
(2016) 07 JH CK 0090
In the Jharkhand High Court
Case No : Cr. Appeal (DB) No. 469 of 2008

Bishwanath Rawani	Vs	APPELLANT
The State of Jharkhand		RESPONDENT

Date of Decision : 30-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2017) 2 AIRJharR 193 : (2016) 4 ECrC 280 : (2016) 4 JBCJ 152 : (2016) 4 JLJR 458 : (2017) 2 PCCR 27

Hon'ble Judges : Mr. D.N. Upadhyay and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. B.M. Tripathy, Senior Advocate, Mr. P.K. Mukhopadhyay with Mr. Jitendra Tripathy and Mr. Ashish Kumar, Advocates, for the Appellants (in Cr. Appeal (DB) Nos. 469, 402, 442 & 466 of 2008); Mr. R.C.P. Sah, Advocate, for the Appellants (in Cr. Appeal (DB

Final Decision : Dismissed

Judgement

D.N. Upadhyay, J.—Criminal Appeal (DB) Nos.469, 402, 442, 466 and 517 of 2008 have been preferred by appellants namely Bishwanath Rawani, Sukhdeo Rawani, Nuni Bala Devi, Rajendra Rawani and Khageshwar Rawani respectively against the judgment of conviction and order of sentence dated 16.02.2008 and 19.02.2008 respectively, passed by the Additional Sessions Judge 13, Dhanbad in connection with Sessions Trial No.73 of 2005 corresponding to G.R. Case No.1584 of 2004 arising out of Baliapur P.S. Case No.53 of 2004 whereby and where under they have been held guilty for the offences punishable under Section 302/149, 323/149 and 148 of the Indian Penal Code and sentenced to undergo life imprisonment and to pay fine of Rs.1000/- under Section 302/149 of the Indian Penal Code, six months R.I. under Section 323/149 of the Indian Penal Code and in default of making payment of fine further imprisonment for three months.

Criminal Appeal (DB) No. 209 of 2011 has been preferred by appellant

Dhaneshwar Rawani against the judgment of conviction and order of sentence dated 19.02.2011 and 21.02.2011 respectively passed by the Additional Sessions Judge 1, Dhanbad in connection with Sessions Trial No.73A of 2005 corresponding to G.R. Case No. 1584 of 2004 arising out of Baliapur P.S. Case No.53 of 2004 whereby and where under he has been held guilty for the offences punishable under Section 302/149 and 147 of the Indian Penal Code and sentenced to undergo imprisonment for life under Section 302/149 of the Indian Penal Code and R.I. for six months under Section 147 of the Indian Penal Code.

2. Since all the appeals arising out of one and same occurrence i.e. Baliapur P.S. Case No.53 of 2004 corresponding to G.R. Case No. 1584 of 2004, are disposed of by this common judgment.

3. The facts emerging from the fardbeyan of Phulchand Rawani recorded on 24.05.2004 at Central Hospital, Saraidhela, Male Surgical Ward No.III, Bed No.19 at 13.00 hours are that on the same day at about 7.30 a.m. while Karla Devi (deceased) was washing her hands and mouth by standing near the door of her house, Dhaneshwar Rawani hurled abuses and raised objection against flow of water. In the mean time, Rajendra Rawani and Bishwanath Rawani both sons of Dhaneshwar Rawani dragged Karla Devi to the courtyard of their house. The alarm raised by the deceased attracted Sanjay Rawani where after the informant with his son Sanjay tried to save Karla but till then the accused persons took out sword, tangi, spear, lathi etc. The former accused were joined by accused Sukhdeo Rawani, Khageshwar Rani, Nuni Bala Devi and Rinki Devi who all were armed with sword and tangi. On being ordered by Dhaneshwar Rawani, Rajendra Rawani with the help of his mother Nuni Bala Devi and sister Rinki Kumari pulled down the deceased on the ground. It is alleged that Nuni Bala Devi and Rinki Kumari caught hold of hand and leg of Karla Devi whereas Rajendra was catching hold of head of the deceased. Bishwanath Rawani, by using sword, slit the neck of Karla Devi as a result she died at the spot. Thereafter Bishwanath Rawani hurled sword blow on the person of informant and caused injury on his hand. Sanjay Kumar Rawani and Madan Kumar Rawani were also assaulted by the appellants by means of tangi, lathi, sword etc.

4. On the basis of fardbeyan of Phulchand Rawani, Sindri, Baliapur P.S. Case No.53 of 2004 under Section 147, 148, 149, 324, 326, 307 and 302 of the Indian Penal Code against all the seven named accused was registered. The police, after due investigation, submitted charge sheet against six named accused except appellant Dhaneshwar Rawani. The accused namely Rinki Kumari was found juvenile and therefore, her case stood split up from the remaining accused. Accordingly cognizance was taken and the case was committed to the court of Sessions and registered as Sessions Trial No.73 of 2005.

5. Since appellant Dhaneshwar Rawani was not sent up for trial, remaining appellants were charged for the offence punishable under Sections 148, 302/149, 307/149 and 323/149 of the Indian Penal Code and were put on trial.

To substantiate the charges, prosecution has examined altogether 12 witnesses and proved documents whereas the appellants also examined six witnesses and proved injury reports in their defence. At the conclusion of the trial, the appellants have been held guilty and inflicted sentence as indicated above. The aforesaid five appellants have preferred their respective appeal as indicated in the title page.

6. During trial the prosecution filed a petition under Section 319 of the Cr.P.C. to implead Dhaneshwar Rawani as an accused and after granting hearing to the parties, Dhaneshwar Rawani, appellant in Cr. Appeal (DB) No.209 of 2011, was directed to face trial where after separate trial vide Sessions Trial No.73A of 2005 proceeded against him.

In Sessions Trial No.73A of 2005 altogether nine witnesses have been examined on behalf of prosecution whereas the appellant examined six witnesses in his defence. Documents were also proved from both sides. At the conclusion of trial appellant Dhaneshwar Rawani was found guilty under Section 147 and 302/149 of the Indian Penal Code and inflicted sentence as indicated above.

7. In both the sessions trial referred to above, except witnesses Balika Devi PW5 and Ramdev Prasad PW12, nine witnesses are common. Investigating Officer Pravin Kumar PW7 has examined himself as DW1 in Sessions Trial No.73A of 2005. It would be convenient for us to refer the evidence of witnesses by their respective name.

8. Phulchand Rawani (informant), Sanjay Rawani and Madan Kumar Rawani are the injured witnesses and they have supported the prosecution case as disclosed in the fardbeyan. All these three witnesses have stated that the occurrence took place on 24.05.2004 at 7.30 a.m. while Karla Devi was washing her hands and mouth by standing near the door of the house. In the mean time, Dhaneshwar Rawani raised objection against flow of waste water in the alley and hurled abuses. In course of that, exchange of hot words took place between the deceased and Dhaneshwar. Thereafter appellant Rajendra and Bishwanath appeared at the scene of occurrence and forcibly took Karla Devi to the courtyard of their house. Rajendra Rawani with the help of Nuni Bala Devi and Rinki Kumari pulled down the deceased on the ground and caught hold of her. Bishwanath Rawani by means of sword slit the neck of Karla Devi. In course of assault, Dhaneshwar Rawani, Khageshwar Rawani, Sukhdeo Rawani also reached to the place. Dhaneshwar Rawani caused injury to the deceased on her head by means of tangi. When these witnesses tried to intervene, they were assaulted by Bishwanath Rawani and Rajendra Rawani. Khageshwar Rawani assaulted Madan Rawani by means of spear whereas Sukhdeo Rawani inflicted blows by means of lathi. Karla Devi died at the spot i.e. in the courtyard of the house of appellants. After about one and half hour, police arrived at the place. The injured were removed to hospital for their treatment where fardbeyan of Phulchand Rawani was recorded and the fardbeyan has been proved as Exhibit 5. Signature of Phulchand Rawani and Baleshwar Rawani appearing on the fardbeyan have been

proved and marked Exhibit 1 and 1/1 respectively. The formal F.I.R. has been proved as Exhibit 6. These witnesses have described the specific weapon held by each of the appellant. The informant in his cross-examination, has admitted institution of counter case lodged against them vide G.R. Case No.1585 of 2004. He has further admitted that title suit with respect to the alley passing between the houses of appellant and informant filed by Dhaneshwar Rawani was pending. The informant has described the length and breadth of the disputed alley in para 25 of his deposition. Contradictions have been taken from him in para 37 to 43. Sanjay Rawani has admitted that his statement was not recorded by the police and he has deposed in court for the first time. Suggestion given to this witness has been denied. Madan Kumar Rawani has also admitted that in the counter case he has been made accused. The dispute regarding use of alley has been prevailing between the parties from before. Sahdeo Rawani and Haripad Rawani are the witnesses who had reached to the place of occurrence after the assault and they had seen the dead body of Karla Devi lying in the courtyard of house of appellants. In presence of these witnesses inquest report was prepared and weapons of the offence were seized. Both the witnesses have proved their signatures appearing on those documents i.e. inquest report and seizure list. Haripad Rawani, in addition to witnessing the inquest and seizure list, has said that he had seen Rajendra and Nunu Bala having weapon in their hand and further says that Sanjay Rawani and Bishwanath Rawani were fighting with each other and Bishwanath was having sword in his hand. Contradictions have been taken from the mouth of this witness during his cross-examination. Baleshwar Rawani happens to be brother of informant and he had reached to the place of occurrence after hearing hulla. He had seen dead body of Karla Devi having injury on her neck and the dead body was lying in the courtyard of house of appellant Dhaneshwar. Appellant Bishwanath Rawani was having sword whereas Rajendra Rawani was in possession of tangi. Nuni Bala Devi was armed with axe and Khageshwar was having spear in his hand. Phulchand Rawani, Sanjay Rawani and Madan Rawani were present at the place of occurrence with bleeding injuries on their person. He took Sanjay and Phulchand to hospital on his tempo. Later Madan was brought to hospital by police. The injured were referred to Central Hospital for better treatment. The defence counsel has taken contradictions from these witnesses in para 9, 10 and 11. Sarswati Devi happens to be wife of Baleshwar Rawani and she has also supported the prosecution case as disclosed by the informant and other injured witnesses.

9. Praveen Kumar happens to be police officer, then posted as incharge Bhuli O.P. He has stated that after receiving rumor that occurrence of assault has taken between two parties, he proceeded from police station after making station diary entry no.588 dated 24.05.2004. When he reached Tola Neem Tand, he was informed that in course of assault between two parties a lady has been killed. He went to the place of occurrence and saw the dead body of a female having cut injury on her neck. The dead body was lying in the courtyard of the house of appellant Dhaneshwar Rawani. The persons namely Phulchand Rawani, Madan

Kumar, Sanjay, Nuni Bala Devi and Rajendra who had sustained injuries in the occurrence were sent to hospital for their treatment. He prepared inquest report of deceased Karla Devi and proved the same as Exhibit 4. He has proved the fardbeyan of Phulchand Rawani as Exhibit 5 and formal F.I.R. as Exhibit 6. This witness has further described the place of occurrence. He disclosed that counter case being Baliapur P.S. Case No.54 of 2004 was also lodged. Contradictions taken from witnesses have been referred to this witness.

10. Dr. Kundan Prasad Singh has examined injured Sanjay Kumar Rawani and Phulchand Rawani and he has proved the injury reports as Exhibit 9 and 10. Dr. Shailendra Kumar had conducted autopsy on the dead body of Karla Devi and the injuries which he had noticed on the person of the deceased have been described. The post mortem report has been proved as Exhibit 11. Cause of death, as opined, is shock and haemorrhage due to the injuries mentioned in the post mortem report and the injuries found on the person of deceased were caused by heavy sharp cutting weapon.

11. Ramdeo Prasad has produced seized sword and tangi and the weapons have been marked material exhibits (I) and (II) respectively. Balika Devi is the niece of deceased and she has supported the prosecution case. She has stated, while Karla Devi was washing her hands and mouth, it was objected by Dhaneshwar. Thereafter altercation took place and exchange of abuses had taken place. Rajendra Rawani and Bishwanath Rawani reached to the place and forcibly dragged Karla Devi to their courtyard where Dhaneshwar instigated and said "Iska bahut man badh gaya hai, isko kaat do." Thereafter Rajendra Rawani armed with tangi, Bishwanath Rawani armed with sword reached to the place. On hulla Phulchand Rawani and Madan Rawani rushed to the place. Dhaneshwar Rawani, Nuni Bala Devi and Rinki Kumari also appeared and they all pulled Karla Devi down and Rajendra Rawani caught hold of head of Karla whereas Bishwanath Rawani slit the neck by sword. Dhaneshwar Rawani caused assault to Karla by means of tangi on her head. The informant Phulchand Rawani, Sanjay Rawani and Madan Rawani were also assaulted by the appellants. Karla Devi died at the spot. Contradictions have been taken in para 2 and 3 of her cross-examination.

12. The appellants have also examined six witnesses in each of the Sessions Trial i.e. Sessions Trial No.73 of 2005 and Sessions Trial No.73A of 2005. Out of those six witnesses Manoj Rawani, Pradeep Kumar Rawani, Manoj Kumar Rawani, Bibhuti Modi and Ramchandra Jha are common in both the cases whereas Dr. Srikrishna Kumar Ranjan has been examined in Sessions Trial No.73 of 2005 and Praveen Kumar, S.I. of police has been examined in Sessions Trial No.73A of 2005. Defence witnesses Manoj Rawani, Pradeep Kumar Rawani and Manoj Kumar Rawani have been examined to support the defence version that on the date of incident Rajendra Rawani was busy in installing water tank at the roof of his house. Plumber and labourers were engaged for the job. In the mean time, Karla Devi (deceased) started abusing Rajendra and raised objection against

installation of water tank because the water pipe to the tank was taken from the alley and the alley was under dispute. She called her family members who reached to the place of occurrence armed with sword, tangi, lathi etc. and caused assault to Rajendra and Nuni Bala Devi. These three witnesses have further gone to depose that Dhaneshwar was not present in the house at the relevant point of time.

13. Bibhuti Modi and Ramchandra Jha are the co-employee working with Dhaneshwar and they have supported the contention that on 24.05.2004 Dhaneshwar Rawani had attended his duty in the A-shift and he had been to the site of his work from 8.15 a.m. The attendance register for the period from 23.05.2004 to 29.05.2004 was produced and proved as Exhibit-A by DW Ramchandra Jha.

14. Dr. Srikrishna Ranjan had examined Rajendra Rawani in P.M.C.H. on 24.05.2004 and found lacerated wound on the right forearm on dorsum and proved the injury report as Exhibit-B. On that very day he had also examined Nuni Bala Devi and proved the injury report of Nuni Bala Devi as Exhibit B/1. He has further deposed that the injured were referred by the police with requisition.

15. In Sessions Trial No.73A of 2005 for which Cr. Appeal (DB) No.209 of 2011 has been preferred, Praveen Kumar, S.I. of police, who happens to be the Investigating Officer has been examined as DW1. Attention of this witness was drawn towards the contradictions of prosecution witnesses taken from them during their cross-examination and after perusing the case diary he has stated that those witnesses have not stated said fact before him and that portion of their statement is not appearing in their statement recorded under Section 161 of the Cr.P.C.

16. Learned counsel appearing for the appellants have assailed the impugned judgments of conviction and sentence on the ground that most of the prosecution witnesses are highly interested and they were in inimical term with the appellants. Long standing dispute relating to use and occupation of alley falling between the houses of parties was prevailing. The informant has not come up with fair hand and he has not given true picture of the occurrence. He has widely exaggerated his statement before the court during trial. The informant has not stated in his fardbeyan that Dhaneshwar was armed with tangi and he caused assault to deceased on her head by means of tangi. This contradiction has been taken from PW1 and it was referred to the Investigating Officer PW7 Praveen Kumar who has clearly stated that no such statement was given by the informant either in the fardbeyan or in his statement recorded under Section 161 Cr.P.C. In the same manner, prosecution witnesses namely Haripad Rawani, Baleshwar Rawani, Balika Devi and Sarswati Devi have also exaggerated their statement in court. Sanjay Rawani PW9 and Madan Kumar Rawani PW10 did not appear before the Investigating Officer during investigation to give their statement but they appeared before the court during trial and deposed against the appellants. Since these two witnesses have been examined for the first time

in court, they could not be considered reliable witnesses. Under vengeance the interested prosecution witnesses have deliberately attributed specific allegation against each and every appellants and they did not spare even the female members who are two in number and out of them Rinki Kumari was juvenile. The learned counsel has submitted that informant is not an eye witness to the assault caused to deceased Karla Devi and it would be apparent from his deposition made in para57 in which he has stated that when he came out of the room after hearing hulla, he had seen Karla Devi lying with bleeding injuries. The aforesaid statement of informant PW1 is sufficient to falsify rest part of his deposition in which he has given vivid description of occurrence. PW4 Baleshwar Rawani, PW5 Balika Devi, PW6 Sarswati Devi, PW9 Sanjay Rawani and PW10 Madan Kumar Rawani are the close relatives of informant and therefore, it is always expected that they would support the prosecution case brought by the informant.

17. Learned counsel have further pointed out that prosecution witnesses have admitted the institution of counter case being Baliapur P.S. Case No.54 of 2004 lodged by appellant Rajendra Rawani. The injuries sustained to appellant Rajendra Rawani and Nuni Bala Devi have well been proved by Dr. Srikrishna Nandan Kumar Singh. Rajendra Rawani had sustained lacerated wound on his forearm whereas Nuni Bala Devi was having sharp cut injury on her person. As a matter of fact, it were the informant and his associates who made an attempt to commit murder and having deadly weapon they had been to the house of appellants and caused injury to Rajendra Rawani and Nuni Bala Devi. The documents and evidence brought by appellants in their defence clearly suggest that there was free-fight between the parties and if it was so, each individual accused shall be held liable for the overt act committed by him. The learned trial judge has committed gross error by holding the appellants guilty with the aid of Section 149 of the Indian Penal Code. Furthermore, the admitted evidence on record is that the occurrence took place in the courtyard of the house of appellants and informant and his associates were the trespassers. Presence of appellants in their house could not be termed as unlawful assembly. Their conviction under Section 302/149 of the Indian Penal Code cannot be sustained.

18. The further argument of counsel appearing for appellant Dhaneshwar Rawani in Cr. Appeal (DB) No.209 of 2011 is that he was not at all present in the house at the time of occurrence. According to evidence of Dr. Srikrishna Ranjan, the time of occurrence disclosed by the injured Sanjay was 9.30 a.m. As per the evidence of defence witnesses Bibhuti Modi, Ramchandra Jha and Manoj Kumar Rawani, this appellant was all along present on his duty after 8.30 a.m. and to attend his duty he might have left home one hour before. The presence of Dhaneshwar Rawani further becomes doubtful even from the evidence of informant and other interested witnesses. The informant has never said that Dhaneshwar Rawani was armed with tangi and he had caused assault to the deceased on her head. Balika Devi PW5 and Sarswati Devi PW6 have also exaggerated their statement by saying that Dhaneshwar hurled tangi blow on the head of deceased though this fact was not disclosed by them in their statement

recorded under Section 161 Cr.P.C. The Investigating Officer PW7, after receiving instruction from supervising authority, had conducted enquiry and examined some of the witnesses to find out whether Dhaneshwar Rawani at the time of occurrence was present in the house or not. On being satisfied that Dhaneshwar Rawani was not present at the time of occurrence, charge-sheet was not submitted against him. All these facts suggest as to how the informant and his family members have tried to implicate each and every member of the family of Dhaneshwar Rawani by giving false evidence. Thus, it is clear that they have not come up with clean hand and deposition made by them is shrouded with suspicion and therefore, cannot be relied upon. Learned counsel appearing for the appellants have relied upon the judgments reported in (2004) 9 SCC 18, Hem Raj and Others v. Raja Ram and Others, (2011) 5 SCC 324, Kuldip Yadav and Others v. State of Bihar and (2015) 2 SCC 734, Inder Singh and Others v. State of Rajasthan.

19. Learned Addl. P.P. appearing on behalf of State and learned counsel representing the informant have vehemently opposed the argument advanced by the appellants. It was contended that role played by the Investigating Officer was not fair. When the contradictions taken from the witnesses were referred to him, he had placed two facts. The evidence which the witnesses have given before the court during trial was well given by them during investigation. The counsel appearing for the appellants, by referring the contradictions taken from the mouth of witnesses and reference of those contradictions made to the Investigating Officer has tried to impress upon the court that the witnesses have exaggerated their statement in court and so-called contradictions highlighted by the appellants were not appearing in the statement of witnesses recorded under Section 161 of the Cr.P.C. It was submitted that the points which the appellants have raised have occurred only because of the manner of recording of the statement by two different persons. The Investigating Officer has recorded the statement of witnesses under Section 161 Cr.P.C. in his own style. When the witnesses were examined during trial, they have reproduced the same fact which they had given during investigation, but there appear some difference due to construction of sentences and also because of use of different words. It was submitted and requested by the learned Addl. P.P. that if the statement of witnesses recorded in the case diary would be perused, it would become clear that they have not introduced new facts during trial rather the facts are almost same and they have not exaggerated their statement in any manner.

20. It was submitted that the informant has fully corroborated and substantiated the occurrence in his deposition in court. The contention made by him in the fardbeyan find support from his statement recorded during trial. The independent witnesses namely Sahdeo Rawani and Haripad Rawani have corroborated this fact that dead body of Karla Devi was lying in the courtyard of the house of appellants. The inquest report was prepared in their presence. The weapon of the offence stained with blood were seized from the house of Dhaneshwar Rawani. Haripad Rawani has not reproduced the entire statement given by him although

he had witnessed part of the occurrence. He has rightly deposed that he had seen Rajendra and Bishwanath having weapon in their hand. Phulchand, Sanjay and Madan were having injuries on their person. Balika Devi and Sarswati Devi have fully supported the prosecution case and they have described the role played by each and every appellants. The injuries caused to witnesses namely Sanjay Rawani and Phulchand Rawani stood corroborated by the evidence of Dr. Kundan Prasad Singh. The ocular evidence brought on record by the prosecution witnesses find full corroboration from the evidence of Dr. Shailendra Kumar who had conducted autopsy on the dead body of Karla Devi. The Investigating Officer had not only supported the appellants during investigation rather he has tried to help them during trial too. He has examined himself as defence witness. He has admitted that he did not record statement of Madan Rawani and Sanjay Rawani though they are injured eye witnesses. The conduct of Investigating Officer was not impartial. The weapon of the offence were produced by PW12 Ramdeo Prasad. The prosecution has relied on the judgments reported in (2011) 7 SCC 295, Waman and Others v. State of Maharashtra, (2012) 4 SCC 776, Surendra and Others v. State of Uttar Pradesh, (2011) 9 SCC 257, Ramachandran and Others v. State of Kerala, (2011) 4 SCC 677, Amerika Rai and Others v. State of Bihar and (2012) 3 SCC 221, Roy Fernandes v. State of Goa and Others and submitted that failure to explain the injuries appearing on the person of appellant Rajendra Rawani and Nuni Bala Devi is not fatal. By referring the judgment rendered in the case of Waman and Others v. State of Maharashtra (supra), it is submitted that prosecution is not obliged to explain each injuries of accused even though the injuries made have been caused in the course of occurrence if the injuries are minor in nature. It is true that the prosecution witnesses have admitted institution of case lodged by appellant Rajendra Rawani vide Baliapur P.S. Case No.54 of 2004 but that will not be sufficient to discard testimony of prosecution witnesses.

21. The plea of alibi taken by appellant Dhaneshwar Rawani is also not tenable because the time of occurrence is 7.30 a.m. and according to attendance register, the appellant had signed it at about 8.50 a.m. The place of work of Dhaneshwar Rawani is hardly at a distance of 34 km. which could well be covered within half an hour. The defence witnesses have admitted that Dhaneshwar Rawani was present in the house. The prosecution has proved its case against all the appellants beyond shadow of all reasonable doubts and there is no merit in these appeals. The judgments of conviction and sentence need no interference.

22. We have considered the rival submissions extended from both sides. We have also perused the judgments cited. The informant had sustained injury in the alleged occurrence when he tried to save his deceased wife. Before looking to the statement of witnesses, we would like to refer following facts which are not in dispute:

Between the houses of appellants and informant there is an alley which is about

72 feet long and three and half feet wide. The houses of the appellants and informant are almost close to each other. For the use and occupation of said alley, the parties were in litigating term since prior to the date of present occurrence. Civil suit and criminal cases were instituted by and between them. Appellant Dhaneshwar Rawani and informant Phulchand Rawani are gotias but they were not having good relation. Dead body of Karla Devi was lying in the courtyard of the house of Dhaneshwar Rawani and inquest report was prepared at the spot.

23. Now coming to the evidence brought on record by the parties concerned. The informant has stated that on 24.05.2004 while his wife Karla Devi was washing her hands and mouth by standing near the door of her house, objection was raised by the appellants and she was dragged to their house by appellants Rajendra and Bishwanath. Immediately other appellants armed with sword, tangi, lathi etc. appeared. Karla Devi was overpowered by the appellants and she was killed in the courtyard. The specific role played by each appellants find mentioned in the evidence of informant. The informant and his son Sanjay rushed to the place after hulla raised by Karla Devi. Following them Madan Rawani also reached to the place. It is disclosed that they were assaulted by appellants Khageshwar Rawani, Bishwanath Rawani and Sukhdeo Rawani by means of sword, tanti, lathi etc. They sustained injuries on their person and were examined by the doctor. The injury reports of the informant and Sanjay Rawani have been proved by Dr. Kundan Prasad singh.

Balika Devi and Sarswati Devi had witnessed the occurrence. Sanjay Rawani and Madan Kumar Rawani are the injured witnesses but admittedly the Investigating Officer did not examine them during investigation. These two injured witnesses have fully supported the prosecution case and narrated the entire occurrence before the court. We do not agree with the argument that evidence of these two witnesses is to be excluded from any consideration because they have deposed about the occurrence for the first time in court. The Investigating Officer is not fair which is apparent from his conduct.

Learned counsel appearing for the State has rightly pointed out that conduct of the Investigating Officer was not fair. The Investigating Officer Praveen Kumar has examined himself as defence witness in Sessions Trial No.73A of 2005. In para 3 of his cross-examination he has admitted that except Phulchand Rawani (Informant), Sanjay Rawani and Madan Rawani had also sustained injury in the occurrence and he had issued requisition against them for their treatment but he did not bother to record their statement. The Investigating Officer DW1 has admitted in para6 of his cross-examination that Sanjay Rawani and Madan Rawani have not been cited as witnesses in the charge sheet but he is unable to explain reason for the same. Since he had left with no option but to admit his fault, he has admitted the same in para6 and said that due to mistake he did not record statement of eye witnesses Sanjay Rawani and Madan Rawani. In the circumstances, we have considered the evidence of these two witnesses. Since

they are injured eye witnesses and they have fully supported the prosecution case and no material contradictions have been elicited from them, we find no reason to discard their testimony. Therefore, the prosecution case find full corroboration from the evidence of informant Phulchand Rawani and injured eye witnesses Sanjay Rawani and Madan Rawani. The testimony of aforesaid three eye witnesses further find support from the evidence of Haripad Rawani, Baleshwar Rawani, Balika Devi and Sarswati Devi. According to statement of aforesaid witnesses, Karla Devi had sustained sharp cut injury on her neck and injury on her head caused by means of tangi. The ocular evidence find support from the evidence of Dr. Shailendra Kumar and post mortem report (Exhibit 11). The Investigating Officer who has been examined as prosecution witness in Sessions Trial No.73 of 2005 has proved the inquest report, seizure list of blood stained soil, seizure list of weapon of the offence recovered from the house of appellant and he has also described the place of occurrence which is courtyard within the house of appellant. At the time of inspecting place of occurrence he had noticed blood fallen on the ground flowing towards hand pump and drain. The weapon of the offence so seized from the house of appellant were produced before the court and marked material exhibit (I) and (II). The role played by the Investigating Officer do not appear fair and therefore conceding the request of the counsel appearing for the State and informant and also with a view to examine the contradictions taken from the mouth of witnesses as referred to the Investigating Officer, we feel it desirable to examine the case diary to find out whether the witnesses have actually given that statement before the Investigating Officer under Section 161 of the Cr.P.C. or they have exaggerated their statement in court. We do agree that some discrepancies have occurred because of construction of sentence and the words used in the statement recorded under Section 161 Cr.P.C. and in the deposition of witnesses in court but the facts remain that barring few minor contradictions, the eye witnesses have not exaggerated their statement in court and they have almost produced the same fact before the court which they had witnessed at the time of occurrence. Learned counsel appearing for the appellants have given much stress on para 57 of the deposition of informant but we do not find that aforesaid statement given by the informant in para 57 is either connected with preceding paragraph or succeeding paragraph. It is not clear in what context that question was put to the informant and in what context that statement was given. What we would like to say is that the entire deposition of informant cannot be thrown away only because of that one sentence which is appearing in para 57 of his deposition.

24. The counsel for the appellants have given much stress on the point that there was free fight between the parties and therefore Section 149 of the Indian Penal Code will not come in picture and the appellants could not be held liable for the offence of murder with the aid of Section 149 of the Indian Penal Code. It was also argued that the injuries appearing on the person of appellants Rajendra Rawani and Nuni Bala Devi have not been explained. The prosecution witnesses

have admitted the incident of counter case being Baliapur P.S. Case No.54 of 2004. In this context, we have gone through the judgment rendered in the case of Waman and Others v. State of Maharashtra (supra) and Amerika Rai and Others v. State of Bihar (supra). What we find from the record is that as soon as Karla Devi was dragged by appellants Bishwanath Rawani and Rajendra Rawani to the courtyard of their house, remaining appellants armed with deadly weapon like sword, tangi, spear, lathi etc. appeared. The further overt act committed by Rajendra Rawani and Nuni Bala Devi (appellants) and Rinki Kumari (case split up because she was declared juvenile) is that they caught hold of Karla Devi and appellant Bishwanath Rawani slit the neck of Karla Devi. Further injuries were caused on her head by means of tangi. When the informant and his son Sanjay appeared to save the deceased, they were assaulted. Appellants Madan Rawani also reached to the place but he was also not spared and sustained injuries. The specific role played by Khageshwar Rawani and Sukhdeo Rawani have also been explained by the witnesses. In the circumstances stated above, it is clear that appellants who had assembled armed with deadly weapon and participated in causing assault not only to the deceased but also to the witnesses, had certainly formed an unlawful assembly with common object to commit offence and in prosecution of the common object of said unlawful assembly, Karla Devi was done to death. Since all the appellants had taken active part in commission of the offence an inference can well be drawn that each and every member of that unlawful assembly was knowing that in prosecution of the common object of said assembly an offence is likely to be committed. The possibility cannot be ruled out, when the informant, Sanjay Rawani and Madan Rawani had appeared to save the deceased an scuffle took place between them and the appellants and in that sequence appellants Rajendra Rawani and Nuni Bala Devi might have sustained some injuries on their person. From the evidence of Dr. Srikrishna Ranjan DW6, the injuries caused to appellants Rajendra Rawani and Nuni Bala Devi were simple in nature. The facts appearing in the case at hand find squarely covered by the judgment rendered in the case of Waman and Others v. State of Maharashtra (supra) para 36 of which is relevant which is as under:

"36. Ordinarily, the prosecution is not obliged to explain each injury on an accused even though the injuries might have been caused in the course of occurrence, if the injuries are minor in nature, however, if the prosecution fails to explain a grievous injury on one of the accused persons which is established to have been caused in the course of the same occurrence then certainly the court looks at the prosecution case with a little suspicion on the ground that the prosecution has suppressed the true version of the incident. However, if the evidence is clear, cogent and creditworthy then non-explanation of certain injuries sustained by the deceased or injury on the accused ipso facto cannot be the basis to discard the entire prosecution case."

In view of the findings of Hon''ble Apex Court in the case of Waman and Others v. State of Maharashtra (supra), we reject the argument advanced by the appellants.

25. Now coming to Cr. Appeal (DB) No.209 of 2011 which has been preferred by appellant Dhaneshwar Rawani who was put on trial after being summoned under Section 319 of the Cr.P.C. and held guilty vide judgment of conviction and order of sentence dated 19.02.2011 and 21.02.2011 respectively passed by the Additional Sessions Judge 1, Dhanbad in connection with Sessions Trial No.73A of 2005 corresponding to G.R. Case No. 1584 of 2004 arising out of Baliapur P.S. Case No.53 of 2004.

It was argued that the witnesses have not given consistent statement regarding presence and role played by appellant Dhaneshwar Rawani. The informant in his fardbeyan has not stated that Dhaneshwar Rawani caused injury to the deceased on her head by means of tangi or he was having tangi in his possession at the time of occurrence. No such statement was given by him in his statement recorded under Section 161 of the Cr.P.C. which is apparent from the evidence of Investigating Officer when the contradiction taken from the mouth of informant was referred to him. The Investigating Officer has clearly stated that no such statement by the informant was given before him during investigation. The Investigating Officer has deposed that after seeking instruction from the supervising authority, he had investigated into the matter and examined the co-employees Ramchandra Jha and Bibhuti Modi. We have further examined the evidence of Balika Devi and Sarswati Devi who are the eye witnesses to the occurrence. These two witnesses have not stated in their statement recorded under Section 161 of the Cr.P.C. that Dhaneshwar Rawani inflicted tangi blow on the head of Karla Devi. Since the conduct of Investigating Officer has been appearing suspicious, we have examined the statement of these two witnesses recorded in the case diary. Admittedly, the contradictions taken from the mouth of these witnesses were referred to the Investigating Officer and the Investigating Officer has stated that they had not given that part of the statement before him during investigation. To verify the authenticity of the evidence of the Investigating Officer and the contradictions taken from the mouth of Sarswati Devi and part of the evidence of the Investigating Officer in which that contradictions taken from Sarswati Devi were referred, we have examined the statement of Sarswati Devi recorded in para28 of the case diary. We do not find that Sarswati Devi in her statement under Section 161 Cr.P.C. had ever stated that Dhaneshwar Rawani was armed with tangi and he caused assault to Karla Devi on her head, rather statement recorded is that Rajendra Rawani caused injury on the head of Karla Devi by means of tangi. Again we would like to make it clear that we have been compelled to examine the case diary to verify the contradictions because conduct of Investigating Officer did not appear impartial and he appeared in Sessions Trial No.73A of 2005 as DW1 and that too for a limited purpose to verify the contradictions taken from the witnesses.

26. Dhaneshwar Rawani has also examined witnesses in support of plea of alibi and he has proved attendance register. The defence witnesses namely Bibhuti Modi and Ramchandra Jha have supported the contention of Dhaneshwar Rawani.

The Investigating Officer has not submitted charge-sheet against appellant Dhaneshwar Rawani because no sufficient evidence was available against him. Cumulatively considering all these aspects of the matter, we are of the opinion that involvement of Dhaneshwar Rawani in the occurrence has not consistently been proved by the prosecution and there appear some laches on the part of prosecution. Therefore, we feel inclined to give him benefit of doubt. Accordingly the judgment of conviction and order of sentence dated 19.02.2011 and 21.02.2011 respectively passed by the Additional Sessions Judge 1, Dhanbad in connection with Sessions Trial No.73A of 2005 corresponding to G.R. Case No. 1584 of 2004 arising out of Baliapur P.S. Case No.53 of 2004 is hereby set aside. Appellant Dhaneshwar Rawani is discharged from the liability of his bail bonds and set at liberty.

Cr. Appeal (DB) No.209 of 2011 stands allowed.

27. In view of the discussions made in the preceding paragraph, we do not find merit in Cr. Appeal (DB) Nos.469, 402, 442, 466 and 517 of 2008 preferred by appellants namely Bishwanath Rawani, Sukhdeo Rawani, Nuni Bala Devi, Rajendra Rawani and Khageshwar Rawani respectively. Accordingly, the judgment of conviction and order of sentence dated 16.02.2008 and 19.02.2008 respectively, passed by the Additional Sessions Judge 13, Dhanbad in connection with Sessions Trial No.73 of 2005 corresponding to G.R. Case No.1584 of 2004 arising out of Baliapur P.S. Case No.53 of 2004 is hereby upheld.

28. In the result, Cr. Appeal (DB) Nos.469, 402, 442, 466 and 517 of 2008 stand dismissed.

29. The bail bonds of appellants Sukhdeo Rawani, Nuni Bala Devi and Khageshwar Rawani are hereby cancelled. They are directed to surrender before the court below within six weeks from today failing compliance the court below shall issue process to ensure their presence.