

(2002) 11 JH CK 0013

In the Jharkhand High Court

Case No : Death Reference No. 1 of 2002, with Cri. Appeal No's. 166, 193 and 199 of 2002

State of Jharkhand and etc.

APPELLANT

Vs

Anil Sharma and etc.

RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302

Citation : (2003) CriLJ 1739 : (2003) 1 EastCriC 131 : (2003) 1 JLJR 155

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

Bench : Division Bench

Advocate : Rajinder Singh, Milan Mukherjee, A.K. Sahani, Nilesh Kumar, Karan Singh, Deepak Kumar and Indrajit Singh, for the Appellant; Jawahar Prasad, Assistant Public Prosecutor and Manoj Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—The Death Reference No. 1 of 2002 u/s 366 Cr. P.C. and three criminal appeals aforesaid preferred by the appellants named above arise from the impugned judgment dated 22-3-2002 passed in S. T. No. 443/ 99 by Sri Prabodh Ranjan Dash, Addl. Judicial Commissioner-cum-Special Judge IV, Ranchi whereby and whereunder appellant Anil Sharma (Cr. Appeal No. 166/02) has been found guilty for the offence u/s 302 and 307/34 I.P.C. and convicted and he was sentenced to death for the offence u/s 302 I.P.C. and 10 years R.I. and a fine of Rs. 2,000/- for the offence u/s 307/34 I.P.C. and in default thereof to undergo R.I. for three months whereas the rest of the appellants named above have been found guilty for the offence under Sections 302/34 and 307/34 I.P.C. and they were convicted and sentenced to undergo R. I. for life for the offence u/s 302/34 I.P.C. and R.I. for 10 years and a fine of Rs. 2,000/- for the offence u/s 307/34 I.P.C. and in default thereof to undergo R.I. for three months and their sentences were ordered to run concurrently and the death sentence passed against appellant Anil Sharma has been submitted before this Court for confirmation. The death reference aforesaid and the three criminal appeals are

hereby disposed of by this judgment.

2. The prosecution case has arisen on the basis of the Fardbeyan (Ext. 8) of P.W. 6 Hare Ram Singh alias Manoj Singh, the cousin of Sudhir Singh alias Bhoma, the deceased in this case, said to be an injured in the occurrence in question recorded by S.I. A. K. Verma (not examined in this case) of Lower Bazar P.S., Ranchi on 22-1-1999 at 10.00 hours in the Surgical ward D-1 of R.M.C.H. Ranchi regarding the occurrence which is said to have taken place at 6.45 hours on that very day in Ward No. 2 of Jail Hospital in Birsa Munda Central Jail, Ranchi and on the basis of said Fardbeyan, Lower Bazar P.S. Case No. 12/99 was registered at 11.00 hours on that day and formal F.I.R. (Ext. 8/1) was drawn and the said Fardbeyan (Ext. 8) along with the formal F.I.R. (Ext. 8/1) was received in the Court of C.J.M., Ranchi on 23-1-1999.

3. The prosecution case as per Fardbeyan (Ext. 8) of P.W. 6, Hare Ram Singh alias Manoj Singh, in brief, is that he had gone to Ward No. 2 of the Jail Hospital at 6.45 A.M. on 22-1-1999 as usual to his cousin Sudhir Singh alias Bhoma from his Ward No. 6 of the jail and he used to sit with Sudhir for the whole day and he also used to keep his clothes etc. there. It is alleged that soon thereafter when he was talking with Sudhir Singh, appellants Anil Sharma, Sushil Srivastava, Niranjana Kumar Singh, Md. Hasim alias Madhu Mian all armed with Chhura, Bablu Srivastava and Gopal Das armed with belt and iron rod respectively along with 10 or 12 other persons came to Sudhir Singh and appellant Anil Sharma caught the collar of Sudhir Singh and at this stage Sudhir Singh asked as to "what has happened, brother" and in the meantime appellant Anil Sharma assaulted him by Chhura and appellant Sushil Srivastava, Niranjana Kumar Singh and Md. Hasim alias Madhu Mian mounted assault on him by Chhura with which they were armed and appellant Bablu Srivastava and Gopal Das also assaulted him by belt and iron rod respectively besides 10 or 12 other persons aforesaid also who had surrounded and assaulted him. The prosecution case further is that the informant requested appellant Anil Sharma to let off and leave Sudhir Singh and also enquired as to what is matter but of no avail and the said Sudhir Singh fell on the ground as a result of injury. It is further alleged that appellant Anil Sharma thereafter mounted attack on the informant and inflicted a blow at the neck of the informant by Chhura and appellant Sushil Srivastava and Niranjana Kumar Singh assaulted him by Chhura causing bleeding injury on his head and left hand respectively and the informant also fell down being injured and other persons aforesaid also assaulted him by kick and fists. There was then the ringing of alarm bell. After ten minutes, the jail constables came there blowing whistles and during that period there was a great stampede and Sudhir Singh in an unconscious state along with the injured informant was shifted to R.M.C.H., Ranchi for treatment where the informant was undergoing treatment, and Sudhir Singh aforesaid had died on his way to the Hospital.

4. The appellants have pleaded not guilty to the charges levelled against them and they claimed themselves to be innocent and to have committed no offence

and that they have been falsely implicated in this case and at the relevant time they were in their Cell or in their Ward and they have also denied the time, place and manner of occurrence as well as the place of recording of the Fardbeyan which has been recorded much later and no such report was ever made by P.W. 6, Hare Ram Singh.

5. The prosecution has examined in all 18 witnesses to substantiate the charges levelled against the accused persons. However, 12 witnesses have also been examined on behalf of defence. P.W. 6, Hare Ram Singh, said to have been assaulted in the occurrence in question along with Sudhir Singh, the deceased of this case, is the informant of this case and Ext. 8 is his Fardbeyan on which Ext. 1/2 is his signature and the said Fardbeyan is said to have been recorded at 10.00 hours on the day of the occurrence in the Surgical Ward D-1 of the R.M.C.H., Ranchi. Admittedly, he is the cousin of the deceased and he was a prisoner in the Bisra Munda Central Jail. On the basis of his Fardbeyan the case was instituted at 11.00 hours on that day and the formal F.I.R. was drawn which is Ext. 8/1 in this case. His blood stained clothes were seized in the Surgical Ward of R.M.C.H., Ranchi and a seizure list (Ext. 7/1) was prepared at 10.30 hours on that very day which bears Lower Bazar P.S. Case No. 12 of 1999 though the said case was registered at 11.00 hours on that date as per formal F.I.R. (Ext. 8/1). P.W. 9, Gautam Singh and P.W. 14, Khokha Sah appear as seizure witnesses and their signatures thereon are Ext. 1/4 and Ext. 1/6 respectively. As per the report of the Forensic Science Laboratory, Ranchi on the record and admissible u/s 293 Cr. P.C. in evidence, human blood was detected on the aforesaid clothes. Ext. D said to be an affidavited petition of P.W. 6, the informant, proved by D. W. 8, Afzal Hussain and D. W. 9, Amrendra Pratap Singh, has been filed before the Court below on 25-7-2001 i.e., after 11/2 years, after his being discharged on his cross-examination on 27-1-2000 for necessary order in view of the facts alleged therein and I will dilate about its relevancy at the appropriate place later on P.W. 10, Dr. Yugal Kishore Chaudhury has examined the injuries appearing on the person of P.W. 6, the informant at 7.30 hours in the R.M.C.H. on 22-1-1999 and the injury report in respect thereof is Ext. 3. P.W. 5, Rajendra Kumar Singh alias Bablu Singh said to be the full brother of deceased of this case and living at the relevant time in Ward No. 7 of the said Jail claims himself to be the ocular witness of the occurrence and to have come to the place of occurrence during the commission of the alleged occurrence from the Canteen in the Jail premises and his statement u/s 161 Cr.P.C. was recorded on 29-1-1999 by P.W. 18, the I.O., and thereafter his statement u/s 164 Cr.P.C. (Ext.6/1) has been recorded by P.W. 15, Anil Kumar Rai, J.M.-Ist Class, Ranchi and the signature of P.W. 5 on Ext. 6/1 is Ext. 1/3. Evidence of D. W. 1, Sitaram Sao alias Mungeri Lal and D. W. 2, Anil Malakar has its relevancy and co-relation to the competency of P.W. 5 as ocular witness to the occurrence. P.W. 4, Rajesh Kumar Pandey alias Kaua residing in Ward No. 7 of the Jail, P.W. 1, Ram Chander Pandey and P.W. 2, Shankar Nath Jha, both admitted in Ward No. 2 of the Jail Hospital said to be eye witnesses of the occurrence and supporting the

prosecution case in material particulars in their evidence have later on resiled and retreated on their re-examination on recall in view of the order of this Court passed in Cr. Misc. No. 2934/2000(r) giving a total go bye to the prosecution case. However, their statements have earlier been recorded u/s 164 Cr. P.C. by P.W. 15 and P.W. 16, both Judicial Magistrates, and their statements u/s Cr. P.C. are Exts 6, 6/3 and 6/2 respectively and their signatures thereon are Exts. 1/3, 1/2 and 1/1 respectively. P.W. 3, Neeraj Rana alias Situa has turned hostile and does not support the prosecution case regarding the occurrence but only claims to have seen the deceased staggering while coming catching hold his neck and falling on the terrace in front of the Gumti and becoming unconscious. Ext. 2 is the inquest report per pen of Sri Arun Kumar, the Executive Magistrate, in respect of the dead body of Sudhir Singh alias Bhoma of this case prepared at 19.25 hours on that day in the R.M.C.H., Ranchi in presence of P.W. 7, Baleshwar Singh and proved by him and P.W. 8, Jogendra Kumar Singh and also in presence of P.W. 18, the I.O. of this case, and signature of P.W.8, Jogendra Kumar Singh is Ext. 1/3-1 thereon. P.W. 12. Bipin Kumar Sinha and P.W. 13, Sateyendra Choudhary are then posted as Assistant Jailors in Birsa Munda Central Jail on the alleged day of occurrence and claim to have gone inside the premises of the said Jail on hearing the alarms bell and they have also proved the production-cum-seizure list (Ext. 5/2) prepared on 29-1-1999 at 11.30 hours regarding one pair of brown NIKE AIR shoe, one pair of Power shoe and one white track suit jacket said to have been recovered from the roof of the Cell prepared by P.W. 18. A. K. Jha which were kept in an old torn stripped Gamchcha. P.W. 13 is a witness of seizure list (Ext. 5/2) and he admits his signature thereon P.W. 17, Nagendra Kumar was the then Superintendent of said Jail and on leave on the date of the occurrence and he has informed the O/C Lower Bazar P.S. vide his letter dated 29-1-1999 regarding the articles seized as per Ext. 5/2 and the said letter is Ext. 7 in this case. The articles recovered and seized as per Ext. 5/2 read with Ext. 7 were sent to the Forensic Science Laboratory, Ranchi for chemical examination and as per the report of Forensic Science Laboratory, Ranchi, no blood stains were found on the aforesaid articles. It is relevant to mention here that P.Ws. 7, 8, 9, 12, 13, 14 and 17 are not the ocular witnesses of the occurrence in question rather they are hearsay witnesses of the alleged occurrence P.W. 18 is the I.O. of this case and he has proved the Fardbeyan (Ext. 8) and the formal F.I.R. (Ext. 8/1). Seizure list (Ext. 5) which is in respect of recovery of blood from Ward No. 2 of the Jail Hospital kept in a small bottle (Sisi), seizure list (Ext. 5/3) regarding the material exhibits, inquest report (Ext. 2), report (Ext 10) regarding the occurrence to the O/C Lower Bazar P.S. by Incharge Superintendent of Jail and the sketch map (Ext. 9) of the premises including the place of occurrence inside the said Jail and another sketch map brought on the record on behalf of defence is Ext. A in respect thereof. P.W. 11, Dr. Ajit Kumar Choudhary has conducted the post mortem examination on the dead body of Sudhir Singh alias Bhoma at 22.00 hours on 22-1-1999 and the post mortem report is Ext. 4 in this case D.W. 4, Gurmit Singh and D. W. 6. Sanjay Sharma, both prisoners living in Ward No. 9 at the relevant time and D.W. 10, Braj

Kishore Ojha, Warden of the said Jail on duty at Ward No. 9 have deposed that appellant Sushil Srivastava was in Ward No. 9 at the relevant time. D. W. 3, Md. Firoj Alam living in Ward No. 1 of the Jail Hospital has denied any occurrence having been taken place in the Ward of the Jail Hospital in his presence. D.W. 5, Saket Bihari Singh, Assistant Jailor has proved the entries of the Gate Register of the jail dated 22-1-1999 and 23-1-1999 which are Exts. S and S/1 (previously marked as B and B/1) respectively and D. W. 7, Kamlesh Prasad has proved the Station Diary Entry Nos. 599, 600, 604, 621 all dated 22-1-1999, Entry Nos. 630 and 638 both dated 23-1-1999 as well as Entry Nos. 765, 772 and 800 dated 28-1-1999 and 29-1-1999 respectively which are Ext. T. series. It is pertinent to mention here that information regarding the occurrence having been taken place inside the Birsa Munda Central Jail, Ranchi has been received by the Lower Bazar P.S. from City Control Room at 8.45 A.M. on the date of the occurrence which is to the effect that some occurrence has taken place there with the direction to reach there and the I.O. along with A.S.I. A.K. Verma proceeds from the said police station. The said information was entered as Sanha Entry and is Ext. T. D.W. 11, Noor Hasan and D.W. 12, Suresh Bhagat have proved the petitions dated 10-10-2001 and 16-11-1999 (Ext. V and V/1) respectively filed on behalf of the appellants calling for the relevant registers from the jail authorities for being taken into evidence. Exts E and E/1 are the letters dated 9-9-2001 and 3-10-2001 of the Superintendent of the said jail addressed to the learned Court below intimating the non-availability of the registers, as called for. The prayer for remand of all the appellants was made by the I.O. before the learned Court of C.J.M. as per his petition on 25-1-1999 which was allowed by the Court in pursuance of the production warrant all the appellants aforesaid were produced before the Court of learned C.J.M. on 27-1-1999 when they were remanded as accused in this case and it appears that P.W. 18 in para 51 of his testimony has incorrectly deposed regarding the date of remand of the appellants in this case as 24-1-1999.

6. It is relevant to mention here that the Gate Register of the jail is of two types --one regarding the persons and the other the articles in Form D-24 and D-25 respectively prescribed under Rule 1295 of the Jail Manual for the purposes enumerated in Rule 305 of the said Manual and it is relevant piece of evidence admissible u/s 35 of the Indian Evidence Act; and Rule 305 reads thus :--

"The gate keeper shall keep two gate registers (Nos. 24 and 25); in one he shall record the names of all jail officers, prisoners and other persons who pass out of or into the jail, and in the other he shall make notes of all goods, tools, or stores passed either into the jail or out of it through the gate. He shall record the hour and minute of the entrance and exist of every person and thing. He shall to the best of his ability prevent the improper removal of any property from within the jail or the introduction into it of any prohibited articles.

XXXXXX XXX XXX"

The Gate Register of the jail regarding persons (Ext. S.) earlier marked as Ext.B)

gives the following picture; The entry dated 22-1-1999 in the said Register begins with 5.50 hours when 15 staff of the jail including Karuna Shanker Singh enters in the jail premises. The Wards of the jail are opened at 6.20 hours and the prisoners at that time were 2299 in all which was the same when the Wards were closed at 6.40 P.M. on 21-1-1999. At 6.30 hours 11 staffs of the jail leave the jail premises. There is ringing of alarms of bell at 7.10 hours. A large number of jail staff comes into the premises of the jail at 7.20 hours Dr. Vijay Babu along with P.W. 12, Bipin Kumar Sinha and Dresser Babu come inside the jail premises at 7.25 hours. Sudhir Singh and P.W. 6, Hare Ram Singh along with ten persons including Dr. Vijay Babu pass out of jail Gate at 7.35 hours. Sri K. B. Yadav, D.S.P. and Shri B. N. Singh O/C Lalpur P. S. enter into the jail premises at 9.10 hours along with Dr. Vijay Babu and the said Sri K. B. Yadav, D.S.P. and Sri B. N. Singh, O/C Lalpur P. S. leave the jail premises at 9.30 hours. P.W. 18, the I.O. in this case, enters into the jail premises at 14.15 hours and thereafter D.C. and Senior S.P., Ranchi along with Sri K. B. Yadav, D.S.P. and Traffic D.S.P. and Dhaneshwar Ram, Inspector come into the jail premises at 14.45 hours and the aforesaid persons leave the jail premises at 15.40 hours and P.W. 18, Abhay Kumar Jha, the I.O., leaves the jail premises at 18.00 hours. I will dilate on this aspect later on at its appropriate place. Exts. W to W/12 (earlier marked as Exts.G to G/12) are the certified copies of judgment of various Courts regarding appellant Anil Sharma in which he stands acquitted and Ext. W/13 is the certified copy of the F.I.R. of Kotwali P. S. Case No. 339/ 1998 under Sections 386, 414, 120B, 109 I.P.C. and u/s 25(1-b), 26 and 35 of the Arms Act and this Ext. W/13 was earlier marked as Ext.H.

7. On the basis of the oral and documentary evidence on the record referred to above the learned Court below has found appellant Anil Sharma guilty under Sections 302 and 307/34, I.P.C. and other appellants under Sections 302/34 and 307/34, I.P.C. and they were convicted and sentenced as stated above it is relevant to mentioned here that charges were also framed against the appellants aforesaid under Sections 326/34, 452/34, 147, 148, 149 I.P.C. but in the impugned judgment of the learned Court below it has been stated that the charge Under Sections 147, 148, 149 and 452/34 I.P.C. do not stand proved and they are also not attracted in this case. It has also been held that the prosecution has been able to prove charges u/s 302/34 and 307/34 I.P.C. therefore there is no need to pass separate conviction u/s 326/34 I.P.C. The learned Court below while awarding capital punishment to appellant Anil Sharma has stated in the, impugned judgment which reads thus :--

"Convict Anil Sharma in fact the king pin and master mind behind the entire occurrence. It can be presumed from the circumstances of the case that convict Anil Sharma must have encouraged other convicts for the participation of the occurrence. Convict Anil Sharma is a person who slited the neck of the deceased by razor due to which the deceased died so I am of the view that convict Anil Sharma should be awarded extreme punishment of death."

8. Before adverting to the submissions made by Sri Rajinder Singh, learned senior counsel for the appellant, Anil Sharma and Sri Milon Mukherjee, learned Advocate for the rest of the appellants it is relevant to look into the antecedents of P.W. 6, Hare Ram Singh, the informant and P.W. 5, Rajendra Kumar Singh, the alleged ocular witnesses of the occurrence. It will admit of no doubt that P.W. 6 and P.W. 5 are the cousin and full brother respectively of the deceased Sudhir Singh and P.W. 6 is said to have sustained injuries on his person in the said occurrence and, therefore, having regard to the rule of caution we have to scrutinize their evidence with greater care and caution keeping in mind that P.W. 6 has sustained injuries in the occurrence, as alleged P.W. 6 is the prisoner living in Ward No. 6 in the said jail in connection with some criminal cases. In para 12 of his testimony P.W. 6 has stated that he is also an accused in a murder case before the Patna Court and the said murder case is of the year, 1997 P.W. 5 is an accused in a case under the Arms Act and besides that he is also in custody in three other cases P.W. 5 has also stated that a case against him is pending in the Court of Sri P.K. Mishra in which deceased of this case is also an accused. P.W. 4, as per his evidence in para 9 of his testimony, is an accused in three cases u/s 302 I.P.C. and besides that he also figures as an accused in a case u/s 307, I.P.C. and also a case of dacoity along with Sudhir, the deceased of this case, as well as P.W. 5, Rajendra Kumar Singh alias Bablu. He has also stated in para 9 of his deposition that he also figures as an accused in S.T. No. 674 of 1997 along with deceased of this case and Rajendra Kumar Singh (P.W. 5), P.W. 1 is a convict undergoing life imprisonment for committing the murder of his daughter-in-law and besides that in one other case there is allegation against him of committing murder and he is also an accused in a case of theft in Dhanbad. P.W. 2 is in custody since 30-9-1993 in a case u/s 414, I.P.C. besides three cases of murder and 6 or 7 cases under the Arms Act as well as u/s 307 I.P.C. As per his evidence in para 4 P.W. 2 also figures as an accused in making firing at the jail campus besides a case u/s 394, I.P.C. and one case of the year 1980 under the Arms Act. It, therefore, appears that all the aforesaid witnesses are confirmed criminals and were undergoing long term imprisonment for more than one offence and P.W. 5 and P.W. 6 are interested witnesses being full brother and cousin brother respectively of the deceased. The antecedents of defence witnesses, namely, D.Ws. 1, 2, 3, 4 and 6 are also not far better to that of the aforesaid witnesses of the prosecution. The rule of prudence therefore requires that there should be some corroboration in respect of their evidence by independent, natural and reliable witness in respect thereof.

9. Place of occurrence as per prosecution case is Ward No. 2 and its gate of the Jail Hospital of Birsa Munda Central Jail, Ranchi. Ext. 9 and Ext. A are the rough sketch maps of the said Birsa Munda Central Jail. Deceased Sudhir Singh is said to be admitted in Ward No. 2 of the Jail Hospital according to the prosecution case at the relevant time though the Hospital register requisitioned by the learned Court below on the prayer of the appellants as per Ext. V has not been brought on the record which is evident from Ext. E series. It is said that at the

relevant time on the date of the occurrence there were 84 prisoners in the Jail Hospital admitted for treatment. Ext. 9 read with Ext.A and the objective findings of P.W. 18, the I.O., appearing in paras 14 to 20 of his deposition depict the topography of inside campus, of the said jail which are as follows :-- The main gate for ingress and egress inside the jail campus faces west having a big gate and there is always a jail constable on duty. North and south of this main gate there are offices of the jail administration. Thereafter in the east of the main gate there is another big gate for going inside the jail campus. There is a double storied prisoner ward at a distance of 150 feet east from inside gate of the said jail in which prisoner Ward Nos. 1 to 7 are housed but Ward Nos. 6 and 7 from north to south are on the ground floor. The reference of Canteen has come in the evidence of P.Ws. 4 and 5. This Canteen is situated at a distance of 15 feet south east of Ward No. 6 referred to above Prisoner Ward Nos. 11, 12 and 13 are situated east of the said Canteen at a distance of 20 feet. There is a reference of terrace in the evidence of most of the witnesses and this terrace is situated 25 feet east of Ward No. 1 where the deceased of this case is alleged to have fallen soon after the alleged occurrence. Prisoner Ward No. 15 which faces west is east of the terrace and Prisoner Ward Nos. 9 and 10 are at a distance of 10 feet east from Ward No. 15. Appellant, Sushil Srivastava is said to be housed in Prisoner Ward No. 9 aforesaid as per prosecution case. The new Cell Nos. 5 to 1 are 25 feet north east of Prisoner Ward No. 9. Appellants, Anil Sharma, Niranjana Kumar Singh and Bablu Srivastava are housed in New Cell No. 5 and appellants Md. Hasim alias Madhu Mian and Gopal Das are said to be housed in New Cell No. 4 as per the evidence of the prosecution on the record. Each new Cell faces east having iron gate and thereafter there is a boundary wall east of the new Cell and said boundary wall is in a dilapidated condition having outlets. The boundary of the Jail Hospital, is 40 feet east of the aforesaid dilapidated boundary of the new Cell. The Jail Hospital is in the extreme eastern side in the Jail campus surrounded by a dilapidated boundary wall. The main building of the jail Hospital is 40 feet east of the boundary wall of the Jail Hospital. There is a 25 feet wide and 200 feet long verandah in front of the Jail Hospital and behind this verandah Ward Nos. 1, 2, Dispensary Room. Doctors Chamber, Ward Nos. 3 and 4 are located from north to south. All these Wards and the Dispensary face west and there are iron gates therein. 30 feet east of the said Jail Hospital is the outer boundary wall of the said Jail. Every iron gate in Ward Nos. 1, 2, Dispensary Room, Doctors Chamber, Ward Nos. 3 and 4 are of 7 feet x 4 feet having thick iron rods therein and each aforesaid iron gates also had a wooden door from outside. There are wooden cots [Chauki] in all the four Wards in the Jail Hospital. P.W. 18 has deposed to have collected blood in a small bottle (Sisi) from the place two feet inside from the entrance gate of Ward No. 2 which was seized as per Ext. 5 and said small bottle (Sisi) is Material Ext. B P.W. 18, the I.O., in para 93 has deposed that he has not sent the blood as per Material Ext. B to the Serologist for chemical examination. He has further deposed in para 79 of his evidence that at the relevant time Kamla Yadav and Nagendra Prasad Singh were the Warden and Head Warden respectively of the Jail Hospital and he has

recorded their statements u/s 161. Cr.P.C. Ext. S. shows that Nagendra Prasad Singh was inside the jail campus at 5.50 hours on that day. However. Kamla Yadav and Nagendra Prasad Singh aforesaid do not figure as charge sheet witnesses and they have also not taken out in this case for the prosecution. The I.O. in paras 20 and 21 of his evidence has deposed that he has also found some blurred blood stains on the southern flank of the said terrace and at places in the way from the said Jail Hospital to the said terrace but those blood stands were not so clear to be taken up and seized and those blood stains were not seized in the course of investigation. However, in para 89, he has deposed that he did not find blood stains at the terrace in course of investigation and he is not definite that the blurred blood stains on the way from Jail Hospital to terrace, as stated above, were in fact blood stains. In para 88 he has deposed that he also did not find blood stains on the bed in the Jail Hospital as well as on the floor and on the floor where Sudhir Singh, the deceased, and P.W. 6, Hare Ram Singh were alleged kept after the occurrence. He has also stated in para 90 not to have found any blood stains on the wooden cot (Chaukil in Ward No. 2 of the Hospital in the course of investigation. A large number of articles were recovered from the new Cell of appellant. Anil Sharma. which were seized and Ext.5/3 is the seizure list in respect thereof and it shows at Item No. 17 in the list that a double edged razor without blade was recorded and also a belt at Item No. 4 and these are Material Exts. Q and F respectively. Ext. 5/3 further shows that appellants. Anil Sharma, Niranjan Kumar Singh and Bablu Srivastava were the occupant in new Cell No. 5 on the day of the occurrence. P.W. 18, the I.O., in para 108 has testified about the recovery of the said double edged razor but he did not find any blood stains on the said double edged razor and he has also not sent it to the Serologist for examination. P.W. 18, the I.O., has also deposed in para 13 of his deposition that Karuna Shankar Singh was on duty at the new Cell aforesaid and as per Ext. S referred to above, this Karuna Shankar Singh, a home guard, had come inside the jail at 5.30 hours on that day. The I.O. has further deposed that this Karuna Shankar Singh is a charge sheet witness in this case. It appears from para 121 of the deposition of the I.O. that he has recorded the statement of Karuna Shankar Singh u/s 161, Cr.P.C. in which he has stated that he was on the duty in the new Cell from 6.00 hours to 12.00 hours and on the ringing of the alarms bell he ran to the new Cell and found the appellants in the Cell and the key of the Cell was with him. It is relevant to mention here that this Karuna Shankar Singh has neither been examined in this case for the prosecution nor as a Court witness at the instance of the court. The distance of the terrace from the Hospital Ward No. 2 is between 300 and 400 feet as per evidence of P.W. 18 appearing in para 118. As per Ext. A there are two temples inside the jail premises, one near the Canteen aforesaid and the other north of Ward No. 8 near the tree.

10. It is pertinent to mention here that P.W. 18, the I.O., in para 47 of his evidence, has deposed that a confidential information was received at the police station that there is great tension between appellant Anil Sharma on the one

hand and Suhhir Singh, the deceased of this case, on the other hand inside the jail campus regarding some matters and they have become sworn enemies of each other and said Sudhir Singh, the deceased has fallen in the group of Surendra Bangali, the sworn enemy of appellant Anil Sharma. The I.O. has further deposed that Station Diary entry No. 365 dated 13-1-1999 has been registered in respect thereof. It is equally pertinent to refer here the evidence of P.W. 18, the I.O., appearing in para 48 in which the I.O. has deposed that it has transpired in course of investigation that a day prior to the occurrence of this case one Manoj Kumar Singh, the associate of appellant Anil Sharma, had become injured by fire arms at Firyalal Chowk and Lower Bazar P. S. Case No. 11/99 was registered in respect thereof in which Sudhir Kumar Singh alias Bhoma, the deceased of the present case, figured as one of the accused. This evidence was objected to by the defence but this objection of the defence has no bearing in view of the fact that Manoj Kumar Singh aforesaid is definitely the associate of appellant Anil Sharma which is established by Ext. W/12, the judgment of G. R. Case No. 1564 of 1998, Trial No. 1259 of 1998 of the court of Sri Raj Kumar Singh, J. M. 1st Class, Ranchi as well as by the F.I.R. of Kotwali (Sukhdeo Nagar) P. S. Case No. 339 of 1998 (Ext. W/13) in which appellant Anil Sharma figures as an accused with Manoj Kumar Singh aforesaid. The I.O. in para 49 of his evidence has also deposed regarding appellant Anil Sharma figuring with Manoj Kumar Singh aforesaid as accused in Kotwali (Sukhdeo Nagar) P. S. case No. 339 of 1998 u/s 386 I.P.C. and Sections 25, 26 and 35 of Arms Act referred to above.

11. Assailing the impugned judgment vehemently as unsustainable and against the evidence on the record it has been submitted by the learned Counsel for the appellants that in a murder trial the appellants stand the risk of being subjected to the highest penalty prescribed by the Indian Penal Code and naturally the judicial approach in dealing with such cases has to be cautious, circumspect and careful and in dealing with such appeals or reference proceedings where the question of confirming a death sentence is involved, the Court has to deal with the matter carefully and to examine all relevant and material circumstances before upholding the conviction and confirming the sentence of death and all arguments urged by the appellants and all material infirmities pressed before the Court on their behalf must be scrupulously examined and considered before a final decision is reached. In support of his contention a reference has been made of the case of Masalti Vs. State of U.P., and also the case of Arjun Marik v. State of Bihar, 1994 (2) SCC 372. It has further submitted that the learned Court below has totally overlooked the material infirmities patent on the face of the record and has gravely erred in coming to the finding of the guilt of the appellants. Elucidating further it has been submitted that there is no cogent and reliable evidence on the record to establish the fact that the occurrence has taken place in Ward No. 2 of the Jail Hospital and its gate as well as there is also no cogent evidence on the record as to who has caused the injury on the person of Sudhir Singh, the deceased of this case as well as P.W. 6. Hare Ram Singh, the

informant. Further contention is that there are two gates -- One in the north and other in the south of Ward No. 2, and no blood has been found to on these gates and rather some blood from the floor inside Ward No. 2 (has been recorded and seized by the I.O. with the help of the cotton and stored in a small bottle (sisi) and in view of the nature of the injuries as deposed by the medical witness (P.W. 11), there ought to have been copious blood at the alleged place of occurrence and even alleged recovered blood from the floor inside Ward No.2 has been examined by the Serologist and there is no legal evidence at all that the blood recovered, seized and kept in the small bottle is a human blood as P.W 18, the I.O. has admittedly not sent the said seized blood for its chemical examination by the Serologist. It has also been submitted that there is no evidence on the record of the Warden. Head Warden and any prisoner out of 84 admitted in the said Jail Hospital, besides, the Jail doctor, compounder or the attendant boy on duty there in support of the prosecution case and even the Hospital register has not been admitted into evidence in spite of the requisition of the court on the prayer of the appellants even prima facie to show that there were 84 prisoners admitted for treatment in the Hospital including Sudhir Singh, the deceased of this case, admitted in Ward No. 2, as alleged, and this clearly indicates that Sudhir Singh, the deceased, was definitely not admitted in the Jail Hospital for treatment at the relevant time of the occurrence. It has also been contended for the appellants that there is no legal evidence at all on the record about recovery of blood from the terrace. In view of the facts aforesaid it has been said that Sudhir Singh and Hare Ram Singh aforesaid might have sustained injuries somewhere else in some occurrence and these appellants have been roped in this case at, the instance of the administration.

12. It has further been submitted that appellants, Anil Sharma, Niranjana Kumar Singh and Bablu Srivastava were in the new Cell No. 5 and appellants Md. Hasim alias Madhu Mian and Gopal Das were in new Cell No. 4 and there is evidence on the record that soon after the occurrence they have been found confined in the Cell and Karuna Shanker Singh, the Home Guard, was on duty at the new Cell and his statement was recorded u/s 161, Cr.P.C. in which he has stated that he has found all the appellants in the new Cell at the relevant time and this Karuna Shanker Singh is-a charge sheet witness but for the reasons best known to the prosecution he has not been examined for the prosecution in this case and it is a circumstance of unimpeachable character negating the participation of the appellants in the alleged occurrence. Further more the said new Cells of the appellants Were searched but no incriminating articles were found and seized from their Cell connecting them with the occurrence in question. Therefore, an adverse inference has to be drawn against the authenticity of the prosecution case due to the non-examination of Karuna Shanker Singh aforesaid falsely implicating them in the occurrence in question. Similarly appellant Sushil Srivastava was in Ward No. 9 which stands established by the testimony of D.W. 4, Gurmit Singh and D.W. 6, Sanjay Sharma coupled with the testimony of D.W. 10, Braj Kishore Ojha, Warden of Ward No. 9 and the finding in para 50 of

the impugned judgment of the learned Court below disbelieving the testimony of D.W. 4, D.W. 6 and D.W. 10 is perverse against the weight of the evidence in view of the ratio of the case of State of U. P. v. Babu Ram AIR 2000 SC 1735 in which it has been observed that deposition of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predirection or bias and no witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness and it is judicial scrutiny which is warranted in respect of the deposition of all witnesses for which different yardsticks cannot be prescribed as for those categories of witnesses. Therefore, the defence, of alibi of all the appellants is not only probable in the facts and circumstances of this case rather it stands proved falsifying their participation in the alleged occurrence.

13. The next contention of the learned Counsel for the appellants is that the nature of the information regarding the occurrence given to the police control room and to the concerned police station as well as to P.W. 7 and P.W. 9 who had admittedly come to the Jail gate read with Ext. 10, the report of the Superintendent, Birsa Munda Central Jail regarding the occurrence is such which does not name the appellants as participants in the occurrence. The said Ext. 10 has been received in the concerned police station at 18.00 hours on that day and entered as Station diary (Ext.T). Elucidating this contention it has been submitted that the nature of the information given to the police station by the Police Control Room at 5.45 A.M. is to the effect that some occurrence has taken place in the Birsa Munda Central Jail, Ranchi with a direction to reach there at once and the I.O., S. 1 Abhay Kumar Jha along with A.S.I, A.K. Verma reached the said Jail where they were informed that there has been Marplt inside the jail between the prisoner in which two prisoners have sustained injuries and they have been sent to the R.M.C.H. Referring the evidence of P.W. 18, the I.O. appearing in para 100 it has been submitted that the I.O. has deposed to have learnt at the Jail gate that there had been a serious Marplt between the two groups of the prisoners in which two prisoners have become injured and they have been sent to the R.M.C.H. and at that time he could not get information as to who are the two injured prisoners and which prisoner had assaulted them. The report of the Superintendent of Jail (Ext. 10 read with Ext. T) also states regarding the occurrence of Marpit inside the Jail in which Sudhir Singh and Hare Ram Singh have sustained grievous injuries and they have been sent to R.M.C.H. though Ext. 10 further states that on enquiry from the prisoners of the Jail it transpired that the appellants have assaulted aforesaid two prisoners and thorough enquiry is being made but the names of the prisoners from whom the aforesaid information transpired has not been mentioned in Ext. 10 vis-a-vis the time as to when this report was prepared for being sent to the concerned police station though it was received in the P.S. at 18.00 hours as per Ext. T.P.W.7. Baleshwar Singh, the father of deceased Sudhir Singh of this case, on information reached at the gate of the Jail where he was informed that both the

injured have been sent to R.M.C.H. but he was not informed about the name of the assailants. Similar is the testimony of P.W. 9, Gautam Singh. On the basis of the facts of aforesaid it was contended that till 8.55 hours the prosecution was definitely uncertain about the participation of the appellants in the occurrence in question and the names of the appellants thereafter appeared in the Fardbeyan of P. W. 6. Hare Ram Singh as a result of after thought due to extraneous consideration at the behest of the administration as Mr. K. B. Yadav, D. S. P. and Mr. B.M. Singh, O/C Lalpur P. S. as per Jail Gate Register (Ext. S) had been inside the Jail campus at 9.10 hours and they had left jail premises at 9.30 hours and in this view of the matter the nature of information given to the Control Room and communicated from there to the concerned Police Station clearly indicates the non-participation of the appellants in the alleged occurrence.

14. It has also been contended that the occurrence is said to have taken place at 6.45 hours and soon thereafter P.W. 6, the informant, was despatched to the R.M.C.H. for treatment and he was also said to have been examined by P.W. 10, Dr. Yugal Kishore Chaudhary at 7.30 hours as per injury report (Ext. 3) but the Fardbeyan (Ext. 8) of P.W. 6, Hare Ram Singh, the informant, was recorded by A.S.I. A.K. Verma at 10.00 hours when he was immediately left Jail campus where he had gone in the company of the I.O. as per information given by the Police Control Room and the case was registered at 11.00 hours by drawing of a formal F.I.R. (Ext. 8/1) and as such it appears that there is abnormal delay of more than three hours in recording the Fardbeyan of the informant and the Fardbeyan is a got up and fabricated document. In this connection it has further been submitted that the said formal F.I.R. along with the Fardbeyan (Exts. 8/1 and Ext. 8) were received in the court of C.J.M., Ranchi on 23-1-1999 when the distance of the P.S. to the court is not very far of and both are situated in the town of Ranchi. Elucidating further it has been submitted that F.I.R. in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appearing the evidence led at the trial. The object of insisting upon prompt lodging of the F.I.R. is to obtain the earlier information regarding the circumstance in which the crime was committed including the names of the actual culprits and the parts played by them, the weapons, if any, used as also the names of the eyewitnesses, if any, and delay in lodging the F.I.R. often results in embellishment which is a creature of an after thought and on account of delay, the F.I.R. not only gets bereft of the advantage of spontaneously, danger also creeps in the introduction of coloured version or exaggerated story. It has further been submitted that the F.I.R. is received late in the court it can give rise to an inference that the F.I.R. was not lodged at the time it has alleged to have been recorded and the facts and circumstances are indicative of the fact that the F.I.R. Came to be recorded later on after due deliberations and consultations and it was anti timed unless, of course, the prosecution can offer a satisfactory explanation for the: delay in despatching or receipt of the F.I.R. by the local Magistrate. Whereas on the record of this case the prosecution has failed to furnish any explanation whatsoever. Furthermore Section 157 of Cr. P.C.

casts a duty upon the I.O. to forthwith send the report of the cognizable offence to the concerned, Magistrate. In support of his contention reference has been made of the case of Meharaj Singh (L/Nk.) Vs. State of U.P., and also of the case of Jang Singh and Others Vs. State of Rajasthan, .

15. It has further been contended on behalf of the appellants that P.Ws. 5 and 6 are the close relatives of the deceased being full brother and cousin brother respectively and they are highly interested persons and in view of the facts and circumstances of this case P.W. 5 can have no occasion to witness the occurrence specifically in view of the fact that in his evidence he has not whispered a word regarding the assault on P.W. 6, Hare Ram Singh in the alleged occurrence coupled with the fact that his statement was recorded by the I.O. on 29-1-1999, i.e., several days after the occurrence and the unjustified and unexplained long delay on the part of P.W. 18, the I.O. in recording the statement of material eye witness during investigation of murder case will render the evidence of P.W. 5 unreliable. It has also been contended that P.W. 6, Hare Ram Singh, the informant, had filed an affidavit petition (Ext. D) on 25-7-2001 for his re-examination in this case on the ground that under threat and coercion of the police he, was compelled to depose falsely implicating the appellants in this case but the learned Court below without any cogent reason rejected the petition of the informant and did not examine him in the case causing serious prejudice to the appellants. It has also been contended that the learned court below has wrongly relied upon the testimony of P.Ws. 1, 2 and 4, who have given a total go by to the occurrence in their respective evidence on recall and they have also deposed that earlier they had given evidence falsely in view of the threat and coercion. It has also been contended that there is no legal evidence at all on the record to connect or implicate the appellants in the occurrence in question and the learned Court below has come to the finding; of the guilt of the appellants only on the basis of surmises and conjectures and not at all on the basis of legal evidence on the record. It has also been contended that the manner of the occurrence is not in conformity with the prosecution case as alleged and there is the allegation of assault by Chhura but. in the course of evidence barber's razor has been introduced as a weapon of assault as a result of after thought to fit in with the prosecution case deliberately and with extraneous reasons and even the said barber's razor has not been recovered from the appellants and, furthermore, the prosecution has neither averred nor proved the motive and genesis of the occurrence in question. It has also been contended that in view of the nature of the injury on P.W. 6 he can never be unconscious and the finding of the medical witnesses regarding injury No. 2 on the person of P.W. 6 being grievous is perverse as it does not fall under the category of the grievous injury as defined u/s 320, I.P.C. Further contention of the learned counsel is that as per the prosecution case the alleged injury on the neck of the deceased was wrapped by a Chader by P.W. 5 but there is nothing on the record to show as to what has happened to that Chader and the prosecution case is conspicuously silent in respect thereof. It has also been contended that seizure list (Ext. 7/1) is said to

have been prepared at 10.30 a.m. i.e., prior to the registration of the case and, as such, it is a fraudulent document and A.S.I. Mr. A.K. Verma has not taken oath in this case. It has also been contended that time elapsed since death as opined by P.W. 11 in his evidence also does not fit in with the time of the occurrence as alleged. Lastly it has been contended that the entire prosecution case is replete with legal infirmities, inherent improbabilities and material contradictions which totally belie the prosecution case and the non-examination of Karuna Shanker and non-production of the relevant registers, as called for by Ext. E, and refusal of examination of P.W. 6, as per his petition (Ext. D), have caused serious prejudice to the appellants and testimony of P.Ws. 5 and, 6 is highly unreliable and unworthy of credit and the impugned judgment is unsustainable. And last but not the least the sentence of death in the facts and circumstances of this case awarded to appellant Anil Sharma is perverse as it is not a case rare of the rarest awarding the capital punishment. Elucidating further it has been contended that Section 354(3), Cr.P.C. mandates that in case of sentence of death the Court has to assign special reasons for such sentence. The reasons assigned by the learned Court below in the impugned judgment for awarding death punishment to Anil Sharma in no stretch of imagination can be said to be special reasons for awarding capital punishment. Under the Cr.P.C., 1973 the unmistakable shift in the legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated. It has also been contended that all murders are terrific and if the fact of the murder being terrific is an adequate reason for imposing the death sentence, then every murder shall have to be visited with the sentence and in that event, the death sentence will become the rule, not an exception and Section 354(3), Cr.P.C. will become a dead letter. In support of his contention reliance was placed upon the of Muniappan Vs. State of Tamil Nadu,

16. The learned A.P.P. has submitted that the evidence on the record establishes beyond doubt that appellant Anil Sharma had inflicted the fatal blow which resulted into the death of Sudhir Singh, the deceased of this case, and other appellants in furtherance of their common intention have also participated and assaulted him in the occurrence. It has also been submitted that P.W. 6, the informant, has also sustained injuries in the occurrence in question caused by the appellants and he is the most natural and competent witness of the occurrence as he has sustained injuries in that very occurrence which has taken place in Ward No. 2 and on its gate in the Jail Hospital and there is clinching evidence on the record as per the objective finding of P.W. 18, the I.O. in respect thereof and P.W. 6 and P.W. 5 have materially substantiated the prosecution case in their evidence besides P.Ws. 1, 2 and 4 though these three witnesses later on have resiled on recall under the pressure of the appellants. It has also been contended that the I.O. in his evidence has referred about the motive for the occurrence in paras 47, 48 and 49 of this testimony read with Ext.W/12 and Ext. W/13. It has also been contended that it is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is

necessary for supporting its case but it will be unsound to say that every witness must be examined even though his evidence may not be very material or even if it is known, that he has been won over or terrorized. It has also been contended that the Court has to appreciate the evidence given by the witnesses who are partisan or interested or relative and Court has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence, whether or not evidence strikes the Court as genuine, whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account but it would be unreasonable to contend that the evidence given by the witnesses should be discarded only on the ground that it is the evidence of partisan or interested or relative witnesses. It has also been submitted that under the Evidence Act the trustworthy evidence given by a single witness would be enough to convict an accused whereas the evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction and it is the quality of the evidence that matters and not the number of witnesses who give evidence. It has also been submitted that in this case the testimony of P.W. 6 read with P.W. 5 are trustworthy and reliable read with the objective findings of P.W. 18, the I.O. It has also been submitted that the non-examination of the Warden, Head Warden, Doctor, Compounder and Attendant in this case for the prosecution does not at all have any bearing in this case viz-a-viz the non-availability of the registers as desired by the appellants as per Ext. E. It has also been contended that evidence on the record of the natural, competent and reliable witnesses of the occurrence referred to above substantiates the prosecution case, beyond all reasonable doubts and the death sentence imposed on the appellant is justified in the facts and circumstances of this case and for the special reasons recorded in the impugned judgment by the learned Court below and in the case of State of Andhra Pradesh Vs. Intha Ramana Reddy and Another, the Apex Court has observed that this was a planned and cold-blooded murder which led the trial Court to impose an extreme penalty on the respondents and on the basis of the authority of Krishna Goud's case commuting the sentence of death to imprisonment for life by the High Court is not a valid ground of law and the matter was remanded back to the High Court to dispose of the case in accordance with law. The ratio of the said case squarely covers regarding awarding the sentence of death of Anil Sharma in the facts and circumstances of this case committing the cold blooded murder of Sudhir Singh inside the jail campus and there is no illegality in the impugned judgment in respect thereof requiring an interference therein.

17. Let us now advert to the evidence on the record. It will admit of no doubt that an occurrence has taken place inside the campus of Birsa Munda Central Jail, Ranchi at 6.45 hours on 22-1-1999 in which Sudhir Singh alias Bhoma has received injuries on his person as a result of which he has died and P.W. 6, Hare Ram Singh alias Manoj Singh has also sustained injuries on his person and immediately soon after the occurrence there was ringing of alarm bell at 7.10 hours and both the injured were shifted to R.M.C.H., Ranchi for treatment.

According to the prosecution case Sudhir Singh died on way to the hospital and P.W. 6, Hare Ram Singh, the informant was admitted in the R.M.C.H., Ranchi for treatment, P.W. 6, Hare Ram Singh was examined at 7.30 hours on that day in the R.M.C.H. by P.W. 10, Dr. Yugal Kishore Chaudhery and he has deposed to have found the following injuries on his person :--

- "(i) Incised wound over left parietal region 6" x 1" x muscle deep i.e. scalp deep;
- (ii) Incised wound over anterior surface of the neck from Sterno -- Clideo mastroid muscles with (from medical to lateral i.e. left to right 6" x 1" x muscle deep and tracheal cartilage (just above thyroid cartilage);
- (iii) Lacerated wound over root of left thumb 1 1/2" x 1" x muscle deep."

The medical witness has further deposed that injury No. (i) and (ii) are simple and grievous respectively in nature caused by sharp cutting weapon and injury no (iii) is simple caused by hard and blunt substance and age of injuries is within six hours. He has also deposed that a razor is also known as sharp cutting weapon whereas hard blunt weapon also includes iron rod. The injury report of P.W. 10 is Ext. 3. In para 6 of his evidence he has deposed that P.W. 6, Hare Ram Singh the injured was conscious at the time of his examination and he was talking with him.

18. P.W. 11, Dr. Ajit Kumar Choudhary has deposed to have conducted the post mortem examination on the dead body of the deceased Sudhir Singh alias Bhoma at 22.00 hours on 22-1-1999 and has found the following ante mortem injuries :--

(a) Abrasions : --

- (i) 1 cm x 1 cm, 1 1/2 cm x 1 cm and 1 cm x 1/2 cm on front of right knee.
- (ii) 1 cm x 1 cm on front of left knee.
- (iii) 2 cm x 1/2 cm on front and upper part of left leg.

(b) Incised wounds :--

- (i) 3 cm x 1/4 cm x soft tissue on the chin;
- (ii) 5 cm x 1 cm soft tissue over the left cheek prominence;
- (iii) 9 cm x 1 cm x soft tissue over left cheek starting from left cheek prominence to left temporal region of head just above the left external ear;
- (iv) 21 cm x 4 cm x soft tissue on right front lateral neck cutting the soft tissue, blood vessels of right side of neck, right side of trachea. On inspection of the wounds, six tissue tags are projecting from the left angle of wound indicating minimum seven blows or sawing with infiltration of blood and blood clot in the soft tissues at the site the injury.

His evidence is further to the effect that the abrasions aforesaid were caused by

hard and blunt substance and incised wounds by sharp cutting weapon and death of the deceased was due to haemorrhage and shock as a result of the aforesaid incised wounds and the time elapsed since death is between 6 to 24 hours from the time of P.M. examination. The medical witness has also deposed that iron rod is hard and blunt substance and the barber razor is a sharp cutting weapon. In para 7 of his cross examination he has deposed that he had found seven sharp cutting blows regarding injury No. (iv) aforesaid appearing on the person of the deceased. In para 6 he has deposed that the aforesaid incised injuries may be caused by different sharp cutting weapons. The medical witness has further deposed in para 3 of his evidence that blood from the heart is pumped out through main carotid artery and because of the incised injury No. (iv) the blood will pass through air passage and in such a case there will be a loss of voice and that makes unable to speak and in para 11 of his testimony he has deposed that in such a case there will be profound bleeding and it bleeds like a fountain and death will be rapid. He has also deposed that he has seen barber's razor but he cannot say that the aforesaid incised injuries have definitely been caused by barber's razor. His evidence is further to the effect that he had not found any inflammation and contusion on the palm and head of the deceased and there, was also no injury on the back portion of the body of the deceased. Ext. 4, the post mortem report per pen of this witness, corroborates his testimony. The inquest report (Ext. 2) prepared by the Executive Magistrate, Sadar Ranchi in R.M.C.H. at 19.25 hours on the day of the occurrence reveals the existence of the right side neck half cut along with windpipe (trachea) and injury on the left cheek extending to the root of the ear caused by sharp cutting weapon and death appears to have been caused by the injuries appearing on the back. The inquest report (Ext. 2) is in conformity with the existence of the incised wound appearing on the person of the deceased as found by the medical witness.

19. There is no denying the fact that the Fardbeyan (Ext. 8) of P.W. 6, the informant, does not indicate the reason/motive and , genesis of the occurrence P.W. 6 the informant in his evidence on oath also does not whisper in respect thereof and he is conspicuously silent about the motive and genesis of the occurrence. However, in para 13 of his evidence he has deposed that he has not averred regarding the motive and genesis of the occurrence in his Fardbeyan. Similarly P.W. 5 in his evidence on oath also does not whisper about the motive and genesis of the occurrence in question. However, there is evidence regarding reason/motive and genesis of the occurrence in para 47, 48 and 49 of the testimony of P.W. 18, the I.O. I have made a reference in respect thereof in para 10 above. The evidence of I.O. is to the effect that he had received confidential information at the police station in respect of which Station Diary Entry No. 365 dated 13-1-1999 was made that there is a great tension between appellant Anil Sharma on the one hand and Sudhir Singh, the deceased of this case, on the other hand inside the jail campus regarding some matters and they have become sworn enemies of each other due to the fact that the said deceased has become the fellow camp man and associate of Sudhir Bengali, the sworn enemy of

appellant Anil Sharma. The I.O. has further stated in para 48 of his evidence that he came to know in course of investigation that a day prior to the occurrence of this case one Manoj Kumar Singh, the associate of appellant Anil Sharma was assaulted at Firdyalal Chowk and he had sustained fire arm injury on his person in respect of which Lower Bazar P.S. Case No. 11/99 was registered in which the deceased of this case had figured as one of the accused. It is pertinent to refer here that said Manoj Kumar Singh is undoubtedly an associate and camp man of appellant Anil Sharma which is established by Ext. W/12 which is the judgment of G.R. Case No. 1564 of 1988/Trial No. 1259 of 1998 of the Court of Sri Raj Kumar Singh, J.M., 1st Class, Ranchi besides the F.I.R. of Kotwali (Sukhdeo Nagar) P.S. Case No. 339 of 1998 (Ext. W/13) u/s 386, I.P.C. and Sections 25, 26 and 35 of Arms Act in which appellant Anil Sharma along with Manoj Kumar Singh aforesaid figured therein as accused. The aforesaid facts appearing in the evidence of the I.O. is very revealing which establishes strong motive as well as genesis of the occurrence taking place in the premises inside the jail campus of Birsa Munda Central Jail in the early morning on 22-1-1999. The non disclosure of the reason/motive as well as genesis for commission of the crime in the Fardbeyan (Ext. 8) can never be a ground to presume the innocence of an accused, if the involvement of the accused is otherwise established. Therefore, there is no substance in the contention of the learned counsel for the appellants in respect thereof. I, therefore, hold that in view of the facts aforesaid the appellant, Anil Sharma along with other appellants had compelling reasons and motive for the commission of the Occurrence in question and motive and genesis of the occurrence, therefore, accordingly, stand established in the facts and circumstances of this case.

20. According to the prosecution case, as averred in the Fardbeyan (Ext. 8), the occurrence in question is said to have taken place at 6.45 am. on 22-1-1999. As per Fardbeyan, P.W. 6, Hare Ram Singh had gone to Ward No. 2 of the Jail Hospital at 6.45 a.m. on 22-1-1999 as usual to his cousin Sudhir Singh from his Ward No. 6 of the Jail and he used to sit with Sudhir Singh for the whole day and he also used to keep his clothes etc. there. It has been further averred in the Fardbeyan that soon thereafter when he was talking with Sudhir Singh, appellant, Anil Sharma along with the named appellants, besides 10 to 12 other persons came there and assault was mounted on Sudhir Singh and thereafter on the informant (P.W. 6). There is further averment in the F.I.R. that soon after the occurrence there was ringing of the alarm bell in the Jail. As per Gate Register of the Jail (Ext. S) there is a ringing of the alarm bell at 7.10 hours on the day of the occurrence. It is the consistent evidence of P.W. 6 in para 23, P.W. 1 in para 2 and 14, P.W. 2 in para 16, P.W. 3 in para 2 and 4, P.W. 4 in para 2, P.W. 12 in para 1 and P.W. 133 in para 1 that there was ringing of the alarm bell soon after the occurrence and P.W. 12 and 13 besides several other persons as per Ext. S had come inside the jail premises. There is evidence on the record that soon after the occurrence there was a great stampede in the premises of the Jail which was following by the ringing of the alarm bell. It further appears from the

entry made in the Jail Register of the Gate (Ext. S) that both the injured were dispatched from the inside premises of the Jail to R.M.C.H. for treatment. The entry in respect thereof is in the Jail Gate Register. It, therefore, becomes an established fact that there was a ringing of the alarm bell at 7.10 a.m. on that day i.e., soon after the occurrence. It further appears from the evidence of P.W. 6 read with P.W. 5 as well as P.Ws. 1, 2 and 4 that when there was alarm regarding the occurrence there was blowing of the whistle also immediately soon thereafter. The Jail Gate Register (Ext. S) further shows that the Wards inside the Jail premises were opened at 6.20 hours P.W. 6, the informant was admittedly housed in Ward No. 6 as per the averment made in the Fardbeyan. He has deposed in para 1 of his evidence that the occurrence has taken place at 6.45 a.m. on 22-1-1999 and at that time he was talking with Sudhir Singh, P.W. 5 has deposed in para 1 of his evidence that his Ward was opened at 6.20 a.m. on the day of the occurrence and thereafter he was in the Canteen inside the premises of the Jail for taking tea along with P.W. 4 Rajesh Kumar Pandey, who after finishing his tea went for nature's call and at that time there was alarm regarding the occurrence taking place in the Jail Hospital P. W. 1 has deposed that Ward was opened at about 6.30 a.m. and the inmates of the Wards were in the premises of the Jail for their nature's call and at that time the occurrence "had taken place. P.W. 2 has deposed that the occurrence had taken place at about 6.30 a.m. when he was in the temple inside the premises of the Jail. P.W. 4 has deposed that the occurrence in question has taken place between 6.30 and 7.00 a.m. P. W. 12 and P.W. 13, both the Assistant Jailors then posted in the Birsa Munda Central Jail as per entry in the Jail Gate Register (Ext. S) come inside the jail premises at 7.20 hours, i.e. after the ringing of the alarm bell P.W. 12 and P.W. 13 each in para 1 have deposed that on the ringing of the alarm bell they came running inside the premises of the Jail and they have found P.W. 6, the informant. Hare Ram Singh and Sudhir Singh alias Bhoma injured lying in the Jail Dispensary. It, therefore, appears from the evidence referred to above that the occurrence has definitely taken place inside the jail premises prior to 7.10 a.m. i.e., the ringing of the alarm bell. Therefore, it can safely be held in view of the facts referred to above that the occurrence in question has taken place at 6.45 a.m. on that day as averred in the Fardbeyan. The opinion of P.W. 11, the medical witness in para (iv) at page 5 of his testimony regarding the time elapsed since death of Sudhir Singh, the deceased of this Case being between 6 to 24 hours from the time of P.M. examination appears to have no bearing in this case and it cannot be said on that basis that the occurrence has not taken place at 6.45 hours, as alleged by the prosecution, and established by the evidence on the record. Therefore, the contention of the learned counsel for the appellants falls flat in respect thereof.

21. The place of occurrence of this case is Ward No. 2 of the Jail Hospital of the Birsa Munda Central Jail as per the averment made in the Fardbeyan (Ext. 8) of P.W. 6, the informant. It has been averred in the Fardbeyan that the informant has gone to Ward No. 2 of the Jail Hospital to his cousin Sudhir and he used to

sit with Sudhir Singh for the whole day there and he was talking with Sudhir Singh in Ward No. 2 of the said Jail Hospital when all the appellants came there and they were armed with Chhura , belt and iron rod and Sudhir Singh was assaulted by them and after sustaining injury Sudhir Singh fell down and thereafter they also assaulted him (the informant) P.W. 6, the informant, in para 1 of his evidence has deposed that at the time of the occurrence he was talking in Ward No. 2 of the Jail Hospital with Sudhir Singh when all the appellants came there with Chhura, belt and iron rod along with 10 or 12 other persons and appellant Anil Sharma assaulted Sudhir Singh by "shaving razor" and thereafter other appellants also mounted assault on him and they dragged Sudhir Singh to the gate of Jail Hospital and appellant, Anil Sharma slit his neck and there was profuse bleeding from the neck of Sudhir Singh and thereafter he (informant) was also assaulted there by them by Chhura. belt rod and fists and kick. P.W. 5 in para 1 has deposed that Sudhir Singh was admitted in Ward No. 2 of the Jail Hospital and on alarms he ran towards the Jail Hospital and when he reached near the said Jail Hospital he saw the appellants assaulting Sudhir Singh at the entrance gate of Ward No. 2 of the Hospital, P.W. 4 in para 2 of his evidence has deposed that after taking tea he was going to the lavatory in the Jail Hospital and when he reached near the Jail Hospital he saw Sudhir Singh being assaulted at the gate of Ward No. 2 of the Jail Hospital. Similar is the evidence of P.W. 1 in para 1 and 2 and P.W. 2 in para 2 of their testimony P.W. 18, the I.O. has deposed to have inspected the place of occurrence and he has specifically deposed in para 17 of his evidence that Ward No. 2 of the Jail Hospital is the place of occurrence of this case. He has also deposed to have found blood fallen on the floor two feet inside from the entrance gate in Ward No. 2 of the Jail Hospital and the said blood was collected and kept in a small bottle (Sisi) and seizure list was prepared and said seizure list is Ext. 5 and the said small bottle containing the blood collected from the place of occurrence has been brought on the record as Material Ext. B. P.Ws. 12 and 13, who are the Asst. Jailors on duty, have testified regarding the fact of seizure of the blood as per Ext. 5 by the I.O. in their presence from the floor two feet inside the gate of the Jail Hospital. The I.O. has also deposed in para 93 that he was not sent the blood as per Material Ext. B to the Serologist for chemical examination. The I.O. has also deposed in para 79 that at the relevant time Kamla Yadav and Nagendra Prasad Singh were the Warden and Head Warden respectively of the Jail Hospital. From the objective findings of the I.O. read with the testimony of P.W. 6, 5, besides, P.Ws. 1, 2 and 4 it appears that the place of occurrence of this case is Ward No. 2 of the Jail Hospital as well as its gate. It has been submitted by the learned counsel for the appellants that there is no cogent and reliable evidence on the record to establish the fact that the occurrence has taken place in Ward No. 2 of the Jail Hospital and its gate and no blood has been found on the gate rather some blood from the floor inside Ward No. 2 has been recovered and seized by the I.O. with the help of the cotton and stored in a small bottle and there is no legal evidence at all on the record in the absence of Serologist report whether the blood said to have been collected in the small bottle is the human blood as P.W. 18 has

admittedly not sent the seized blood in a small bottle for chemical examination by the Serologist. It has also been submitted that there is no evidence on the record of Warden, Head Warden and any prisoner out of 84 admitted in the Jail Hospital besides the Jail doctor, compounder, attendant boy on the duty there in support of the prosecution case regarding the occurrence having been taken place in Ward No. 2 of the Jail Hospital or its gate and besides that the Hospital Register in spite of requisition of the Court on the prayer of the appellants was not brought on the record and, as such, it is not established by the prosecution that the occurrence has taken place in Ward No. 2 of the Jail Hospital and its gate and it is equally not established that Sudhir Singh was admitted in the Jail Hospital at the relevant time. It has also been submitted that Sudhir Singh and P.W. 6, Hare Ram Singh might have sustained injury somewhere else in some occurrence in the jail premises. It Has also been submitted that in view of the nature of the injury as deposed by P.W. 11 there ought to have been copious blood at the alleged place of occurrence and P.W. 11 has specifically stated that in view of the injuries on the neck of the deceased there will be profuse bleeding and it bleeds like a fountain. It is relevant to mention here that Dr. Vijay Babu, the jail doctor and Dresser Babu had come inside the jail campus at 7.25 hours, i.e, after the ringing of the alarm bell as per the Jail Register (Ext. S). Therefore, their evidence in this case has no relevance regarding the matter in controversy P.W. 1, Ram Chander Pandey at the relevant time was one of the inmates admitted in Ward No. 2 in the Jail Hospital. Kamla Yadav and Nagendra Prasad Singh were the Warden and Head Warden respectively in the Jail Hospital as per para 79 of the testimony of P.W. 18, the I.O. but they have not been cited as witnesses in this case and hence not examined in this case by the prosecution. The non-examination of Kamla Yadav and Nagendra Prasad Singh does not cast a cloud of suspicion on the case of prosecution regarding the occurrence having been taken place in Ward No. 2 of the Jail Hospital and its gate in view of the ocular testimony of P.W. 6, who has sustained injuries in the occurrence in question read with P.W. 5 as well as P.Ws. 1, 2 and 4 coupled with the objective findings of the I.O. It is true that a lapse has been committed by the I.O. for not getting the blood which was seized inside Ward No. 2 of the Jail Hospital as per Material Ext. B sent for chemical examination by the Serologist but it cannot be a ground to discredit the place of occurrence as well as the prosecution case. I am fortified in my view aforesaid as per the ratio of the case of Raghunandan Vs. State of U.P., in which it has been observed that the failure of the police to send the blood for chemical examination in a serious case of murder is to be deprecated and in such case the place of occurrence is often disputed. However, such an omission need not jeopardize the success of the prosecution case where there is other reliable evidence to fix the scene of occurrence. I have already stated above that there is reliable evidence of P.W. 6, the informant on the record who has himself sustained injuries in the said occurrence along with Sudhir Singh, the deceased of this case, as a result of assault mounted on him in Ward No. 2 of the Jail Hospital as well as its gate which has also been corroborated by P.W. 5 and other witnesses referred to above. Therefore, in the facts and

circumstances of this case, no adverse inference can be drawn for the non-production of the Hospital Register as well as of non-examination of the Warden and Head Warden of the Jail Hospital. Therefore, the evidence on the record referred to above conclusively establishes the fact that the occurrence has taken place in Ward No. 2 of the Jail Hospital and its gate at the relevant time. The evidence of D.W. 3 that no occurrence as alleged has ever taken place in the ward of the Jail Hospital and he has not seen the blood fallen there appears to be palpably false in view of the overwhelming evidence referred to above. Therefore, I see no force in the submission of the learned counsel for the appellant that the occurrence might have taken place some-where else and not in Ward No. 2 of the Jail Hospital and its gate.

22. Let us now come to the manner of the occurrence. According to the prosecution case P.W. 6, the informant, was talking with Sudhir Singh, the deceased of this case, in Ward No. 2 of the Jail Hospital Appellants, Anil Sharma, Sushil Srivastava, Niranjana Kumar Singh, Md. Hasim alias Mian all armed with Chhura and appellants, Bablu Srivastava and Gopal Das armed with belt and iron rod respectively along with 10 or 12 other persons came to Sudhir Singh and appellant, Anil Sharma caught the collar of Sudhir Singh and at this Sudhir Singh asked as to "what happened, brother" and in the mean time appellant, Anil Sharma assaulted him by Chhura and Sushil Srivastava, Niranjana Kumar Singh and Md. Hasim also assaulted him by Chhura with which they were armed and appellants, Bablu Srivastava and Gopal Das also assaulted him by belt and iron rod respectively along with 10 or 12 persons aforesaid also who had surrounded and assaulted him. Prosecution case further is that informant requested appellant Anil Sharma to let off and leave Sudhir Singh and also enquired as to what is the matter but of no avail and Sudhir Singh fell on the ground as a result of injury. Second part of the prosecution case is that appellant Anil Sharma thereafter mounted attack on the informant and inflicted a blow on the neck of the informant by Chhura and appellants, Sushil Srivastava and Niranjana Kumar Singh assaulted the informant by Chhura causing bleeding injuries on his head and left hand respectively and the informant also fell down being injured and other persons aforesaid also assaulted him by kick and fists. There is the testimony of P.W. 6, the informant, P.W. 5, Rajendra Kumar Singh alias Bablu Singh, besides, the testimony of P.Ws. 1, 2 and 4, who have later on resiled on recall from their earlier evidence and the aforesaid witnesses appear to be the eye witnesses of the occurrence. Let us now scrutinize their evidence. P.W. 6, Hare Ram Singh, has deposed in his evidence on oath that he was talking with Sudhir Singh in Ward No, 2 of the Hospital and at that time appellant, Anil Sharma came there armed with "shaving Chhura" along with appellants, Sushil Srivastava and Niranjana Kumar Singh, both armed with "pointed Chhura", appellant, Madhu Mian armed with Chhura. appellant, Bablu Srivastava armed with leather belt and appellant Gopal Das armed with iron rod besides 10-12 other persons and appellant, Anil Sharma abused Sudhir Singh and caught his collar and at this Sudhir Singh asked him as to "what has happened, brother" ?

He has further deposed that at this appellant. Anil Sharma attacked Sudhir Singh with "shaving Chhura" causing injury on his cheek and thereafter the other appellants also mounted assault on him and thereafter they dragged Sudhir Singh towards the gate of Ward No. 2 of the Jail Hospital. He has also deposed that he was raising alarms and asking as to "what is the matter, brother ?" He has also deposed that they reached near the gate aforesaid dragging Sudhir Singh who caught the rod of the gate by his both hands. He has also deposed that at that time Sudhir Singh was facing him and appellant, Anil Sharma caught the hair of the head of Sudhir Singh from his one hand and slit his neck by his other hand and at that time appellant, Sushil Srivastava had raised the head of Sudhir Singh and there was profuse bleeding. His evidence is further to the effect that appellant, Anil Sharma left Sudhir Singh badly injured and thereafter he abused him (informant) and ordered to assault him (informant) and at this the appellant felled him on the Chawki (wooden cot) in front of the said gate and appellant, "Anil Sharma assaulted at his neck and thereafter appellant, Sushil Srivastava assaulted him (informant) causing injury on his head by "shaving Chhura" and appellant, Niranjana Kumar Singh also assaulted him by Chhura causing injury on his left hand and the other two appellants along with other persons assaulted him with belt, rod and fist and kick. He has specifically deposed in para 2 at page 4 of his testimony that at the time of the occurrence he was raising alarms and P.W. 5, Rajendra Kumar Singh and P.W. 4, Rajesh Kumar Pandey came there running and there was a blow of whistle inside the premises of Jail and all the appellants fled towards the Cell and at that time P.W. 2, Shanker Nath Jha was seen coming towards the Jail Hospital. He has further deposed that the injury on his head was bandaged by cloth and he was brought to the Jail Dispensary where he found Sudhir Singh lying there. In para 6 of his evidence he has deposed that he has sustained injuries on his thumb when he was warding off the assault by Chhura of appellant Niranjana Kumar Singh. In para 10 of his cross examination he has deposed that appellants, Anil Sharma and Sushil Srivastava were armed with "shaving Chhura" and the other appellants, who were armed with Chhura . had different kind of Chhura. P.W. EL Rajendra Kumar Singh has deposed that after opening of Ward No. 7 at 6.20 a.m. on the day of the occurrence he had gone to take tea in the Canteen inside the jail premises along with P.W. 4, Rajesh Kumar Pandey. Ext. 9 read with Ext. A shows that the said Canteen is situated at a distance of 15 feet south east from Ward No. 6, P.W. 4, Rajesh Kumar Pandey in para 2 of his evidence has also deposed that after the opening of the Ward in the morning he had gone with P.W. 5, Rajendra Kumar Singh in the Canteen for taking tea, P.W. 5 has further deposed that after taking tea P.W. 4, Rajesh Kumar Pandey proceeded from there towards the latrine for easing himself and the (P.W. 5) was taking tea there and in the meantime there was an alarm raised from the Jail Hospital. He (P.W. 5) has deposed that he ran towards the Jail Hospital in view of the fact that his elder brother Sudhir Singh was then living" in Ward No. 2 of the Jail Hospital. His evidence is further to the effect that when he reached near the jail hospital he saw Sudhir Singh catching hold of the rod of the gate of the entry of the jail

hospital and appellant Anil Sharma who was in the white track suit was slitting the neck of Sudhir Singh by "Shaving razor" and appellant Sushil Srivastava had raised the head of Sudhir Singh and at that time appellant Gopal Das and one other person had caught the leg of Sudhir Singh and aforesaid persons live with Sudhir Singh in the Cell and at this he also raised alarms and thereafter they all left Sudhir Singh and went inside the hospital. His evidence is further to the effect that Sudhir Singh ran towards the "Gumti" catching hold his slit neck and he fell near the "Gumti". He has further deposed that he followed him and he wrapped the injury on the neck of Sudhir by his "Chhadar" and he was weeping there and in the meantime constable of the jail came there whistling and they brought him to this Ward and they also brought Sudhir Singh to the Jail hospital. He has also deposed that he learnt thereafter the appellants have also assault P.W. 6, Hare Ram Singh causing injuries on his person.

23. P.W. 4, Rajesh Kumar Pandey has deposed that after taking tea in the Canteen he was going towards the hospital for nature's call and when he reached near the jail hospital he saw that appellant Anil Sharma and Sushil Srivastava had caught the neck of Sudhir Singh at the gate of Ward No. 2 of the hospital and appellants Madhu Mian and Niranjan Kumar Singh had caught the hands of Sudhir Singh where as appellants Gopal Das and Bablu Srivastava had caught the leg of Sudhir Singh and appellant. Anil Sharma slit the neck of Sudhir Singh twice by "Shaving razor" and thereafter they left Sudhir Singh and went inside the Ward. He has also deposed that Sudhir Singh ran from there towards the "Gumti" catching hold his slit neck. In para 17 of his evidence he has deposed that he had raised alarms and 60-70 other persons had also assembled there. He has also deposed that he had seen the occurrence from 12 to 13 feet. P.W. 1, Ram Chander Pandey has deposed that on the day of the occurrence he was admitted in Ward No. 2 of the jail hospital and when the Ward was opened at about 6.30 a.m. the inmates of the said Ward went for nature's call and 20 or 25 persons were inside the Ward. He has further deposed that 4 or 5 persons came in Ward No. 2 of the jail hospital and they asked from Sudhir Singh as to why your conduct has not improved and at this Sudhir Singh asked them as to what wrong he has committed and thereafter they started assaulting Sudhir Singh who fell from his bed and thereafter the aforesaid persons dragged Sudhir Singh towards the gate of the said Ward of the hospital. His evidence is further to the effect that Sudhir Singh caught the rod of the gate where two of the aforesaid persons caught his leg, two his hands and appellant Anil Sharma assaulted at the neck of Sudhir Singh by "Shaving razor" by catching hold his hair. He has also deposed that Sudhir Singh ran from there catching hold of his injured neck. His evidence is further to the effect that the aforesaid persons assaulted P.W. 6. Hare Ram Singh by "Shaving razor" causing bleeding injury on his face and neck and thereafter there was the ringing of the alarm bell of the Jail. In para 10 of his evidence he has deposed that after sustaining the injuries Sudhir Singh has run towards the "Gumti" where he fell down and the said "Gumti" is west of the hospital and about 50 yards west from the Canteen. In

para 18 he has deposed that Hare Ram Singh was assaulted inside the Ward one or two minutes after the fleeing away of Sudhir Singh in the injured state. He has also deposed in para 19 that he cannot say that as to which side the appellants had fled away after the occurrence. P.W. 2, Shanker Nath Jha has deposed that he was admitted in Ward No. 2 of the Jail Hospital and at the time of the occurrence he was in the temple and he had started his worship when he heard the alarm bell. In para 3 of his evidence he has deposed that the new Cell is between the jail hospital and temple and on hearing the alarm bell he ran towards the hospital and he saw that there was a "Shaving razor" in the hand of appellant Anil Sharma besmeared with blood and there were blood stains on the hand of appellants Sushil Srivastava and Bablu Srivastava and they went towards their Cell. He has also deposed that he has found the blood fallen at the gate of Ward No. 2 of the hospital. His evidence is further to the effect that he made enquiry from Ram Chander Pandey (P.W. 1) and Dilip Singh the one who told him that appellant Anil Sharma had fled away assaulting Sudhir Singh and they have also stated to him about the assault of Hare Ram Singh and also of the fact that they have been brought to the dispensary. He has also deposed that in the dispensary he found Sudhir Singh alone on the bed and there was a "Chhadar" wrapped around his neck and on query from him he told in a choked voice that appellant Anil Sharma and Sushil Srivastava have assaulted him. He has also deposed that he enquired from Hare Ram Singh, who had fallen by the side gate of the dispensary having bleeding injury on his head and face and he pointed him to take care of Sudhir Singh. These are the oral evidence which have been referred to above led by prosecution regarding the manner of the occurrence.

24. There is no denying the fact that as per evidence on the record P.W. 6, the informant, has sustained injuries in course of the occurrence in which Sudhir Singh was also assaulted and as a result of the injuries sustained on the neck he has died while being brought to the R.M.C.H. Therefore, the evidence of P.W. 6 though related with the deceased of this case has its special value and relevance in this case. The weapon of assault as mentioned in the Fardbeyan (Ext. 8) is Chhura and appellants, Anil Sharma, Sushil Srivastava, Niranjan Kumar Singh and Md. Hasim alias Madhu Mian are said to be armed with Chhura. It has specifically been averred in the Fardbeyan that appellant Anil Sharma inflicted injury on the neck of Sudhir Singh by Chhura and as per medical evidence as deposed by P.W. 11 injury No. (iv) on the neck of Sudhir Singh is the imminent cause of his death. The medical witness (P.W. 11) referring to the four incised wounds appearing on the person of Sudhir Singh, the deceased, has categorically stated that the incised injuries aforesaid may be caused by different sharp cutting weapons. It, therefore appears that Chhura of different kinds of shapes were used in the occurrence and that is why the said medical witness has opined regarding injury No. (iv) mentioned in para 18 aforesaid that on inspection of the wounds six tissue tags were projecting from the left angle of the wound indicting minimum seven blows of sawing with infiltration of blood and blood clot on the soft tissue on the site of the injury. In course of evidence P.W. 6 besides P.W. 5

and also P.Ws. 1, 2 and 4 have deposed that appellant Anil Sharma assaulted Sudhir, the deceased, with Ustara (Shaving razor), though Ustara (Shaving razor) has not been mentioned specifically in the Fardeyan (Ext. 8) as a weapon of assault by appellant Anil Sharma. Now a pertinent question arises at this stage as to whether Ustara (Shaving razor) as a weapon of assault by appellant Anil Sharma has been introduced in the course of the evidence deliberately to fill up the alleged lacunae of the prosecution case. The answer to the question is in the negative. Firstly, for the reason that the word "Chhura" has very wide connotation and it includes also Ustara (Shaving razor). Secondly, statement of P.Ws. 2 and 1 as well as of P.Ws. 4 and 5 was recorded u/s 164 of the C. P.C. by P.Ws. 15 and 16, both Judicial Magistrates, on 27-1-1999 as well as on 1-2-1999 respectively and all the four witnesses aforesaid in their statement have categorically stated Ustara (Shaving razor) as a weapon of assault by appellant Anil Sharma. Thirdly, P.W. 6, in his evidence on oath, has categorically stated regarding Ustara (Shaving razor) as a weapon of assault by appellant Anil Sharma. Nowhere it was suggested to him in his cross-examination by the defence that he has not mentioned Ustara (Shaving razor) as a weapon of assault by appellant Anil Sharma in his statement u/s 161 of the Cr. P.C. It, therefore, means that in his further statement P.W. 6 soon after the recording of his Fardbeyan has stated Ustara (Shaving razor) as a weapon of assault by appellant Anil Sharma slitting the neck "of Sudhir Singh, the deceased of this case. It appears from Ext. 5/3, the seizure list, that a double edged razor though without blade was recovered from the new Cell No. 5 in which appellant Anil Sharma along with some of the appellants was residing at the relevant time. Even column 8 of the inquest report (Ext. 2) shows that death of Sudhir Singh is the result of the injury caused On his neck by sharp cutting weapon. Ustara (Shaving razor) is definitely a sharp cutting weapon. Therefore, in the facts and circumstances of this case a non-mention of Ustara (Shaving razor) in the F.I.R. is of no consequence. The Court should not be fastidious with mere omissions in the First information Report in view of the fact that First Information Report cannot be expected to be a chronology of every detail of what happened, not to contain an exhaustive catalogue of event which took place. The person who furnishes first information to the authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing there from. Some may miss even important details in a narration. Quite often the police officer who takes down the first information would record what the informant conveys to him without resorting to any illustratory exercise. It is the voluntary narrative of the opinion without interrogation which usually goes into such statement. So any omission therein has to be considered along with the other evidence to determine whether the facts so omitted never happened at all. Here in this case we have the consistent evidence of P.W. 6 and P.W. 5 besides the evidence of P.Ws. 1, 2 and 4 that Ustara (Shaving razor) was the weapon of assault by which appellant Anil Sharma had slit the neck of Sudhir Singh, the deceased of this case. In view of the facts aforesaid, there is no substance in the contention of the learned counsel

for the appellants that Ustara (Shaving razor) as a weapon of assault has been introduced in the course of the evidence only with a view to fill up the lacunae of the prosecution case.

25. P.W. 6, Hare Ram Singh, has admittedly filed an affidavited petition (Ext. D) on 25-7-2001 for his re-examination in this case stating therein that under threat and coercion of the police he was compelled to depose falsely implicating the appellants in this case. The said petition of P.W. 6 was rejected by the learned Court below. Now the question is whether the rejection of the petition of P.W. 6, the informant, does amount to any prejudice caused to the appellants vitiating the impugned judgment. P.W. 6, Hare Ram Singh was examined on 22-1-2000 and he was cross examined on several dates by the defence and finally he was discharged on 27-1-2000 after his cross-examination. The affidavited petition (Ext. D) has been filed on 25-7-2001. i.e., one and half years of his discharge after his evidence in this case, Chapter 18 of the Cr. P.C. deals with the procedure of the trial before a Court of Session. The relevant provision is contained in Section 231 of the Cr. P.C. which provides that on the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. It further provides that the Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination. P.W. 6 was examined, cross-examined and discharged as per the procedure laid down under the Code. Section 233 of the Cr. P.C. provides that where the accused is not acquitted u/s 232 Cr. P.C., he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. In exercise of the right the defence has examined 12 witnesses on its behalf. The defence has not taken any steps u/s 233 of the Cr. P.C. before the learned Court below for re-examination recall of P.W. 6 after his discharge in the case on his cross-examination. Section 311 of the Cr. P.C. is relevant in this connection which provides that Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined; and the Court shall summon and examine on recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. It is settled in law if the conditions u/s 311 Cr. P.C. are satisfied the Court can recall a witness not only on the motion of either the prosecution or the defence but also it can do so on its own motion and the discretion vested in the Court under this section is to be exercised judiciously and not arbitrarily. The learned Court below after due consideration and in exercise of discretion judiciously has rightly rejected the affidavited petition (Ext. D) of P.W. 6 as his further examination on recall was not at all essential for the just decision of the case. It further appears that due to extraneous consideration P.W. 6 appears to have filed affidavited petition (Ext. D). Furthermore, the defence has not taken any steps by filing a petition for re-examination of P.W. 6 on recall for the reasons best known to him. And last but not the least, P.w. 6,

the informant, had no right vested in him to file affidavited petition (Ext. D.) suo motu for his re-examination in the case on recall after being discharged in the case on his full fledged cross-examination. Therefore, Ext. D has no relevance in the matter. It pales into insignificance and the defence cannot be said to have been prejudiced due to the rejection of Ext. D by the learned Court below for re-examining P.W. 6 on recall. Therefore, I see no substance in the contention of the learned counsel for the appellants in respect thereof.

26. I have already stated above that P.Ws. 5, Rajendra Kumar Singh, the full brother of Sudhir Singh, the deceased of this case, was housed in Ward No. 7 of Birsa Munda Central Jail, Ranchi and after the opening of the Ward he had been in the Canteen where he was taking tea with P.W. 4, Rajesh Kumar Pandey, and where he heard alarms and rushed in the vicinity of the entrance gate of Ward No. 2 of the Jail Hospital from where he claims to have seen the assault perpetrated on Sudhir Singh by the appellants. It appears as per evidence on the record that said Canteen is run by D. W. 1, Sitaram Sao alias Mungeri Lal. D. W. 1, Sitaram Sao, has taken oath for the defence. His evidence is that he normally opens the Canteen at 8.00 O'clock in the morning but on the date of the occurrence he had not opened his Canteen and he has also not served tea to any person in the Canteen. He has also deposed that at the time of the ringing of the alarm bell P.W. 5 along with P.W. 4 were found sleeping in Ward No. 7. D. W. 2, Anil Malakar, has deposed that at the ringing of the alarm bell he was inside Ward No. 7 along with P.W. 5 and P.W. 4 and he along with them did not go out from Ward No. 7 on the ringing of the alarm bell. It is relevant to mention here that P.w. 5 and P.W. 4 have categorically deposed in their evidence on oath that after the opening of the Ward in the Jail they had been in the Canteen taking tea. Ext. 9, the sketch map, establishes the existence of the Canteen inside the jail campus. This Canteen is . run by D. W. 1 for providing tea etc. to the prisoners inside the jail campus and it starts functioning immediately soon after the opening of the Ward. No specific reason has been assigned by D. W. 1 in his evidence on oath as to why he did not open the Canteen on the date of the occurrence. In para 2 of his evidence he has deposed that he had come out of his Ward No. 7 in the morning after opening of the Ward. It, therefore, appears that he was deliberately speaking a lie regarding non-opening of the Canteen in the morning on the day of the occurrence for the reasons best known to him. There is also no basis for D. W. 1 to depose that he opens the Canteen at 8.00 O'clock. Admittedly, there is an authority letter regarding running of the Canteen, but the said authority letter as deposed by D.W. 1 has not been brought on the record for the reasons best known to him. It appears that this authority letter has been deliberately withheld by D. W. 1 so that time of opening of the said Canteen should remain a mystery. Therefore, an adverse inference has to be drawn in respect thereof. In the absence of any cogent reason assigned by D. W. 1 for not opening the Canteen, as deposed by him, the evidence of D. W. 1 is, therefore, fit to be brushed aside. The evidence of D. W. 2 that P.W. 5 and P.W. 4 have not gone out of Ward No. 7 before the ringing of the alarm bell also does not appear

to be reliable in view of the categorical evidence of P.W. 5 and P.W. 4 that soon after the opening of the Ward they had been in the Canteen taking tea. Therefore, the evidence of D.W. 2 is equally fit to be brushed aside. The evidence of P.W. 3, a hostile witness, appearing in para 4 that after the ringing of the alarm bell he had gone to Ward No. 7 where he found P.Ws. 4 and 5 sleeping and he awakened them and told them about the occurrence does not appear to be worthy of credit in the facts and circumstances of this case. The learned Court below has rightly disbelieved the evidence of D. W.1, D. W. 2 and P.W. 3.

27, There is no denying the fact that P.W. 6, the informant, is the cousin brother of Sudhir Singh, the deceased of this case and P.W. 5 is the full brother of said Sudhir Singh, the deceased and both are closely related with Sudhir Singh. There is no dispute in respect of the fact that P.W. 6 has also sustained injuries in the occurrence in question along with Sudhir Singh aforesaid. Having regard to the rule of caution the evidence of P.Ws. 6 and 5 have to be scrutinized with greater care and caution but it has to be kept in mind that P.W. 6 has sustained injuries in the occurrence in question and, therefore, the evidence of P.W. 6 has greater relevance. The presence of P.W. 6 at the scene of the occurrence can never be disputed in the facts and circumstances of this case. Therefore, there appears to be no reason to doubt the veracity of the evidence of P.W. 6 and dub him as a got up witness. P.W. 6 himself being the victim in the occurrence in question and P.W. 5 who came to the place of occurrence on alarms during the course of the commission of the occurrence though closely related would not leave out the real assailants and implicate any innocent person. The fact that P.Ws. 6 and 5 have criminal antecedents is no ground at all to discredit their testimony. Even with regard to the interested witnesses being close relatives it is the duty of Court to separate the truth from the falsehood and the chaff from the grain and in view of the close relationship they would not leave out the real assailants and implicate any innocent person and while appreciating the evidence of a relative witness the approach must be; whether the evidence of witnesses read as whole appears to have a ring of truth. Once the impression regarding the ring of truth has been found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiency, drawbacks and infirmity pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies or trivial matters not touching the core of the case, a hyper-technical approach in perusal of the evidence should normally be avoided. The evidence of P.W. 6 read with P.W.5 has clearly established the manner of the occurrence as alleged. The non-recovery of the Chhadar which was wrapped around the neck of Sudhir Singh by P.W. 5 is not at all a discrepancy of such a magnitude to cast a cloud of suspicion to the very creditability of the evidence of P.W. 5. On meticulous scrutiny with due care and caution I find a ring of truth in the testimony of P.W. 6 and P.W. 5 and I see no reason to disbelieve their evidence. It is relevant to mention at this stage that rule of prudence requires that there should be some corroboration in respect of

the evidence of P.Ws. 6 and 5 by independent, natural and reliable witness in respect thereof in view of the criminal antecedent of P.Ws. 6 and 5. P.Ws. 1, 2 and 4 though supported the occurrence in their evidence but later on, on recall, they retreated. There is no other independent and natural witness of the occurrence except them. Warden and Head Warden of Ward No. 2 of the Jail Hospital have also not figured as a prosecution witness in this case. P.W. 18, the I.O., in para 112 of his testimony has deposed that Kamla Yadav was the Incharge Warden of Ward Nos. 1 to 4 of the Hospital and Nagendra Prasad Singh was the head Warden Incharge during the relevant time and their duty was from 6.00 O'clock to 12.00 O'clock in the day. It appears that it was the morning hour and the wards of the jail were opened and most of the prisoners were outside their wards for their nature's call and at that time the Warden of each ward was engaged to look after them outside their respective wards to facilitate them for their nature's call. Rule 590 of the Bihar Jail Manual at page 143 published by Malhotra Books vide Home Jail Department letter No. 3597 dated 25-8-1990 which provides that the Warden Incharge shall regulate the latrine parades. Therefore, it appears that the Warden Incharge was engaged in regulating the latrine parade of the prisoner soon after the opening of the wards of the Jail Hospital. Therefore, the presence of Warden at the place of occurrence at the relevant time is ruled out. The head Warden is Incharge of all the wards, as such, it is not expected of him to be present at the place of occurrence at the relevant time. I have already stated above that the Jail Doctor and Dresser Babu had come to the Jail Hospital after the ringing of the alarm bell. In this view of the matter the presence of any independent and natural witness of the occurrence to corroborate the testimony of P.Ws. 6 and 5 is totally ruled out in the facts and circumstances of this case. Therefore, there is no scope at all of the corroboration of the evidence of P.Ws. 6 and 5 by any independent and natural witness in respect thereof. The evidence of P.W. 6 read with P.W. 5 materially corroborates the prosecution case and there also appears no variance in their evidence regarding the injuries found on the person of the deceased as well as P.W. 6 himself as deposed by the medical witness. At the cost of repetition I see no reason at all to disbelieve the testimony of P.Ws. 6 and 5, who are the ocular witness of the occurrence, as there is no animus for them to depose falsely against the appellants and I see ring of truth in their evidence.

28. Let us now consider the evidentiary value of the testimony of P.Ws. 1, 2 and 4. They in their evidence on oath have corroborated the testimony of P.W. 6, the informant, regarding the occurrence in question but they were cross-examined on recall as per order dated 28-9-2000 passed by this Court in Cr. Misc. No. 2934/2000(r) and in their cross-examination on recall they have given a total go by to their evidence earlier deposed and have stated that under duress, threat and intimidation by the police they have earlier deposed supporting the prosecution case. Let us now look into the background giving rise to the said Misc. case. The copy of the police report and other documents were supplied to the appellants before commitment. A prayer was made for supply of the Hindi

transliterated copy of police papers which were in English prior to the commitment of the case for trial to the Court of Session and the case was committed to the Court of Session vide order dated 19-8-1999 and the prayer aforesaid of the appellant was rejected on that very day and being aggrieved of that order appellant Md. Hasim alias Madhu Mian filed Cr. Misc. No. 7714/99(r) and vide order dated 8-12-1999 the learned Court below was directed to supply the Hindi transliterated copy of the aforementioned documents. P.Ws. 1, 2 and 4 were examined in the case by the learned Court below before the order dated 8-12-1999. In obedience to the order dated 8-12- 1999 aforesaid Hindi transliterated copy of the documents was delivered to the appellants on 12-1-2000. Thereafter a petition of recall was filed for the examination of P.Ws. 1, 2 and 4 which was rejected by the learned Court below vide order dated 31-3-2000 and being aggrieved of that order Cr. Misc. No. 2934 of 2000(r) was filed and the order dated 28-9-2000 was passed by this Court directing the learned Court below to accord an opportunity to the appellants to cross-examine P.Ws. 1, 2 and 4. There is no denying the fact that only the injury report of P.W. 6, Hare Ram Singh and the post mortem report on the prescribed form were in English and Hindi transliterated copies were accordingly supplied to the appellants. It, therefore, appears that the appellants have to cross-examine P.Ws. 1, 2 and 4 on recall only with respect to the documents which were supplied to them as per order of this Court. It is pertinent to mention here that P.Ws. 1, 2 and 4 were not subjected to any cross-examination on their recall in respect of the documents, the Hindi transliterated copies of which were delivered to them, rather facts alien to the aforesaid documents were brought in their evidence on the record in their cross-examination on recall and it appears that P.Ws. 1, 2 and 4 by the time has been gained over by the appellants for giving a total go by to the prosecution case and having deposed earlier under threat, coercion and duress. Now the question is how to test the veracity of the evidence of P.Ws 1, 2 and 4. The very object for which the Courts are created is to find the truth as per legal evidence on the record. To search out the truth, Courts have been removing chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is the solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand that no innocent man should be punished but on the other hand to see no person committing an offence should go scot free. If in spite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused. For this, one has to comprehend the totality of the facts and the circumstances as spelled out through the evidence, depending on the facts of each case by testing the credibility of eye witnesses. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretized. It would depend on the evidence in the case including the manner of deposition and his demeanour, clarity, corroboration of

witnesses and overall, the conscience of a judge evoked by the evidence on record. So the Court has to make genuine efforts within Judicial sphere to search out the truth. It is pertinent to mention here that P.Ws. 1, 2 and 4 were earlier examined u/s 164 Cr. P. C. and thereafter they have also figured as witnesses for the prosecution and in their evidence on oath they have materially corroborated the prosecution case and at that time there Was no threat, coercion of duress on them. In their cross-examination they have not deposed as to which police officer or police personnel had intimidated them to depose in support of the prosecution case. Para 3 of Ext. 6/3 and para 5 of Ext. 6/2 clearly indicate that there was threat, intimidation and coercion on them by the appellants to depose falsely and ultimately the appellants have succeeded in their venture when P.Ws. 1, 2 and 4 were cross-examined on recall as stated above. The truth of the matter is that P.Ws. 1,2 and 4 have given a total go by to the prosecution case on recall as per threat, coercion and duress of the appellants. Be the case as it may, even the evidence of P.Ws. 1,2 and 4 is discarded in this case still there is testimony of P.Ws. 6 and 5 on the record which materially supports the prosecution case and I have already stated above in the earlier paragraph that there is ring of truth in the testimony of P.W. 6 and P.W. 5 and their evidence is worthy of credit.

29. Admittedly, as per prosecution case, appellant Sushil Srivastava was housed in Ward No. 9 of Birsa Munda Central Jail, Ranchi. D. W. 4. Gurmit Singh and D. W. 6, Sanjay Sharma have deposed that they were also housed in Ward No. 9 of the said jail on the relevant date. Their evidence is further to the effect that appellant, Sushil Srivastava did not go out of his Ward No. 9 prior to the ringing of the alarm bell or even thereafter D. W. 10, Braj Kishore Qjha, who is the Warder in the said jail has deposed that he was incharge of Ward No. 9 on the day of the occurrence and he has deposed that when he had opened the ward he had found appellant Sushil Srivastava Inside the ward. He has further deposed that after the ringing of the alarm bell he verified the inmates housed in Ward No. 9 and he found appellant Sushil Srivastava in the said ward. D. W. 10 has not deposed that Sushil Srivastava was inside Ward No. 9 between the period of the opening of Ward No. 9 and ringing of the alarm bell. Therefore, the evidence of D. W. 10 is of no avail to appellant Sushil Srivastava to make his defence probable regarding his presence in Ward No. 9 at the time the occurrence had taken place. The evidence of D. Ws. 4 and 6 is equally not worthy of credit and reliable in view of the specific and categorical evidence of P. W. 6 and P.W. 5 about the active participation of appellant Sushil Srivastava in the occurrence in question. Therefore, the learned Court below has rightly disbelieved the evidence of D.Ws. 4, 6 and 10. It is pertinent to mention here that appellants, Anil Sharma, Niranjana Kumar Singh and Bablu Srivastava were housed in a new Cell No. 5 and appellants, Md. Hasim alias Madhu Mian and Gopal Das were housed in new Cell No. 4. P.W. 18, the I.O. in para 112 of his testimony has deposed that Kamla Yadav was the Warder also of the new Cell on the date of the occurrence. P.W. 18, the I.O. in para 113 in his testimony, has further deposed that one

Karuna Shanker Singh, a home guard, was on duty at the new Cell. I have already stated above that the entry (Ext. S) of the Jail Register shows that Kamla Yadav and Karuna Shanker Singh aforesaid were inside the jail campus since 5.50 A.M. on the date of the occurrence. Both the aforesaid persons do not figure as a prosecution witness in this case. I have already stated about Kamla Yadav above as to why he has not figured as a witness for the prosecution in this case. Karuna Shanker Singh aforesaid was a charge sheet witness. P.W. 18, the I.O. in para 121 of his evidence, has deposed that the duty hour of Karuna Shanker Singh in the new Cell was from 6.00 hours to 12.00 hours on the date of the occurrence and he has recorded his statement u/s 161 Cr. P.C. in which he has stated that on the ringing of the alarm bell he ran to the new cell where he found the appellants present in their cell.

30. It is crystal clear from the evidence of P.W. 18, the I.O., appearing in para 121 of his testimony that after the opening of the new Cell Karuna Shanker Singh was definitely not present at the new cell and when there was a ringing of the alarm bell he ran to the new cell from the place somewhere inside the jail campus. It is equally relevant to mention here that the jail hospital is at a distance of about 80 feet from the dilapidated boundary wall of the new Cell. It is also relevant to mention here that the boundary wall of the hospital is also in dilapidated condition. Admittedly, the wards of the jail hospital were already opened and that is why P.W. 6 was present there talking with the deceased at that time at the place of the occurrence. Therefore, the appellants have easy excess in the jail hospital soon after opening of the new cell. Karuna Shanker Singh was definitely not present at the new Cell and after opening of the new Cell he had gone somewhere inside the jail campus. Had Karuna Shanker Singh been examined in this case, there was no reason for him to depose against what he has stated before the I.O. u/s 161 Cr. P.C. Therefore, there is no question of any prejudice being caused to the appellants due to the non-examination of Karuna Shanker Singh in this case for the prosecution and there also does not appear any question of taking adverse inference due to the non-examination of Karuna Shanker Singh and his non-examination is definitely not an infirmity of the prosecution case. It was equally open to the defence to examine Karuna Shanker Singh as defence witness or the appellant would have moved the Court for the examination of Karuna Shanker Singh as a Court witness u/s 311 of the Cr.P.C. Therefore, I find no substance in the contention of the learned counsel for the appellants in respect thereof. Therefore, the defence of alibi of all the appellants though not taken specifically but appearing on the face of the record is not at all natural and probable in the facts and circumstances of this case.

31. According to the prosecution case, the occurrence has taken place at 6.45 hours on 22-1-1999. Both the injured of this case were shifted to the R.M.C.H., Ranchi from the jail at 7.35 hours as per entry (Ext. S) in the jail register where P.W. 6 was examined by the medical witness and the other injured Sudhir Singh had, died on his way to the hospital. Information regarding the occurrence having taken place inside Birsa Munda Central Jail, Ranchi has been received by

the Lower Bazar P. S. from the City Control Room at 8.45 a.m. on the date of the occurrence which is to the effect that some occurrence has taken place there with the direction to the officials of the Lower Bazar P. S. to reach Birsa Munda Central Jail and in pursuance of that information P.W. 18, the I.O. along with A.S.I. A. K. Verma proceeds from the Police Station for Birsa Munda Central Jail. This fact stands corroborated by Station Diary Entry (Ext. T). P.W. 18 has deposed in para 6 of his evidence that he proceeded for the said Jail from the police station at 8.55 hours where he learnt that there has been an occurrence regarding assault in which two of the prisoners have been seriously injured and they have already been shifted to R.M.C.H., Ranchi. Thereafter he passed the information regarding the occurrence to the senior police officials. He has further deposed in para 7 of his evidence that A.S.I. A.K. Verma proceeded from the jail to the R.M.C.H., Ranchi followed by P.W. 18, I.O. Fardbeyan of P.W. 6 (Ext. 8) has been recorded at 10.00 O'clock in R.M.C.H. Thereafter blood stained clothes of P.W. 6. Hare Ram Singh were also seized at 10.30 A.M. though the formal F.I.R. regarding the institution of the case was recorded at 11.00 hours at the police station. Putting of the P.S. case number on the seizure list (Ext. 7/1) of the occurrence in the facts and circumstances of this case cannot be said to be an interpolation as well as fraudulent act on the part of the I.O. with ulterior reasons and extraneous considerations. It is in practice that case number is inserted on the seizure list subsequently in a case where the seizure list is prepared prior to the institution of the case. Admittedly, F.I.R. has been received in the Court of C.J.M., Ranchi on 23-1-1999, i.e., the following day of the occurrence. Section 157 of the Cr.P.C. casts a duty upon the investigating officer to forthwith send the report of a cognizable offence to the concerned Magistrate. The purpose behind it is that if the F.I.R. is received late in the Court, empowered to take cognizance, it can give rise to an inference that the F.I.R. was not lodged at the time it is alleged to have been recorded, and in such a situation, it may be indicative of the fact that the F.I.R. came to be recorded later on after due deliberation and consultation and it may be ante timed in the absence of any explanation for the delay in despatch or receipt of the F.I.R. by the Magistrate concerned. However, mere delay in despatch of the F.I.R. itself is no ground to throw away the prosecution case in its entirety. Sending the report late to the concerned Magistrate is a circumstance which provides a basis for raising suspicion that the F.I.R. is the result of consultation and deliberation and it was recorded much later on the date and time mentioned in it. Here, in the facts of this case, there is cogent evidence on the record that the Fardbeyan of P.W. 6, the informant, was recorded at 10.00 hours on 22-1-99 and there is no delay at all in recording the Fardbeyan in respect of which I have already stated above. The inquest report was prepared on 22-1-1999 at 19.25 hours which is evident from the inquest report itself (Ext. 2) and the said inquest report has been prepared by an Executive Magistrate and it bears the P.S. Case No. i.e., the Lower Bazar P. S. Case No. 12 of 1999 dated 22-1-1999. Therefore, the question of the Fardbeyan of P.W. 6, the informant being ante timed is totally ruled out in the facts and circumstances of this case. Even the postmortem was conducted by P.W. 11 on

the dead body of the deceased Sudhir Singh at 22.00 hours on 22-1-1999, i.e., the date of the alleged occurrence, and the postmortem report (Ext. 4) also contains the P.S. Case No. 12 of 1999 regarding the, occurrence in question. This aspect of the matter gives credence to the fact that the Fardbeyan was recorded on the date of the occurrence and the case was instituted on the basis of the Fardbeyan on that very day. On this score also it can safely be said that the Fardbeyan in this case is definitely not ante timed. The principle enunciated in the cases of Jang Singh, (AIR 2001 SC 2322) Arjun Marik and Others Vs. State of Bihar, and Meharaj Singh (L/Nk.) Vs. State of U.P., relied upon by the appellants in support of their contention is of no help to them. In the case of Jang Singh (supra) there was delay of three days in sending the F.I.R. to the Magistrate and no explanation was offered to explain the said abnormal delay. The fact of the present case is quite distinct and dissimilar to the facts of the case of Jang Singh and others (supra). In the case of Meharaj Singh (supra) there were suspicious circumstances surrounding the F.I.R. and the inquest report and in view of the infirmity and suspicious circumstances surrounding the F.I.R. and the inquest report resulting in not sending the F.I.R. forthwith to the concerned Magistrate it was observed in the case of Meharaj Singh (supra) that the F.I.R. is ante timed. Here, in the present case, the facts are quite dissimilar. Therefore, the ratio in the case of Meharaj Singh (supra) is equally of no help to the appellants. In the case of Arjun Marik (supra) there were also suspicious circumstances surrounding the recording of the Fardbeyan and F.I.R. I quote one of the suspicious circumstances surrounding the Fardbeyan which is as follows:--

"The most surprising part of the seizure of articles from the house of the appellants is the fact that they are exactly of the same number, description and details as are mentioned in Fadbeyan Ext. 3 and the F.I.R. which was recorded on the basis of Fardbeyan. Even the weight of the ornaments and the cash seized from the house of the appellants tally with the weight mentioned in Fardbeyan and the F.I.R., although Surnath Jha, P.W. 6, who gave Fardbeyan mentioning the details of the stolen articles and cash stated that he had never counted the money of his uncle nor touched it. He had simply seen the money in the box about two months prior to the occurrence and at that time there were 14,000 rupees in the box. Surnath Jha also deposed in para 20 of his deposition that he had never weighed the ornaments of her aunt and he had mentioned the weight in Fardbeyan as his deceased aunt had told him the weight of ornaments. It is difficult to believe such a statement that the deceased will tell the weight of the ornaments possessed by her and Surnath Jha wants us to believe that he remembered the weight of all these ornaments with the minutest details. This part of the story clearly gives an impression that neither Fardbeyan nor F.I.R. were recorded till the police raided the house of the appellant, seized the articles at 3.00 P.M. and thereafter on the basis of the description of the articles seized, Fardbeyan and F.I.R. were recorded."

It is also pertinent to mention here that the said F.I.R. was received in the Court taking cognizance on the third day of the occurrence. Here in the case before us

as stated earlier that there is no iota of any suspicious circumstance surrounding the recording of the Fardbeyan of P.W. 6, Hare Ram Singh, the informant. Therefore, the ratio of the case of Arjun Marik (supra) is equally of no help to the appellants. I have already stated above that the F.I.R. has been received in the Court on the following day of the occurrence and there are no suspicious circumstances surrounding the F.I.R. as well as the inquest report and in this view of the matter it can never be said that the F.I.R. Ext. 8/A and the Fardbeyan (Ext. 8) are ante timed. In view of the facts aforesaid there appears to be no delay at all also in recording the Fardbeyan of P.W. 6 by A.S.I. A.K. Verma. Therefore, possibility of any embellishment in the Fardbeyan of P.W. 6, the informant, is totally ruled out in this case and in the facts and circumstances of this case it cannot be said that the Fardbeyan is bereft of spontaneity and there is introduction of a coloured version of an exaggerated story regarding the occurrence in question. I, therefore, see no substance in the contention of the learned counsel for the appellants in respect thereof. My attention was also drawn to the fact that Sri K.B. Yadav, D.S.P., Sri B. N. Singh, O/C, Lalpur P.S. and S. I. Sri Dhaneshwar Ram of Lower Bazar P.S. besides Senior S.P., S.D.M. and Sri Rajesh Kumar, the Executive Magistrate had visited the jail premises between 9.00 hours and 12.00 hours on the day of the occurrence. The entry in the Jail Register (Ext. S) shows that Sri K. B. Yadav D.S.P. and Sri B. N. Singh, O/C. Lalpur P.S. came inside the jail premises at 9.10 hours along with Dr. Vijay Babu and said D.S.P. and O/C Lalpur P. S. and they left the jail premises at 9.30 hours. It further appears from Ext. S that D. C. and Senior S. P., Ranchi along with others came inside the jail premises at 14.45 hours and they left the jail premises at 15.40 hours. Vist by D. C. and Senior S. P., and others of the jail premises at 14.45 hours has no relevance so far the occurrence is concerned. There is no denying the fact that Sri K. B. Yadav, D.S.P. and O/C. Lalpur P.S. had visited the jail premises at 9.10 hours on the date of the occurrence i.e., prior to the recording of the F.I.R. There is no iota of evidence on the record to show that Sri K. B. Yadav, D.S.P. along with O/C Lalpur P.S. had visited the R.M.C.H., Ranchi prior to the recording of the Fardbeyan of P.W. 6, the Informant or even thereafter. Therefore, it is totally ruled out that any otherwise influence has been exerted by them in recording of the Fardbeyan of P.W. 6, the informant, and in this view of the matter, the Fardbeyan of the informant cannot be said to be tainted one under influence of Sri K. B. Yadav, D.S.P. and O/C Lalpur P.S. In this view of the matter I see no substance in the contention of the learned counsel for the appellants in respect thereof. It is true that the nature of the information given to the police station by the Police Control Room at 8.45 A.M. as well as to P.W. 7, P.W. 9 and Ext. 10, the report regarding the occurrence, is to the effect that some occurrence has taken place in Birsa Munda Central Jail, Ranchi and P.W. 18, the I.O. along with A.S.I., A.K. Verma when reached the said jail on the said information were also informed that there has been Marpit inside the jail between the prisoners in which two prisoners have sustained injuries and they have been sent to R.M.C.H. In this information there is no reference about the appellants involved in the occurrence. The absence of the details of the

occurrence in the information aforesaid does not in any way cast a cloud of suspicion to the warp and woof of the prosecution case as averred in the Fardbeyan (Ext. 8) of P.W. 6. have already stated above that K. B. Yadav, D.S.P. and B.M. Singh O/C. Lalpur P. S. have not gone to the R.M.C.H. after their visit of the said jail at 9.30 a.m. Therefore, any extraneous consideration at the instance of K.B. Yadav, D. S. P. and B. M. Singh, O/C Lalpur P.S. is totally ruled put in drawing of the Fardbeyan of informant (P.W. 6). Therefore the contention of the learned counsel for the appellants in respect thereof has no substance. It has been contended based on the ratio of the case of Balakrushna Swain Vs. State of Orissa, that unjustified and unexplained long delay on the part of the investigating officer in recording the statement of material eye witness during the investigation of the murder case will render evidence of such witness unreliable. In the said case the statement of Chakradhar (P.W. 5) was not recorded by the I.O. till 15th January i.e., till after 10 or 11 days after the incident. There were several infirmities regarding the evidence as deposed by said Chakradhar. In that case he had animus to depose falsely as well as to falsely implicate the appellant in the said case and the fact that he was an indoor patient as a result of injury sustained by him was not found corroborated. In view of the infirmities surrounding the evidence of Chakradhar and there being considerable delay in recording the statement by the I.O. it was observed by the Apex Court that unjustified and unexplained long delay in recording his statement renders his evidence unreliable. The ratio of the case of Balakrushna (supra) is of no help to the appellants in the present " case. The statement of P.W. 5 u/s 161 Cr. P.C. was recorded by P.W. 18, the I.O., on 29-1-2001. Here P.W. 5 is confined in custody in Birsa Munda Central Jail, Ranchi. There are no suspicious circumstances surrounding his evidence which he has deposed in the Court. There are also no circumstances to suggest that the I.O. was deliberately taking time with a view to decide about the shape to be given to the case and eye witnesses to be introduced. It is equally pertinent to mention here that P.W. 5 has only deposed regarding the assault on Sudhir Singh which had taken place at the gate of Ward No. 2 of the jail hospital. He has not whispered in his evidence regarding the assault on P.W. 6, Hare Ram Singh for the reason that Hare Ram Singh was not assaulted at the gate of Ward No. 2 of the jail hospital and he had no occasion to see it. Had he been set up as a witness by the I.O. deliberately then there was nothing to prevent him also to depose as an eye witness regarding the assault on P.W. 6, Hare Ram Singh. Therefore, in the facts and circumstances of this case, the delay of seven days in recording the statement of P.W. 5, a material witness in the case, does not at all cast a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story. In this view of the matter, I equally see no force in the contention of the learned counsel for the appellants in respect thereof and the case of Balakrushna (supra) is of no help to him.

32. Now a pertinent question arises at this stage about the prejudice being caused to the appellants due to non-production of certain documents called for

on behalf of the appellants as per Ext. V. Inmate registers of Ward Nos. 6, 7 and 9, the Hospital Ward Nos. 1 and 2, new Cell and old Cell of the Birsa Munda Central Jail, Ranchi were ordered to be called for by the learned Court below as per the prayer of the appellants. Exts. E and E/1 show that in spite of thorough search aforesaid registers could not be traced out and those registers were not produced before the learned Court below by the jail authorities. Part 2 of Ext. V states regarding the documents called for are relevant to show that appellant Sushil Srivastava was an inmate in Ward No. 9 along with D. Ws. 4 and 6 and the informant of this case was not an inmate of the hospital Ward No. 2 rather an inmate of Ward No. 6 and P.Ws. 4 and 5 were inmates of Ward No. 7 along with D. Ws. 1 and 2, There is averment in para 4 of Ext. V that inmate register of new Cell is also relevant, inter alia, for appreciation as to whether any of the accused persons were inmate of the new cell on the date of the occurrence. Placing reliance on the ratio of the case Ronald v. State of West Bengal AIR 1954 SC 455 it has been submitted that the appellant cannot be convicted without an opportunity being given to him to present his evidence and if it is denied to him there is no fair trial and the conviction cannot stand. It has been held in the case of Ronald (supra) as follows :

"Although the evidence on record may tend to establish a strong case against the accused, he is entitled to rebut and if certain documents would furnish good material for rebutting that case, the Court, by declining to issue process for the examination of the witnesses connected with those documents, would deprive the accused of an opportunity of rebutting it. The accused cannot be convicted without an opportunity being given to him to present his evidence and if it is denied to him, there is no fair trial and conviction cannot stand. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and Courts should be jealous in seeing that there is no breach of them."

It is pertinent to mention at the very outset that the non-production of the documents called for as per Ext. V does not at all cause any prejudice to the appellants in the facts and circumstances of this case. For this, the reasons are not very far to seek. There are admissions on record of D.Ws. 1, 2, 3, 4, 6 and 10 to establish the fact that P.Ws. 4 and 5 are the inmates of Ward No. 7 of Birsa Munda Central Jail and appellant . Sushil Srivastava was the inmate of Ward No. 9 of the said jail. Ext. 5/3 is the seizure list regarding the articles recovered from new Cell No. 5 proved by P.W. 18, the I.O. which stands witnesses by P.W. 12, Bipin Kumar Sinha and P.W. 13, Satyendra Choudhary. One Rajesh Kumar, Executive Magistrate, also figures as a witness thereon. Ext. 5/3 shows that the place of recovery of the articles enumerated therein is new Cell No. 5 in which appellant Anil Sharma, Niranjana Kumar Singh and Bablu Srivastava were residing. It is, therefore, crystal clear from Ext. 5/3 that appellants, Anil Sharma, Bablu Srivastava and Niranjana Kumar Singh were the occupants of new Cell No. 5 in the said jail. P.W. 18, the I.O. has categorically stated in his statement on oath that appellants Md. Hasim alias Madhu Mian and Gopal Das were housed in new Cell No. 4 at the relevant time. There is averment in the Fardbeyan (Ext. 8) that

the informant (P.W. 6) was housed at the relevant time in Ward No. 6 which stands corroborated as per testimony of P.W. 6 appearing in para 27. The evidence of P.W. 6 is that he was at the relevant time in Ward No. 2 of the Jail Hospital where Sudhir Singh was admitted. There is averment to that effect also in the Fardbeyan (Ext. 8). Therefore, it is established that Sudhir Singh was the inmate in Ward No. 2 of the jail hospital where P.W. 6 had gone in the morning as usual from his Ward No. 6 P.W. 18, the I.O., in para 110 of his testimony has categorically deposed that appellants Md. Hasim alias Madhu Mian and Gopal Das were housed in new Cell No. 4. Therefore, the materials which were intended to be brought on the record by the documents, as called for, are already on the record as per the evidence of the witnesses referred to above. In this view of the matter, the fact of any prejudice being caused to the appellants due to the non-production of the documents, as called for as per Ext. V, is totally ruled out in the facts and circumstances of this case. Accordingly, the ratio of the case of Ronald (supra) is of no help to the appellants and I see no substance in the contention regarding the alleged prejudice caused to the appellants as submitted by the learned counsel for the appellants.

33. To sum up, there is legal evidence on the record worthy of credit as per testimony of P.W. 6 read with P.W. 5 that appellant Anil Sharma has slit the neck of Sudhir Singh causing his death and other appellants have also assaulted Sudhir Singh by Chhura, belt and rod along with some other unknown accused persons. There is also legal evidence on the record to show that appellant Anil Sharma and other appellants have assaulted P.W. 6, Hare Ram Singh causing injuries on his person by the weapons with which they were armed. P.W. 10, the medical witness has found injury no. (ii) appearing on the neck of P.W. 6, Hare Ram Singh to be grievous. The nature of the injury on the neck of P.W. 6 is such which definitely comes under the category of grievous injury. Injury no. (ii) has definitely endangered the life of P.W. 6 as well as it has unabled him to follow his ordinary pursuits. Therefore, P.W. 10, the medical witness, has rightly come to the conclusion that injury no. (ii) on the person of P.W. 6, Hare Ram Singh is a grievous injury. The evidence of P.W. 10 read with the post mortem report (Ext. 4) materially corroborates the testimony of P.W. 6 and P.W. 5 regarding the injuries appearing on the dead body of the deceased, Sudhir Singh as well as the manner of occurrence as deposed by P.W. 6 and P.W. 5. The objective finding of the I.O. establishes the place of occurrence beyond all reasonable doubts as alleged by the prosecution. There are no legal infirmities in the prosecution case and the evidence on the record substantiating the prosecution case does not cast a cloud of suspicion to the warp and woof of the prosecution case. Fardbeyan and F.I.R. are also not ante timed and the facts and circumstances of this case discussed above are illustrative of fact that there is no delay in receipt of the F.I.R. by the Magistrate empowered to take cognizance. The evidence of P.W. 6 and P.W. 5 has a ring of truth therein and keeping in mind the rule of care and caution in scrutinizing their evidence I find their evidence worthy of credit and trustworthy. There is no probable reason at all to discard their testimony as they

have the occasion to witness the occurrence coupled with the fact that P.W. 6 has himself sustained injuries in the occurrence in question. Therefore, the learned Court below has rightly come to the finding of the guilt of the appellants and convicted them. I see no reason to disagree with the finding of the learned Court below in respect thereof. I, therefore, confirm the finding of guilt and conviction of the appellants as recorded by the learned Court below.

34. Now I come to the question of death sentence awarded to the appellant Anil Sharma. Section 354(3) Cr. P.C. mandates that in case of sentence of death the Court has to assign special reason for such sentence. The learned Court below has assigned reasons for that. The reason assigned is that appellant Anil Sharma is, in fact, the Kingpin and master mind behind the entire occurrence. The second reason is that appellant Anil Sharma has slit the neck of Sudhir Singh by "shaving razor" causing his death. The third reason is that appellant Anil Sharma had encouraged other appellants for their participation in the occurrence. The reasons, as recorded for awarding death sentence to appellant Anil Sharma in the facts and circumstances of this case, cannot be said to be the special reasons for awarding extreme penalty. It is settled principle of law that capital punishment may be awarded in a case which is the rarest of rare. Under the Code of 1973 there is an unmistakable shift in the legislative emphasis that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated. In the case of Bachan Singh Vs. State of Punjab, the Apex Court has observed as follows :--

"It is, therefore, imperative to voice the concern that Courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

In the case of Muniappan Vs. State of Tamil Nadu, it has been observed by the Apex Court that all murders are terrific and if the fact of the murder being terrific is an adequate reason for imposing the death sentence, then every murder shall have to be visited with that sentence and in that event, that death sentence will become the rule and not an exception and Section 354(3) Cr. P.C. will become a dead letter. On the touchstone of the ratio of case of Bachan Singh (supra) the case before us regarding extreme penalty awarded to appellant Anil Sharma does not appear to be a case rare of the rarest for the reason that it is not a case of extreme culpability and there is nothing uncommon about the crime which renders the sentence for life inadequate and calls for a death sentence. Furthermore, the circumstances of this case are not such that there is no alternative but to impose death sentence even after recording maximum weightage to the mitigating circumstances in favour of the said offender. Even

the crime is not enormous in proportion and 1stly the murder committed by appellant, Anil Sharma cannot be said to be extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. The murder in the case is the result of gang rivalry as both, i.e., the deceased as well as the assailant Anil Sharma have criminal and anti-social antecedents. Taking an overall global view of all the circumstances in the light of the guidelines of the Apex Court in Bachan's Case (supra), the circumstances of this case are such that death sentence is definitely not warranted. Therefore, it is a fit case to commute the sentence of death imposed upon appellant Anil Sharma for the conviction u/s 302 I.P.C. to R. I. for life. Accordingly, the sentence of death awarded to appellant Anil Sharma is hereby modified to a sentence of R.I. for life u/s 302 I.P.C. With the modification aforesaid, the reference is hereby disposed of. The Cr. Appeal No. 166 of 2002 is hereby dismissed with the modification of sentence as stated above.

35. In regard to the rest of the appeals (Cr. Appeal No. 193/02 and Cr. Appeal No. 199/02) by the rest of the appellants, the order of conviction and sentence passed by the learned Court below are hereby confirmed and both the appeals are hereby dismissed.