

(2002) 12 JH CK 0034

In the Jharkhand High Court

Case No : Criminal Appeal No. 49 of 1993 (R)

Kishan Singh Munda and Others

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 302, 323, 324

Citation : (2003) 2 JCR 83

Hon'ble Judges : Vishnudeo Narayan, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Praveen S. Dayal, for the Appellant; Vijay Gopal, APP, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—This appeal has been directed by the appellants named above against the impugned judgment and order dated 22.12.1992 passed by Sri Anant Prasad Shrivastava, Judicial Commissioner, Ranchi at Circuit Court, Khunti in ST No. 70 of 1991 whereby and whereunder all the appellants were found guilty for the offence punishable u/s 302/149. IPC and they were convicted and sentenced to undergo RI for life. All the appellants except appellant Chono Singh Munda were also found guilty u/s 148, IPC and they were convicted and sentenced to undergo RI for two years. Appellant Chono Singh Munda was found guilty for the offence under Sections 147 and 323, IPC and he was convicted under both the counts but he was sentenced to under RI for two years for the offence u/s 147, IPC and no separate sentence for the offence u/s 323. IPC was awarded to him. Appellants Kishan Singh Munda and Jagarnath Singh Munda @ Jagarnath Munda were also found guilty u/s 324, IPC and they were convicted but no separate sentence was awarded for the offence u/s 324, IPC. However, sentences were ordered to run concurrently.

2. The prosecution case has arisen on the basis of fardbeyan (Ext. 4/1) of PW 8. Sahdeo Munda, the informant and son-in-law of Bahadur Singh Munda, the

deceased of this case, recorded by ASI, R.K. Singh of Bundu P.S. on 20.10.1990 at 9.45 hours in Bundu Referral Hospital, District-Ranchi regarding the occurrence which is said to have taken place on 19.10.1990 at 17.00 hours at the house of the deceased in village Arradih, P.S. Bundu, District-Ranchi and a formal FIR (Ext. 5) was drawn at 10.30 hours on that very day and a case under Sections 147, 148, 149, 323 and 324. IPC was registered against the appellants and thereafter Bahadur Singh Munda aforesaid died in course of treatment on 26.10.1990 at R.M.C.H., Ranchi where he was referred for treatment and Section 302, IPC was added. The said FIR was received in the Court of A.C.J.M. on 22.10.1990.

3. The prosecution case, in brief, is that at the time of the occurrence the informant was sitting at the door of his house and on hearing the alarms he went to the door of Bahadur Singh Munda aforesaid and he saw all the appellants named above variously armed with lethal weapons surrounding the door of Bahadur Singh Munda aforesaid and they caught Bahadur Singh Munda and appellant. Lodo Singh Munda and Chono Singh Munda assaulted on the head of Bahadur Singh Munda by farsa and lathi respectively and Bahadur Singh Munda fell on the ground after having sustained the injuries! It is further alleged that PW 8, the informant along with PW 3, Pradhan Singh Munda, PW 9, Ramdhan Singh Munda and PW 5, Sukru Kumari attempted to rescue Bahadur Singh Munda and in that course of rescuing appellant Karam Singh Munda assaulted PW 9. Ramdhan Singh Munda by farsa causing injury on his right hand finger and appellant Chono Singh Munda assaulted PW 3, Pradhan Singh Munda by lathi causing injury on his head and he also fell down and appellant Jagarnath Singh Munda assaulted PW 5 Sukru Kumari by tangi (axe) causing injury on her right arm and appellant Kishan Singh Munda assaulted PW 8, the informant, by Jarsa causing bleeding injury on his left ear and thereafter due to the intervention of the villagers the appellants fled away from there and all the injured aforesaid including Bahadur Singh Munda were brought to Bundu Referral Hospital for treatment. It is also alleged that genesis and motive for the occurrence is that the appellants are the active members of the CPM party whereas the informant and others are the supporters of Jharkhand Mukti Morcha and the appellants used to pressurize them to support the CPM party whereas they are not willing to leave their Jharkhand Mukti Morcha party.

4. The appellants have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no offence and that they have been falsely implicated to counter blast the case against Bahadur Singh Munda aforesaid and others filed by Hori Munda regarding the occurrence of that very day.

5. The prosecution has, in all, examined 11 witnesses to substantiate the charges framed against the appellant. PW 8, Sahadeo Munda, the son-in-law of Bahadur Singh Munda the deceased of this case, is the informant of this case and he is said to have sustained Injury on his person in the occurrence in question and the

injury report in respect thereof is Ext. 2/2 and his fardbeyan is Ext. 4/1 in this case. PW 3, Pradhan Singh Munda, PW 5, Sukru Kumari and PW 9, Ramdhan Singh Munda are the alleged eye witnesses of the occurrence in question named in the fardbeyan (Ext. 4/1) and they have also sustained injuries on their person in the occurrence in question and the injury reports in respect thereof are Exts. 2/3, 2/1 and 2 respectively and PWs 8, 3, 5 and 9 are closely related with Bahadur Singh Munda as they are son-in-law, brother, daughter and father respectively of Bahadur Singh Munda, the deceased of this case. PW 1, Kalewar Munda, PW 4, Matal Munda, PW 6, Vishwanath Munda, all the sons of deceased of this case and PW 2, Lal Singh Munda, the brother of deceased of this case, though not named in the Jardbeyan (Ext. 4/1) as the ocular witnesses of the occurrence claimed themselves to have witnessed the occurrence. PW 7, Dr. Kanhiya Prasad Shrivastava has examined the injuries appearing on the person of PWs 8, 5 and 9 and the injury reports in respect thereof are Exts. 2/2, 2/1 and 2 respectively. PW 10, Dr. Umesh Prasad Jaiswal has also proved the injury report regarding the injury appearing on the person of Pradhan Munda per pen of Dr. Dilip Kumar and the said injury report is Ext. 2/3. PW 10 has also examined injured Bahadur Singh Munda in the Referral Hospital, Bundu and referred him for his treatment to RMCH, Ranchi and said direction regarding referring the injured Bahadur Singh Munda is Ext. 3. Bahadur Singh Munda died in the RMCH in course of his treatment on 26.10.1990 and the inquest report is Ext. 4 in this case and the post mortem examination on the dead body was conducted by PW 7, Dr. Kanhiya Prasad Shrivastava on 27.10.1990 at 16.00 hours and the post mortem report per his pen is Ext. 1. PW 11, Muneshwar Uraon is the IO of this case, who has proved the Jardbeyan, the formal FIR and the inquest report and his signature on the inquest report is Ext. 6. DW 1, Radha Mohan Swami and DW 2, Banwari Lal Jaiswal are the formal witnesses examined on behalf of the defence and they have proved the fardbeyan (Ext. A) and formal FIR (Ext. B) of the case bearing Bundu P.S. Case No. 64 of 1990 regarding the occurrence of that very day filed by one Hori Munda against the deceased of this case and others.

6. In view of the oral and documentary evidence on the record the learned Court below found the appellants guilty and convicted and sentenced them as stated above.

7. Assailing the impugned judgment as unsustainable primarily based on conjectures and surmises and not on legal evidence on the record it has been submitted by the learned counsel for the appellants that the prosecution case is replete with diverse infirmities and there is no legal evidence at all on the record to substantiate the prosecution case. Elucidating his contention firstly it has been submitted that the fardbeyan (Ext. 4/1) of PW 8. Sahdeo Munda, the informant, recorded at 9.45 hours on 20.10.1990 at the Referral Hospital, Bundu can never be said to be the basis of this case as it contravenes the provision contained in Section 162, Cr PC being a subsequent statement regarding the occurrence in question in view of the fact that earlier to that PW 1, Kalewar Munda has

reported at the Bundu P.S. regarding the occurrence and his statement was recorded by the police on which he has put his signature and PW 9, Ramdhan Singh Munda at page 11 has also testified the fact that he along with others had been at the Police Station at 6,15 hours on 20.10.1990 and the earliest version regarding the occurrence as reported by PW 1 has deliberately been suppressed in this case for the reasons best known to the prosecution and, as such, the fardbeyan (Ext. 4/1) is anti timed and anti dated and in this view of the infirmity the prosecution case is fit to be thrown. The said fardbeyan (Ext. 4/1) and the formal FIR (Ext. 5) have been received in the Court of ACJM empowered to take cognizance on 22.10.1990 and there is no explanation at all on the record in respect of inordinate delay regarding receipt of the fardbeyan and the FIR of this case by the Court of ACJM.

8. Secondly, it has been submitted for the appellants that the motive, as alleged in the fardbeyan (Ext. 4/1) for the occurrence in question,, does not stand proved in view of the evidence on the record and on the contrary PW 1 in para 6 and PW 6 at page 8 of his deposition have categorically deposed that the deceased of this case was not a member of any party and PW 3 in para 2 and PW 6 at page 8 of his deposition have deposed that the genesis and the motive for the occurrence is the ongoing litigation in respect of land between the parties. It has also been submitted that if the motive has been alleged for the occurrence then in that case it has to be proved by legal evidence on the record and if the motive does not stand proved as per evidence on the record, the appellants are definitely entitled to the benefit of doubt on this score alone.

9. It has further been contended that the evidence of the medical witness totally belies the manner of the occurrence and the post mortem report does not conform also with the manner of the occurrence and it is inconsistent with the prosecution case. Elucidating further it has been submitted that as per the averment made in the fardbeyan of the informant there is allegation of assault by farsa by appellant Lodo Singh Munda and by lathi by appellant Chono Singh Munda on the head of the deceased as a result of which he fell down and as per the prosecution case it appears that there was allegation of single blow by each of the appellants aforesaid on the head of the deceased and prosecution case does not whisper regarding any further assault by any of the rest of the appellants on the person of the deceased, but surprisingly enough, PW 7 while conducting the post mortem examination on the dead body of the deceased has found six injuries on the dead body of the deceased and this aspect of the matter goes at the very root of the prosecution case. It has also been submitted that the medical witness has not specifically deposed in his evidence on oath or stated in the post mortem report that the injuries appearing on the person of the deceased were sufficient in ordinary course of nature to cause the death of the deceased. It has also been submitted that PW 10, the medical witness, who had examined the other alleged injured, namely, PW 8, PW 5 and PW 9, who are alleged to have sustained injuries in the alleged occurrence has deposed regarding the age of the injury within six hours which equally casts a cloud of

suspicion to the credibility of the manner of the occurrence of this case.

10. Assailing the impugned judgment it has also been submitted for the appellants that all the witnesses, who have taken oath for the, prosecution, are highly interested and partisan witnesses and closely related with the deceased. PW 8 is the son-in-law of the deceased, PW 5 is the daughter of the deceased, PW 9 is the nephew of the deceased and PW 3 is the brother of the deceased, though named in the fardbeyan as the ocular witnesses, PW 1, PW 4 and PW 6 are the sons of the deceased whereas PW 2 is the brother of the deceased and PWs 1, 2, 4 and 6 are not named in the fardbeyan as the ocular witnesses of the occurrence and, therefore, their evidence has to be scrutinized with due care and caution and some corroboration by independent and natural witness of the occurrence is the requirement of law to substantiate the prosecution case but surprisingly enough, no independent corroboration of the prosecution case by any other independent, natural, competent and reliable witness is on the record which equally casts a cloud of suspicion to the credibility of the prosecution case.

11. It has also been submitted for the appellants relying upon the ratio of *Haramant Laxmappa Kukkadi and Others Vs. State of Karnataka*, that there is total absence of common object in this case to commit the murder of the deceased in view of the fact that appellants Karam Singh Munda, Kishan Singh Munda and Jagarnath Singh Munda have not assaulted the deceased of this case and they have not inflicted even a single blow on the deceased and there is no evidence at all on the record that all the appellants had shared the common object of the unlawful assembly for committing the murder of the deceased and in this view of the matter the conviction of all the appellants for the offence u/s 302/149. IPC is bad and illegal in law.

12. Lastly it has been submitted that the learned Court below did not at all consider the counter version of the case as per Exts. A and B of the defence when admittedly appellants, Karam Singh Munda and Chono Singh Munda were found by the IO in the Bundu Referral Hospital for their treatment and in this connection he has referred the testimony of PW 11, the IO, appearing at page 6 his deposition. It has also been contended that as per the fardbeyan (Ext. A) appellants, Chono Singh Munda and Karam Singh Munda have sustained injuries on their person caused by the members of the party of the informant and there is no explanation forthcoming on the record explaining the injuries appearing on the person of appellants Chono Singh Munda and Karam Singh Munda which is equally a vital infirmity of the prosecution case.

13. The learned A.P.P has submitted that there are two versions of the occurrence in this case, one as alleged by the informant as per fardbeyan (Ext. 4/1) and the other version as averred in the fardbeyan (Ext. A) of the defence, and in view of Ext. A it is established by itself that the occurrence has definitely taken place at the time and place as alleged. It has also been submitted that motive, as disclosed in the fardbeyan (Ext. 4/1), also stands established in view of the averments made in Ext. A and for this no evidence is at all required by the

prosecution to establish it. PWs 8, 5, 9 and 3 have also sustained injuries on their person in the occurrence in which Bahadur Singh Munda have been done to death and in this view of the matter they are ocular witnesses of the occurrence and their evidence is worthy of credit. He has also submitted that PWs 1, 2, 4 and 6, though not named in the fardbeyan of the informant, had come to the place of occurrence and they are also ocular witnesses of the occurrence and the evidence of the injured witnesses as well as PWs 1, 2, 4 and 6 materially support the manner of the occurrence of this case. It has also been submitted that in view of the counter version it is an established fact that occurrence has taken place between the parties at the given place and the time and the evidence of the witnesses of the prosecution proves the manner of the occurrence as averred in the Jardbeyan (Ext. 4/1) of the informant whereas no evidence has been brought on the record by the defence to probablise the fact regarding the existence of injuries on the person of appellants, Chono Singh Munda and Karam Singh Munda and in this view of the matter prosecution is definitely not duty bound to explain as to how the injury has been caused on the person in the occurrence in the absence of any cogent and legal evidence on the record regarding injury, if any, existing on the person of those two appellants. It has further been contended that all the appellants in prosecution of their common object forming an unlawful assembly had come to the house of the deceased and appellants Lodo Singh Munda and Chono Singh Munda have assaulted the deceased on his head by farsa and lathi respectively and the medical witness had found the injuries on the head of the deceased which was sufficient in ordinary course of nature to cause the death of the deceased and it cannot be said that only two blows on the head of the deceased have been given by appellants, Lodo Singh Munda and Chono Singh Munda as it has not specifically been averred in the fardbeyan of the informant. Reading the fardbeyan of the informant it appears that appellants Lodo Singh Munda and Chono Singh Munda have, assaulted on the head of the deceased and there is no specific mention of giving only two blows on the head of the deceased by them and in this view of the matter it cannot be said that the medical evidence on the record does not conform with the manner of the occurrence. It has further been contended that there is no suspicious circumstances surrounding the fardbeyan of the informant and, as such, it cannot be said that the fardbeyan of the informant is anti dated and anti timed. It has further been contended that the age of the injury as disclosed within six hours in Exts. 2, 2/1 and 2/2 is patent error of record as the requisition of the IO is dated 20.10.1990 forwarding PWs 8, 5, 9 and 3 along with the deceased for their treatment to the Referral Hospital, Bundu which suggests that there were injuries on the person of the aforesaid witnesses when they had come to the Police Station with injured Bahadur Singh Munda, who subsequently died on 26.10.1990. Lastly it has been contended that fardbeyan (Ext. 4/1) cannot be termed as a subsequent statement of the informant and it does not stand vitiated u/s 162, Cr PC In view of the fact that PW 11, the IO, in his evidence on oath does not whisper regarding any previous statement of PW 1, Kalewar Munda recorded at the Police Station in respect of

the occurrence. It, therefore, appears that there is no earlier statement of PW 1 on the record recorded by the IO at the Police Station and in this view of the matter fardbeyan (Ext. 4/1) is the basis of this case.

14. It is pertinent to mention at the very outset that there are two versions of the occurrence on the record, one as averred in the fardbeyan (Ext. 4/1) of PW 8, the informant and other as stated in the fardbeyan (Ext. A) of one Hori Munda. The fardbeyan (Ext. A) has been recorded on 20.10.1990 at 13.45 hours in the Bundu Referral Hospital and it is subsequent to the fardbeyan (Ext. 4/1) of PW 8, the informant of this case. In the fardbeyan (Ext. A) of Hori Munda deceased Bahadur Singh Munda, PW 3, Pradhan Singh Munda, PW 4, Matal Munda, PW 1, Kalewar Munda, PW 2, Lal Singh Munda, PW 6, Vishwanath Munda figure as the accused. Chono Singh Munda and Karam Singh Munda besides other persons are alleged to have sustained injuries in the occurrence as per Ext. A aforesaid. The following facts in view of the two versions of the occurrence emerge on the record. That an occurrence has taken place in front of the house of Bahadur Singh Munda, the deceased between 5.00 p.m. and 5.30 p.m. Presence of Bahadur Singh Munda, PW 3, Pradhan Singh Munda, PW 1, Kalewar Munda, PW 2, Lal Singh Munda, PW 4, Matal Munda and PW 6. Vishwanath Munda besides appellants Chono Singh Munda and Karam Singh Munda at the place of occurrence at the time of occurrence does not stand disputed. Ext. A describes that the motive of the occurrence is to the effect that Bahadur Singh and others are the members of JMM whereas informant Hori Munda and others are the supporters of the CPM party and Bahadur Singh Munda and others used to pressurize them to support JMM which is opposed by Hori Munda and others. Similar is the motive and genesis of the occurrence stated in Ext. 4/1, the fardbeyan of PW 8, the informant- Therefore, the genesis and motive in both the versions of the occurrence is the same and similar and, therefore, it becomes an admitted fact. In this view of the matter, the prosecution in the case before us is not at all required to prove the genesis and motive for the occurrence by any other evidence on the record. Therefore, the evidence of PW 1, in para 6 and PW 6 at page 8 of their deposition that Bahadur Singh Munda, the deceased of this case was not a member of any party and evidence of PW 3, in para 2 and PW 6 at page 8 of their testimony that the genesis and motive for the occurrence is the ongoing litigation between the parties in respect of the land pales into insignificance and has no effect at all to cast a cloud of suspicion to the creditability of the prosecution case regarding the motive and genesis of the occurrence as averred in fardbeyan (Ext. 4/1) of PW 8, the informant. Therefore, it cannot be said that the prosecution case has failed to prove the motive and genesis of the occurrence rather in both the versions of the occurrence, i.e., the case and the counter case, the motive for the occurrence being the same and similar stands proved as an admitted fact. Therefore, the contention of the learned counsel for the appellants in respect thereof has no substance.

15. Let us now come to the manner of the occurrence of the prosecution case and scrutinize the evidence in the record in respect thereof. According to the

prosecution case all the appellants armed with lethal weapons surrounded the door of Bahadur Singh Munda and they caught Bahadur Singh Munda and appellants Lodo Singh Munda and Chono Singh Munda assaulted on the head of Bahadur Singh Munda by farsa and lathi respectively and Bahadur Singh Munda fell on the ground after having sustained the injuries. The prosecution case further is that PW 8, PW 3, PW 9 and PW 5 attempted to rescue Bahadur Singh Munda and in that course appellant Karam Singh Munda assaulted PW 9 by farsa causing injury on his right hand finger, appellant Chono Singh Munda assaulted PW 3 by lathi causing injury on his head, appellant Jagarnath Singh Munda assaulted PW 5 by tangi causing on his right arm and appellant Kishan Singh Munda assaulted PW 8 by farsa causing bleeding injury on his left ear. PW 8, Sahdeo Munda, the informant has deposed that he went to the place of occurrence from his house on alarms and saw all the appellants present at the place of occurrence and appellants, Kishan Singh Munda, Lodo Singh Munda and Karam Singh Munda were armed each with farsa, appellants Jagarnath Singh Munda and Chono Singh Munda were armed with axe and lathi respectively. He has also deposed that appellant, Lodo Singh Munda and Chono Singh, Munda caught Bahadur Singh Munda and brought him out of his house and thereafter Lodo Singh Munda and Chono Singh Munda assaulted Bahadur Singh Munda by farsa and lathi respectively causing injury on his person and Bahadur Singh Munda fell on the ground being injured. His evidence is further to the effect that he (PW 8) along with PW 5, PW 9 and PW 3 attempted to rescue Bahadur Singh Munda and appellant Kishan Singh Munda assaulted him by farsa causing injury on his left ear, PW 10, Dr. Umesh Prasad Jaiswal at page 4 of his deposition has deposed to have examined PW 8 at Referral Hospital, Bundu on 21.10.1990 and has found incised wound 1/2" in length on pina of his left ear, the nature of which is simple caused by sharp cutting weapon. Ext. 2 is the injury report per pen of PW 10 which supports his testimony in respect thereof. It, therefore, appears that PW 8, the informant, has sustained injuries when he was rescuing Bahadur Singh Munda in the course of the said occurrence. The existence of the injuries caused to PW 8, the informant in course of the occurrence in question probablise his presence at the place of occurrence and it, therefore, appears that he is a competent and natural witness of the occurrence and he has occasion to witness the occurrence. PW 8 has further deposed that appellant Jagarnath Singh Munda assaulted PW 5, Sukru Kumari by tangi causing injury on her right arm. PW 10 has examined the injury appearing on her person of Sukru Kumari. PW 10 has deposed to have found one lacerated wound 1/2" x 1/2" on the right upper arm of Sukru Kumari when he examined Sukru Kumari on 21.10.1990 and the nature of the injury as opined by PW 10 is simple. Ext. 2/1 is the injury report in respect of PW 5. Sukru Kumari per pen of PW 10, PW 8 has further deposed that appellant Karam Singh Munda assaulted PW 9 by farsa causing injury on his right hand finger. PW 10 has deposed to have found lacerated wound on the right ring finger of PW 9, Ramdhan Singh Munda. The injury report in respect of PW 9 is Ext. 2. PW 8 has further deposed that appellant Chono Singh Munda attempted to assault PW 3, Pradhan Singh Munda who fled away from the place of

occurrence and appellant Chono Singh Munda chased him and gave a lathi blow on his person. Ext. 2/3 is the injury report in respect of Pradhan Singh Munda which shows that he has sustained lacerated wound on his scalp over his right occipital region, the size of which is 1/4" x 1/4" skin deep and the nature of the said injury is simple. Ext. 2/3 further shows that there was pain and tenderness over the left shoulder of PW 3. It, therefore, appears that PWs 3, 5 and 9 have sustained injuries in the course of the occurrence besides the informant while attempting to rescue Bahadur Singh Munda when he was assaulted by appellants Lodo Singh Munda and Chono Singh Munda by farsa and lathi respectively, therefore, PWs 3, 5 and 9 have also occasion to be present in course of the occurrence and they are the ocular witnesses of the occurrence to have witnessed the assault perpetrated on the person of Bahadur Singh Munda in the course of the occurrence and as a result of injuries on his head the said Bahadur Singh Munda died on 26.10.199Q in RMCH, Ranchi where he was referred by PW 10 as per Ext. 3 for his treatment. PW 8 has also deposed that on his alarms PW 1, Kalewar Munda, PW 6 Vishwanath Munda, PW 2 Lal Singh Munda and PW 4 Matal Munda have come to the place of occurrence. The evidence of PW 8 regarding the presence of PWs 1, 2, 4, and 6 at the place of occurrence on alarms is further testified as per averment made in Ext. A, the fardbeyan of counter case. Therefore, PWs 1, 2, 4 and 6 have also the occasion to have witnessed the occurrence in question. Similar is the evidence of PW 5, Sukru Kumari, PW 3, Pradhan Singh Munda and PW 9 Ramdhan Singh Munda in their evidence on oath as deposed by PW 8, PWs 3, 5 and 9 have categorically deposed in the most clear and unequivocal terms that appellants Lodo Singh Munda and Chono Singh Munda have assaulted by farsa and lathi respectively on the head of Bahadur Singh Munda who fell on the ground sustained injuries in the occurrence. Therefore, the testimony of PWs 3, 5 and 9 materially corroborates the testimony of PW 8, the informant regarding the manner of the occurrence. PW 1, Kalewar Munda, PW 3, Pradhan Singh Munda and PW 4, Matal Munda have deposed to have come to the place of occurrence on hearing the alarms. PW 6 has deposed that he came to the place of occurrence on being called by PW 5, Sukru Kumari that the appellants have forcibly taken Bahadur Singh Munda from his house to the place of occurrence. PWs 1, 2, 4 and 6 though not named in the fardbeyan of the informant as the ocular witnesses of the occurrence but their presence at the place of occurrence having been admitted as per the counter version in view of Ext. A have materially corroborated the testimony of PW 8 read with PWs 3, 5 and 9. PWs 1, 2, 4 and 6 have categorically deposed that Lodo Singh Munda and Chono Singh Munda have assaulted Bahadur Singh Munda on his head by farsa and lathi respectively and after sustaining the injuries on his head Bahadur Singh Munda fell on the ground. They have also deposed regarding the assault on PWs 8, 3, 5 and 9 by the appellants as deposed by PWs 8, 3, 5 and 9 in their evidence on oath, therefore, PWs 1, 2, 4 and 6 who have come to the place of occurrence have seen the assault on the deceased and PWs 8, 3, 5 and 9 as averred in the fardbeyan (Ext. 4/1) of PW 8, the Informant. PW 7 has deposed to have conducted the post

mortem examination on the dead body of Bahadur Singh Munda, the deceased of this case on 27.10.1990. Bahadur Singh Munda was referred to RMCH, Ranchi for treatment as per Ext. 3 He had died on 26.10.1990 in course of treatment in the RMCH, Ranchi. PW 7 has deposed to have found the following ante mortem injuries on the person of the deceased :--

(A) Abrasion :--

(i) 5x3 cm. back of right chest

(ii) 2x1 cm. left forehead

(iii) 7x3 cm. over lumbar area.

(B) Stitched wound (ununited) :--

(i) 2 1/2 cm. (3/4 cm. x scalp deep) over left frontal area of head

(ii) 2 cm. (1/2 cm. x scalp deep) near above said wound

(iii) 2-1/2 cm. (3/4 cm. x scalp deep) over left parietal head.

The medical witness has further deposed that on dissection he has found diffused contusion of fronto parietal scalp, both temporal scalps, both temporallis muscle, underneath there is depressed and comminuted fracture measuring 9x4 1/2 cm. of left fronto parietal bone (vide stitched wound No. 3). The medical witness has also deposed that there is another depressed comminuted fracture measuring 5x3 cm. in the left frontal bone (vide stitched wound No. 1). He has also deposed that from the above said depressed comminuted fractures the crack fracture extends over left parietal, left temporal, frontal and there is separation of coronal suture and there is presence of epidural and subdural blood and blood clot in the cranial cavity besides contusion of whole brain the surface laceration at the sites of depressed comminuted fractures. The medical witness has further deposed that the opinion regarding the original nature of stitched wound No. 2 can be had from the Surgeon who has first attended the case and rest of the injuries has been caused by hard and blunt substance. The medical witness has categorically deposed that the death of the deceased has been caused due to the head injury and the time elapsed since death is within 2-24 hours from the time of post mortem examination. Ext. 3 shows that Bahadur Singh Munda was found unconscious when he was brought to Referral Hospital, Bundu and his condition was serious and he was referred to RMCH, Ranchi for better treatment. However, the treating physician/ Surgeon of the RMCH, Ranchi has not taken oath in this case and, therefore, there is no evidence on the record regarding the nature of the injuries appearing on the head of the deceased caused by farsa as per prosecution case. However, there is consistent evidence of the informant read with PWs 3, 5, 9, 1, 2, 4 and 6 that appellant Lodo Singh Munda has assaulted on the head of the deceased with farsa and appellant Chono Singh Munda has assaulted on his head by lathi. Therefore, the medical evidence on the record materially supports the prosecution case that Bahadur Singh Munda has died due

to the injuries sustained on his head in the occurrence caused by appellants Lodo Singh Munda and Chono Singh Munda. My attention was drawn by the learned counsel for the appellants that six injuries were found on the person of the deceased as per post mortem examination report but as per the prosecution case appellants Lodo Singh Munda and Chono Singh Munda have not given repeated blows on the head of the deceased and there is simple averment in the fardbeyan (Ext. 4/1) that appellants, Lodo Singh Munda and Chono Singh Munda have assaulted on the head of the deceased by farsa and lathi and in this view of the matter it has been submitted that the injury found as per post mortem report is not at all in conformity with the manner of the occurrence as averred in the fardbeyan which totally belies the manner of the prosecution case. I see no substance in the contention of the learned counsel for the appellants in respect thereof for the (reason that there is specific averment in the fardbeyan that appellants Lodo Singh Munda and Chono Singh Munda have assaulted on the head of the deceased and the medical witness has found three injuries on the head of the deceased and the injuries on the head are sufficient in the ordinary course of nature to cause the death of the deceased and the medical witness has clearly opined that the injuries on the head were the cause of the death of the deceased. There is no averment in the fardbeyan that any other appellant has assaulted on the head of the deceased. Furthermore, it is the settled principle of law that the FIR/fardbeyan is definitely not required to contain graphic details of the occurrence. The non-mention of the details and meticulous particulars can never be deemed to be a ground to reject the prosecution case. The existence of three abrasions on the dead body of the deceased in no way affects the prosecution case in view of the fact that the deceased was forcibly taken out of his house by the appellants and after the assault the deceased fell on the ground and in that course there is every possibility of the abrasions being caused on the person of the deceased. Therefore, it cannot be said that the objective finding of the medical witness as contained in the post mortem report and as appearing in his evidence is inconsistent with the manner of the prosecution case. It, therefore, appears that the facts regarding the occurrence in question revealed in the fardbeyan (Ext. 4/1) of PW 8, the informant, are definitely consistent with the detailed narration of the eye witnesses, namely. PWs 8, 3, 5 and 9 in their evidence and I have no hesitation to come to the conclusion that in the facts and circumstances of this case non-mention of the details of the assault and the number of the blows in the occurrence in question on the head of the deceased is inconsequential. It is pertinent to mention here that PW 10 has opined regarding the age of the injuries within six hours from the time of his examination which were found on the persons of PWs 8, 5 and 9 and it has similarly been stated in Exts. 2/2, 2/1 and 2, i.e., the injury reports in respect thereof. The opinion regarding the age of injuries within six hours of PW 10 is palpably incorrect in the facts and circumstances of this case and it appears that it is an inadvertent error on the part of PW 10. For this the reason is not very far to seek. Exts. 2, 2/1 and 2/2 have come into existence on the basis of the requisition of the Bundu Police forwarding PWs 8, 5, 9 and 3 for their medical examination in the Referral

Hospital, Bundu and this requisition is dated 20.10.1990. There is also averment in the fardbeyan (Ext. 4/1) of PW 8, the informant, that other injured persons of this case are undergoing treatment in the Bundu Referral Hospital. PW 11, the IO at page 2 of his deposition has specifically stated that he has recorded the statement of PWs 8, 9 and 3 on 20.10.1990 in the Bundu Referral Hospital.

It is, therefore, crystal clear that the aforesaid injured witnesses of the prosecution were undergoing treatment in the Bundu Referral Hospital on 20.10.1990 and requisition for their examination by the doctor sent by the Bundu Police is also 20.10.1990. The medical witness has examined the aforesaid injured prosecution witnesses on 21.10.1990 and, therefore, in the facts and circumstances of this case the age of injury can never be six hours as opined by PW 10 which appears to be nothing but an inadvertent error by PW 10. Therefore, this aspect of the matter does not in any way affect the authenticity of the prosecution case regarding the occurrence having been taken place on 19.10.1990 at 5.00 p.m. as averred in the fardbeyan of PW 8, the informant and also as supported by the ocular witnesses of the occurrence on the evidence on oath as well as the manner of the occurrence. In this view of the matter I see no substance in the contention of the learned counsel for the appellants in respect thereof. The contention of the learned counsel for the appellants that the FIR in this case is anti dated and anti timed in view of the fact that it has been received in the Court of competent jurisdiction to take cognizance on 22.10.1990 when the fardbeyan was recorded on 20.10.1990 at 9.45 hours, as alleged, and the case has been instituted on the basis of formal FIR on that very day at 10.30 hours and there is no explanation coming on the record as to why and how the FIR has been received before the Court of Magistrate on 22.10.1990 i.e., after considerable delay. In view of the facts and circumstances of this case there is no substance in the contention of the learned counsel for the appellants inspite of the fact that FIR has been received before the Court of ACJM, competent to take cognizance on 22.10.1990. It appears from the materials on the record that the occurrence is said to have taken place on 19.10.1990 at 5.00 p.m. The place of occurrence is in a village 7 kms away from Bundu P.S. The fardbeyan of PW 8, the informant, was recorded in the Bundu Referral Hospital on 20.10.1990 at 9.45 hours, i.e., the following morning of the occurrence. The case was instituted on the basis of the formal FIR at 10.30 hours on 20.10.1990. The FIR has been received in the Court of ACJM on 22.10.1990. It is pertinent to mention here that even the fardbeyan (Ext. A) and FIR (Ext. B) of the counter case has also been received to the Court of ACJM on 22.10.1990 though fardbeyan (Ext. A) was recorded at 13.45 hours on 20.10.1990 in the Bundu Referral Hospital. The forwarding of the FIR is indisputable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word forth occurring u/s 157 of the Cr PC which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combine reading of Sections 157 and 159, Cr PC. It has a dual purpose firstly to avoid the possibility of improvement in the prosecution story and introduction of

any distorted version by deliberation and consultation. It is true that quite often there are valid reasons for the delay in the despatch of the First Information Report and it is definitely not always a circumstance on the basis of which the entire prosecution case may be said to be fabricated, but it all depends on the facts and circumstances of each case where the circumstance of delay may lead to a serious significance. But in the present case before us there are total absence of any surrounding suspicious circumstances regarding the fardbeyan (Ext. 4/1) and formal FIR (Ext. 5) to cast a serious doubt and cloud on the prosecution case. This is the consistent evidence of PWs 1 and 2 and other prosecution witnesses that the occurrence has taken place, at 5.00 p.m. on 19.10.1990 which was Friday. On the following day, i.e., 20.10.1990 being Saturday the fardbeyan has been recorded and FIR has been drawn. The fardbeyan (Ext. A) and FIR (Ext. B) of the counter case was also drawn on Saturday i.e., on 20.10.1990. 21.10.1990 was Sunday. Therefore, the FIR and the fardbeyan of both the cases were sent to the Court of Magistrate on 22.10.1990 i.e., Monday. The fardbeyan and FIR ought to have been sent on Sundays and holidays and the practice of not sending the FIR to the residence of the Magistrate on Sundays and holidays is not a healthy practice and it is depreciable but since the FIR was not sent on Sunday and as such, it cannot be said that the fardbeyan (Ext. 4/1) and FIR (Ext. 5) is anti dated and anti timed in the absence of any suspicious circumstance surrounding them. Therefore, in the facts and circumstances of this case the fardbeyan (Ext. 4/1) and formal FIR (Ext. 5) can never be termed as anti dated and anti timed.

16. The contention of the learned counsel for the appellants regarding the infirmities in fardbeyan (Ext. 4/1) of Sahdeo Munda which is hit under the provision of Section 162, Cr PC being the subsequent statement regarding the occurrence in question has no leg to stand. PW 1, Kalewar Munda in para 8 of his evidence has deposed that he along with all the injured had gone to the Referral Hospital, Bundu carrying his father Bahadur Singh Munda and thereafter he had gone to the Police Station. He has also deposed that his statement was recorded at the Police Station on which he has signed. He has further deposed that he had gone to the Police Station at 8.00 or 9.00 O'clock on the following day of the occurrence. PW 9, Ramdhan Singh Munda at page 11 of his evidence has deposed that he along with other injured persons had gone to the P.S. at 6.15 hours on Saturday, i.e., the following day of the occurrence. PW 9, however, does not whisper (hat the statement of PW 1, Kalewar Munda has been recorded by the Bundu P.S. at that time. PW 11, the IO in his evidence also does not whisper regarding the fact of recording of the statement of PW 1. Kalewar Munda at Bundu P.S. regarding the occurrence on the following morning of the occurrence. The fardbeyan (Ext. 4/1) of PW 8, the informant has been recorded at 9.45 hours on 20.10.1990 in the Referral Hospital, Bundu. There is total absence of any unimpeachable evidence on the record to suggest that any statement of PW 1 was recorded by the Bundu P.S. regarding the occurrence prior to the recording of fardbeyan of PW 8. Therefore, the fardbeyan (Ext. 4/1) of PW 8, the

informant, can never be termed as a subsequent statement regarding the occurrence in question. In this view of the matter the fardbeyan (Ext. 4/1) is definitely not hit by Section 162, Cr PC being the subsequent statement and, as such, fardbeyan (Ext. 4/1) is the legal basis of this prosecution case. There is also no delay at all in recording the fardbeyan (Ext. 4/1) regarding the occurrence in question in the facts and circumstances of this case.

17. The contention of the learned counsel for the appellants that appellants, Karam Singh Munda, Kishan Singh Munda and Jagarnath Singh Munda have no common object to commit the murder of the deceased in view of the fact that they have not assaulted the deceased and they have also not given a single blow on the deceased and, therefore, it cannot be said that all the appellants had shared the common object of the unlawful assembly for committing the murder of the deceased and in view of the ratio of the case of Haramant Laxmappa Kukyadi (supra) the conviction of the appellants u/s 302/149, IPC is bad and illegal. I equally see no substance in the contention of the learned counsel for the appellants in respect thereof and the ratio of the case Haramant Laxmappa Kukyadi (supra) is of no help to the appellants in this case. According to the prosecution case all the appellants had come to the house of the deceased and they have forcibly taken out of the deceased from his house to outside his house i.e., at the place of occurrence and assault was made on the head by appellant Lodo Singh Munda by farsa and Chono Singh Munda by lathi and due to the head injury Bahadur Singh Munda died on 26.10.1990 in the RMCH, Ranchi where he was shifted for treatment from Bandu Referral Hospital where he was unconscious and his condition was serious. Therefore, the appellants, Karma Singh Munda, Kishan Singh Munda and Jagarnath Singh Munda have active participation in the occurrence and they have also overt act in the said occurrence in assaulting PWs 8, 4, 5 and 9. The absence of any assault by them on the deceased is not a mitigating circumstance to be taken into consideration for the appreciation of principle of common object in the facts and circumstances of this case. The evidence on the record of the ocular witnesses clearly suggests that appellants Karam Singh Munda, Kishan Singh Munda and Jagarnath Singh Munda had shared the common object along with appellants Lodo Singh Munda and Chono Singh Munda to " commit the murder of the deceased and these three appellants were armed with lethal weapons such as, farsa and tangi. It is therefore evident from the materials on the record that all the appellants were the member of the unlawful assembly having common object to commit the murder of the deceased and in prosecution of their common object appellants Lodo Singh Munda and Chono Singh Munda had inflicted Injuries on the head of the deceased causing his death.

18. It is true that PWs 8, 3, 5 and 9 are closely related with the deceased and they have sustained Injuries in the occurrence in question and they have occasion to witness the occurrence and they are ocular witnesses of the occurrence. PWs 1, 2, 4 and 6 are also closely related with the deceased who had come to the place of occurrence on alarms and have witnessed the occurrence

and PW 8 is the son-in-law of the deceased, PW 3 and PW 2 are the brothers of the deceased, PW 5 is the daughter of the deceased, PW 9 is the father of the deceased and PWs 1, 4 and 6 are the sons of the deceased. Therefore, they are closely related with the deceased. I have already stated above that presence of some of the witnesses named above is an admitted fact in view of the counter version of the occurrence in question. There is no denying the fact that large number of villagers had come to the place of occurrence on alarms and at their intervention the appellants had fled away from the place of occurrence and those villagers are not forthcoming to support the prosecution case for the reasons best known to them. It is the settled principle of law that the evidence of close relatives of the deceased cannot be discarded on the ground of their relationship with the deceased. However, the Court must scrutinize their evidence with care and caution. There is common tendency of outsiders not to get themselves involved in a criminal case and it would be quite natural that no independent witness would come forward to assist the prosecution in a case of murder. Even with regard to the interested witnesses being close relatives it is the duty of the Court to separate the truth from falsehood and the chaff from the grain and in view of the close relationship they would not leave out the real assailant and implicate any innocent person and while appreciating the evidence of a relative witness the approach must be; whether the evidence of the witness read as a whole appears to have a ring of truth. Once the impression regarding a ring of truth is found it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficient, draw backs and infirmity pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies or trivial matter not touching the core of the case, a hyper technical approach in perusal of the evidence should be avoided. The prosecution witnesses though related as stated above are the most competent and natural witnesses of the occurrence and they have occasion to witness the occurrence and they cannot be said to be interested and partisan witnesses in view of their close relationship as there is no reason for them to leave out the real assailant and falsely implicate the appellants in this case. On scrutiny of the evidence of the aforesaid witnesses with care and caution there appears to be a ring of truth in their evidence. The evidence of the aforesaid witnesses in the facts and circumstances of this case is credit worthy and I see no reason to discard their evidence after due evaluation with care and caution. The non-examination of any witness of the village to corroborate the testimony of the aforesaid ocular injured witnesses besides PW 1, 2, 4 and 6 cannot be termed as a lacuna of the prosecution case in view of the fact that there is common tendency of the outsider not to get themselves involved in a criminal case and that is why no villagers who had come to the place of occurrence had come forward to assist the prosecution in this case of murder. Therefore, I equally see no force in the submission of the learned counsel for the appellants in respect thereof.

19. The fardbeyan (Ext. A) of Hori Munda has been recorded in the Bundu Referral Hospital. PW 11, the IO at page 6 of his testimony has deposed that he had found appellant Karam Singh Munda and Chono Singh Munda besides Hori Singh Munda and Chander Lohra in the said Referral Hospital. On the basis of the above evidence the contention of the learned counsel for the appellants is that the appellants Karam Singh Munda and Chono Singh Munda have sustained injuries on their person in the occurrence caused by the side of the informant and the fardbeyan (Ext. 4/1) of the informant has suppressed the true version of the occurrence and has not at all explained the injuries appearing on the aforesaid two appellants. In this regard it is pertinent to mention that the defence has not brought an iota of evidence on the record regarding the existence of any injury on the persons of appellants Chono Singh Munda and Karam Singh Munda. Mere presence of these appellants in the Bundu Referral Hospital does not ipso facto prove the existence of any injuries on their person. In a murder case the non-explanation of the injuries sustained by the appellants at about the time of the occurrence or in the course of altercation is a very important circumstance from which it can be inferred that the prosecution has suppressed the origin of the occurrence and has, thus, not presented the true version of the occurrence and further the witnesses who have denied the existence of injury on the person of the deceased is lying on a most material point which shall be a ground to hold them as an unreliable witness and also further that in case there is a defence version which explains the injuries on the person of the appellants. It is rendered probable so as to throw doubt on the prosecution case. The omission on the part of the prosecution to explain injuries on the person of the appellants assumes much greater importance where the evidence consists of interested, related or inimical witnesses or where the defence gives the version which competes in probability with that of the prosecution case. There may be cases also where non-explanation of the injuries by the prosecution may not affect the prosecution case where the injury sustained by the appellants are minor and superficial or where the evidence of the prosecution is so clear and cogent, so probable and consistent and credit worthy that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. Here, in this case I repeat once again that there is no iota of evidence on the record that appellants Karam Singh Munda and Chono Singh Munda had any injury on their person. No evidence has been brought in respect thereof by the defence for the reasons best known to it. The mere presence of the aforesaid two appellants in the Bundu Referral Hospital does not lead conclusively to the fact that they were present there for the treatment of their injuries in the Bundu Referral Hospital. Therefore, there is no duty cast on the prosecution in this case to explain any injury alleged to be appearing on their person which is as per evidence on the record is non est. Therefore, the defence version as averred in the counter case does not at all appear to be probable and it does not compete in probability with that of the prosecution case. Therefore, the non-explanation of the alleged injuries on the person of appellants Chono Singh Munda and Karam Singh Munda cannot lead to an inference that the prosecution in this case has not presented a true version as

well as that the ocular witnesses of the occurrence referred to above have lied on most material aspect of the case for discarding their evidence. Therefore, the contention of the learned counsel for the appellants also does not hold good in the facts and circumstances of this case.

20. After careful consideration of the facts and circumstances of this case and materials on the record and after proper scrutiny of the evidence of the ocular witnesses of the occurrence with due care and caution I see ring of truth in their evidence and there is no infirmity at all in the prosecution case of such a magnitude to cast a cloud of suspicion to the warp and woof of the prosecution case. The learned Court below has meticulously considered the evidence on the record and has rightly come to the finding of the guilt of the appellants, I see no illegality in the impugned judgment requiring an interference therein. Therefore, the finding of the guilt of the appellants by the learned Court below is hereby affirmed. There is no merit in the appeal and it fails. The appeal is hereby dismissed. The bail bonds of all the appellants are hereby cancelled. They are directed to surrender before the Court below to serve out the sentence. The learned Court below is also directed to take all coercive steps for the apprehension of the appellants for serving out the sentences.

Lakshman Uraon, J.

21. I agree.