
(2013) 10 PAT CK 0018

In the Patna High Court

Case No : Criminal Appeal (DB) No. 38 of 1991

Kusum Lal Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2013) 10 PAT CK 0018

Hon'ble Judges : Shyam Kishore Sharma, J; Amaresh Kumar Lal, J

Bench : Division Bench

Advocate : Maruti Kumari, Amicus Curiae, for the Appellant; Ajay Mishra, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

Amaresh Kumar Lal, J.—This appeal is directed against the judgment of conviction dated 5.01.1991 and the order of sentence dated 8.01.1991 passed by the learned 2nd Additional Sessions Judge, Bhagalpur in Sessions Trial No. 308 of 1983 by which the appellants Kusum Lal Singh and Deepan Singh have been convicted and sentenced to undergo imprisonment for life u/s 302 of the Indian Penal Code and rigorous imprisonment for two years u/s 148 of the Indian Penal Code, the appellants Mahendra Singh, Jitendra Singh, Badri Singh, Jagarnath Singh, Basudeo Singh and Daroga Singh have been convicted and sentenced to undergo rigorous imprisonment for life under Sections 302/149 of the I.P.C., the appellants Daroga Singh and Mahendra Singh have been further sentenced to undergo rigorous imprisonment for two years u/s 148 of the I.P.C., the appellant Mahendra Singh has been further convicted and sentenced to undergo rigorous imprisonment for two years u/s 324 of the I.P.C. and the appellants Sanjho Singh, Suresh Singh, Saryug Singh and Mathura Singh have been sentenced to undergo rigorous imprisonment for one year u/s 147 of the I.P.C. and all the sentences have been directed to run concurrently. The prosecution case, in brief, is that the informant Md. Harun Ansari (P.W. 12)

alongwith Kaushar Ansari (deceased), Ashraf Ansari (P.W. 1), Md. Jaggu Mian (P.W. 2), Md. Rahul Ansari (P.W. 8), Bibi Margina (P.W. 3) and Shakila Khatoon (P.W. 10), all residents of village-Rahua, P.S.- Baunsi went to collect Mahua from their tree situated at Mauza-Kairi, Tola-Paharpur on 4.04.1983 at about 5.00 A.M. After collecting Mahua at about 7.00-8.00 A.M., they were ready to return to their home taking Mahua. In the meantime, all of a sudden, the aforesaid appellants, Lilo Singh (since died) and Jamuna Singh (since acquitted) and 8-10 others came there. The appellant No. 1 Kusum Lal Singh asked and instigated the others to kill them (informant and others). The appellant No. 1 Kusum Lal Singh assaulted Kaushar Ansari (deceased) with Barchhi causing injury in his head. He fell down. Thereafter, Daroga Singh, Deepan Singh and Mahendra Singh assaulted him with Barchhi and others assaulted with Lathi. The informant and his companions tried to rescue Kaushar. Thereafter, Kusum Lal Singh, Mahendra Singh assaulted the informant with Barchhi causing injury in his head and leg and others also assaulted him with Lathi. The companions of the informant were also assaulted by the accused/appellants. All the victims raised alarm. Several persons of the adjoining village came there and witnessed the occurrence. Thereafter, the accused escaped. The co-villagers brought the informant and other injured to Baunsi Hospital for their treatment. Md. Kaushar (deceased) was seriously injured, as such; he was referred to Bhagalpur Hospital, who succumbed to the injury in the way. The dead body was returned to the Baunsi Hospital. The reason for the occurrence was that in the land bearing Khata No. 482, Plot No. 4689, there were Mahua trees and the occurrence took place for the collection of the Mahua flower. The fardbeyan of the informant (P.W. 12) was recorded by the S.I. N.P. Singh (P.W. 15) at Baunsi State Dispensary on 4.04.1983 at 11.00 hours. The fardbeyan was witnessed by Md. Karamat Ali (P.W. 14) and Md. Maksud Ali (P.W. 4). On the basis of the aforesaid fardbeyan, Baunsi P.S. Case No. 0037 dated 4.04.1983 was instituted against the accused for the offence punishable under Sections 147, 148, 149, 307, 302, 324, 323 and 341 of the Indian Penal Code. After investigation, charge-sheet was submitted against the accused. The cognizance was taken. The case was committed to the court of sessions. The charges were framed against the accused/appellants to which they denied and claimed to be tried. After the trial, they have been convicted and sentenced, as aforesaid, by the learned trial court.

2. This Court is required to reappraise the evidence to consider as to whether the prosecution has been able to substantiate its charge against the appellants beyond reasonable doubt.

3. The prosecution has examined the following witnesses to prove its charge: P.W. 1 Md. Ashraf Ansari, P.W. 2 Jaggu Mian, P.W. 3 Bibi Margina, P.W. 4 Md. Maksud Ali, P.W. 5 Md. Islam, P.W. 6 Mulhai Mian, P.W. 7 Md. Sohrab, P.W. 8 Md. Rahul Ansari, P.W. 9 Md. Hanif, P.W. 10 Shakila, P.W. 11 Md. Mohsin Ansari, P.W. 12 Md. Haroon, P.W. 13 Md. Habibulla, P.W. 14 Md. Karamat Ali, P.W. 15 Narayan Pd. Singh and P.W. 16 Dr. Gopaldhari Jaiswal.

4. P.W. 4 is the FIR witness, who has stated that the fardbeyan of the informant was recorded in his presence, which was witnessed by him. He has proved his signature (Ext. 1) and of Karamat Ali (P.W. 14) as Ext. 1/1. P.W. 5, P.W. 9 and P.W. 10 have been tendered. P.W. 11 is a seizure list witness of bloodstain soil, who has proved his signature and of Ushman Ansari which have been marked as Ext. ? and 1/3. P.W. 13 is the witness to the inquest report. P.W. 14 is the witness to the fardbeyan.

5. P.W. 12 is the informant and the injured of the occurrence, as such, his evidence is being considered. He has stated that on 4.04.1983 at about 5.00 A.M., he alongwith others went to his Mahua Orchard situated at Paharpur Tola with his Gotias. The orchard was planted by his grandfather on his land bearing Khata No. 482, Plot No. 4689. Kaushar (deceased), P.W. 1, P.W. 2, P.W. 8, P.W. 3 and P.W. 10 had gone with him to collect Mahua. They were returning to their house after collecting Mahua at about 8.00 A.M. When they reached in the field of Panchu Mian, all of a sudden, Kusum Lal Singh and 20-25 others surrounded the informant and others. Kusum Lal Singh, Daroga Singh, Deepan Singh, Mahendra Singh, Badri Singh and Jagarnath Singh were armed with Barchhi. Mahendra Singh was armed with spear. The accused Basudeo Singh, Suresh Singh, Ganauri Singh, Jamuna Singh, Lilo Singh, Mathura Singh, Saryug Singh and Sanjho Singh were armed with Lathi. He did not identify the others. Kusum Lal Singh instigated the co-accused to assault them. Kusum Lal Singh assaulted Kaushar (deceased) with Barchhi causing injuries on his head. Daroga Singh, Deepan Singh, Mahendra Singh and Jagarnath Singh assaulted Kaushar (deceased) with Barchhi. Basudeo Singh and Suresh Singh assaulted him with Lathi. He has further stated that Mahendra Singh assaulted him with Barchhi which caused injury in his head. Daroga Singh, Kusum Lal Singh and Deepan Singh also assaulted him with Barchhi. Jaggu (P.W. 2), Ashraf (P.W. 1), Shakila (P.W. 10), Margina (P.W. 3) were also assaulted by the accused. The villagers Sohrab (P.W. 7), Rahul (P.W. 8), Mulhai (P.W. 6) and many others came there. The villagers took the injured to Baunsi Hospital. The doctor asked to take Kaushar to Bhagalpur Hospital for treatment. Kaushar died in the way to Bhagalpur Hospital. The statement of P.W. 12 was recorded in presence of P.W. 14, P.W. 4 and others. P.W. 14 and P.W. 4 also witnessed the fardbeyan. In his cross-examination, he has stated that the victims and the accused belong to different villages at a distance of half mile. He has submitted the documents regarding the ownership of the land of Mahua orchard. It appears that there has been proceeding under Sections 144 and 145 Cr.P.C. with regard to the land bearing Mahua trees. In paragraph 10, P.W. 12 has admitted that there is dispute between the victim and the accused with regard to Mahua orchard and there is no other dispute. In paragraph 14, he has stated that all the injured were surrounded by the accused and there was no way for the victims to move from there. The accused assaulted six persons of the informant side. This witness has denied the suggestion of the accused that the informant and others had gone to loot the Mahua by making an unlawful assembly and in course of the unlawful

assembly; some of the members have got injuries, which has been exaggerated by lodging this case.

It appears that the evidence of P.W. 12 is convincing and fit to be relied upon.

6. P.W. 1 has also supported the prosecution case as narrated by the informant (P.W. 12). He is also a victim of the occurrence and received injuries in the occurrence. He has further stated that Kaushar (deceased) became senseless at the place of occurrence due to assault. He was taken to Baunsi Hospital and was referred to Bhagalpur Hospital but in the way to hospital he died. In his cross-examination, he has stated that the accused persons belong to one village. One accused Jagarnath is of village Hichla and remaining accused are of Tola Paharpur. The occurrence of assault continued for 10-15 minutes. He has also stated that the rent of the land was paid and the rent receipts were granted. He has denied the suggestion that the Mahua orchard does not belong to him.

7. P.W. 2 has also supported the prosecution case as P.W. 1. He is also a victim of the occurrence and he has stated that Badri Singh, Lilo Singh, Jago Singh and Saryug Singh assaulted him. Ashraf (P.W. 1), Harun (P.W. 12), Kaushar (deceased), Margina (P.W. 3) were also assaulted. The injury caused to Kaushar was serious. He became senseless. He has also stated that Kusum Lal Singh, Deepan Singh, Jagarnath Singh, Daroga Singh, Mahendra Singh and Badri Singh were armed with Barchhi. Jitendra Singh was armed with Bhala and the rest were armed with Lathi. He has also identified the accused in the court and claim to identify who were represented. He has also been cross-examined at length but the prosecution has not been able to demolish his evidence. In paragraph 9, he has stated that there has been recent survey in the Mauza-Kairi and land bearing 15-18 Mahua trees has been registered in the name of accused persons in the Chakbani. He has further stated in paragraph 10 that he has filed objection before the Consolidation Officer. In paragraph 11, he has stated that due to a mango tree and two Mahua trees, there was proceeding u/s 144 Cr.P.C. with the accused and that proceeding was converted into Section 145 Cr.P.C. He has denied the suggestion that 15-16 Mahua trees are in possession of the accused.

It appears that his evidence is also convincing and natural.

8. P.W. 3 is also a victim of the occurrence and she has also supported the prosecution case as P.W. 2. She has stated that Jamuna and Ragho Singh assaulted her. She has stated that she had gone to collect the Mahua flower with her husband (P.W. 2), his brother, daughter-in-law (P.W. 10) and others. She has also identified the accused Kusum Lal Singh, Daroga Singh, Deepan Singh and Basudeo Singh in the dock and claimed to identify the others, who were not present at the time of her deposition. She has also been cross-examined but her evidence has not been demolished.

9. P.W. 6 is adjacent raiyat at the place of occurrence. He has stated that at the time of occurrence, he was getting harvested Jau (Barley) in his field and saw that the informant and others were coming after collecting Mahua. In the

meantime, 20-25 persons armed with Lathi, Bhala came there and surrounded the victims at the instance of Kusum Lal Singh. The informant and others were assaulted. He has narrated the occurrence as to who had assaulted them. He has stated that at the instance of Kusum Lal Singh, Kaushar Mian was assaulted with Barchhi by Kusum Lal Singh, Deepan Singh, Daroga Singh with Barchhi. Mathura Singh and Mahendra Singh assaulted him with Lathi. Badri Singh, Lilo Singh and Jitendra Singh were also armed with Lathi and Bhala. They assaulted Harun, Ashraf, Jaggu, Margina and Shakila. On raising alarm, several persons from the Bahiyar and from the village rushed there. The injured were taken to Baunsi Hospital. In the way to Bhagalpur Hospital, Kaushar (deceased) died. He has claimed to identify the accused. He has also been cross-examined at length. His evidence also appears to be natural and convincing.

10. P.W. 7 has also supported the prosecution case as P.W. 6. In his cross-examination, he has admitted that Haldhar Sah lodged a criminal case against him. He has denied that Kusum Lal Singh deposed in favour of Haldhar and against him (P.W. 7). He has also admitted that Sachidanand Mishra lodged a case against him for the occurrence of assault in which he was also an accused. He has denied that due to his terror, Sachidanand Mishra withdrew his case.

11. P.W. 8 is also a victim of the occurrence. He has supported the prosecution case and has stated that at the instance of Kusum Lal Singh, the accused assaulted the victims. He has further stated that accused Badri Singh assaulted him with Barchhi and Jitendra Singh assaulted him with Bhala. Others were also assaulted. No one assaulted P.W. 10. On raising alarm, the villagers came there. Thereafter, the accused escaped. Kaushar (deceased) and other injured were taken to Baunsi Hospital. Kaushar was being taken to Bhagalpur Hospital but he died in the way. In his cross-examination, he has stated that he has given the documents to the Investigating Officer regarding Mahua tree and the proceedings u/s 145 Cr.P.C. and 100 (3) of B.T. Act. He has denied that the land in question has been recorded in favour of Jamuna Singh during consolidation. He has also been cross-examined at great length but the defence has failed to discredit his evidence.

12. P.W. 15 is the Investigating Officer. He has stated that on 4.04.1983 the Officer-in-charge of Baunsi Police Station after getting the outdoor slip of Bounsi Hospital went there and recorded the fardbeyan of Md. Haroon Ansari (P.W. 12) and observed the injuries of the injured person and prepared the injury report with regard to Haroon Ansari (P.W. 12), Asraf Ansari (P.W. 1), Jaggu Mian (P.W. 2) and Bibi Margina (P.W. 3) and the inquest report of Kaushar Ansari in presence of P.W. 13 and P.W. 9. He has proved the inquest report (Ext. 2) and sent the dead body to Banka Hospital for postmortem examination. The formal FIR has been marked as Ext. 4. He visited the place of occurrence on 4.04.1983 which is in Bahiyar Mauza-Baidachak, the field of Panchu Mian. He seized the bloodstain soil in presence of Usman Mian and Mohsin Ansari (P.W. 11). The seizure list has been marked as Ext. 5. He took the restatement of the informant (P.W. 12). He

took the statement of Ashraf Ansari (P.W. 1), Jaggu Mian (P.W. 2), Bibi Margina (P.W. 3), Shakila (P.W. 10), Habibulla (P.W. 13), Md. Hanif (P.W. 9), Md. Karamat Ali (P.W. 14), Md. Maksud Ali (P.W. 4), Md. Rahul Ansari (P.W. 8), Usman, Jahir Mian, Mohsin (P.W. 11), Md. Sohrab (P.W. 7), Mulhar Mian (P.W. 6), Md. Islam (P.W. 5), Nazibullah and Siddik. After investigation, he submitted the charge-sheet. In his cross-examination, he has stated that he has no personal knowledge as to whether the place of occurrence was the field of Panchu Mian. Three rent receipts were given by Rahul Ansari (P.W. 8) which were in favour of Khudus Mian. He has stated that P.W. 2 has stated that when he and others were returning to his house after collecting Mahua, all of a sudden, the persons from village Paharpur and Hechla surrounded him. He did not mention the name of Yamuna Singh. P.W. 3 did not state before him that P.W. 10 went with her to collect Mahua. She also did not name Badri Singh. He took the statement of P.W. 6 on 5.04.1983. He did not state before him that Kaushar was assaulted with Barchhi by Kusum Lal Singh in right side of his head. Deepan Singh assaulted him in his right leg. Mathura Singh and Mahendra Singh assaulted him with Lathi and Daroga Singh assaulted him with Barchhi. P.W. 7 did not state before him that Kusum Lal Singh assaulted Kaushar (deceased) with Barchhi, Basudeo with Lathi, Suresh Singh with Barchhi, Daroga Singh with Barchhi, Mahendra Singh with Barchhi and rest the accused with Lathi. He did not state that Shakila was assaulted with Lathi. He has stated that P.W. 8 did not name Jamuna and Sadhu. He stated before him that after escaping the accused Sohrab Ansari and Malahi Ansari came there. It was also not stated by him that Haroon was assaulted by Badri Singh and Mahendra Singh with Barchhi and Jitendra with spear.

13. P.W. 16 has stated that on 4.04.1983 while he was posted at Baunsi Hospital as Medical Officer, he examined Bibi Margina (P.W. 3) at 1.00 P.M. and found the following injuries on her person:

- (i) Diffused swelling 3" x 3" on the right leg below knee joint.
- (ii) Abrasion ?" size on the left index figure.

In the opinion of the doctor, all the injuries were simple in nature caused by hard and blunt weapon such as Lathi. Age within 12 hours.

The injury report has been marked as Ext. 6.

On the same day at about 1.15 P.M., he examined Md. Ashraf (P.W. 1) and found following injuries on his person:

- (i) Lacerated wound 1 ?" x ?" x ?" on the right temporal region of head.
- (ii) Diffused swelling 2" x 2" on the right upper area.
- (iii) Lacerated wound 1" x ?" x ?" on the right side.
- (iv) Swelling 3" x 3" on the right thigh.
- (v) Swelling 1" x 1" on the left thigh.

(vi) Swelling 2" x 2" on the right hand.

The opinion was reserved about injury No. (vi) and rest of the injuries were simple in nature caused by hard and blunt weapon.

The injury report has been marked as Ext. 6/1.

On the same day at 1.30 P.M., he examined Jaggu Mian (P.W. 2) and found the following injuries on his person:

(i) Diffused swelling 3" x 3" on the right knee point.

(ii) Abrasion 2" on the back.

(iii) Abrasion 2" size on the left leg.

The doctor has opined that all the injuries were simple in nature caused by hard and blunt substance.

The injury report has been marked as Ext. 6/2.

On the same day at about 2.00 P.M., he examined Haroon Ansari (P.W. 12) and found the following injuries on his person:

(i) Fracture of left upper arm (shaft of humerus).

(ii) Incised wound 1" x 2" x 2" on the occipital region of the head.

(iii) Lacerated wound 2" x 1/8" x 1/8" on the left upper arm.

(iv) Lacerated wound 1" x 2" x 2" on the left leg below knee joint.

The doctor has opined that injury No. (i) was grievous in nature caused by hard and blunt weapon and injury Nos. (ii), (iii) and (iv) were simple in nature. Injury No. (ii) was caused by sharp edge weapon such as Bhala. Injury Nos. (iii) and (iv) caused by hard and blunt weapon.

The injury report has been marked as Ext. 6/3.

14. The following witnesses have been examined on behalf of the defence: D.W. 1, Ram Lochan Pd. Singh, D.W. 2 Ramawtar Purbe, D.W. 3 Krishna Kumar Sinha, D.W. 4 Kailash Pd. Sinha and D.W. 5 Katki Singh.

15. D.W. 1, D.W. 2 and D.W. 3 have been examined on the point of alibi of the accused Yamuna Singh to show that he was present on his duty in the Irrigation Department. Since Jamuna Singh has been acquitted, the evidence of D.Ws. 1, 2 and 3 is not required to be discussed in details.

16. D.W. 4 is a formal witness who has proved the rent receipt in the pen and signature of Lakhan Lal Sah (Ext. C).

17. D.W. 5 has stated that Mahua Orchard situated in Paharpur belongs to Jamuna Singh and it is in his possession.

18. It has been submitted on behalf of the appellants that Dr. Jagarnath Prasad has conducted the post-mortem examination but the prosecution has failed to examine him and there is no explanation for his non-examination and in absence of non-examination of the doctor, the post-mortem examination report should not be relied upon. It has been further submitted that there has been various contradictions in the depositions of the prosecution witnesses. The learned trial court has failed to appreciate that every individual in the facts and circumstances of the case was liable for his individual act as the prosecution has failed to prove the common intention. It has been further submitted that in paragraph 10 of the judgment, the evidence of Chulhai Mian has been discussed, who is not the witness of the instant case. The place of occurrence is the subject matter of the litigation of title suit. It has been further contended that the object of accused persons was simply to restrain the persons from collecting Mahua flowers and not otherwise their assembly was never unlawful and they cannot be saddled with charge of the vicarious liabilities and their individual act will govern their guilt, if it is found by the Court. It has also been submitted that the learned trial court has also not held that the object of the unlawful assembly was common and as such, the appellants Saryug Singh, Mathura Singh, Suresh Singh and Sanjho Singh have not been held guilty for the offence punishable under Sections 302/149 of the Indian Penal Code and they have been convicted and sentenced to undergo rigorous imprisonment for one year u/s 147 of the Indian Penal Code. Since the object of the appellants was not to kill any one, the liability of the member of the unlawful assembly has to be scrutinized separately.

19. The learned counsel for the State has submitted that there is sufficient evidence to show that the appellants were the members of an unlawful assembly with the common object to assault the informant and his companions, as such; each and every member of the unlawful assembly is liable to be punished. He has fairly submitted that the State has not filed any appeal against the acquittal of the appellants who have not been held guilty under Sections 302/149 of the I.P.C.

20. After hearing the learned counsel for both the parties and on perusal of the material on the record, it appears that there has been bonafide dispute of land between the prosecution side and Jamuna Singh, the claimant of the land, in question, where Mahua trees are standing and Mahua flowers have been collected by the victims of the occurrence. The learned trial court has also considered the evidence on the record and has held that murder was not the common object of the unlawful assembly and as such, two appellants Kusum Lal Singh and Deepan Singh have been held guilty for the offence punishable under Sections 302 and 148 of the Indian Penal Code. The appellants Saryug Singh, Mathura Singh, Suresh Singh and Sanjho Singh have been held guilty and sentenced to undergo rigorous imprisonment for one year for the offence punishable u/s 147 of the Indian Penal Code. According to the prosecution case, the appellant No. 1 Kusum Lal Singh instigated the members of the assembly to assault and he himself assaulted Kaushar Ansari (deceased) with Barchhi which

caused injuries in the right side of his head and other appellant assaulted Kaushar and other victims.

21. From perusal of the evidence of P.Ws. 1, 2, 3, 4, 6, 7, 8 and 12, it appears that the appellant Kusum Lal Singh was armed with Barchhi and he instigated the other appellants to assault the persons who have collected Mahua flowers and thereafter, he assaulted the deceased Kaushar Ansari with Barchhi. Thereafter, Daroga Singh, Deepan Singh, Mahendra Singh, Badri Singh and Jagarnath Singh assaulted Kaushar (deceased) and other injured with Barchhi. The accused Basudeo Singh, Suresh Singh, Ganauri Singh, Jamuna Singh, Lilo Singh, Mathura Singh, Saryug Singh and Sanjho Singh assaulted Kaushar (deceased) and other victims with Lathi. P.W. 1, P.W. 2, P.W. 3, P.W. 7, P.W. 8 and P.W. 12 have got injuries.

22. It appears from the evidence of P.W. 16 Dr. Gopaldhari Jiaswal that he has examined the injured Bibi Margina (P.W. 3) and the injuries were found simple in nature caused by hard and blunt substance (Ext. 6). The injury found on Md. Ashraf (P.W. 1) was simple in nature caused by hard and blunt substance except injury No. 6 on the right hand. He has found injuries on P.W. 2, all simple in nature and the injuries found on P.W. 12 were caused by hard and blunt substance and sharp edge weapon such as Bhala. All the injuries were simple in nature except injury No. 1 i.e. fractures of left arm.

23. It appears from the post-mortem examination report (Ext. 6) that following injuries were found on the body of the deceased Kaushar Ansari:

(i) Lacerated wound containing fresh blood clot on the right side of forehead size 1" x 1" x bone deep.

(ii) Lacerated wound containing fresh blood clot on the side of head size 2" x 2" x skin deep.

On dissection blood and blood clots found in muscular layers.

(iii) Diffuse swelling on the left side of head. On dissection blood and blood clots were found in the muscular layers.

A transverse linear fracture of left side of skull measuring 2" in length was present. Blood and blood clots were present in between menbone and skull bone.

(iv) Abrasion on the middle of the left leg on the medial side size 1" x 2".

(v) Bruise sign 1" x 2" with diffuse swelling on the middle of left leg. Fracture in the leg bone was present.

(vi) Radish bruise on the lateral side of the right leg size 1" x 2". Fracture of the leg was present.

(vii) Two punctured wound on the front of the middle of right leg size 1" x 2" x 2" x 2" x 2" each becoming narrower in depth.

(viii) Three abrasion on the left shoulder blade size ?" x ?" x ?" x ?" in size.

Cause of Death: By haemorrhage and shock due to above mentioned injuries particularly injury No. 3.

Time elapsed since death was within six hours.

Injury Nos. (i), (ii), (iii), (iv), (v), (vi) and (viii) were caused by hard and blunt object and injury No. (vii) was caused by sharp pointed weapon.

24. It appears that several appellants were armed with lethal weapons like Barchhi and Bhala. Had they any intention to cause the death of the victims, they were able to do so as there was no intervening circumstance. The victims were unarmed. No one had the intention to cause the death of the deceased. The acts of the accused/appellants convicted under Sections 302 and 302/149 do not show that they had common intention or common object to kill the victims. As such, their conviction u/s 302/149 of the I.P.C. is not justified. Their action comes within the purview of Section 304 part second of the I.P.C. They are liable to be held guilty and deserve punishment of culpable homicide not amounting to murder u/s 304 (part second) of the I.P.C. As such, the conviction of the appellants Kusum Lal Singh, Daroga Singh, Basudeo Singh, Jitendra Singh, Mahendra Singh, Badri Singh, Dipan Singh and Jagarnath Singh under Sections 302 and 302/149 of the I.P.C. is set aside and they are held guilty u/s 304 (part second) of the I.P.C.

There is no material on the record to show that they had any criminal antecedent or they have committed any overt act after commission of this occurrence. The occurrence has taken place on 4.04.1983 and more than 30 years have passed and they have been suffering from mental agony since then. It also appears that they have also remained in custody prior to the trial and after conviction and sentence. The appellants Saryug Singh, Sanjho Singh, Mathura Singh, Daroga Singh and Jagarnath Singh were taken into custody on 6.04.1983. The appellants Badri Singh, Mahendra Singh, Basudeo Singh and Dipan Singh were taken into custody on 11.04.1983. The appellants Jitendra Singh and Suresh Singh surrendered and were taken into custody on 12.04.1983 and appellant Kusum Lal Singh surrendered and was taken into custody on 15.04.1983. The appellant Kusum Lal Singh was granted bail on 23.08.1983. The appellants Dipan Singh, Daroga Singh, Mahendra Singh, Basudeo Singh, Saryug Singh, Sanjho Singh and Jagarnath Singh were released on 15.09.1983. The appellants Suresh Singh and Mathura Singh were released on 29.09.1983. After the trial, the appellants were taken into custody on 8.01.1991. The appellants Saryug Singh, Mathura Singh, Suresh Singh and Sanjho Singh were granted bail on 7.02.1991. The appellants Basudeo Singh, Jitendra Singh and Badri Singh were granted bail by this Court on 18.07.1991. The appellants Jagarnath Singh was granted bail on 18.12.1991. The appellants Daroga Singh and Mahendra Singh were granted bail on 30.04.1992. The appellants Kusum Lal Singh and Dipan Singh were granted bail by this Court on 24.05.1996.

25. Considering the facts and circumstances stated above, the sentence of appellants Kusum Lal Singh, Daroga Singh, Basudeo Singh, Jitendra Singh, Mahendra Singh, Badri Singh, Dipan Singh and Jagarnath Singh is reduced to the period already undergone in custody to meet the ends of justice.

26. In the result, this appeal is dismissed with the aforesaid modification in the conviction and sentence. Let a copy of the first page and the last page of the judgment be given to Ms. Maruti Kumari, learned Amicus Curiae so that she may be able to get the prescribed fee from the Patna High Court Legal Service Committee.