of assault on them by her from P. W. 2 and P. W. 4 cannot be ruled out. Her evidence is admissible u/s 6 of the Evidence Act as res gestae as she came to place of occurrence and saw the injuries of deceased, her husband and her mother-in-law.

41. Mr. Basu contended before us that charge u/s 147 of the I. P. C. failed and the trial Court itself held that charge u/s 147 of the I.P.C. was not proved. As the charge of formation unlawful assembly failed, the charge u/s 304 with the aid of 149 of the I.P.C. also failed and the learned trial Court after coming to the finding that charge u/s 147 of I.P.C. was not established made serious mistake by finding the appellants guilty u/s 304 part II read with Section 149 of the I. P. C. We are not impressed with this submission of Mr. Basu and we find that charge u/s 147 of the I. P. C. was a separate and distinct charge. There was no need of framing separate charge u/s 147 of I. P. C. as elements of Section 149 of I. P. C. covers the elements of 147 of I. P. C. When the trial Court found the appellants guilty u/s 304 part II read with Section 149 of I. P. C. the elements of Section 147 of I. P. C. merged with the elements of Section 149 of I. P. C. Observation of the trial Court that charge u/s 147 of the I. P. C. was not established was a mistake as the trial Court failed to consider that the main charge was u/s 304

read with Section 149 of I.P.C. and the said charge automatically covers elements of Section 147 of I.P.C. From the evidence of P.W. 2, P.W. 4 and P.W. 6 presence of all the accused persons at the place of occurrence was well-proved and their evidence clearly proves formation of unlawful assembly whose common object was to assault Madhusudan Singha Mahapatra, Manorama Singha Mahapatra and Niranjana Singha Mahapatra and their evidence clinchingly proves that the accused persons were armed with deadly weapons like sickle and lathi. P. W. 2 and P. W. 4 were themselves the injured persons who were assaulted by the appellants and their evidence is the best evidence and they are the best witnesses in this case. From evidence we find that elements of Section 304 part II read with elements of Section 149 of I.P.C. were well established and finding of the trial Court that Section 147 I.P.C. was not established is inconsequential and such a finding does not favour the appellants and does not wipe out elements of Section 149 of I.P.C.

42. Mr. Basu next contended before us that the injured persons at the earliest opportunity did not disclose name of the assailants. First of all, they were produced before Khatra PHC and P.W.9 examined them but before the said doctor the injured persons did not disclose name of the assailants and they simply stated about opposite parties. Placing reliance on *Devinder Vs. State of Haryana*, . Mr. Basu submitted that non-disclosure of name of the assailants at the earliest opportunity could show that FIR was ante-timed and names of the assailants were subsequently transplanted and the prosecution story cannot be accepted by the Court. It is true that in *Devinder v. State of Haryana* (supra) the Supreme Court held that non-disclosure of the name of the assailants at the earliest opportunity would indicate that the FIR was ante-timed and names of the appellants were inserted and that prosecution story cannot be accepted. The reported decision is not applicable in the present case due to difference in facts and circumstances. In the reported decision there was no disclosure at all about assailants whereas in the present matter before us as it appears from P.W.9 that P.W.2 and P.W.4 stated to him that the opposite parties were the assailants. This is significant in our opinion as opposite parties are none but the appellants as from evidence of P.W.2 and P.W.4 and the circumstances it is clear that there was dispute between the complainant party and the accused party concerning possession and growing of paddy in plot No. 122/470. Considering the evidence of P.W.2 and P.W.4 as well as the evidence of the doctors and police officers and the evidence of P.W. 8 who advised them to go to the Khatra PHC we find that the appellants were the assailants and the Injured persons were sent to PHC before registration of FIR from the police station by P.W. 8 himself. Possibility of ante-timing of FIR and insertion of names of the appellants is nil in his case and we do not find that names of the appellants were planted or inserted subsequently as assailants. The FIR was sent to the learned Magistrate without delay on 15-9-90. The incident was at about 2.30 p.m. on 13-9-90 and the FIR was lodged on the same day at 4.05 p.m.

43. Mr. Basu drew our attention to the evidence of the autopsy surgeon who

opined that injury on the head of deceased was not caused by sharp cutting weapon and the autopsy surgeon (P.W. 15) opined that the head injuries found on deceased might have been caused with blows of lathi. The evidence of P.W.2 and P.W.4 that even after fall of deceased on the paddy land, the appellants Subrata and Uttam assaulted on his head by sickle, is therefore false and accordingly the entire evidence of P.W.2 and P.W.4 are false and no reliance can be placed on their evidence. We are unable to agree with the views of Mr. Basu. The theory of "falsus in uno falsus in omnibus" is not applicable in criminal trial. While appreciating the entire evidence, the Court has to judge and ascertain which portion is more reliable and trustworthy, which portion is less important and which portion requires to be ignored. Evidence of P.W.9, the first doctor who examined the patients at Khatta PHC reveals that he found at least two sharp cutting injuries on the head of deceased. P.W.9 was of course not specific about the weapons which caused those sharp cutting injuries; whether those were caused by sharp cutting weapon or blunt weapon. The evidence of P.W.2, P.W.4 and P.W.6 was very particular relating to first attack on the deceased as they stated that Ananta Deb Singha Mahapatra, Giridhari Singha Mahapatra and Phani Bhusan Singha Mahapatra assaulted on the head of Madhusudan Singha Mahapatra by lathi and after receiving such blows by lathi Madhusudan fell down on the paddy land. This part of evidence cannot be disbelieved at all and such lathi blows were sufficient to cause death of Madhusudan Singha Mahapatra as was opined by P.W. 15. Possibility of making mistake by P.W.2 and P.W.4 as to causing further injury on head of deceased by Subrata and Uttam with sickle cannot be ruled out as more than 15 accused persons surrounded the deceased for which was not possible for them to see actually whether the sickle blow was given on head or not. From evidence it is clear that the deceased sustained sharp cutting injuries on fingers of his both hands and palmer region and both the doctors P.W.9 and P.W. 15 opined that injuries on finger were caused by sharp cutting weapon and P.W. 15 further stated that injuries on fingers were defence wounds. The picture thus establishes that after the deceased fell down on paddy land there was attempt to cause further assault on his head and he raised his hands to save himself from further assault when the sickle blows given by Uttam and Subrat caused such sharp cutting injuries on his figures. Due to this minor discrepancy we find no ground at all to disbelieve the evidence of P.W.2, P.W.4 and P.W.6 as well as the evidence of the doctors namely, P.W.9 and P.W.15. The law is well-settled that where there is discrepancy between ocular version and medical evidence, the ocular version is to be given more weight than the medical evidence. Besides that, we observed earlier that first lathi blows were given and the lathi blows were the major and vital blows on head and the subsequent assault by Subrata and Uttam by sickle were on hands when his fingers were cut and as the deceased raised his hands the sickle blows did not struck on his head and sickle blows cut the fingers and palmer regions.

44. Mr. Basu thereafter placed before us the contradictions between the evidence of witnesses stated in Court and their statements made before I.O. recorded u/s

161 of Cr.P.C. In our opinion, these contradictions between the statement of P.W.2, P.W.4 and P.W.6 in Court and their earlier statement recorded by I.O. u/s 161 of Cr.P.C. are not at all vital or material. We find that there was no proper cross-examination of P.W.2, P.W.4 and P.W.6 relating to incident of assault by the appellants as well as the weapons used by them in assaulting the deceased, P.W.2 and P.W.4. The contradictions in the evidence of P.W.2 and P.W.4 from their statements to I.O. recorded u/s 161 of Cr.P.C. have not affected or demolished the foundation of the prosecution story. Such contradictions do not destroy the evidentiary value of evidence of P.W.2, P.W.4 and P.W.6 and not make them untrustworthy witnesses.

45. It is not essential to cite all the contradictions; still we reproduce some of the contradictions which would make it clear that those contradictions between evidence in Court and statements recorded u/s 161 of Cr.P.C. were not vital and material. It was taken from the I.O. that before him P.W.2, P.W.4 and P.W.6 did not state that saree of P.W.4 was stained with blood of deceased. It was taken from P.W. 16 that P.W.2 and P.W.4 did not state that Dwijapada Kar came to Khatra hospital. It was taken also that P.W.2 and P.W.4 did not state to I.O. that P.W.6 followed them to the place of occurrence. It was also taken from I.O. that P.W.2 and P.W.4 did not state that the deceased Madhusudan told the accused persons not to cut paddy from his land and that there was no heavy bleeding from head, nose of deceased. P.W.2 and P.W.4 also did not state to the I.O. that they grew "kalinga" variety of paddy in plot No. 122/470. Presence of P.W.2 and P.W.4 at place of occurrence cannot be disputed, cannot be doubted as they are the injured persons and sustained injuries in the same incident. It was quite natural and probable that P.W.4 being wife would try to save her husband and would take her husband on her lap when he fell down. As there was bleeding from head of deceased it was quite natural that saree of P.W.4 was stained with blood of deceased. Evidence of P.W.9 and P.W. 15 and the direct and ocular version of P.W.2 and P.W.4 as well as P.W.6 clearly proves how serious were the injuries of Madhusudan Singha Mahapatra and both the doctors stated about stitched wounds on fingers of both hands as well as stitched wounds on the head and forehead. These injuries definitely caused profuse bleeding and accordingly it is inconsequential and immaterial whether P.W.2 and P.W.4 stated about bleeding injury of deceased from head or not to I.O. and stain of blood on the saree of P.W.4. We have already discussed about the evidence of P.W. 5 and the manner of bringing FIR into police station by P.W. 5 from the Khatra PHC. Whether P.W.2 and P.W.4 stated to the I.O. regarding presence of P.W.5 does not throw the prosecution case out of Court as evidence of P.W. 12, the Officer -in-Charge of Khatra P.S. establishes that P.W.5 brought the FIR as police station. Non-mention of leaving the place of occurrence by the accused persons with lathi and "dao" is not vital at all as it is well expected that the accused persons after the incident left the place of occurrence. Failure of the witnesses to state to I.O. about "kalinga" variety of paddy is not vital and material as it is the specific case which transpires from evidence that in the said land "kalinga" variety of paddy were

grown and P.W. 16 seized "kalinga" variety of paddy. The discrepancies between the evidence of witnesses in Court and their statement before I.O. u/s 161 of Cr.P.C. as mentioned above clearly shows and establishes that those omissions and contradictions were very minor, inconsequential and are ignorable. Such contradictions do not at all make P.W.2, P.W.4 and P.W.6 untrustworthy witnesses and such contradictions have not destroyed the evidentiary value of the witnesses and have not thrown the prosecution case out of Court.

46. The aforesaid discussion made by us considering the evidence, circumstances and material on record clearly establishes that the prosecution was able to prove its case. Though the charge was u/s 304, Part I read with Section 149 of the I.P.C., considering the entire evidence and circumstances we find that the learned trial Court made no mistake by convicting the appellants 1 to 4 u/s 304, Part II read with Section 149 of I.P.C. and sentencing them to suffer rigorous imprisonment for 8 years and also fine. The learned trial Court also made no mistake by convicting the appellant Nos. 1, 2 and 5 u/s 323 read with Section 149 of I.P.C. and sentencing them to suffer simple imprisonment for 6 months and with fine. In our opinion, the sentence imposed on the appellants were not harsh at all and we do not like to interfere with the sentence also. In the result, the appeal fails and is dismissed.

47. The appellant Nos. 1, 2 and 5 who are on bail are directed to surrender in the trial Court within 30 days from the date of this Judgment in order to serve out the sentence failing which the trial Court would take steps against them in accordance with law for taking them into custody to serve out the sentence.

48. Criminal Section is directed to send down the lower Court records with copy of judgment and order to the trial Court for information and necessary action.