
(2009) 02 JH CK 0034

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 280 of 1999

Kishun Singh and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 304, 323

Citation : (2009) 57 BLJR 1410

Hon'ble Judges : M.Y. Eqbal, J;D.N. Patel, J

Bench : Division Bench

**Advocate : Arjun Narain Deo, M.S. Chhabra and B.K. Sinha, for the Appellant;
Mahua Palit, Assistant Public Prosecutor, for the Respondent**

Judgement

D.N. Patel, J.—Both the Criminal Appeals are arising out of the judgment and order of conviction and sentenced dated 4th & 6th August, 1999 respectively, passed by the learned 1st Additional Sessions Judge, Giridih in Sessions Trial No. 167 of 1989, by which, the appellants of Cr. Appeal No. 280 of 1999 i.e. Kishun Singh, Gondu Singh and Inder Singh have been convicted for the offence u/s 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months whereas the sole appellant of Cr. Appeal No. 300 of 1999 i.e. Girja Singh has been convicted for an offence punishable u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and also order to pay a fine of Rs. 500/- and in default thereof further simple imprisonment of three months has been awarded. Against these convictions, the accused have preferred the aforesaid Criminal Appeals.

2. If the case of the prosecution is unfolded, the brief facts of the case are as under:

It is the case of the prosecution that on 23rd February, 1988 at 6.30 a.m. accused assaulted Laljeet Kandu (deceased), Latti Kandu (PW 6) and Murli Kandu (PW 5) as they were constructing a wall. The whole dispute has arisen because of the construction of the wall. The victims were under belief that the land

belongs to them whereas accused were believing that the land is belonging to the accused side persons. There was hot altercation between the parties and thereafter, Laljeet Kandu sustained injuries, who has been declared dead later on. Accused No. 1, accused No. 3, accused No. 4 and accused No. 5 have also sustained several injuries and they were also taken to Sadar Hospital, Giridih. Likewise, injured eye witnesses i.e. PW 5 and PW 6 were also taken to the same hospital on a same date.

Dr. B.P. Singh (PW 10), who is doctor at Sadar Hospital, Giridih, examined the prosecution witnesses as well as Laljeet Kandu as well as accused No. 1, accused No. 3 and accused No. 4 and thereafter Laljeet Kandu was referred to Rajendra Medical College & Hospital, Ranchi, where he was declared dead at the hospital at Ranchi on 24th February, 1988 at 11.30 a.m. It is also a case of the prosecution that accused No. 3 Girja Singh (appellant of Cr. Appeal No. 300 of 1999) was having sharp cutting instrument "Farsa" and he caused head injuries to Laljeet Kandu, who fell down and further injuries were caused by the accused persons by stick upon Laljeet Kandu. PW 5 and PW 6 also sustained injuries. PW 2, PW 3, PW 4, PW 5 and PW 6 are saying that there was hot altercations between the family of Girja Singh and Laljeet Kandu. The victim side-Laljeet Kandu family were having spear, sword, stick and dagger whereas accused side was having Farsa and sticks in their hands. In this free fight Laljeet Kandu expired mainly due to head injury as per the evidence of the doctor (PW 10). First Information Report was lodged by Latti Kandu (PW 6) on 23rd February, 1988 at 8.15 a.m. at Sadar Hospital, which was registered as Giridih (Mofassil) P.S. Case No. 32 of 1988. The same was investigated and charge sheet was filed upon completion of investigation and upon recording the evidence, Girja Singh has been convicted for an offence punishable u/s 302 of the Indian Penal Code whereas Kishun Singh, Gondu Singh and Inder Singh were punished for an offence punishable u/s 323 of the Indian Penal Code for six months" rigorous imprisonment. Against this conviction Girja Singh has preferred Cr. Appeal No. 300 of 1999 whereas rest of the accused have preferred Cr. Appeal No. 280 of 1999.

3. Initially all the accused were charged for an offence punishable u/s 302 read with Section 149 of the Indian Penal Code. Accused Girja Singh and one Arun Singh (who has been acquitted) were also further charged for an offence u/s 148 of the Indian Penal Code. Accused Kishun Singh was also further charged for an offence u/s 325 of the Indian Penal Code. Likewise accused Inder Singh and Gondu Singh were also further charged for an offence punishable u/s 323 of the Indian Penal Code Out of these charges, conviction for an offence punishable u/s 302 of the Indian Penal Code against Girja Singh has been proved by the prosecution whereas for Kishun Singh, Gondu Singh and Inder Singh prosecution could prove the offence u/s 323 of the Indian Penal Code. For rest of the charges, the accused have been acquitted against which no Acquittal Appeal has been preferred by the State.

4. We have heard learned Counsel appearing on behalf of the appellants, who has mainly submitted that the prosecution has failed to prove the offence beyond reasonable doubts against the accused-appellants. There are lots of omissions, improvements and contradictions in the depositions of the prosecution witnesses. This aspect of the matter has not been properly appreciated by the trial court and hence the judgment and order of conviction and sentence, passed by the trial court, deserves to be quashed and set aside. It is also submitted by the learned Counsel or the appellants that there was no intention on the part of the appellants to commit the murder of the deceased nor there was any premeditation on the part of the accused. It is submitted by the learned Counsel for the appellants that PW 2, PW 3, PW 4, PW 5 and PW 6 have stated that there were injuries caused to accused. There was hot altercations between the accused side persons and victim side persons. Looking to the deposition of PW 5 (Murli Kandu), the victim side persons were having spear, sword, sticks and dagger in their hands. Looking to the deposition of PW 10 (Dr. B.P. Singh) accused No. 3 has sustained five injuries, including scalp deep injury, accused No. 4 has sustained four injuries (injury No. (ii) was a grievous injury), accused No. 1 was having five injuries (injury No. (i) could have been caused by sharp edged instrument like sword) and accused No. 5 has sustained eight injuries [injury Nos. (i), (ii), (iv) and (v) can be caused by sharp cutting instrument like sword and injury No. (v) was a grievous injury]. Looking to the deposition of PW 10 (Dr. B.P. Singh) injuries caused to the accused persons were within three hours from their examination. The doctor examined the accused persons on 23rd February, 1988 at 7.45 a.m. Thus, the whole incident has taken place because of sudden fight and the accused have not taken any undue advantage. It is also submitted by the learned Counsel for the appellants that Girja Singh has already undergone approximately twelve and half years imprisonment and, therefore, if the conviction is altered u/s 304 Part-II of the Indian Penal Code, looking into the evidence on record, the appellant of Cr. Appeal No. 300 of 1999 has no objection. In fact the trial court ought to have punished Girja Singh for the offence punishable u/s 304 Part-II of the Indian Penal Code instead of Section 302 of the Indian Penal Code. The injuries caused to the accused side persons have not been explained by the prosecution. The injuries are several in number including grievous injuries. There is no premeditated or preplanned well designed action or any intention on the part of the accused. Only because of sudden fight the whole incident has taken place because of digging of a land for constructing a well as the boundary of the land, claimed by both the sides. This aspect of the matter has not been properly appreciated by the trial court.

5. So far as appellants of Cr. Appeal No. 280 of 1999 are concerned, it is submitted by the learned Counsel for the appellants that the incident has taken place in February, 1988, these accused are on bail and they have already undergone approximately one month's imprisonment and more than two decades have passed and, therefore, they may be punished for the sentence already undergone by them for the offence u/s 323 of the Indian Penal Code. No

offence has been committed by them. There is no antecedent of these appellants.

6. It is submitted by the learned A.P.P., appearing on behalf of the State, that the prosecution has proved the charges against the accused beyond reasonable doubt and no error has been committed by the trial court in convicting Girja Singh (appellant of Cr. Appeal No. 300 of 1999) for an offence punishable u/s 302 of the Indian Penal Code and in punishing the appellants of Cr. Appeal No. 280 of 1999 for the offence punishable u/s 323 of the Indian Penal Code for rigorous imprisonment of six months. It is submitted by the learned A.P.P. that there are injured eye witnesses i.e. PW 5 and PW 6, who have given clear depositions before the trial court. They are trustworthy and reliable witnesses. It has been stated by these witnesses that Girja Singh assaulted by weapon like "Farsa" and caused head injury to Laljeet Kandu. Other accused have also caused injuries to PW 5 and PW 6. Laljeet Kandu was taken to Sadar Hospital, Giridih, where he was examined by the doctor (PW 10), who referred him at Rajendra Medical College & Hospital, Ranchi where he was declared dead on 24th February, 1988 at 11.30 a.m. There is, thus, enough corroborations to the depositions of these two witnesses by the depositions of PW 2, PW 3, PW 4, PW 8 and PW 9 and also by the Post Mortem Report and by the deposition of Dr. B.P. Singh (PW 10) and it is stated by the learned A.P.P. that looking to these evidences the trial court has rightly arrived at a conclusion for conviction the accused and while exercising the appellate jurisdiction, this Court may not acquit the accused or alter the punishment.

7. We have also heard learned Counsel appearing on behalf of the informant, who has adopted the arguments advanced by the learned A.P.P. and submitted that already a lenient view has been taken by the trial court and, therefore, conviction may not be altered from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code. The prosecution has proved the offence beyond reasonable doubt. Girja Singh has caused head injury by "Farsa" upon Laljeet Kandu and as per doctor's evidence to be read with Post Mortem Report there is enough corroboration to the depositions of injured eye witnesses.

8. Having heard learned Counsel for both the sides find looking into the evidence on record it appears that the whole incident took place on 23rd February, 1988 at about 8.15 a.m. in the morning at Village- Karhar Bari within the district of Giridih because of a dispute pertaining to construction of a boundary wall.

9. Looking to the deposition of Barhan Kandu (PW 1), he has stated that he is an eye witness of the incident and he has seen that there was a hot altercation going on between the family of Girja Singh (accused No. 3-appellant of Cr. Appeal No. 300 of 1999) and the family of Laljeet Kandu (deceased). He is brother of the informant and nephew of deceased Laljeet Kandu. He has stated that Girja Singh gave blow of Farsa on the head of Laljeet Kandu and other accused caused injuries by stick to Laljeet Kandu as well as Latti Kandu (PW 6) and Murli Kandu (PW 5). The construction of wall was started by Laljeet Kandu and other persons of his side and, therefore, accused was stopping them from

constructing the boundary wall and, therefore, the whole dispute started. Because of the injuries caused to Laljeet Kandu as well as Latti Kandu and Murli Kandu they were immediately shifted to Sadar Hospital, Giridih where they were examined by Dr. B.P. Singh (PW 10) and looking to the condition of Laljeet Kandu he was referred to Rajendra Medical College & Hospital, Ranchi, where he was declared dead on 24th February, 1988 at 11.30 a.m. This witness has not stated anything about the injuries caused to Kishun Singh (accused No. 1), Girja Singh (accused No. 3-appellant of Cr. Appeal No. 300 of 1999), Inder Singh (accused No. 4) and Arun Singh (accused No. 5). This witness has not narrated the facts about the weapons in the hands of victim side persons. Though suggestion was made in the cross-examination, this witness has denied any assault by or any injury caused by the victim side persons. But looking to the evidence of Dr. B.P. Singh (PW 10), there are number of injuries caused to the accused, some of them are grievous in nature and some of them are incised wounds and could have been caused by sword. This PW 1 is not explaining or stating anything about the injuries caused to the accused.

10. It has been held by the Hon'ble Supreme Court in the case of Ram Narain and Others Vs. State of Uttar Pradesh, that where eye witnesses do not mention anything about the injuries on the person of the accused, it is unsafe to rely on their evidence completely, unless the same is corroborated by independent evidence.

11. Looking to the deposition of Lakhan Rawani (PW 2), he has also stated before the court the fact that the family of Girja Singh and the family of Laljeet Kandu were having a hot altercation with regard to construction of a boundary wall and thereafter, Girja Singh gave Farsa blow on the head of Laljeet Kandu and in this fight, Latti Kandu and Murli Kandu also sustained injuries. This witness has stated that the accused persons were also injured and they were also hospitalized in the same very hospital i.e. Sadar Hospital, Giridih, where the victim side persons were also hospitalized. This witness is claiming himself to be an eye witness of the incident. This witness has also stated that he heard hot exchange of words between both the parties and Laljeet Kandu, Latti Kandu (PW 6) and Murli Kandu (PW 5) were having sharp cutting instruments like Gainta, Kudal (spade) in their hands. But this witness has not stated anything about the injuries caused to the accused persons.

12. Looking to the deposition of Tulsi Rai (PW 3), he has narrated in his deposition before the trial court similar facts and he has also stated that there were injuries caused to the accused. He has also stated that accused side persons were having weapons and victim side persons were having sticks in their hands but nothing has been stated by this witness as to who caused injuries to the accused. This witness is also an eye witness of the incident.

13. Similar is the deposition of Dasrath Rawani (PW 4). He has also stated before the court that there was hot altercation between the victim side persons and accused side persons and Girja Singh caused injury by Farsa on the head of

Laljeet Kandu. Similarly Latti Kandu and Murli Kandu, who are PW 6 and PW 5 respectively, were also injured.

14. None of these witnesses has given correct facts before the court about the injuries caused to the accused. The witnesses are hiding certain crucial facts. Very reluctantly they have narrated about the weapons in the hands of the victim side persons in corss-examination.

15. Looking to the deposition of Murli Kandu (PW 5), who is an injured eye witness, it appears that he is a very close relative of the deceased Laljeet Kandu. This witness is younger brother of the deceased.

Looking to the deposition of this witness, he has stated that there was construction of boundary wall by Laljeet Kandu and other victim persons in their field. The accused persons were stopping them from constructing the boundary wall and, therefore, there was hot altercation and exchange of hot words and, thereafter, Girja Singh (accused No. 3- appellant of Cr. Appeal No. 300 of 1999) caused injury by Farsa on the head of Laljeet Kandu, who fell down and, thereafter, other accused caused injuries by sticks on the legs of Laljeet Kandu as well as upon him (Murli Kandu-PW 5) and Latti Kandu (PW 6). Murli Kandu i.e. PW 5 has also received injuries. He along with the deceased and Latti Kandu was taken to Sadar Hospital, Giridih, where he was examined by Dr. B.P. Singh (PW 10). He has also stated that at the time of hot altercation between both the sides, this witness was having spear in his hand. Another person from victim side i.e. Kailash Kandu (PW 8) was having sword in his hand. Latti Kandu (PW 6- the informant) was having dagger in his hand and he has also stated that other companions of his side were having sticks in their hands. But he has denied that they have caused any injury to the accused. This injured eye witness has clearly stated before the court in his deposition that the whole incident has taken place because of a sudden fight. Both the sides were having enough weapons in their hands. Though he is an injured eye witness, he is not stating the correct and clear facts about the incident before the court and is hiding the grievous injuries caused to the accused persons.

16. Looking to the deposition of Latti Kandu (PW 6) it appears that the deceased Laljeet Kandu was uncle of this witness. He has also narrated the similar facts before the court about the hot altercation between both the parties mainly due to construction of a boundary wall by the victim side persons between the land of accused and the land of the victim. This witness is also an injured eye witness and is the informant, who has lodged the First Information Report at Sadar Hospital, Giridih, on 23rd February, 1988 at 8.15 a.m. He has stated that Girja Singh gave Farsa blow on the head of Laljeet Kandu and other accused have also caused injuries by sticks upon Laljeet Kandu as well as upon him (Latti Kandu-PW 6) and Murli Kandu (PW 5). This witness was also taken to the Sadar Hospital at Giridih and was examined by Dr. B.P. Singh (PW 10). A suggestion was made to this witness in cross-examination that victim side persons were also having weapons including sword but it has been denied by this witness. Thus, this

witness though is an injured eye witness is not stated clear and correct facts before the court about the whole incident. Like PW 5 he is also an interested eye witness. Nature of injuries caused to the accused side persons have been narrated in detail by Dr. B.P. Singh (PW 10), which were very fresh injuries. Dr. B.P. Singh examined all the accused on the very same day of the incident within couple of hours.

17. We have also been taken to the deposition of Dr. B.P. Singh (PW 10), who was Civil Assistant Surgeon at the said Hospital. He is an independent witness. He has examined Laljeet Kandhu (later on died), Latti Kandhu (PW 6), Murli Kandhu (PW 5) as well as Kishun Singh (accused No. 1), Girja Singh (accused No. 3), Inder Singh (accused No. 4) and Arun Singh (accused No. 5).

18. The injuries caused to Laljeet Kandhu (ultimately declared dead at R.M.C.H., Ranchi) as per the deposition of this witness are as under:

Compound fracture of scalp bones. The patient was unconscious so he was referred to Rajendra Medical College and Hospital, Ranchi.

19. Injuries caused to Kishun Singh (accused No. 1- appellant of Cr. Appeal No. 280 of 1999) are as under:

(i) Incised wound 1" x 1/2" x bone deep on back of left forearm below elbow joint.

(ii) Lacerated wound 1" 3/4" 1 1/4" x scalp deep on scalp.

(iii) Tender swelling 2 1/4" x 2 1/4" on left forearm on middle.

(iv) Tender Swelling 2" x 2" on right leg

(v) Lacerated wound 1/2" x 1/5" x skin deep on dorsum of left hand little finger.

It has been narrated by this witness that injury No. (i) was caused by sharp edged weapon like sword. He has also stated that the age of these injuries was within three hours from the time of examination. The doctor has examined the accused side persons and victim side persons on 23rd February, 1988 starting from 7.45 a.m. This accused No. 1 was having incised wound as well as scalp deep lacerated wound.

20. Likewise, accused No. 3 i.e. Girja Singh was having the following injuries:

(i) Two lacerated wounds 2" x 1/" x scalp deep and 1/2" x 1/5" x skin deep on scalp.

(ii) Tender swelling 1 1/2" x 1 1/4" on dorsum of left hand near metacarpo phalangeal joint of thumb.

(iii) Minute scratch on right wrist

(iv) Bruise 2" x 1/2" with swelling and scratch on back of right thigh.

The injuries were caused within three hours from the time of examination and there were two injuries on the head of this accused.

21. Accused No. 4 i.e. Inder Singh was having the following injuries:

- (i) Lacerated wound 3" x 1/4" x scalp deep on scalp.
- (ii) Tender swelling 2" x 2" on left forearm associated with fracture of ulna bone. X-ray was advised.
- (iii) Tender swelling 1 1/2" x 1 1/2" on left side of chest.
- (iv) Scratch 1" x 1/4" on left side of back.

As per Dr. B.P. Singh (PW 10) injury No. (ii) was grievous in nature. The injuries were caused within three hours from the time of their examination.

Looking to injury No. (i), it was scalp deep injury.

22. Accused No. 5 i.e. Arun Singh was found to have sustained the following injuries on his person:

- (i) A cut with even and clean cut edges on left side of scalp 1 1/4" x 1/2" x scalp deep.
- (ii) A cut 1 1/2" x 1/2" x scalp deep with clean cut edges on right side scalp on back portion.
- (iii) Two lacerated wounds 1 1/4" x 1/4" x scalp deep and 3/4" x 1/5" x skin deep on right side of scalp above injury No. (ii).
- (iv) Incised wound 2 1/2" x 1/2" x bone deep on left side of chest.
- (v) Incised wound 1" x 1/2" x bone deep on dorsum of right hand near metacarpo phalangeal joint of little finger associated with fracture of proximal phalanx. X-ray was advised.
- (vi) Scratch 1/4" x 1/4" on dorsum of left index finger.
- (vii) Minute scratch on right knee.

As per the doctor's deposition before the trial court, injury No. (v) was grievous in nature. It has also been stated by the doctor that injury Nos. (i), (ii), (iv) and (v) were caused by sharp cutting weapon like sword and injury Nos. (ii), (vi) and (vii) could have been caused by hard and blunt substance like Lathi. The age of the injuries was found three hours from their examination. The injury reports were also proved before the trial court. They are Exts. A to A/3.

23. Other witness, who has also been examined by the prosecution like Investigating Officer (Balram Pandey-PW 13), has stated that upon registering the First Information Report, he has carried out investigation and upon recording the statements of the prosecution witnesses and upon collecting the evidences, the charge sheet was filed against the accused.

24. Looking to the evidence on record before the trial court it appears that PW 5 and PW 6 are the injured eye witnesses. PW 5 is the brother of the deceased and PW 6 has stated that the deceased was his uncle. These witnesses have not narrated before the trial court about the injuries caused to the accused side persons. Other witnesses i.e. PW 2, PW 3, PW 4, PW 8 and PW 9 are supporting witnesses. They have also remained silent about the injuries caused to the accused. It has been held by Hon"ble Supreme Court in the case of Mohar Rai and Bharath Rai Vs. The State of Bihar, , that accused were having injuries and when they were produced and when they were taken to the hospital immediately, the injuries could not have been self-inflicted when the eye witnesses do not mention about the injuries on the person of the accused, it is unsafe to rely on their evidence completely. In the case of Gajendra Singh Vs. State of U.P., . the Hon"ble Supreme Court at paragraph No. 6 has referred to a decision rendered by the Hon"ble Supreme Court in the case of State of Gujarat Vs. Bai Fatima and Another, , wherein it has been held that:

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on facts of each case, any of the three results may follow:

- (i) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.
- (ii) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (iii) It does not affect the prosecution case at all.

25. In the case of Lakshmi Singh and Others Vs. State of Bihar, , at paragraph No. 11 it has been held by the Hon"ble Supreme Court that:

...It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of the altercation is a very important circumstance from which the Court can draw the following inferences:

- (i) That the prosecution has suppressed the genesis and the origin of the occurrence and has, thus, not presented the true version;
- (ii) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;
- (iii) That in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance when the evidence consists of

interested or inimical witnesses or where the defence gives a version which completes in probability with that of the prosecution one.... We must hasten to add that as held by this Court in the State of Gujarat Vs. Bai Fatima and Another, there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries....

(Emphasis supplied)

26. It has been further held by the Hon"ble Supreme Court in the case of Bhaba Nanda Sarma and Others Vs. State of Assam, , at paragraph No. 2 that:

...In a case of this nature before an adverse inference is drawn against the prosecution for its alleged suppression or failure to explain the injuries on the person of an accused, it must be reasonably shown that, in all probability, the injuries were caused to him in the same occurrence or as a part of the same transaction in which the victims on the side of the prosecution were injured. The prosecution is not obliged to explain the injuries on the person of an accused in all cases and in all circumstances. This is not the law. It all depends upon the facts and circumstances of each case whether the prosecution case becomes reasonably doubtful for its failure to explain the injuries on the accused.

(Emphasis supplied)

27. It has also been held by the Hon"ble Supreme Court in the case of Dashrath Singh Vs. State of U.P., , at paragraph No. 19 that:

...If there is an omission to explain, it may lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident....

(Emphasis supplied)

In the said case at the same very paragraph, it has further been held by the Hon"ble Supreme Court that:

...In case the prosecution version is sought to be proved by partisan or interested witness, the non-explanation of serious injuries may prima facie make a dent on the credibility of their evidence.... In other words, the non-explanation of injuries of the accused is one of the factors that could be taken into account in evaluating the prosecution evidence and intrinsic worth of the defence version.

(Emphasis supplied)

28. In the facts of the present case, PW 5 (eye-witness) and PW 6 (eye-witness) are close relatives of the deceased.

29. Thus, looking to the evidence on record it appears that the whole incident

has taken place suddenly and without any premeditation and without there being an intention. There is no preplanned well designed assaulted by the accused upon victim. Because of the construction work going on of a boundary wall between the land of accused as well as of victim, the whole incident has taken place. The victim side persons were constructing the boundary wall. The eye witnesses i.e. PW 5 and PW 6 as well as PW 2, PW 3 and PW 4 have also stated that there was hot altercation between the family members of Girja Singh (accused No. 3-appellant of Cr. Appeal No. 300 of 1999) and the family members of Laljeet Kandu (deceased). Eye witness PW 3 Tulsi Rai, injured eye witness PW 5 Murli Kandu have narrated about the weapons in the hands of the accused as well as in the hands of victim side persons. But they have not stated anything about the injuries caused by victim side persons to the accused. PW 5 and PW 6 are interested witnesses and, therefore, their depositions ought to be scrutinized carefully by this Court and it appears that these injured eye witnesses are not giving the correct facts about the whole dispute before the Court. They are hiding relevant and important facts before the Court. Looking to the deposition given by Dr. B.P. Singh (PW 10) it appears that he had examined Laljeet Kandu (who was ultimately declared dead at R.M.C.H., Ranchi) and other accused persons on 23rd February, 1988 at about 7.45 a.m. Accused No. 1 was having five injuries; accused No. 3 was having five injuries, including scalp deep injury; accused No. 4 was having four injuries, including injury No. (ii), which was grievous in nature; and accused No. 5 was having eight injuries, out of which injury No. (v) was grievous in nature whereas injury Nos. (i), (ii), (iv) and (v) were caused by sharp cutting instrument like sword. This doctor has also stated that the age of injuries was with three hours. Thus, it appears that the injuries have a direct nexus with the incident but the witnesses are not giving true and correct fact before the Court. Though they are admitting the fact that victim side persons were also having sword, spear and dagger in their hands (as per deposition of PW 5). Another eye witness has also stated that the victim side persons were having spade in their hands and Gainta-sharp cutting instrument (as per paragraph No. 8 of the deposition of PW 2-Lakhan Rawani). As per this witness, PW 2, Laljeet Kandu (deceased), Murli Kandu (PW 5) and Latti Kandu (PW 6) were having sharp cutting instruments in their hands. Thus, the whole incident has taken place due to sudden fight without any premeditation. The accused have not taken any advantage of their free light or sudden fight. This aspect of the matter has not been properly appreciated by the trial court. The whole case of the prosecution falls within the exception of murder. It appears from the testimony of eye witnesses and injured eye witnesses that the act was committed by Girja Singh (appellant of Cr. Appeal No. 300 of 1999) and by the appellants of Cr. Appeal No. 280 of 1999 without any pre-meditation and in course of digging of the land and construction of boundary wall there was a sudden quarrel and in the heat of passion the appellants caused injuries. Looking to the cumulative effect of the evidence on record, it can be said that Girja Singh-appellant of Cr. Appeal No. 300 of 1999 has not taken undue advantage or calculatedly acted in a cruel and unusual manner. This aspect of the matter has

also not been properly appreciated by the trial court. In view of these facts the appellant is held guilty of only culpable homicide not amounting to murder, punishable u/s 304 Part II of the Indian Penal Code and is acquitted from the charge of murder of Laljeet Kandhu. The judgment and order of conviction and sentence passed by the trial court in Sessions Trial No. 167 of 1989 for the offence u/s 302 of the Indian Penal Code is hereby quashed and set aside. The appellant of Cr. Appeal No. 300 of 1999 i.e. Girja Singh is awarded rigorous imprisonment for ten years.

30. So far as appellants of Cr. Appeal No. 280 of 1999 are concerned, they have been convicted for the offence punishable u/s 323 of the Indian Penal Code. No error has been committed by the trial court in convicting these appellants for the offence punishable u/s 323 of the Indian Penal Code, looking to the evidence on record. I see no reason to take any deviation so far as conviction of these appellants is concerned by the trial court, but, so far as quantum of punishment is concerned, it appears that the whole incident has taken place without premeditation and without any intention and during sudden fight, in the starting of the year, 1988 i.e. in the month of February, 1988. These accused/appellants have already undergone a sentence of about a month as per the submissions made by the learned Counsel for both the sides. Thus, a period of more than two decades has lapsed. The trial court has awarded rigorous imprisonment for six months.

31. We hereby reduce, in view of the circumstances, especially when there was absence of mens rea on the part of these appellants, they are severely injured (as per deposition of Doctor-PW 10), the incident has taken place suddenly and it was not preplanned nor was it premeditated and more than two decades have been passed from the date of incident i.e. from 23rd February, 1988, the sentence for the offence u/s 323 of the Indian Penal Code, awarded to the appellants of Cr. Appeal No. 280 of 1999, up to the period for which they have already undergone. Thus, the judgment and order of conviction and sentence is modified to the aforesaid extent. The conviction u/s 323 of the Indian Penal Code is upheld but the quantum of sentence is reduced up to the period for which they have already undergone the imprisonment for the offence u/s 323 of the Indian Penal Code. Both the Cr. Appeals are partly allowed.

M.Y. Eqbal, J.

32. I agree.