

(2025) 12 JH CK 1932

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No.437 Of 2002

Ramawatar Rawani Son of Late Kashi Ram

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 23-12-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161

Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 302, 307, 323, 325, 364, 380, 427, 452, 504

Citation : (2025) 12 JH CK 1932

Hon'ble Judges : Rongon Mukhopadhyay, J;Pradeep Kumar Srivastava, J

Bench : Division Bench

Advocate : Neeharika Mazumdar, Manoj Kumar Mishra

Final Decision : Allowed

Judgement

Pradeep Kumar Srivastava, J

1. Instant criminal appeal is directed against the judgment and order of conviction and sentence dated 31.07.2002 passed by Ist Additional Sessions Judge, Bermo at Tenughat, District Bokaro in S.T. Case No. 162/110(A) of 1997 corresponding to G.R. Case No. 226/1997, whereby the whereunder, the appellants have been held guilty for the offences under Sections 148, 302/149, 325/149 of the I.P.C. and sentenced to undergo R.I. for one year for the offence under Section 148 of the I.P.C., R.I. for two years for the offence under Section 325/149 of the I.P.C and R.I. for life for the offence under Section 302/149 of the I.P.C.

2. We have heard Mrs. Neeharika Mazumdar, learned counsel for the appellants as well as Mr. Manoj Kumar Mishra, Additional Public Prosecutor appearing for the State and perused the record.

Factual Matrix

3. Factual matrix giving rise to this appeal is based upon Fardbeyan of one Rupa

Devi wife of Nandan Singh, recorded on 27.03.1997 at Bokaro Colliery Hospital, Verandah at 09:00 P.M. by S.I. Sudama Yadav, Officer In-Charge of Gandhi Nagar Police Station wherein the informant stated that on the same day at about 07:30 PM, informant's father Gang Deo Singh was present at his hotel situated at Kurpania More. Meanwhile, 100-150 miscreants surrounded him and started brutally assaulting. Informant's father started fleeing away, but he was chased and caught hold of near the gate of Ashok Dubey and assaulted by means of Lathi, Bhala and Gadasa. Thereafter, some miscreants entered into the house of informant in search of her brothers who were not present in the house then, miscreants ran away towards the south and north direction by assaulting persons who met them. The informant along with her husband brought her injured father to Bokaro Colliery Hospital, but he was declared dead. The informant has mentioned the name of 15 accused persons, whom she saw armed with Lathi, Bhala and Gadasa as under:- Ramavtar Rawani, Bijay Rawani, Dr. Madhusudan Prasad Shibu Rawani, Ramesh Prasad, Dhiraj Rawani, Laxman Ram, Sunil Rawani, Sanjay Rawani, Avinash Kumar, Bhim Rawani, Kisto Rawani, Arvind Rawani, Ashok Rawani, Nageshwar Rawani.

The motive behind the occurrence is alleged that prior to occurrence some dispute arose between Tinu Singh, Sunil Rawani and Pankaj Singh. Thereafter, Sunil and Pankaj attacked on Tinu Singh who fled away and concealed himself in a house and while returning, they assaulted deceased (Gang Deo Singh) and killed him.

4. On the basis of Fardbeyan, F.I.R. was registered as Gandhi Nagar P.S. Case No. 24/1997 for the offences under Sections 147, 148, 149, 452, 302, 323, 427, 120 B of the I.P.C. against 15 accused persons. During investigation one accused person absconded. Charge-sheet was submitted against the above 14 accused persons. The case was committed to the court of Sessions where S.T. Case No. 162/110(A) of 1997 was registered and trial proceeded against the appellants.

5. In order to prove the charges against the appellant, the prosecution has examined 13 witnesses and apart from oral testimony of witnesses following documentary evidences were also adduced:-

Exhibit-1:- Carbon Copy of Inquest Report.

Exhibit-2:- Injury report.

Exhibit-3:- Carbon copy of requisition of Ram Kumar Singh.

Exhibit-4:- P.M. Report.

Exhibit-5:- Signature of Rupa Devi on Fardbeyan.

Exhibit-5/1:- Signature of Nandan Singh on Fardbeyan.

Exhibit-5.:- Signature of Ramadhar Singh on Fardbeyan.

Exhibit-6:- Fardbeyan of Rupa Devi.

Exhibit-7:- Inquest report of Gangdeo Singh.

Exhibit-8:- Certified copy of Judgment dated 28.02.1998 in G.R. No. 230 of 1997, T.R. No. 796 of 1998.

Exhibit-9:- Certified copy of deposition of Dhiraj Rawani in G.R. Case No. 230 of 1997.

Exhibit-9/A:- Certified copy of deposition of Bimla Devi in G.R. Case No. 230 of 1997.

Exhibit-9/B:- Certified copy of deposition of Rajesh Rawani in G.R. Case No. 230 of 1997.

Exhibit-9/C:- Certified copy of deposition of Sunil Rawani in G.R. Case No. 230 of 1997.

6. The case of defence is denial from the occurrence and false implication. The defence has also examined five witnesses and following documentary evidence has also been adduced:-

Exhibit-A- Fardbeyan of Bokaro P.S. Case No. 25 of 1997.

Exhibit-B- Formal F.I.R. of Bokaro P.S. Case No. 25 of 1997.

Exhibit-C- Compromise Petition dated 11.02.1998 (except signature of the both parties).

Exhibit-C/1- Signature of Parties on compromise petition dated 11.02.1998.

7. The trial court after considering the oral as well as documentary evidences led by the parties recorded the conclusion of guilt of the appellants and sentenced as stated above which has been assailed in this appeal.

8. Learned counsel for the appellants assailing the impugned judgment submitted that in the course of trial altogether 13 witnesses have been examined by the prosecution, but none of them have been able to state any specific overt act against any of the appellants. Admittedly, there was crowd of 100 to 150 persons at the relevant time of occurrence as stated by the prosecution witnesses wherein some members of appellants' party were also injured and for which Bokaro Thermal P.S. Case No. 25 of 1997 was also registered on behalf of the appellants. The deceased was assaulted by some unknown persons and due to previous enmity the appellants were falsely implicated in this case. It is further submitted that the learned trial court has miserably failed to properly scrutinize and evaluate ocular testimony of the witnesses which suffers from material improvement, contradictions and discrepancies. The prosecution witnesses have miserably failed to prove the exact place of occurrence and involvement of appellants as perpetrators in the alleged crime. No incriminating materials have been collected against the appellants to prove their guilt. It is further submitted that there is no doubt that one person has been died in this case due to assault given to him, but there is absolute lack of evidence showing

involvement of the appellants in commission of murder of the deceased. The learned trial court has committed serious illegality while recording the guilt of the appellants in the alleged crime ignoring evidence adduced by the appellants and factum of counter-case instituted by them. Therefore, judgment and order of conviction and sentence of the appellants is fit to be set aside, allowing this appeal.

9. On the other hand, learned Additional Public Prosecutor has opposed. the contentions raised on behalf of appellants and submitted that learned trial court has very wisely and in threadbare manner appreciated the evidence available on record and arrived at right conclusion about guilt of the appellants. There is no reason to interfere with the impugned judgment and no legal force in contentions raised on behalf of the appellants. Therefore, this appeal is fit to be dismissed.

10. We have given thoughtful consideration to the rival contentions raised on behalf of the respective parties and perused the impugned judgment and order along with trial court record.

11. The only point for determination in this appeal is that as to whether the impugned judgment and order of conviction and sentence of the appellants suffers any error of law calling for any interference by way of this appeal?

12. Before imparting our verdict on the above point, we have to apprise with the evidence adduced in this case.

13. It appears that altogether 13 witnesses were examined by the prosecution to substantiate the charges leveled against the accused persons.

P.W.1 Ram Kumar Singh has deposed that on 27.03.1997 at about 07:30 to 07:45 PM., he was standing near the betel shop at Kurpania More and saw that some boys were scuffling and assaulting to each other. After said occurrence, 50 to 60 persons were assembled at the shop of Dr. Maksudhan Prasad. Meanwhile, some persons became unruly and started raising alarm "Maro-Mar" and rushed towards Kurpania, Gandhi Nagar Road by assaulting every person who met them.

This witness proceeded to his home and reached near the well situated in front of his house, then some miscreants also shouted to assault and Vijay, Sunil, Rajesh, Shibu and Ramesh assaulted him by lathi causing fracture injury on left hand. He also sustained injury on his head, leg and left elbow joint. He further stated that Shibu and Ramesh are staff of Bahar Cinema, Kurpania. On the next day morning, he went to Gandhi Nagar Hospital where Police was preparing inquest report of the deceased (Gangdeo Singh) which was also signed by this witness. The inquest report has been marked as Exhibit -1 (with Objection).

In his cross-examination this witness admits that he is acquainted with Vijay, Shibu, Rajesh, Sunil, Ramesh prior to occurrence, but he has no previous scuffle with them. He cannot tell how many persons were assaulted by the members of mob. This witness has stated nothing else about the occurrence of this case in connection with murder of the deceased (Gang Deo Singh). P.W.2 Nand Kishore

Singh has deposed that on 27.03.1997 at about 07:30 to 07:45 PM, he was sleeping in his quarter meanwhile, heard hulla and woke up and came out of his house. Meanwhile some miscreants assaulted him and went away towards Durga Mandap. He also saw that some miscreants were assaulting Gang Deo Singh and some were fleeing towards the house of Sunil Kumar Singh then, this witness fled away and about 11/2 hours later, he came to know that Gang Deo has been murdered. On the next day morning, he went to Gandhi Nagar Hospital where he has signed the inquest report of the deceased (Gangdeo Singh) as a witness.

P.W.3 Dr. Hira Prasad Singh: was posted as Medical Superintendent at Colliery Hospital, Bokaro. On that day this witness examined Jagdish Narayan Singh on the requisition of Officer In-Charge Gandhi Nagar police station and found:-

- i. Hematoma on left forearm 2" x 1/2".
- ii. Abrasion on left forearm 1.1/2" x 1/2".
- iii. Fracture of lower end of left ulna, nature grievous.

According to this witness, the injury caused by hard and blunt substance and the age of the wound was within 12 hours. He has proved the injury report which is marked as Exhibit-2.

P.W.3 Sunil Kumar Singh aged about 16 years has stated that at about 07:30 to 07:45 PM, he was studying in his home, meanwhile he heard some commotion raised by 20 to 25 persons, then he came out of his house and saw that Pankaj Singh along with 20 to 25 persons. The mob entered into his house and he was also assaulted and sustained injuries on his right hand. He was brought to police station by his father. He has identified Pankaj Kumar Singh and Ramavatar Singh as assailants. This witness has stated nothing about the murder of Gang Deo Singh.

P.W.5 Rabindra Singh has also claimed to see Pankaj Kumar Singh along with 20-25 persons who were assaulting to his son Sunil Kumar Singh. His wife was also dashed when she attempted to save Sunil Kumar Singh. When he was going to police station, then Ramavatar Singh threatened him. He brought his son to Bokaro Colliery Hospital where he has seen the dead body of Gang Deo Singh. This witness has disclosed nothing about the murder of Gang Deo Singh.

P.W.6 Manoj Pratap Singh has deposed that on 27.03.1997 at about 07:45 PM, he was present at Kurpania More meanwhile, he saw Pankaj Singh along with 20 to 25 persons coming towards his home then, he concealed himself inside his house and closed the door. He has stated nothing about the further occurrence. He went next day, he informed about the occurrence to the police station and in the hospital he has seen the dead body of the Gang Deo Singh. There is nothing else in his evidence.

P.W.7 Jagdish Mahato has been declared hostile by the prosecution and has expressed no knowledge about the occurrence.

P.W.8. Dr. Vinod Kumar was posted as Medical Officer at Sub-Divisional Hospital Tenughat. He has conducted the post-mortem examination on the dead body of Gang Deo Singh and found following injuries:-

- i. Bruise 10 cm x 4 cm over right lower auxiliary region.
- ii. Small bruise over right upper auxiliary region.
- iii. Small bruise over right eyebrow of forehead.
- iv. Lacerated wound 7cm x 2 cm x skin deep over left temple (over left eyebrow). No fracture under line bone.

Injury no. (i) to (iv) are caused by hard and blunt substance and same were ante mortem in nature.

- v. Stab wound 10 cm x 1.5 cm x 5cm situated over left 7th intercostal space with inverted margin. Injury was ante-mortem in nature.

Injury No. (i) to (iv) may be caused by lathi and injury no. (v) may be possible by Bhala.

On dissection, found following internal injuries:-

Stomach, liver and right lung were lacerated and perforated. Peritoneal cavity was full with blood and blood clot.

He has opined that the time elapsed since death with 24 hours. Death due to shock and hemorrhage. This report is signed by this witness and marked as exhibit-4.

P.W.9 Ashok Singh has also claimed to be present at Kurpania More on 27.03.1997 at about 07:30 PM, meanwhile he saw some incident of exchange of assault was going on meanwhile a dumper came and some persons lifted him on the dumper and brought towards the Pilpilo forest and left there. Thereafter, he returned to his home on foot. This witness is son of the deceased when he returned to home, his mother disclosed him about the murder of his father. Surprisingly, this witness has disclosed nothing about the miscreants who have committed murder of his father.

P.W.10 Arjun Singh is the star witness-cum-son of the deceased. According to his evidence on 27.03.1997 at about 07:30 PM, he saw that some persons assaulting his father from the hotel of his brother-in-law were passing through his shop. He has disclosed the names of the miscreants who were assaulting to his father as Ramavtar Rawani, Bijay Rawani, Dr. Madhusudan Prasad, Shibu Rawani, Ramesh Rawani, Dhiraj Rawani, Laxman Ram, Sanjay Rawani, Avinash Kumar Bhim Rawani, Kisto Rawani, Arvind Rawani, Ashok Rawani, Nageshwar Rawani. His father was brought in front of the house of Ashok Dubey where he was assaulted by means of Bhala, Lathi and Gadasa by the above named accused persons due to which he died. He has further deposed that on 27.03.1997 at about 06:00 PM, while Tinu Singh was going on his scooter, he

was stopped and abused by Pankaj Singh and Sunil Rawani upon which Tinu Singh slapped them. When the accused persons were returning, they assaulted to his father as a motive to take revenge.

In his cross examination, this witness has denied the suggestion of the defence any case instituted against him by Dhiraj Rawani for some scuffle happened on 27.03.1997 and the case was compromised later on. He has also denied that any previous enmity with the accused persons as named above. He also admits that at the time of occurrence, there were 150 persons and he could only identify 15 persons as named above. He also admits that 150 persons were searching him to assault. At the time of occurrence, he was with his sister who was also present in his grocery shop. He has denied the suggestion of the defence that at the time of occurrence Rupa Devi was inside her house and he is telling a lie. He also admits that a conversation took place with his sister Rupa Devi about the occurrence. He also admits that at about 07:30 PM, he closed the shop. His attention has been drawn by the prosecution towards his statement recorded under Section 161 of the Cr.P.C. wherein he has not stated that at the time of occurrence he was present in his grocery shop. He also admits that prior to occurrence, the accused persons were not in visiting terms with his family and they have never come to his home. He has denied that he has not seen the occurrence and giving false evidence.

P.W.11 Nandan Singh:- This witness has deposed that on 27.03.1997 at about 07:30 PM, he has gone to Khatal for brining milk and when he returned home his wife Rupa Devi disclosed that about 100 to 150 persons attacked on the Hotel and Gang Deo Singh (father-in-law) and assaulted him by Lathi, Bhala and Gadasa near the gate of Ashok Dubey and killed him. Then, he along with his wife brought Gang Deo Singh at Bokaro Colliery hospital, but doctor declared him dead. This witness is not an eye witness of the occurrence and he heard the whole incident from his wife Rupa Devi who happens to be informant in this case. It is quite surprising that Rupa Devi in the F.I.R. has named 15 accused persons, but this witness categorically says that his wife told him that there were 100 to 150 persons who have assaulted to Gang Deo Singh, but name of any miscreants has not been disclosed.

P.W. 12 Rupa Devi is the informant of the case. According to this witness, at about 07:30 PM when Tinu Singh at his scooter reached at Kurpania More, he was stopped by Pankaj Singh and Sunil Rawani and was abused then after Tinu Singh assaulted them by fists and fats. Thereafter, Pankaj Singh and Sunil Singh along with other persons chased Tinu Singh to assault him. Tinu Singh fled away from there and concealed himself in his house. After sometime, Pankaj Singh, Sunil Rawani along with other miscreants come to the house of Tinu Singh and pelted stones at his house and while returning from the house of Tinu Singh, Pankaj Singh and Sunil Rawani and his associates attacked to the hotel of her father (Gang Deo Singh) and assaulted him brutally by Lathi, Bhala, Gadasa in front of Ashok Dubey's house and after assaulting Gang Deo Singh, they started

search for her brothers, miscreants fled away by assaulting persons who met them in their way. This witness along with her husband brought her injured father to Bokaro Colliery Hospital where he was declared dead. She has mentioned the name of 15 accused persons whom she saw armed with Lathi, Bhala and Gadasa as under:- Ram Avtar Rawani, Bijay Rawani, Dr. Madhusudan Prasad Shibu Rawani, Ramesh Prasad, Dhiraj Rawani, Laxman Ram, Sanjay Rawani, Avinash Kumar Bhim Rawani, Kisto Rawani, Arvind Rawani, Ashok Rawani, Nageshwar Rawani. The police has recorded the statement of this witness on which she and two witnesses has signed which is marked as 5, 5/1 and 5/2.

P.W.13 S.I. Sudama Yadav is the investigating officer of this case. According to his evidence, on 27.03.1997 at the time of evening patrolling, he got information through rumor that in Kurpania, mob of some persons are using force and violence. This witness along with other police personnel went to the place of occurrence Kurpania More at about 08:30 PM and came to know that Tinu Singh, Pankaj Singh and Sunil Rawani have indulged in an incident of some assault to each other and as a repercussion to above incident one Gang Deo Singh was assaulted. This witness went to Bokaro Colliery Hospital where he saw the dead body of Gang Deo Singh. The daughter of the deceased namely, Rupa Devi (P.W.12) was present there. He recorded the Fardbeyan which is marked as Exhibit-6 of Rupa Devi which was also signed by witnesses Ram Kumar Singh (P.W.1) and Nandan Singh (P.W.11). He visited the place of occurrence which is situated at Kurpania Main Road towards eastern side corner, hotel belonging to informant at a distance of 100 yards. In front of the house of the informant, there is house of Ashok Dubey and in between the house of Ashok Dubey and informant there is public road. He did not notice any incriminating materials at the place of occurrence. He also recorded the statement of witnesses Nand Kishor Singh (P.W.2) and Rabindra Singh (P.W.5) and sent the fardbeyan for registration of formal F.I.R. to Bokaro Thermal police station. On the next day morning at about 06:00 AM, he prepared the inquest report of the deceased in presence of witnesses Nand Kishore Singh (P.W.2) and Ram Kumar Singh (P.W.1). Carbon copy of inquest report is marked as exhibit-9. The dead body was sent to Sub-Divisional Hospital, Tenughat for post-mortem and the report received on 22.04.1997. He has also arrested the accused persons during investigation and after completion of investigation submitted charge-sheet.

In his cross-examination, he admits that in connection with incident of assault between Tinu Singh, Sunil Rawani, a case was instituted and he has also investigated that case. He has also not interrogated with any neighbor shopkeepers near the hotel of Gang Deo Singh. Although, there are several shops. He has also not interrogated with Ashok Dubey or any other witnesses adjacent to his house. He also admits that he has not visited any other injured persons who have sustained injuries in the said incident. He has taken statement of Dr. Madhusudan Prasad, but in accordance with his evidence he has not conducted any further investigation. This witness further admits that Ram Kumar

Singh (P.W.1) has not stated before him that who has assaulted him on his head, leg, left hand and elbow. Manoj Pratap Singh (P.W.6) has not stated that he was present at Kurpania More. He further stated that witness Arjun Singh (P.W.10) has not stated before him that at the time of incident, he was present at his grocery shop which is situated near his house, he has also not stated that accused persons dragged his father towards the gate of Ashok Dubey. This witness further admits that Nandan Singh (P.W.11) has not stated before him that his wife disclosed about the names of 15 persons who have assaulted Gang Deo Singh. The main witness Rupa Devi (P.W.12) has also not stated before this witness that Pankaj Kumar Singh and Sunil Rawani had attacked her father at his hotel. He also admits that he has investigated the counter case Bokaro P.S. Case No. 25 of 1997 and submitted charge-sheet against the accused persons, that case was registered on the basis of fardbeyan of Dhiraj Ram. This witness has denied the suggestion that he has falsely submitted charge-sheet without any concrete evidence against the accused persons and his investigation is defective.

15. On the other hand, the defence has also examined 5 witnesses namely Subodh Singh (D.W.1), Dineshwar Mahto (D.W.2), Sunil Rawani (D.W.3), Pawan Kumar (D.W.4), Dilip Patwa (P.W.5).

These witnesses have proved the plea of counter case lodged by the accused persons which was compromised between the parties. Exhibit-A is the Fardbeyan of Bokaro Thermal P.S. Case No. 25 of 1997. Exhibit-B is formal F.I.R. of Bokaro P.S. Case No. 25 of 1997. Exhibit-C:- Compromise Petition dated 11.02.1998, Exhibit-C:- Signature of Parties on Compromise Petition.

16. The case of defence is false implication merely because there was a scuffle and assault took place between son of the deceased namely Ashok Singh and his associates with Sunil Rawani who happens to be the son of Dheeraj Ram of Bokaro Thermal P.S. Case No. 25 of 1997.

17. We have considered the overall evidence, from the aforesaid discussion of oral testimony of prosecution witnesses, it is crystal clear that except P.W.12 (Rupa Devi) and P.W.10 (Arjun Singh) none of the witnesses have claimed to be eye-witnesses of the occurrence rather all the other witnesses of case namely Ram Kumar Singh (P.W.1), Nand Kishore Singh (P.W.2), Sunil Kumar Singh (P.W.4), Rabindra Singh (P.W.5), Manoj Pratap Singh (P.W.6), Ashok Singh (P.W.9) have only seen some persons in the mob who were assaulting to everyone passing through and met in the way. It is the informant alone who has named about 15 persons as assailants of her father. Out of mob members about 150 persons, she has stated in specific terms that her father was being assaulted by the accused persons from her hotel and brought towards the gate of Ashok Dubey which is situated adjacent to her house, then she saw that her father was being assaulted by the accused persons, who died on the spot. She also admits that on the same day at about 06:00 PM while Tinu Singh was going by his scooter then, Tinu Singh assaulted Sunil Rawani and Pankaj Singh by slaps. After sometime, Pankaj Singh and Sunil Rawani along with his associates came back to

assault Tinu Singh then, Tinu Singh entered into his house and Sunil Rawani and his associates started pelting stones on the gate and upon firing by Tinu Singh they with his associates, fled away. She has further deposed that after sometime Pankaj Singh and Sunil Rawani and his associates reached at the hotel of her father Gang Deo Singh, brought him towards the gate of Ashok Dubey and assaulted by lathi, Bhala and gadasa. Both of her brothers were also searched, but they could not find them then accused persons fled away. The testimony of P.W.12 (Rupa Devi) finds corroboration from the evidence of P.W.10 (Ashok Singh) who happens to be the son of the deceased Gang Deo Singh, but there are vital contradictions in their evidence which demolishes their testimony as eye-witnesses of the occurrence. P.W.12 (Rupa Devi) admits in her cross-examination that at about 07:00 P.M., she had gone to hotel for calling her child and she saw scuffle between Tinu Singh, Pankaj and Sunil Rawani from her grocery shop which is being run by her brother Arjun Singh (P.W.10). At the time of scuffle Arjun Singh was also present at his grocery shop. She again reiterates that when the accused persons went at the hotel and assaulted to her father and her father was fleeing, she has seen the occurrence from the grocery shop. When she reached at the place of occurrence where her father was being assaulted, she saw her father was lying under injured condition. On the other hand P.W.10 (Arjun Singh) who is none else but the brother of Rupa Devi (P.W.12) has admitted in his cross-examination that at the time of occurrence, door of his house was closed from inside by his sister Rupa Devi (P.W.12) and Shanti Devi who were present inside the house. He further admits that after incident he met with Rupa Devi who was present in his shop at the relevant time of occurrence. Again, he denies the suggestion of defence that he has given false version that at the time of occurrence Rupa Devi was inside house which he has denied. It means he affirms that Rupa Devi was inside the house at the time of occurrence. He also admits that at about 7:30 PM, he closed his shop.

18. The above contradictory statements of P.W.10 and P.W.12 further fortified by the P.W.13 S.I. Sudama Yadav who is Investigating Officer of the case wherein P.W.10 (Arjun Singh) has not stated before him that at the time of occurrence he was present at his grocery shop along with sister (Rupa Devi). The evidence of Investigating Officer (P.W.13) also indicates that Nandan Singh (P.W.11) who happens to be the husband of the informant has not stated before him that his wife Rupa Devi (P.W.12) told him the name of 10-15 persons as assailants of her father near the gate of Ashok Dubey. Moreover, the Investigating Officer admits that he has not interrogated with Ashok Dubey and his neighbors to verify the place of occurrence. He has also not noticed any material thing in front of gate of Ashok Dubey. If the testimony of P.W.12 (Rupa Devi) informant-cum-daughter of the deceased is believed to be true that her father was killed by assaulting by Lathi, Bhala and Gadasa, then some blood stains or mark of struggle must have been found at the place of occurrence as the number of accused persons is stated to be sixty and above. No weapon of offence has also been seized.

19. The actual scenario of the alleged occurrence as depicted by star prosecution

witnesses, it transpires that first of all a scuffle took place while one Tinu Singh was going to market by his scooter, he was intercepted by Sunil Rawani and Pankaj Singh who slapped them and proceeded. It is further shown that after sometime, Sunil Rawani and Pankaj Singh gathered his associates numbering about 150 persons started a meeting near the shop of Dr.Maksudan Prasad. Thereafter, they proceeded in search of Tinu Singh, but Tinu Singh saved himself entering into his home, then all the mob persons started pelting stones on his roof then Tinu Singh opened fire from his roof thereafter mob proceeded. As prosecution story, the mob persons went to the hotel of Gang Deo Singh and brought him assaulting in front of house of Ashok Dubey where he was assaulted by Lathi, Bhala and Gadasa and killed on the spot. The prosecution itself has proved the defence of the accused persons that a case bearing Bokaro Thermal P.S. Case No. 25 of 1997 was instituted for the offences under Sections 147, 148, 149, 452, 323, 380, 364 and 504 of the I.P.C. against Om Prakash Singh @ Tinu Singh , Ashok Singh (P.W.10), Akhilesh Singh, Sanjay Handi, Nand Singh. In that Exhibit 8, prosecution has itself proved judgment passed in that case as which was disposed of on the basis of compromise petition. The case of defence is also that counter case was lodged by for earlier dispute which was compromised between the parties. The subsequent events of the incident of the same day were committed by some other persons, but the present appellants were implicated falsely due to previous enmity.

20. As discussed above, we find that except P.W.10 (Arjun Singh) and P.W.12 (Rupa Devi) no eye-witnesses have disclosed the presence and participation of present appellants in the alleged offence of murder of Gang Deo Singh. Even the husband of the informant namely Nandan Singh (P.W.11) has also stated in clear terms that he has not seen the occurrence rather came to know from his wife, but he has stated that her wife has disclosed that 100-150 persons attacked on the hotel and brought her father towards the gate of Ashok Dubey and about 15 persons have assaulted by lathi, bhala and Gadasa resulting in the death of Gang Deo Singh. The witness has not stated the name of 15 persons nor has he stated that his wife has disclosed the name of 15 persons who were actual assailants of her father.

21. Upon careful examination of prosecution evidence in the light of impugned judgment, we find that the learned trial court has based conviction of appellants merely on the basis of evidence of P.W.12 (Rupa Devi), the informant and P.W.10 (Arjun Singh) and brushed aside the defence taken by the appellants. The picture of crime as depicted by P.W.10 and P.W. 12 as discussed above and critical examination of their evidence clearly goes to show that although they are eye-witnesses of the occurrence, which was committed by a member of mob of about 100 to 150 persons and their claim that the present appellants were the actual assailants and identified on the spot appears to be doubtful in view of material contradictions about their presence on the spot. The prosecution has also not attributed any inimical terms prior to occurrence with the present appellants and the appellants were not in visiting terms at the house of the informant and her

family members. Therefore the totality of circumstances as proved by the prosecution has not been properly considered by the learned trial court in right perspective rather bald testimony of P.W.10 and P.W.12 without considering the materials elicited in their examination showing their presence as doubtful has been considered. The learned trial court has committed serious error of law while appreciating the evidence of material eye-witnesses. The presence and participation of the appellants in the alleged occurrence has not been proved beyond all reasonable doubt, therefore, benefit of doubt is extended to the appellants.

22. In view of above discussion and reasons, we are of the firm view that prosecution has miserably failed to prove the charges leveled against the appellants beyond all reasonable doubt and impugned judgment and order passed by the learned trial court is based on improper appreciation of evidence of main eye-witnesses which suffers from serious error of law. Accordingly, impugned judgment and order of conviction and sentence of the appellants is hereby set aside and this appeal is allowed.

23. Appellants are on bail, as such they are discharged from the liability of bail bond and sureties shall also be discharged.

24. Pending I.As, if any stand disposed of.

25. Let a copy of this judgment along with trial court record be sent to the concerned court forthwith for information and needful.