
(2019) 05 JH CK 0031

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1304, 1424 Of 2008

Ghuran Munda And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 15-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 427, 452
Code Of Criminal Procedure, 1973 — Section 157, 313, 357A

Citation : (2019) 05 JH CK 0031

Hon'ble Judges : H.C. Mishra, J; Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Jitendra Shankar Singh, Vandana Bharti

Final Decision : Dismissed

Judgement

1. As both these appeals arise out of the same impugned Judgement, they have been heard together and are being disposed of by this common Judgement.
2. Heard learned counsel for the appellants and the learned counsel for the State.
3. The appellants are aggrieved by the impugned Judgement of conviction dated 21st August, 2008 and Order of sentence dated 22.08.2008, passed by the learned Addl. Judicial Commissioner-XVII, Ranchi, in S.T. No. 726 of 2005, whereby, the appellants have been found guilty and convicted for the offences under Sections 147, 148, 427, 452 and 302 / 149 of the Indian Penal Code. Upon hearing on the point of sentence, the appellants have been directed to undergo R.I. for two years each for the offences under Sections 147 and 148 of the Indian Penal Code, R.I. for one year each for the offence under Section 427 of the Indian Penal Code, R.I. for five years and fine of Rs.1,000/- each for the offence under Section 452 of the Indian Penal Code, and life imprisonment with fine of Rs.5,000/- each for the offence under Sections 302 / 149 of the Indian Penal Code, and all the sentences were directed to run concurrently.
4. The case relates to the gruesome murder of seven persons, including infant

and children in a family, and the prosecution case was instituted on the basis of the fardbeyan of the informant Prakash Mahto, the son of one of the deceased, namely, Mohan Mahto, recorded at his house at village Hazam, P.S. Dhurwa (Tupudana O.P.), District Ranchi, on 28.02.2005 at about 10:00 A.M., wherein he has stated that in the previous night which was a Saturday, at about 10:00 P.M., he was sleeping with his mother Mahadei Devi in one of the rooms in the house. His step-mother and step-brothers were also sleeping in one room, his maternal grandmother was sleeping in the outer room and his father was also sleeping in one of the rooms, when about 16 to 17 persons armed with tangi, balua, tono, dabli (all sharp cutting weapons) came and started forcing them to open the door. When the door was not opened, they scaled the tiled roof of the house and started breaking the tiles and some of them were trying to break the door, whereupon the informant along with his mother opened the door and fled outwards. His mother saw that Binod Mahto of his village was armed with tangi, Mansukoka Mahto was armed with balua, Kandru Mahto was armed with tangi, Ganesh Mahto was armed with dabli, who were trying to break the door. The informant also identified Ghuran Munda, Mundo Mahto, Vijay Mahto, Makru Munda, in the light of the lamp and moonlit night, who were breaking the roof tiles and Etwa Lohra, Kandru Mahto, Suresh Mahto, Ashman Mahto and also other accused persons armed with sharp cutting weapons entering into the house, and he saw the accused persons assaulting his maternal grandmother, father, step mother and four step brothers. Thereafter he fled away. He has stated that on the previous day at about 6:00 P.M., there was a quarrel between his parents and Bhondu Mahto and his wife and the other accused persons were also from their side, and they had also abused and threatened to kill his parents. About one year ago, at the time of construction of the village road, the roof of the house of the informant was damaged by the truck due to which there was some quarrel with the villagers. It is also alleged that two days prior to the occurrence, one goat of Bhondu Mahto had become traceless and Bhondu Mahto and his wife were alleging that the parents of the informant had stolen the goat and had sold it away, due to which there was quarrel between them on the day of occurrence. The informant has alleged that on the instigation of Bhondu Mahto and his wife, the accused persons had assaulted his father, maternal grandmother, step mother and step brothers, by sharp cutting weapons, causing their death. He has also stated that he returned to his house in the morning and found the dead bodies of all the seven persons in the house. On the basis of the fardbeyan of the informant, Dhurwa P.S. Case No. 42 of 2005 corresponding to G.R. No. 630 of 2005, was instituted for the offences under Sections 147, 148, 149, 452, 427, 302 of the Indian Penal Code, against nineteen named accused persons, including these appellants, and investigation was taken up. One accused Dhodhai was reported to be dead during investigation. After investigation the police submitted the charge-sheet in the case, against nine accused persons, including the six accused appellants who had faced the trial. It appears from the impugned Judgment that three accused persons were found to be juvenile, and as such their cases were split up and transferred to Juvenile Justice Board.

5. After commitment of the case to the Court of Session, the charge was framed against all the accused persons for the offences under Sections 147, 148, 427, 452 302, 302 / 149 of the Indian Penal Code, and upon the accused persons' pleading not guilty and claiming to be tried, they were put to trial. In course of trial the prosecution has examined six witnesses, including the I.O. and the Doctor.

6. P.W.-3 Prakash Mahto is the informant in the case. The Court has assessed his age to be about 16 years on the date of his examination, i.e., 24.3.2007. He has stated that the occurrence had taken place on 27.02.2005 at about 10:00 P.M., in the night. He was in the cattle house alongwith his mother Mahadei Devi. His father Mohan Mahto, his step mother Mangri Devi, his maternal grandmother Somari Devi and his brothers Ashok Mahto, Anil Mahto, Sunil Mahto and Surendra Mahto were in the house, when the accused Masukoka, Ghuran, Bhondu, Suresh, Kandru, Ashman, the uncle of this witness, Jalesh, Balesh, Makru, Anand, Binod, Dilu, Hari, Vijay, Jharia, Tulu and Chandru tried to break the door, and thereafter they entered the house after scaling the tiled roof. All of them were armed with tangi, tonu, balua, lathi etc. They entered the house and assaulted his father, maternal grandmother, brothers etc., and he and his mother saw the occurrence concealing themselves in the cattle room through a window. He could not see as to which accused had assaulted whom and with what weapon, but the accused persons were also having the torch and there was a lamp burning in the house. When the accused persons fled away, this witness and his mother came out of the cattle house and saw all the seven persons namely, Mohan Mahto, Mangari Devi, Somari Devi, Ashok Mahto, Anil Mahto, Sunil Mahto and Upendra Mahto dead with sharp cut injuries on their bodies. In the next day morning his mother went to inform the police and the police arrived along with his mother and recorded his fardbeyan, and upon finding it true he had put his signature thereon. He has identified his signature on the fardbeyan, which was marked Exhibit-1. He has stated that the police took away the dead bodies after preparing the inquest reports. He has identified the accused persons in the Court. In his cross-examination this witness has stated that his statement was recorded for the first time at his house, where he had also put his signature on the statement. He has denied the suggestion to have given the statement before the police that when the accused persons started breaking the door this witness and his mother went out of the house. He has stated that at the time of occurrence he was lying in the room with his mother, which was at a distance of 20-25 feet from the cattle house. Upon hearing the noise they went to the cattle house, where they concealed themselves, due to which they could be saved. He has stated that after the occurrence he went to the house of his sister situated in the same village at a distance of about 1 kilometer, and he stayed there for the night. He returned back in the morning at about 10:00 A.M. His mother had gone to the house of his grandfather situated nearby. He has stated that his grandfather is Yogi Mahto, who is alive. This witness has again stated to the Court's question that some of the accused persons had entered the house after

breaking the roof and some of them had entered the courtyard and then entered the house. He has stated that the house was opened by Hari and at that time this witness was in the cattle house and he had seen him from the window, from which the front door as well as the rooms of his house were visible. He has also stated that he had given the statement before the police that the accused persons were also having torches. He has denied the suggestion that at the time of occurrence he had fled away and he was not present in the house.

7. P.W.-2 Mahadei Devi is the mother of the informant. She has also stated that the occurrence had taken place on 27.02.2007 at about 10:00 P.M., in the night. She was present in the house along with her husband, her mother, the second wife of her husband and their sons, when she heard the sound of breaking the door. When the door was not opened, the accused persons scaled the tiled roof of the house and Suresh Mahto, Bhondhu Mahto, Mansukoka Mahto, Ghuran Munda, Balesh Mahto, Ashman Mahto, Makru Munda, Kandru Mahto entered the house. They were armed with tonu, balua, tangi, dabli etc., and they were also having torches. A lamp was also burning in the house. She has stated that Ashman Mahto is her elder brother-in-law and Suresh, Jalesh, Balesh are the sons of Ashman, and the other accused persons are also her villagers. She has stated that there were other persons also along with them, whom she could identify. The accused persons entered her house and they killed her husband, her husband's second wife Mangri Devi, her mother and all the four sons by cutting their neck and other parts of body. She and her son Prakash had entered the cattle house for saving themselves, and they saw the occurrence through the window in the cattle house. When the accused persons fled away, both of them went there and found all the seven persons dead. She informed the police, where upon the police came and took the dead bodies for post-mortem examination. She has stated that the fardbeyan of her son Prakash was recorded by the police on which he had put his signature and this witness had also put her thumb impression. She has identified the accused persons in the Court. In her cross-examination she has stated that she had four children and her husband had married again after three to four years of her marriage. This witness has also stated that the children had slept after taking the meal and she was still awake. The second wife of her husband had also not taken her meal and her son Prakash was also sleeping in her room. She has stated that when the accused persons scaled the roof, she and her son could not flee away, and they entered the cattle room, but the other persons remained in the house, who were killed. The accused persons could not find her and her son Prakash, as they were in the cattle room which was dark, due to which they could be saved, otherwise they would also have been killed. She could not count as to how many accused persons had entered the house. She has also stated that after the occurrence, no one came to her house in the night, and in the morning she went to inform the police. She had given the information to the police at the police station, where she had also put her thumb impression on her statement. The police came along with her to the place of occurrence at about 10:00 A.M., and recorded the

statement of her son. She had informed the police that the accused persons were having torches, and a lamp was also burning in the house, and she had also informed the police that they had seen the occurrence from the window in the cattle room. She has denied the suggestion that there was no window in the cattle room and she had not seen any occurrence, as she was not present in the house.

8. P.W.-1 is Jogi Mahto, who had visited the place of occurrence in the morning and had seen the dead bodies of all the seven deceased in the house, and he was informed about the occurrence by the wife of the deceased Mohan and her son. He has also stated that the inquest reports of the dead bodies were prepared on which he had put his thumb impression.

9. P.W.-6 is Dr. Tulsi Mahto. He has stated that he had worked with Late Dr. Shambhu Saran for about 12 years, who expired in a road accident in the month of May, 2005. Dr. Shambhu Saran had conducted the post-mortem examination of the dead bodies of the all the seven deceased on 28.02.2005.

On the dead body of Anil Mahto, aged about 05 years, the following injuries were found:

- i) 11 c.m. x 2 c.m. x bone deep over left temporo-parietal region of head, cutting the underlying bone & brain matter.
- ii) 9 c.m. x 1 c.m. x bone deep over left temporo-occipital region of head, cutting the underlying bone & brain matter.
- iii) 8 c.m. x 1 c.m. x bone deep over left parietal & occipital region of head, cutting the underlying bone & brain matter.
- iv) 9 c.m. x 2 c.m. x bone deep over the right flank of abdomen lower part cutting right iliac bone.
- v) 13 c.m. x 3 c.m. x soft tissues deep on the front part of abdomen lower part cutting the abdominal wall through which coil of intestine was protruding out.

Internal:

Presence of blood & blood clot in cranial and abdominal cavity.

On the dead body of Somari Devi, aged about 70 years, the following injuries were found:

Incised wound:

- i) 14 c.m. x 3 c.m. x bone deep over the left cheek & on adjoining left lateral neck upper part cutting left cheek bone, left side of mandible, soft tissues and blood vessels of the left side of the neck and 2nd cervical vertebra partially.

On the dead body of Mohan Mahto @ Birbal Mahto, aged about 45 years, the following injuries were found:

Incised wound:

- i) 7 c.m. x 2 c.m. x bone deep over left forearm back middle part cutting the soft tissues blood vessels and radius & ulna bone completely.
- ii) 5 c.m. x 3 c.m. x bone deep over left wrist front cutting the left radius & ulna bone completely
- iii) 6 c.m. x 2 c.m. x bone deep over right wrist front cutting the radius & ulna completely.
- iv) 15 c.m. x 3 c.m. x bone deep
14 c.m. x 3 c.m. x bone deep
15 c.m. x 2 c.m. x bone deep
14 c.m. x 2 c.m. x bone deep &
13 c.m. x 2 c.m. x bone deep over left cheek, left temporo-parietal region of head cutting underlying bone & brain matter.
- v) 7 c.m. x 2 c.m. x bone deep over bridge of nose & left cheek cutting the underlying bones.
- vi) 9 c.m. x 2 c.m. x soft tissue
7 c.m. x 2 c.m. x soft tissue over left thigh lateral side.
- vii) 7 c.m. x 2 c.m. x soft tissue
6 c.m. x 2 c.m. x soft tissue
5 c.m. x 1 c.m. x soft tissue over left leg lateral side.
- viii) 5 c.m. x 2 c.m. x bone deep on left lateral knee cutting left tibia partially.
- ix) 9 c.m. x 3 c.m. x bone deep over the back of right knee cutting the lower part of femur.
- x) 7 c.m. x 2 c.m. x soft tissue over the right leg back middle part.
- xi) 6 c.m. x 2 c.m. x bone deep on right leg back cutting right fibula bone.
- xii) 12 c.m. x 3 c.m. x bone deep over the right foot upper surface cutting the underlying bone.

On the dead body of Upendra Mahto, aged about 02 years, the following injuries were found:

Incised wound:

- i) 14 c.m. x 3 c.m. x bone deep on left cheek, left mastoid region & left occipital region of head, cutting the underlying bone & brain matter.
- ii) 5 c.m. x 2 c.m. x soft tissue deep over left arm back middle part.

Internal Injury:

There was laceration of spleen & presence of blood & blood clot in the abdominal cavity.

On the dead body of Mangari Mahto, aged about 40 years, the following injuries were found:

Incised wound:

- i) 8 c.m. x 3 c.m. x bone deep over left parietal region of head cutting underlying bone & brain matter.
- ii) 8 c.m. x 2 c.m. x bone deep over bridge of nose & left cheek cutting underlying bone.
- iii) 10 c.m. x 4 c.m. x bone deep over front part of neck situated transversally cutting the soft tissues, blood vessels, trachea, oesophagus & 4th cervical vertebra completely.
- iv) 7 c.m. x 3 c.m. x bone deep over the back of left hand cutting the underlying bones.

On the dead body of Ashok Mahto, aged about 09 years, the following injuries were found:

Incised wound:

- i) 8 c.m. x 2 c.m. x bone deep over right cheek cutting the underlying bone.
- ii) 9 c.m. x 2 c.m. x bone deep over right occipital region of head cutting the underlying bone & brain matter.
- iii) 7 c.m. x 2 c.m. x bone deep
6 c.m. x 2 c.m. x bone deep over the right lateral neck cutting soft tissue & 5th & 6th cervical vertebra.
- iv) 6 c.m. x 3 c.m. x soft tissue over right side of front of abdomen cutting abdominal wall through which intestine was protruding out.

On the dead body of Sunil Mahto, aged about 07 years, the following injuries were found:

Incised wound:

- i) 13 c.m. x 4 c.m. x bone deep on the occipital region of head lower part situated transversely cutting the occipital bone & the brain matter.
- ii) 7 c.m. x 2 c.m. x bone deep over the left side of front of chest upper part & left clavicular region cutting the left clavicle & left 1st rib.
- iii) 3 c.m. x 1 c.m. x soft tissue deep on the front of right side of chest.

He has stated that all injuries on all the deceased were ante-mortem in nature, caused by heavy sharp cutting weapon, and all the deceased had died due to their above noted injuries. Time elapsed since death was six to twenty-four hours. He has identified all the seven post-mortem reports to be in the pen and signature of Late Dr. Shambhu Saran, which were marked Exhibits- 6 to 6/f respectively.

10. P.W.-4 Ram Uchit Singh, is the S.I. of police, who has only proved the seven inquest reports of the dead bodies, prepared by him, which were marked Exhibits 2 to 2/f respectively. He has stated that he had seen the dead bodies in the presence of the witnesses and had found sharp cut injuries on the dead bodies. In his cross-examination this witness has stated that he had not made any investigation in the case. He has reiterated that the injuries on the dead bodies were mainly caused by sharp cutting weapons.

11. P.W.-5 Ravindra Prasad is the I.O. of the case. This witness has stated that in February, 2005, he was posted at Tupudana Police Out Post under Dhurwa Police Station, as S.I. He was handed over the charge of investigation of the case. He has stated that the fardbeyan of the informant was recorded by him, which he has proved and he has also proved the formal F.I.R., which were marked Exhibits 3 & 4 respectively. He has stated that he had recorded the re-statement of the informant in which he had supported the fardbeyan. He inspected the place of occurrence, which is the residential house of Prakash Mahto, situated in village Hazam. It is a thatched mud built house, and in the western side there is a cattle house, in which it was claimed by the informant and his mother that they had concealed themselves and had seen the occurrence from there. To the Court's question, whether there was any window in the cattle house or not, this witness has stated that the presence of any window is not recorded in the case diary, but he has again stated in his evidence that a small window was shown to him in the cattle house. To the Court's question this witness has also stated that in the fardbeyan the informant had not stated that he had seen the occurrence through the window in the cattle house. He has stated that he found the dead bodies in the different portions of the house, with several injuries on the dead bodies. The inquest reports of the dead bodies were also prepared. He recorded the statement of the wife of the deceased Mohan Mahto, and he also recorded the statements of Sukra Mahto and Yogi Mahto. He raided the house of the named accused persons, from where the weapons of offence were recovered and the seizure lists were prepared. From the house of the accused Kandru Mahto, one tonon and blood stained tanga were recovered, for which the seizure list was prepared, which he has identified, and the same was marked Exhibit-5. From the house of Mansukoka Mahto one blood stained balua was recovered and the seizure list was prepared, which he has proved, and the same was marked Exhibit 5/a. From the house of Jalesh Mahto one blood stained dabia was recovered and the seizure list was prepared, which he has proved, and the same was marked Exhibit 5/b. From the house of Ghuran Munda, one blood stained tangi was recovered and the seizure list was prepared, which he has proved, and

the same was marked Exhibit 5/c. From the joint house of Bhondu Mahto and Vijay Mahto, one blood stained tangi and one blood stained full pant were recovered, and the seizure list was prepared which he has proved, and the same was marked Exhibit-5/d. He had also recovered blood stained soil from the house of deceased and prepared the seizure list, which he has proved, and the same was marked Exhibit-5/i. Blood stained weapons were also recovered from the houses of the other co-accused persons, apart from these appellants, and the seizure lists were prepared which were also proved, and marked as Exhibit 5 series. He has stated that the witnesses had stated before him that accused Bhondu Mahto had alleged that the deceased Mohan Mahto had stolen his goat and had sold it away. He had also recorded the confessional statements of the accused Suresh Mahto, Balesh Mahto and Ghuran Munda. He received the post-mortem reports and showing the accused Dhodhai Mahto as dead, charge-sheet was submitted against 9 accused persons, and the investigation was continued against the others. He has stated that during investigation he was shown one small window in the cattle house, from which the informant and his mother claimed to have seen the occurrence. He has also stated that Kandru Mahto and Dhodhai Mahto were also beaten by the people, and they were sent to hospital after their arrest. This witness has also produced the weapons seized from the houses of the accused persons in the Court, and they were marked material Exhibits I to XIV, and has stated that all these weapons were blood stained. He has stated in his cross-examination that the investigation of the case was still pending against some accused persons. He has stated that the information about the occurrence was in the form of a rumour which was received at the police station on 28.02.2005 at about 8:30 A.M. He has denied the suggestion that Mahadei Devi had come to the police station and had given any information before the police, on which she had also put her thumb impression. He has also stated that Mahadei Devi had not accompanied them to the place of occurrence from the police station. This witness has further admitted that the seized weapon were not sent for forensic examination. He had proceeded from the police station at about 8:30 A.M., and had reached the place of occurrence at about 9:30 A.M., which was at a distance of about 15 kilometers in the village. He has stated that the dead bodies were lying on the different portions of the house, and there were blood stains also in the house. This witness has also stated that there was no cattle in the cattle house and there is open space between the main house and the cattle house. He has stated that after entering into the main gate of the house, one could enter into cattle house and there is no obstruction in between. He had not recovered any lamp, lantern or torch from the place of occurrence. The houses of the accused persons were also situated nearby. He has also stated that in the statement of Mahadei, it is not mentioned that she had seen the occurrence from the cattle house, or that the accused persons were having torches. The informant Prakash Mahto had stated that at the time of occurrence he and his mother had fled away and he had not stated that he returned back. Prakash had not stated in his statement that he had seen the occurrence from the cattle house, nor had he stated that the accused persons were having

torches. This witness has denied the suggestion of making faulty investigation.

12. The statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they have denied the evidence against them. No evidence was adduced by the defence. On the basis of the materials on record the appellants have been convicted and sentenced by the Trial Court below as aforesaid.

13. Learned counsel for the appellants has submitted that the impugned Judgement of conviction and Order of sentence passed by the Trial Court below cannot be sustained in the eyes of law, in as much as, there are several discrepancies in the evidence of the witnesses. It is submitted by learned counsel that P.W.-2 Mahadei Devi has stated in her evidence that she had informed the police at the police station where she had put her thumb impression also, and as such the true first information report has been concealed by the prosecution. Learned counsel also submitted that there was delay in sending the F.I.R. to the Court, in as much as, the F.I.R. was lodged on 28.02.2005, whereas the same had been received in the Court on 02.03.2005, as is apparent from the signature of the C.J.M. on the F.I.R. Learned counsel submitted that since this delay in sending the F.I.R. to the Court has not been properly explained, the same is fatal to the prosecution. In this connection learned counsel has placed reliance upon the decision of the Hon'ble Supreme Court in *Motilal & Anr. Vs. State of Rajasthan*, reported in, AIR 2009 SC 2790. Learned counsel further pointed out that in the F.I.R. it is stated that at the time of occurrence the informant and his mother fled away. There is no mention in the F.I.R. that they had seen the occurrence from the cattle house, and it is apparent from the evidence of the I.O. P.W.-5 Ravindra Prasad that neither the informant nor his mother had claimed to have seen the occurrence from the cattle house, but both these witnesses have made improvements in their evidence before the Court, stating that they had seen the occurrence from the cattle house. Learned counsel submitted that though to the Court's question the I.O. has stated that there is no mention of any window in the cattle house in the case diary, but he has again stated that there is one small window in the cattle house and the informant and his son had claimed to have seen the occurrence from the cattle house. It is submitted that even if it is accepted that there was a small window there, the entire occurrence could not have been visible from the cattle house as it was a dark night and the occurrence had taken place in different portions of the house. Learned counsel also submitted that the identification of the accused in the light of the lamp or the torch is also very doubtful as no such source of light were recovered from the place of occurrence, and even if it is claimed that the accused persons were having torches, in that light the accused persons could be identified, as the torch in the hands of the accused would have partially blinded the informant and his mother from seeing them. In this connection learned counsel has placed reliance upon the decision of the Hon'ble Supreme Court in *Tamilselvan Vs. State*, reported in (2008) 7 SCC 755. Learned counsel also submitted that none of the seizure list witnesses have been examined by the

prosecution to prove the seizure of the weapons of offence from the houses of the accused persons, and it is also admitted by the I.O. that these weapons were not sent for forensic examination. Learned counsel submitted that there is admitted enmity between the parties and the prosecution case is supported only by highly interested witnesses, i.e., P.W.-2 Mahadei Devi and P.W.-3 Prakash Mahto, the wife and the son of one of the deceased, and since they are highly interested witnesses, their evidence is not reliable and cannot be made the basis of the conviction of the appellants in absence of their corroboration by any independent witness. In this connection learned counsel has placed reliance upon the decisions of the Hon'ble Supreme Court in Jalpat Rai & Ors. Vs. State of Haryana, reported in (2011) 14 SCC 208, and Golbar Hussain & Ors. Vs. State of Assam &Anr., reported in 2015 (4) Crimes 222 (SC). Placing reliance upon these decisions learned counsel submitted that there being no independent witness to the occurrence, the appellants were entitled to be given the benefits of doubt, as the evidence of the two alleged eye witnesses supporting the prosecution case is not at all reliable.

14. Learned counsel for the State, on the other hand, has opposed the prayer, submitting that the prosecution case is fully supported by two eye witnesses, who are P.W.-3 Prakash Mahto, the informant and the son of the deceased, and P.W.-2 Mahadei Devi, the mother of the informant. It is submitted that it is a case of gruesome murder in which seven persons in the family were butchered to death including four innocent children aged from 2 to 9 years, and the occurrence had taken place at about 10:00 P.M., in the night when the presence of these witnesses in the house cannot be disputed. Though there may be some discrepancies in their evidence as to whether they had seen the occurrence from the cattle house, but they have clearly stated that the accused persons had entered the house in the dead night and when they came after the accused persons fled away, they saw the dead bodies of all the seven persons in the house. Though it is claimed by the defence that both these witnesses had fled away from the place of occurrence at the time of occurrence, but no such statement is there in the F.I.R., rather it is only stated that the informant and his mother had gone out of the house, and going out of the residential house may also mean staying nearby, or even in the cattle house. Learned counsel further submitted that the houses of the accused persons were raided by the police soon after recording the F.I.R., and from the houses of all the accused persons 14 weapons of offence, all blood stained, were recovered by the police and had produced in the Court, which were also marked material exhibits. Learned counsel submitted that the ocular evidence of both the eye witnesses, is fully corroborated by the medical evidence on record, which shows that all the injuries on all the injureds were caused by sharp cutting weapon, and those weapons were also recovered by the police from the houses of the accused persons. Learned counsel accordingly, submitted that the prosecution has been able to bring home the charges against the accused persons beyond all reasonable doubts and there is no illegality in the impugned Judgement of conviction and

Order of sentence passed by the Trial Court below.

15. Having heard learned counsels for both the sides and upon going through the materials on record, we find that the prosecution case is fully supported by P.W.-3 Prakash Mahto and his mother P.W.-2 Mahadei Devi, as the eye witnesses to the occurrence. They are the son and the wife of one of the deceased Mohan Mahto, and though they are interested witnesses, but their presence at the time of occurrence just cannot be doubted, as they are the natural inmates of the house. The evidence of both these witnesses cannot be discarded for the reason that they are the interested and related witnesses, as they are the only natural witnesses to be present at the place of occurrence in the dead night at about 10.00 P.M., and they are the only survivors in the occurrence, in which seven members of their family were butchered to death in a gruesome manner. At such hour in the dead night in the village, the presence of any other independent witness is not expected at all. Both these witnesses have named all the accused persons to have entered the house at about 10:00 P.M., in the night and to have assaulted all the seven deceased, including the helpless four children aged between 2 to 9 years, and an old lady aged about 70 years, apart from the husband and wife, causing their death at the spot. The fact remains that all the accused were either agnates, being the own uncle and their sons, and some of them were villagers residing nearby, and as such their identification even in the night in the house cannot be doubted, even in absence of any light, as they could be identified even by their voice. Even though the police has not recovered any lamp from the house, but the burning of the lamp in the house in the night cannot be doubted. There may be some discrepancies in the evidence of these witnesses whether they had seen the occurrence either from the cattle house or from outside, but the fact remains that they had seen all the accused persons entering the house with sharp cutting weapons and after the accused persons fled away after committing the offence, they found all the seven family members dead in the house with sharp cut injuries on their bodies. As such, there could no iota of doubt that the named accused persons, including these appellants, had committed the gruesome murder of seven members in a family, including four innocent children. Some discrepancies in their evidence are only natural, as the informant was himself a child aged about 14 years at the time of occurrence, (as his age is assessed to be about 16 years on the date of his examination, i.e., 24.3.2007, and the occurrence had taken place on 27.02.2005), and his mother is also an illiterate village lady. The fact remains that blood stained weapons were recovered from the houses of all the appellants and were also produced in the Court, which were marked material exhibits in the Court. There is recovery of the blood stained weapon even from the house of the accused Jalesh Mahto, who, according to the evidence of P.W.-2 Mahadei Devi, is the son and brother of the appellants Ashman Mahto and Suresh Mahto. According to the prosecution case about 16 to 17 persons entered the house, committed the murder of the seven family members, including the children, and 14 blood stained sharp cutting weapons were recovered from the houses of the accused persons including these

appellants. The injuries on all the seven dead bodies were found to be ante-mortem in nature and caused by sharp cutting weapons only, and the post-mortem reports proved by P.W.-6 Dr. Tulsi Mahto, clearly show the brutality with which the murder was committed, and even the helpless infant, children and old aged lady were not spared.

16. The submissions of learned counsel for the appellants that the true first information report has been concealed by the prosecution, or that the story that the informant and his mother had seen the occurrence from the cattle house, is an improvement on their earlier version, are only fit to be rejected, for the reasons, firstly, that some discrepancies in the evidence of the informant and his mother are only natural in their background, as discussed above, and secondly, the evidence of the I.O. P.W.-5 Ravindra Prasad shows that the mother of the informant had not visited the police station, and as such, there was no question of recording her statement at the police station, on which she could have given her thumb impression. It is also apparent from the evidence of the I.O. P.W.-5 Ravindra Prasad that the informant and his mother had claimed to have seen the occurrence from the cattle house before him also, and the window in the cattle house was also shown to him. As such, this cannot be treated to be any improvement in the earlier versions of these witnesses. There being no obstruction between the cattle house and the residential portion, the occurrence could be seen from the window of the cattle house.

17. The other submission of learned counsel for the appellants that there was undue delay in sending the F.I.R. to the Court, and since this delay has not been properly explained, the same is fatal to the prosecution, is also only fit to be rejected. In *State of Rajasthan Vs. Daud Khan*, reported in (2016) 2 SCC 607, the law is laid down by the Hon'ble Apex Court as follows:-

"26. The interpretation of Section 157 CrPC is no longer *res integra*. A detailed discussion on the subject is to be found in *Brahm Swaroop v. State of U.P.* which considered a large number of cases on the subject. The purpose of the "forthwith" communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard." (Emphasis supplied.)

In the present case, though it is a fact that the F.I.R. was lodged on 28.02.2005, and the same had been received in the Court on 02.03.2005, but no question

was put to the I.O. concerning this delay, nor any prejudice has been shown to have been caused to the defence thereby. As such, the prosecution case cannot be doubted on this score as well.

18. In the facts of this case, we are of the considered view that simply because P.W.-3 Prakash Mahto and his mother P.W.-2 Mahadei Devi are the interested witnesses their evidence cannot be discarded in spite of some discrepancies therein. There is no discrepancy in their evidence as regards the identification of the accused persons, coupled with the facts that their testimony is fully corroborated by the medical evidence of P.W.-6 Dr. Tulsi Mahto, and the post-mortem reports proved by him as Exhibits 6 Series, and the recovery of the blood stained sharp cutting weapons from the houses of the all the appellants, which were produced in the Court and marked as Material Exhibits I to XIV. As such, the prosecution has been able to bring home the charges against all these accused appellants beyond all reasonable doubts and we see no illegality in the impugned Judgment passed by the Trial Court below, convicting the appellants for the offences charged.

19. This brings us to the consideration of the sentence passed by the Trial Court below for the offence under Sections 302 / 149 of the Indian Penal Code. Looking into the fact that this case relates to brutal murder of seven persons of the family, by order dated 11.12.2018, we had noticed the accused appellants through the Superintendent of the Jail where they are presently lodged, for enhancement of their sentence and the notices were served upon the appellants. We have been addressed by learned counsels for both the sides on the point of sentence also.

20. Learned counsel for the State has submitted that the case relates to the gruesome murder of seven persons in a family, including the four innocent children, and as such this case comes within the rarest of the rare cases, in which the capital punishment shall be just sentence to be imposed upon the accused appellants, in the interest of justice. In this connection learned counsel has placed reliance upon the decisions of the Hon'ble Supreme Court in Bachan Singh Vs. State of Punjab, reported in (1980) 2 SCC 684 and Machi Singh & Ors. Vs. State of Punjab, reported in (1983) 3 SCC 470, giving the necessary guidelines for awarding the death sentence, and submitted that in Machi Singh's case (supra), it has been held that when the victim of murder is an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, the case comes within the rarest of the rare category, and it is a fit case for imposing the death sentence.

21. Learned counsel for the appellants on the other hand has opposed the prayer submitting that though in the present case it has come that nineteen accused persons had entered into the house, including these appellants, but it could not be proved by the prosecution that which accused had assaulted which deceased. The evidence on record only shows that these appellants along with the other accused persons entered the house, they were armed with sharp cutting

weapons, and when the accused persons fled away, the dead bodies of the seven family members were found in the house. As such it cannot be said that all or any the deceased were murdered by any of the present accused. It is accordingly, submitted that since there is no specific allegation of assault against the appellants, the death sentence is not at all warranted in the present case.

22. Having heard learned counsels for both the sides on the point of sentence, though we find that it is a case of gruesome murder of seven persons of a family, including innocent infant and children aged between 2 to 9 years, as also an old lady aged about 70 years, who were not in the position either to give any provocation, or to save themselves, and the case in hand falls within the category of rarest of the rare cases, but the fact remains that the prosecution has not been able to prove as to which of the accused had specifically assaulted whom. The fact, however, remains that all these appellants had entered the house of the deceased armed with sharp cutting weapons, and the blood stained weapons were also recovered from the houses of all of them, which clearly shows that the offence had been committed in prosecution of the common object of all these appellants, and the appellants had also taken active part in commission of the offence. However, in a recent case the Hon'ble Supreme Court has held in *Rajendra Pralhadrao Wasnik Vs. State of Maharashtra*, reported in AIR 2019 SC 1, as follows :-

"75. ----- . It must be appreciated that a sentence of death should be awarded only in the rarest of rare cases, only if an alternative option is unquestionably foreclosed and only after full consideration of all factors keeping in mind that a sentence of death is irrevocable and irretrievable upon execution. It should always be remembered that while the crime is important, the criminal is equally important in so far as the sentencing process is concerned. In other words, courts must "make assurance double sure"." (Emphasis supplied).

The accused in the said case was awarded death sentence, which was earlier affirmed up to the Supreme Court, as he was found to be accused in several cases of murder and even gruesome rape and murder of a girl child aged about three years, but the Hon'ble Apex Court, laying down the law that in absence of any consideration about the probability of reformation, rehabilitation and social re-integration of the accused into the society, the death sentence could not be maintained, commuted the death sentence of the accused, to the life imprisonment with direction that the accused should not be released from the custody for the rest of his normal life.

23. In the present case also, we find that the appellants at the time of impugned Judgement were aged between 35 to 55 years, and in absence of any consideration about their probability of reformation, rehabilitation and social re-integration into the society, as also in absence of any specific allegation of assault against any of them, the death sentence is not warranted in the facts of this case. However, the fact remains that all of them had taken active part in gruesome murder of seven persons in a family, including four innocent children

and a lady aged about 70 years old, and the medical evidence of P.W.-6 Dr. Tulsi Mahto, and the post-mortem reports proved by him as Exhibits 6 Series, clearly show that all of them were literally butchered to death.

24. We are of the considered view that the interest of justice demands no benefit of remission should be given to the appellants as well. We accordingly, clarify that the sentence of imprisonment for life imposed upon the appellants by the Trial Court below, shall mean the imprisonment for the rest of their biological life, without any remission of sentence to them.

25. For the foregoing reasons, we do not find any illegality in the impugned Judgement of conviction dated 21st August, 2008, and Order of sentence dated 22.08.2008, passed by the learned Additional Judicial Commissioner-XVII, Ranchi, in S.T. No. 726 of 2005, convicting and sentencing the appellants, Ghuran Munda, Suresh Mahto, Kandru Mahto, Bhondur Mahto, Mansukoka Mahto @ Koka Mahto and Ashman Mahto for the offences under Sections 147, 148, 427, 452 and 302 / 149 of the Indian Penal Code, which we hereby, affirm, with the clarification as stated above. All the appellants are in custody, undergoing the sentence.

26. Before parting with this Judgement, we wish to record that P.W.-2 Mahadevi Devi and P.W.-3 Prakash Mahto are the victims of crime in the case and they need to be suitably compensated under the 'Victim Compensation Scheme', under Section 357-A of the Code of Criminal Procedure. We, accordingly, direct the Member Secretary, Jharkhand State Legal Service Authority, Ranchi, to take up the matter with the concerned District Legal Services Authority, so that they may be duly compensated at an early date. Let a copy of this Judgment be sent to the Member Secretary, Jharkhand State Legal Services Authority, Ranchi, for the needful.

27. There is no merit in both these appeals, which are accordingly, dismissed with the clarification in sentence as aforesaid. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgement.