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**(2003) 01 PAT CK 0116**  
**In the Patna High Court**  
**Case No : Criminal Appeal No. 426 of 1986**

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|----------------------------------------------|------------|
| Sanat Kumar Mandal @ Sanat Mandal and Others | APPELLANT  |
| Vs                                           |            |
| The State of Bihar                           | RESPONDENT |

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**Date of Decision :** 14-01-2003

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 391  
Penal Code, 1860 (IPC) — Section 147, 149, 302, 307, 323

**Citation :** (2003) 1 PLJR 589

**Hon'ble Judges :** R.N. Prasad, J;M.L. Visa, J

**Bench :** Division Bench

**Advocate :** Anjana Prakash, for the Appellant; Lala Kailash Bihari, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.N. Prasad, J.—The appeal was heard and it was dismissed on 28.1.1999 affirming the judgment and order of conviction and sentence passed by the trial court. The Appellants Challenged the aforesaid judgment and order of this Court before the Supreme Court in Cr. Appeal No. 53/2000. The Supreme Court set aside the judgment and order passed by this Court and remitted the matter to this Court to examine afresh the point raised by the learned Counsel for the Appellants. The relevant portion of the order of the Supreme Court is quoted here-in-below:

The main submission for the Appellant is that conviction is based on Post Mortem Report of another accused of the same name arising out of a different case. Thus conviction cannot be sustained. This aspect has not been dealt with by the Court's below. With regard to this specific ground taken by the Appellant is:

As is evident from a bare perusal of the post mortem report exhibited in the trial, the said post mortem is in regard to Sewari P.S, Case No. 34/84. It is thus evident that a post mortem report in regard to another person has been exhibited instead of the report of the instant case and the Petitioners have been

convicted on that basis. It is the most respectful submission of the Petitioners that the whole basis of the prosecution being wrong, the Petitioners ought not to have been convicted and sentenced by the learned trial court.

If this is a truth, it is a serious matter. How conviction of any of the accused could be based on the post mortem report of another case of another person. However, since this scrutiny was not done by the High Court though according to the Appellant it was raised before the High Court. We feel it appropriate, the matter may be examined afresh by the High Court including the circumstances under which it was done, in case the High Court finds that another post mortem is brought into this case, consequential order be passed.

Accordingly, we set aside the judgment and order by the High Court and remand the case back to it for expeditious disposal of this case with liberty to the Appellant to apply for bail.

2. It is manifest from the order quoted above that submission was made before the Supreme Court that post mortem report of different person in different case was used in the instant case, though such point was raised before the High Court, but it did not consider, but it appears that no such point was taken either in the memo of appeal or raised before the High Court at the time of hearing. However, when such point was raised and the matter was remitted before this Court, the Court felt it appropriate to exercise power u/s 391 of the Code of Criminal Procedure to determine the issue and accordingly, directed the trial court to take further evidence to ascertain the question involved in the matter and remit the evidence recorded to this Court vide order dated 15.2.2002. The trial court accordingly recorded the evidence of Sk. Sayeem Ali, a constable and Jagarnath Bhattacharya, the then Inspector of Sewari P.S. and also got proved inquest report and thereafter remitted the oral and documentary evidence to this Court.

3. The Appellants were convicted vide judgment and order dated 30.7.1986 passed by 1st Addl. Sessions Judge, Dumka in S.T. No. 291/28 of 1984/85 for the offence u/s 302/149 of the Indian Penal Code and sentenced to undergo imprisonment for life. They were further convicted for the offence u/s 147 of the Indian Penal Code but no separate sentence was awarded. Appellant Rabilal Mandal and Bishwanath Mandal were further convicted for the offence u/s 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one month. Appellant Sanat Kumar Mandal had further been convicted for the offence under Sections 342 and 354 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six month and one year respectively. Sentences were ordered to run concurrently.

4. The prosecution case, in brief, is that one Nimal Chand Mandal gave his fardbeyan on 17.3.1984 at 9 P.M. that at about 4 P.M. his sister Kalpana Mandal was going to village tank. On way Sanat Kumar Mandal @ Habul Mandal caught her and took her to his house and confined her there. The information was given

by one Aduri Mandal of his village on which he, his father and others went to the house of Sanat Kumar Mandal and asked Sanat Kumar Mandal to free his sister Kalpana Mandal. They wanted to open the door of the room where his sister was confined with Sanat. Kumar Mandal but the Appellants came with lathi and on the order of Sanat Kumar Mandal Appellant Rabilal Mandal assaulted with lathi on his head and, thereafter, other Appellants assaulted with lathi. Appellant Sanat Kumar Mandal assaulted him with sharp weapon on his left hand finger causing bleeding injury. Appellant Gudru Tudu and Bhonda Tudu assaulted Ashwani Kumar Mandal with lathi on his head causing bleeding injury. He fell down and became unconscious. Appellant Sanat Kumar Mandal said, thereafter, that old man Ashwani Kumar Mandal was very mischievous and so kill him. Thereafter, all the accused persons assaulted Ashwani Kumar Mandal with lathi. On hearing hue and cry the villagers came at the place of occurrence and they took him and Ashwani Kumar Mandal to Raneshwar State Dispensary for treatment.

5. On the aforesaid fardbeyan a formal First Information Report, Ext. 5, was drawn for the offence under Sections 147, 324, 323, 307 and 342 of the Indian Penal Code and investigation was taken up. Injured Ashwani Kumar Mandal was referred to Sewari Hospital in West Bengal as his condition was precarious but he died there and as such on completion of investigation, charge-sheet was submitted for the offence under Sections 302, 147, 323, 324 and 307 of the Indian Penal Code. On receipt of charge-sheet, cognizance was taken and the case was committed to the court of sessions for trial. The trial court convicted the Appellants and sentenced them as indicated above.

6. The defence of the Appellants was that they were innocent and had falsely been implicated in this case out of previous enmity.

7. The prosecution in support of its case examined 13 witnesses, out of whom P. Ws. 2, 6 and 7 have claimed to be eye witnesses to the occurrence. P.W. 11 is the informant and has claimed to be an eye witness to the occurrence. P.W. 3 is a doctor who held autopsy over the dead body. P. Ws. 4 and 5 are witnesses to the seizure of blood stained earth from the place of occurrence. P.W. 8 has been declared hostile.

P. Ws. 9 and 10 have been tendered. P.W. 12 is a doctor who examined the injured P. Ws. 2 and 11. P.W. 13 is the Investigating Officer. On remand Sk. Sayeem Ali, a constable posted in Sewari Police Station was examined as C.W. 1 u/s 391 of the Code of Criminal Procedure who proved inquest report, Ext. Ka, and also challan of the dead body, Ext. Kha. C.W. 2 is the Inspector of Police posted in Sewari Police Station who proved his writing of inquest report, Ext. Ka/1 and also proved challan for post-mortem, Ext. Kha/1.

8. P.W. 1 Kalpana Mandal stated in her evidence that Appellant Rabilal Mandal had brought a case of assault against the deceased, the injured, P.W. 11 and herself and the case is still pending. Her mother, P.W. 2, also stated in her evidence about the previous enmity that criminal case was instituted against the

accused Rabilal Mandal, Bishwanath Mandal and Madhusudan Mandal and, thereafter, Rabilal Mandal brought false case against them. P.W. 6 Aduri Mandal also admitted enmity with Hare Krishna Mandal who is uncle of Appellant Sanat Kumar Mandal. Learned Counsel for the Appellants in the circumstances, contended that since the witnesses were inimical their evidence be not accepted. In this regard it would not be out of place to mention herein that law is well settled that evidence of such witnesses be not rejected outright but their evidence be scrutinised with care and caution. Keeping in mind the aforesaid well established rule of law, I proceed to examine the evidence of eye witnesses.

9. P.W. 2, the widow of the deceased and P.W. 11 son of the deceased are injured witnesses. They sustained injury during the course of occurrence and as such their presence at the place of occurrence cannot be doubted. P.W. 2 stated in her evidence that at the relevant time she was at her house. Her husband, the deceased, her son, P.W. 11, and two daughters-in-law were in the house. Aduri Mandal, P.W. 6, came and disclosed that she along with Kalpana Mandal, P.W. 1, was going to the tank. On way Sanat Kumar Mandal caught her and confined her in his house. On getting information she, her husband, the deceased, and her son, P.W. 11, along with P.W. 6 went to the house of Sanat Kumar Mandal. There she saw that P.W. 1 was confined in a room. P.W. 1 uttered that they should leave the place otherwise Sanat Kumar Mandal would kill them. She tried to escape from there and went to the courtyard of Hare Krishna Mandal. She also stated that there were five houses and the court-yard of all the houses was one. Gudru, Bhonda, Sanat Kumar Mandal and Madhusudan Mandal assaulted the deceased. Bishwanath Mandal and Rabilal Mandal assaulted P.W. 11 on head and fingers. Due to assault on her husband, blood was oozing out. Subsequently, as the accused persons assaulted on his chest with lathi. Her husband became senseless. Rabilal Mandal and Bishwanath Mandal also assaulted her with lathi due to which she fell down. People came on hearing alarm and the accused persons as away. She, P.W. 11 and her husband, the deceased, were taken to Raghunathpur Hospital. From there her husband was forwarded to Sewari Hospital (West Bengal) for better treatment but he died in the midnight. In cross-examination the witness stated that accused persons were family members of Appellant Sanat Kumar Mandal out of whom two were separate. The witness also gave details of place of occurrence and stated that house of Hare Krishna Mandal is adjacent to the house of Sanat Kumar Mandal. The witness also admitted litigation with the Appellants,

10. P.W. 11 is son of the deceased and is informant of the case. The witness has stated in his evidence that he was at his house at the relevant time. Aduri Mandal, P.W. 6, came and disclosed that Appellant Sanat Kumar Mandal caught his sister Kalpana Mandal, P.W. 1, and took her to his house. On getting information he, his mother, P.W. 2, and father, the deceased, along with Aduri Mandal, P.W. 6, went to the house of Sanat Kumar Mandal. He saw that his sister, P.W. 1, had been confined in a room. He asked him to free his sister, but she was not allowed to go Out by Sanat Kumar Mandal who had bolted the door of the

room from inside. P.W. 1 uttered to leave the place otherwise they would be killed. Thereafter, Rabilal Mandal and Bishwanath Mandal assaulted him with lathi on his head Which is also used as Hurka (instrument for closing the door from inside). Appellants Bhonda Tudu and Gudru Tudu assaulted with lathi on the head of his father. His father fell down. Thereafter, Rabilal Mandal, Bishwanath Mandal and Madhusudan Mandal assaulted his father. His father became unconscious. In the meantime Sanat Kumar Mandal came and he also assaulted his father. The witness stated that the Appellants assaulted either with Hurka or lathi. His mother P.W. 2, was assaulted by Rabilal Mandal and Bishwanath Mandal, Thereafter, the Appellants ran away. His father was taken to Raghunathpur Hospital. He and his mother also went to the Hospital but condition of his father was serious and as such he was referred to Sewari Hospital (West Bengal). In the Hospital the police came and recorded his fardbeyan and he signed the same. The witness was cross-examined at length and he stood the test of cross-examination and nothing cogent was elicited to disbelieve his evidence.

11. P.W. 6 is also an eye witness to the occurrence. She stated in her evidence that she and Kalpana Mandal, P.W. 1, were going to the tank of the village. On the way Appellant Sanat Kumar Mandal caught Kalpana Mandal, P.W. 1, and took her to his house, She raised hulla end went to the house of Kalpana Mandal and disclosed about the incident to her father, mother and brother, She along with P. Ws. 2 and 11 and the deceased came to the house of Sanat Kumar Mandal and found that Kalpana Mandal, P.W. 1, had been confined in a room. They called Kalpana Mandal but she uttered to leave the place as Sanat Kumar Mandal was saying that he would kill her father and mother. They tried to escape but they were not allowed to go out. In the meantime Bhonda Tudu and Gudru Tudu came and assaulted with lathi on the head of Ashwini Mandal, the deceased. Nimai Chand Mandal, P.W. 11, tried to save him but he was also assaulted with lathi by Bishwanath Mandal, Rabilal Mandal and Madhusudan Mandal. Nimai Chand Mandal fell down and thereafter Bishwanath Mandal and Rabilal Mandal assaulted the mother of P.W. 11. All the Appellants including Sanat Kumar Mandal assaulted the deceased. Villagers also came at the place of occurrence on hearing alarm. The injured were taken to the hospital but Ashwini died in the night. The witness has given details of the place of occurrence. In cross-examination the witness stated that the assault took place in the court yard of Hare Krishna Mandal which is adjacent to the house of Sanat Kumar Mandal. Blood had fallen on the earth. P.W. 1 did not complain misbehaviour by Sanat Kumar Mandal. The witness also stated about the enmity with Hare Krishna Mandal.

12. P.W. 7 is an independent witness who came at the place of occurrence on hearing alarm. There is nothing on the record to show that the witness was inimical to either of the Appellants. The witness stated that on alarm raised by Aduri Mandal, P.W. 6, he went to the place of occurrence where Ashwani Mandal, the deceased, Nimai Chand Mandal, P.W. 11, and Amoti Bala Mandal, P.W. 2, were present from before. He found the door of the house closed but wall of the

house was damaged and he saw the occurrence of assault from there. He saw assault by Bhonda Tudu and Gudru Tudu on the deceased. He also saw other accused persons taking part in the assault. The witness explained that Hurka is like a lathi and is used for closing the door. He saw injury on the head and chest of Ashwani Mandal, the deceased who was lying unconscious. He also found injury on the person of P.W. 1 and P.W. 2. They were taken to Raghunathpur Hospital. However, Ashwani Mandal died in the night. The witness was cross-examined at length. In cross-examination the witness stated that incident of assault took place in the court yard of Hare Krishna Mandal which is adjacent to the house of Sanat Kumar Mandal. It appears that the witness stood the test of cross-examination.

13. It is manifest from the discussion of evidence of eye witnesses that their evidence is consistent on the material point. The witnesses were cross-examined at length but nothing could be elicited to disbelieve their testimony nor the learned Counsel for the Appellants could be able to point out any such defect in their evidence to disbelieve their evidence. Thus, it appears that their evidence is worthy of reliance.

14. P.W. 13 is the Investigating Officer. He recorded the fardbeyan of informant Nimai Chand Mandal in the hospital. He also prepared injury report of the injured persons in the hospital. He inspected the place of occurrence and seized blood stained earth from the court-yard of Hare Krishna Mandal and prepared seizure list, Ext. 8, in presence of the witnesses. P. Ws. 4 and 5 are seizure witnesses. They have proved their signatures on the seizure list. The witness gave detailed picture of the place of occurrence and stated that five houses were adjacent to the house of Appellant Sanat Kumar Mandal. The house of Hare Krishna Mandal, from the courtyard of which blood stained earth was seized, was adjacent to the house of Appellant Sanat Kumar Mandal. The witness has given detailed picture of five houses which were adjacent to the house of Appellant Sanat Kumar Mandal but he did not mention in the diary as to whether there was inside door to go from one court-yard to another. He learnt that Ashwani Kumar Mandal, who was sent to Sewari hospital for treatment, died in the hospital. He went to Sewari hospital and learnt that Ashwani Kumar Mandal died on 18.3.1984 and post-mortem has been done. He could not get post-mortem report there inspite of efforts made by him. Subsequently, he received post-mortem report of Ashwani Kumar Mandal and also injury reports of the injured persons from the hospital. The evidence of the Investigating Officer thus establishes the place of occurrence and supports the prosecution case i.e. oral evidence of the eye witnesses.

15. P.W. 3 is a Doctor of Sewari Sadar Hospital (West Bengal). He held post mortem over the dead body of Ashwani Kumar Mandal in connection with Sewari Police Station U.D. Case No. 34/84 dated 18.3.1984. He found the injuries as mentioned here-in-below:

(i) Multiple slight abrasions all over the body.

- (ii) One stitched wound on right lateral aspect of head. On opening of stitch it was measuring 5" x 2" x 1 1/2".
- (iii) Fracture of right lateral aspect of frontal bone.
- (iv) Fracture of 4th, 5th, 6th and 7th ribs of right side.
- (v) Fracture of 4th, 5th and 6th ribs of left side.
- (vi) Both lungs ruptured.

16. The Doctor opined that death was due to head injury and injuries found on the person of the deceased were ante-mortem and homicidal. He proved the postmortem report, Ext. 1. The witness stated that injuries were caused by lathi, fists and blows. In cross-examination he stated that he found stitched wound on the person of the deceased. He was admitted in surgical Ward of Sewari Hospital. Some of the injuries were internal which he found on dissection of the body. No external injury was found on the surface of internal injuries. The dead body was produced by Home-guard Sk. Sayeem Ali C.W. 1. He found the name of the deceased in the inquest report of the police. The evidence of the Doctor establishes the death of Ashwani Kumar Mandal due to the injuries caused by lathi etc. P.W. 12 is a Doctor who initially examined Ashwani Kumar Mandal, the deceased, the injured P.W. 11 and P.W. 2 on 17.3.1984. He examined Ashwani Kumar Mandal on 17.3.1984 at 7.45 P.M. He stated that patient was unconscious, bleeding from his mouth was seen. He found cut injury on the right side of the head and also on the left side of the head and also swelling on right and left upper and lower eye lids. The injury on head was grievous caused by sharp cutting weapon and injury on eye lids was simple caused by hard blunt substance. The Doctor further stated that head injury may be caused by hard blunt substance also. He did not say about the Internal injury i.e. fracture of ribs but P.W. 3, the Doctor who held post-mortem has explained the position that he did not find external injury on the surface of internal Injury which he found on dissection. On the same day at about 8 P.M. he examined Amoti Devi widow of Ashwani Kumar Mandal, the deceased, and found bruises on the person of the injured, On the same day at 8.15 P.M. he examined Nimal Chand Mandal, P.W. 11, and found lacerated injury on his person. He proved injury reports, Ext's. 4, 4/2 and 4/1 respectively. The witness in cross-examination stated that condition of Ashwani Kumar Mandal was precarious and also explained that cutting underlying bone which means fracture may be caused by sharp cutting weapon as well as hard blunt substance. The evidence of the Doctors, P.W. 3 and P.W. 12, as discussed above, thus, also supports the prosecution case.

17. On remand of the case by the Supreme Court, the witnesses i.e. C.W.1 and C.W.2 were examined u/s 391 of the Code of Criminal Procedure to ascertain as to whether the post-mortem report of Ashwani Kumar Mandal, Ext.1, used in the instant case was of different person in different case. C.W.1 is a Constable who was posted in Sewari Police Station (West Bengal) at the relevant time. His evidence is that Jagarnath Bhattacharya was the Officer-in-charge of Sewari Police Station. On 18.3.1984 the Officer-in-charge prepared inquest report of Ashwani Kumar Mandal son of Surendra Nath Mandal, village Narayanpur, Thana Raneshwar, District Dumka in the surgical ward of Sewari Sadar Hospital. He deputed him for post-mortem of the dead body. He obtained the post-mortem report and produced the same to Sewari Police Station and, thereafter, took it to Raneshwar Police Station. The said post-mortem report was of U.D. Case No. 34/84. The inquest report was prepared in his presence and he proved the same as Ext. Ka. The inquest report bears the signature of Nilmani Das and Lakhan Chand Mandal. He also proved challan of the dead body, Ext. Kha. The witness in cross-examination, however, stated that he was not witness in the case nor he knew Ashwani Kumar Mandal from before.

18. C.W.2 was the Inspector of Sewari Police Station at the relevant time. His evidence is that in 1984 he was posted in Sewari Police Station. On requisition from the Hospital U.D. Case No. 34/84 was registered. He prepared inquest report of Ashwani Kumar Mandal, son of Surendra Nath Mandal, village Narayanpur, Thana Raneshwar, District Dumka. The inquest report is in his pen, Ext. Ka/1. The dead body was identified by Lakhan. Chand Mandal son of the deceased and relation Nilmani Das. Lakhan Chand Mandal disclosed that daughter of the deceased Kalpana Rani Mandal who on 17.3.1984 had gone to wash cloth, was caught and taken by Sanat Kumar Mandal and Maksudan Mandal. He prepared challan of the dead body, Ext. Kha/1 for post-mortem and gave the same to Sk. Sayeem Ali, C.W. 1. U.D. case is registered only on requisition from the Hospital. In cross-examination the witness stated that he did not register U.D. Case rather it was registered in the Police Station. The requisition is not with him but it must be in the Police Station. He cannot say the distance between Raneshwar and Sewari Police Station. He did not visit Raneshwar Police Station or Narayanpur village in connection with this case.

19. To ascertain the issue as to whether Ext. 1, the post-mortem report with respect to deceased Ashwani Kumar Mandal was of the instant case i.e. Raneshwar P.S. Case No. 16 dated 17.3.1984 or with respect to another case, it is necessary to deal with the evidence of the witnesses brought on the record. P.W. 2, wife of deceased Ashwani Kumar Mandal, stated in her evidence that she, her husband Ashwani Kumar Mandal and her son Nimai Chand Mandal were taken to Raghunathpur Hospital. The Doctor of the Hospital stated that treatment of her husband was not possible and as such he was taken to Sewari Sadar Hospital (West Bengal) where he died at 11-12 in the night. P.W. 11 the informant stated in his evidence that his father Ashwani Kumar Mandal was taken to Raghunathpur Hospital and was treated and injury report was prepared but his

condition was precarious and as such his father was taken to Sewari Sadar Hospital (West Bengal) where he died and after post-mortem cremation was done. P.W. 13 the Investigating Officer stated in his evidence that on information that Ashwani Kumar Mandal was taken to Sewari Sadar Hospital (West Bengal) he went there and learnt that he died on 18.3.1984. He tried for post-mortem report but he could not get. Subsequently, he received the post-mortem report, Ext.1, In the Police Station. P.W. 12, the Doctor of Raghunathpur Hospital, also stated that he treated and prepared injury report of Ashwani Kumar Mandal in the Hospital whose condition was precarious. P.W. 3 is a Doctor of Sewari Sadar Hospital who held post-mortem over the dead body of Ashwani Kumar Mandal. His evidence is that he held post-mortem over the dead body in connection with Sewari P.S.U.D. Case No. 34/84. In fact U.D.P.S. Case number has created the question as to whether post-mortem report, Ext.1, is wife respect to the deceased of the instant case or not. The cloud has been cleared by the evidence of C.W.1 and C.W.2 who were examined on remand u/s 391 of the Code of Criminal Procedure C.W.2 is the then Inspector of Sewari Police Station. His evidence is that on requisition from Sewari Hospital U.D. Case No. 34/84 was registered and he prepared inquest report of deceased Ashwani Kumar Mandal son of late Surendra Nath Mandal of village Narayanpur, Thana Raneshwar, District Dumka. He proved the inquest report in his writing, Ext. Ka/1. The dead body was identified by son of the deceased Lakhan Chand Mandal and his relation Nilmani Das. Lakhan Chand Mandal disclosed that Kalpana Mandal, P.W. 1, on 17.3.1984 who had gone to wash cloth was caught and taken by Sanat Kumar Mandal and Madhusudan Mandal to their house. The deceased had gone to the house of Sanat Kumar Mandal on the aforesaid information where he was as-saulted. He prepared challan of the dead body, Ext. Kha/1 and handed over it to Constable Sk. Sayeem Ali, C.W. 1, for postmortem. The witness in cross-examination stated that he was neither knowing the deceased from before nor he had gone to Raneshwar Police Station or Narayanpur village in connection with the case. C.W. 1 is Constable posted as Sewari Police Station at the relevant time. His evidence is that Jagarnath Bhattacharya, C.W. 2, was the Officer-in-Charge of the Police Station on 18.3.1984. The Officer-in-charge prepared inquest report of Ashwani Kumar Mandal, son of Surendra Nath Mandal of village Narayanpur, Thana Raneshwar, District Dumka in surgical ward of Sewari Hospital and he was deputed for postmortem of the dead body. After postmortem he obtained the post-mortem report and took it to Raneshwar Police Station. Post-mortem report was with respect to U.D.P.S. Case No. 34/84 dated 18.3.1984. The inquest report was prepared in his presence, Ext. Ka. He also proved the challan of the dead body, Ext. Kha. Thus, from the evidence as discussed above, it is evident that name of the deceased, father's name of the deceased and village of the deceased are of the deceased of Raneshwar Police Station Case No. 16 dated 17.3.1984. The postmortem report of Sewari P.S. U.D. Case No. 34/84 was also sent to Raneshwar Police Station. The Investigating Officer also had gone to Sewari Hospital on coming to know about the death of the deceased. The witnesses i.e.P. Ws. 2 and 11 have also stated that condition

of the deceased was precarious and as such he was taken to Sewari Hospital where he died in the night. Therefore, on consideration it has become manifest that the postmortem report, Ext.1, of U.D. Case No. 34/ 84 is with respect to the deceased of Raneshwar P.S. Case No. 16/84 and not of different person and of different case.

20. Learned Counsel for the Appellants, however, pointed out that witnesses had tried to develop the prosecution case in court. In support of the contention learned Counsel drew our attention to the evidence of Investigating Officer, P.W. 13, wherefrom it appears that the witnesses did not say before the Investigating Officer what had been stated in their evidence in the court, such as specific allegation of assault against particular accused to particular person but it is evident that witnesses stated even before the Investigating Officer about the assault by the Appellants to the injured and the deceased. Therefore, such contradiction/development is not fatal to the prosecution case, specially in the facts and circumstances i.e. the witnesses have categorically stated about the assault by the Appellants and their evidence is consistent.

21. Learned Counsel for the Appellants further pointed out that place of occurrence has not been established in this case and as such the Appellants deserve-acquittal. In this regard it would not be out of place to mention that P.W. 6 has categorically stated in her cross-examination that incident of assault took place in the court-yard of Hare Krishna Mandal. P.W. 7 also stated that incident of assault took place in the court-yard of Hare Krishna Mandal. Nothing specific was stated by P.W. 2 and P.W.11 with regard to the place of occurrence nor the defence put any question with regard to the place of occurrence. However, P.W. 2 has stated in her evidence that five houses have one courtyard. P.W. 13, the Investigating Officer, stated in his evidence that houses have separate boundary wall but he did not mention that there was inside door to go from one court-yard to the other. However, he stated that house of Hare Krishna Mandal is adjacent to the house of Sanat Kumar Mandal. He found blood in the courtyard of Hare Krishna Mandal and prepared seizure list in presence of P. Ws. 4 and 5. P. Ws. 4 and 5 also supported the seizure of blood from there land proved their signatures on the seizure list. Thus, it is evident that prosecution has succeeded in establishing the place of occurrence.

22. Learned Counsel for the Appellants further pointed out that injury report and post-mortem With respect to the deceased are not consistent. In support of her contention she drew our attention to the evidence of P.W. 12 and stated that he found injury on the head and eye lids and no injury was found on the chest. Whereas, P.W. 3 the Doctor who held post-mortem over the dead body found injuries on the chest i.e. fracture of ribs. The submission of learned Counsel for the Appellants is without any substance in view of the evidence of P.W. 3. P.W. 3 has found stitched wound on the right lateral aspect of the head and has stated in his evidence in paragraph 10 that rest of the injuries were internal and found on dissection of the dead body. No external injury was found on the surface of

the internal injury. The rest of the injuries were fracture of ribs which were internal injuries and in such a situation not finding any external injury by P.W. 12 on the surface of internal injury cannot be fatal for the prosecution or can not be said to be inconsistent to the injury report

23. It is pertinent to mention herein that P.W. 12 gave first aid only to the deceased and referred him to Sewari Hospital (West Bengal). The eye witnesses have stated that the Appellants also assaulted on the chest. The post-mortem report shows that fracture of rib was found which may not have been visible on the person of the deceased and as such the discrepancies pointed out by the learned Counsel for the Appellants are not very material. More-over, it is well established that if the oral evidence is consistent and worthy of reliance, the inconsistency in the medical evidence shall be ignored. Though learned Counsel for the Appellants pointed out about discrepancy but the same has been explained. More-over, in view of the consistent evidence of eye witnesses, I do not find any substance in the submission of learned Counsel for the Appellants to dis-believe the prosecution case.

24. P.W. 1 is not eye witness to the occurrence of assault. She has categorically stated in paragraph 19 of her evidence that she did not see the incident of assault. The witness, however, has categorically stated that she along with P.W. 6 was going to the tank of her village. Appellant Sanat Kumar Mandal caught and took her to the house and confined her in a room and Sanat Kumar Mandal bolted the room from inside. However, she did not complain misbehaviour with her.

25. Thus, on consideration as discussed above, I find that prosecution has succeeded in establishing its case beyond all reasonable doubts. There is no need of interference with the judgment and order of the trial court. Accordingly, this appeal is dismissed.

M.L. Visa, J.

26. I agree.