
(1981) 05 OHC CK 0013
In the Orissa High Court
Case No : Government Appeal No. 49 of 1977

State of Orissa

APPELLANT

Vs

Kirtan Bhuyan and Others

RESPONDENT

Date of Decision : 01-05-1981

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 232, 302

Citation : (1981) 52 CLT 155

Hon'ble Judges : P.K. Mohanti, J;B.N. Misra, J

Bench : Division Bench

Advocate : I. Ray, for the Appellant; R.C. Patnaik, P.K. Misra, M. Mohanty and B. Sarangi, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—This is an appeal against acquittal preferred by the State Government.

2. Thirty-three accused persons were jointly tried and were acquitted by the learned Additional Sessions Judge of Puri. The present appeal is confined to seven accused persons only.

3. The prosecution case was that in the early morning of 22-1-1976 the accused persons forming themselves into an unlawful assembly and being armed with deadly weapons went to the house of P.W. 3 Bachha Naik and accused him of having committed theft of paddy sheaves belonging to one Matia Patra. They dragged P.W. 3 out of his house and took him to the house of P.W. 2 Uchhab Naik and committed assault on him. When P.W. 8 Sushila Dei, the wife of P.W. 3 came to his rescue, some of the accused persons assaulted her and pushed her to the ground as a result of which she fell down and sustained injuries, Meanwhile P.W. 3 crawled towards the Tungighar adjacent to the outer verandah of P.W. 2 and fell down there. At this time Nihali Bewa, the grandmother of P.W. 3 came there and protested. Respondent No. 1 Kirtan Bhuyan dealt a katari blow on her neck

as a result of which she died at the spot.

4. After the incident, P.Ws. 1 and 2 along with some others went to the police station and reported about the occurrence. The Officer-in-charge of the police station made a station diary entry (Ext. 5) and proceed to the spot. He recorded the statement of P.W. 3 Bachha Naik and held inquest over the dead body. He sent the dead body for post-mortem examination. He also sent P.Ws. 3 and 8 for medical examination. After due investigation, he submitted charge-sheet against the accused persons.

5. All the accused persons stood charged under Sections 148 and 302/149, Indian Penal Code. Respondent No. 1 Kirtan Bhuyan was separately charged u/s 302, Indian Penal Code with having intentionally caused the death of Nihali Bewa. Respondent No. 1 Kirtan Bhuyan and Respondent No. 2 Hajari Pradhan stood charged u/s 324, Indian Penal Code with having voluntarily caused hurts to P.W. 3 Bachha Naik by means of deadly weapons. Respondent No. 1 Kirtan Bhuyan and Respondent No. 2 Hajari Pradhan, Respondent No. 3 Ainthia Swain, Respondent No. 4 Chintamani Jena, Respondent No. 5 Mani Bhuyan, Respondent No. 6 Sukuru Swain and Respondent No. 7 Nila Jena were jointly charged u/s 323, Indian Penal Code with having voluntarily caused hurts to P.W. 3 Bachha Naik. They were also charged u/s 341, Indian Penal Code with having wrongfully restrained P.W. 3. Respondent 5 Mani Bhuyan and Respondent No. 7 Nila Jena stood separately charged u/s 323, Indian Penal Code with having voluntarily caused hurts to P.W. 8 Sushila Dei.

6. The Respondents denied the charges and contended that the case was falsely foisted against them by the witnesses out of previous enmity.

7. In order to establish the charges, prosecution relied mainly on the direct evidence of the eye-witnesses P.Ws. 1, 2, 3, 5, 6, 8, 9, 10 and 11. P.W. 11 did not support the prosecution case at the trial and was cross-examined by the Public Prosecutor. The Trial Court, on a consideration of the evidence, disbelieved the prosecution case and acquitted the accused persons on the following findings:

(a) The death of the deceased Nihali Bewa was homicidal;

(b) There was strong suspicion that P.W. 3 Bachha Naik might have killed Nihali Bewa;

(c) There was discrepancy between the direct evidence of the eye-witnesses and the medical evidence regarding the injuries on P.Ws. 3 and 8 sustained the injuries on account of the assault as alleged by the prosecution; and

(d) Unreliability of the witnesses coupled with the previous enmity of the witnesses with the accused persons and their interestedness in the prosecution and also the other suspicious circumstances of the case and the perfunctory investigation made the entire prosecution case unreliable and so the prosecution miserably failed to bring home the charges to the accused persons.

8. The learned Counsel for the Appellant vehemently contended that the findings of the learned Sessions Judge are unreasonable and the order of acquittal is wholly perverse: It was submitted that in view of the consistent evidence of the eye-witnesses that Respondent No. 1 Kirtan Bhuyan had given the blow by a katari on the neck of Nihali Bewa, the Trial Court should have convicted him u/s 302, Indian Penal Code. It was also submitted that since the F.I.R. was without delay there was valuable corroboration of the prosecution case about the guilt of Kirtan Bhuyan. It was, further, maintained that the discrepancy in the evidence of the witnesses in regard to matters of detail are naturally probable when they were examined to depose to the events which happened long before their examination, and that mere interestedness of the witnesses was not a valid ground to reject their evidence. No effort was made by the Trial Court to sift the grain from the chaff.

9. It is no doubt, true that the eye-witnesses belonged to the same caste and to the same locality. Some of them are related to each other. P.W. 8 is the wife of P.W. 3, P.W. 5 is the son of P.W. 2 and P.W. 10 is the brother of P.W. 1. There is, however, no evidence to show that P.Ws. 1, 2, 5, 6, 9 and 10 are in any way related to the injured persons P.Ws. 3 and 8 or to the deceased Nihali Bewa. It is common ground that there was no love-lost between the eye-witnesses and the accused persons. The evidence of the eye-witnesses should, therefore, be subjected to strict scrutiny to accept what appears to be true and to reject the rest. The evidence of the witnesses cannot be lightly brushed ground of their ill-feeling towards the aside merely on the accused per sons.

10. We shall now proceed to give a brief resume of the evidence of the eye-witness. P.W. 1 Hadu Naik is a close neighbour of P.W. 3 Bachha Naik. He stated that on the date of occurrence in the early morning he was called by P.W. 11 Hadu Naik, the Gramarakhi and subsequently by Respondent No. 1 Kirtan Bhuyan. When 1 came out of the house, Kirtan Bhuyan said that P.W. 3 along with three others had committed theft of paddy sheaves I Matia Patra. He told Kirtan Bhuyan that P.W. 3 had return from his father-in-law s house that very day and the other three persons had gone for hunting in the forest at distance of about 12 miles from the village and hence it was not possible on the parts to commit theft. At that time about 60 persons came front of his house being armed with deadly weapons. Kirtan Bhuyan was holding a katari. Kirtan asked him to accompany the mob up to the well in front of the house of P.W. 2 Uchhab Naik. Then Respondents 1, 2, 4, 5 and 6 along with accused Achyuta Majhi (since acquitted) went to the house of P.W. 3 a dragged him out of his home. The mob insisted that P.Ws. and 3 should go near the well of Uchhab Naik. While th were proceeding towards the well of Uchhab Naik, Respondent and 5 caught hold of both the hands of P.W. 3 and Respondent No. 2 gave fist blows to P.W. 3 and snatched away the chad from his body. Then P.W. 3 was taken to the house of Uchhab Naik where he was assaulted by Respondents 1, 2, 4, 5, 6 and When P.W. 8 Sushila, the wife of Bachha Naik (P.W. 3) WE there and "intervened, Respondent No. 5 Mani Bhuyan and Respondent No. 7 Nila Jena dragged her and

threw her on the danda. They also assaulted her by fist blows, slaps and kicks. Her glass bangles were broken on account of the assault. While 1 accused persons were committing further assault on Bad (P.W. 3), Respondent No. 1 Kirtan Bhuyan threatened to, 1 him. At that time Nihali Bewa, the grandmother of P.W. 3 came running to the spot and caught hold of P.W. 3 with a view to give him protection. Just at that time Respondent No. 1 Kirtan Bhuyan gave a katari blow on the right side of the neck of Nihali who fell down dead. Then P.Ws. 1 and 2 along with some others went to the police station and reported that Kirtan Bhuyan had caused the death of Nihali Bewa. In cross-examination P.W. 1 specifically stated that P.W. 3 was assaulted at two places, once on the danda while he was proceeding towards the well and again at the house of P.W. 2. The witness admitted that two criminal cases had been started against him. In one of those cases the allegation against him was that he raised ganja plants. He stated that he did not know the allegation made against him in the other case but he guessed that the case had been instituted at the instance of the accused persons. He, however, stated that there was no criminal case against him before the occurrence of this case.

11. P.W. 2 Uchhab Naik stated that being called by P.Ws. 11 Hadu Naik and Respondent No. 1 Kirtan Bhuyan he came out of his house and saw 50 to 60 persons standing in front of his house being armed with deadly weapons. Hadu and Kirtan told him that there had been theft of paddy sheaves. When he said that it was the duty of the police to look into the matter, one of the accused replied that it was not necessary to call the police. At that time, Respondent No. 2 Hajari Padhan pulled the chadar of P.Ws. 3 and snatched it away. Then Respondent Nos. 2, 4, 5, 6 and some others dragged P.W. 3 and assaulted him by fist blows, slaps, kicks and gave pokes with lathi and the bamboo portion of bhalli and bhusa. He also stated that when P.W. 8 came there and; tried to intervene Respondent No. 5 Mani Bhuyan dragged her and threw her on the ground and, she became naked. Respondent No. 5 Mani Bhuyan and Respondent No. 6 Sukru Swain and some others also committed assault on her by kicks and fist blows.

When the deceased Nihali Bewa went near P.W. 3 to give him protection, Respondent No. 1 Kirtan Bhuyan ran towards the deceased and gave a katari blow on the right side of her neck as a result of which she died at the spot. The witness claimed to have seen the entire occurrence which took place in front of his house. He also stated that the glass bangles of Sushila were broken on account of the assault and she sustained bleeding injuries on her person. He stated to have gone to the police station along with P.W. 1 and some others and reported about the occurrence.

12. P.W. 3 Bachha Naik testified (that while he was sleeping he was called from his house by P.W. 11 Hadu Naik. Coming out of his house he saw all the accused persons standing in front of his house being armed with deadly weapons like bhalli, bhusa and thenga. R. 1 Kirtan Bhuyan was carrying a katari. Kirtan

Bhuyan accused him of having committed theft of paddy sheaves of Matia Patra. When he said that he was absent from home, the accused persons asked him to accompany them and they dragged him. He went with them to the house of P.W. 1 Hadu Naik and stood on his verandah. but he was made to sit down. While he was sitting R. 1 Kirtan Bhuyan again told him that he had committed theft of paddy sheaves along with four other persons. When he said that the allegation was false, R. 1 Kirtan Bhuyan and R. 2 Hajari Padhan pulled his chadar and snatched it away. He was again asked to accompany the accused persons. When he said that he would not go unless the police come, he was assaulted by all the seven Respondents. He went inside the Tungighar of P.W. 2 Uchhab Naik and fell down there. His wife (P.W. 8) stood at the door of that room in order to prevent the accused persons from going inside. There upon R. 5 Mani Bhuyan and R. 7 Nila Jena dragged her away and gave her pokes by the bamboo portions of bhusa and pushed her to the ground as a result of which she fell down in naked condition. R. 5 Mani and R. 7 Nila brakes her glass bangles. Then the deceased Nihali Bewa went to the door of that room and stood there with a view to prevent the accused persons from entering inside. R. 1 Kirtan gave a katari blow on the right side of her neck as a result of which she fell down dead. At about 11 a.m. the O.I.C. of the police station arrived at the spot and took down his statements. In cross-examination he stated that upper caste Hindus did not like him and created a lot of difficulties for him as a result of which he had left the village for some time and lived in village Sorada. He had returned to the village about a month before the occurrence. His evidence shows that R. 1 Kirtan Bhuyan bore ill-will against him as he did not cast vote in his favour in the Sarpanch election. Nothing has been elicited in his cross-examinations to show that he had any ill feeling towards the deceased. It was simply suggested to him that the deceased was abusing "him at times as he remained engaged in criminal activities, but he denied the suggestion. He also denied the suggestion that he had caused the death of the deceased by inflicting a katari blow on her.

13. P.W. 5 Trinath Naik, who is the son of P.W. 2, stated that while he was sleeping in his house he heard a hulla and coming out of his house he found a mob consisting of 100 to 150 persons standing on the danda being armed with deadly weapons. He, however, denied the presence of Respondent No. 3 Ainthia Swain in the mob. He stated that P.W. 3 was sitting on the verandah and R. 1 Kirtan Bhuyan was accusing him of having committed theft of paddy sheaves of Matia Patra and Bachha was denying the allegation. He also stated that Kirtan asked P.W. 3 to accompany him, but he refused. At that time R. 2 Hajari Padhan, R. 4 Chintamani Jena and R. 6 Sukuru Swain along with one Chatia Swain assaulted P.W. 3 by fist blows, kicks and by giving pokes with thengas. He witnessed the occurrence while sitting on his bedding inside the room. He stated to have seen P.W. 3 falling down at the door of the Tungighar. He also stated that when P.W. 8 went to the rescue of P.W. 3. R. 5 Mani Bhuyan and R. 7 Nila Jena dragged her away from that place. Then the deceased Nihali Bewa went there and stood near the door of the room where P.W. 3 had fallen down. At that time

R. 1 Kirtan Bhuyan dealt a blow with a katari on the right side of the neck of Nihali Bewa thereby causing her death. He stated to have seen swellings all over the bodies of P.W. 3 and P.W. 8.

14. P.W. 6 Padia Nahak Hated that while he was sleeping in his house he was called by P.W. 11 Hadu Naik and being told by him that there had been theft of paddy sheaves of Sama Mohanti he went towards the house of P.W. 2 Uchhab Naik and found about 50 to 60 persons present there being armed with deadly weapons. He has specifically stated that R. 1 Kirtan Bhuyan had a katari with him. He deposed about the presence of all the accused persons except R. 3 Ainthia Swain in the mob. He found P.W. 3 being brought from his house and R. 2 Hajari Padhan snatching away the chadar from his body. While P.W. 3 Bachha was sitting on the verandah of Uchhab Naik (P.W. 2), R. 1 Kirtan Bhuyan said that P.W. 3 along with others had committed theft of paddy sheaves of Sama Mohanti and when P.W. 3 denied, he was asked to accompany the mob and to verify for himself regarding the removal of the paddy shelves of Sama Mohanty. But P.W. 3 did not agree to go with the mob and said that he would not go until the arrival of the police. At this, R. 2 Hajari Padhan, R. 4 Chinta Jena, R.5 Mani Bhuyan, R. 6 Sukuru Swain and R. 7 Nila Jena assaulted him by giving fist blows, kicks and also by giving pokes with then gas. When P.W. 8 went to the rescue of P.W. 3, R. 5 Mani Bhuyan and R. 7 Nila Jena caught hold of her on the danda, dragged her and threw her on the danda as a result of which her glass bangles were broken. As soon as the deceased Nihali Bewa went there and tried to give protection to P.W. 3, R. 1 Kirtan Bhuyan gave a katari blow on the right side of her neck and she fell down dead. In cross-examination he admitted that R. 1 Kirtan Bhuyan had instituted a criminal case against his two brothers on the allegation of theft and they were convicted and sentenced to fine.

15. P.W. 8 Sushila Dei is the wife of P.W. 3. She stated that being called by P.W. 11 Hadu Naik and R. 1 Kirtan Bhuyan she came out of her house along with her husband and found a gathering of 50 to 60 persons in front Of her house. She stated to have seen all the Respondents present in the mob. According to her, the mob took her husband towards the house of P.W. 2 Uchhab Naik and while the house of Uchhab Naik was still at some distance, R. 1 Kirtan Bhuyan and R. 5 Mani Bhuyan caught hold of her hands and R. 1 Kirtan Bhuyan, R. 2 Hajari Padhan; R. 4 Chintamani Jena, R. 5 Mani Bhuyan, R. 6 Sukuru Swain, R.3 Ainthia Swain and R. 7 Nila Jena surrounded her husband and gave him kicks, blows and dragged him to the verandah of P.W. 2 Uchhab Naik where they committed further assault on him by kicks and fist blows and also by giving pokes with thengas and bamboo portions of bhalli and bhusa. When she raised a protest against the action of the accused persons, R. 5 Mani Bhuyan, R. 7 Nila Jena dragged her, broke her glass bangles and made her half naked. They also gave her fist blows and pushed her to the ground. Then her husband went crawling up to the door of the Tungighar and fell down near the door. At that time the deceased Nihali Bewa went to the rescue of P.W. 3 and R. 1 Kirtan Bhuyan gave katari blow on the right side of her neck as a result of which she died at the spot.

Then Kirtan Bhuyan went away with the katari in his hand. She admitted in cross-examination that the accused persons were not pulling on well with her husband.

16. P.W. 9 Hajari Nahak stated that in the early morning of the date of occurrence he came out of his house on hearing a hulia and saw that P.W. 3 was being assaulted on the danda in front of the house of P.W. 2. He stated to have seen Respondents 1, 2, 3, 4 and 5 assaulting P.W. 3 by kicks and fist blows and also by giving pokes with bamboo sticks and bamboo portions of bhalli and bhusa. He deposed about the presence of all the Respondents in the mob. He "also stated that when P.W. 8 went and intervened, R. 5 Mani Bhuyan and R. 7 Nila Jena dragged her to some distance and gave her kicks and pushed her to the ground and made her naked. Then P.W. 3 went crawling and fell down near the door of the Tungighar of P.W. 2. At that time, the deceased went to the rescue of P.W. 3 and was given a katari blow on her neck by R. 1 Kirtan Bhuyan. In cross-examination he admitted that one Naran Patnaik who belongs to the accused party had filed a criminal case against him and he was convicted in that case. He also admitted that he has been charge-sheeted in a criminal case filed by one Binod Bihari Naik.

He denied the presence of Banchha Naik at the place of occurrence .

17. P.W. 10 Agadhu Nahak who is the brother of P.W. 1 stated that on the date of occurrence in the early morning he came out of his house on hearing a hulla and found that many persons had gathered on the danda being armed with deadly weapons. On reaching the spot he found that R. 1 Kirtan and R. 5 Mani had caught hold of the hands of P.W. 3 and R. 2, Hajari Padhan, R. 4 Chintamani Jena, R.6 Sukuru Swain and R. 3 Ainthia Swain were assaulting him by kicks fist blows and by giving pokes with thenga and bamboo portions of the bhusa. He stated to have seen the incident of assault on P.W. 3 at a little distance from the house of P.W. 2 Uchhab Naik. He also stated that when P.W. 8 went and intervened, R. 5 Mani Bhuyan and R. 6 Sukuru Swain dragged her and gave her blows, made her naked and pushed her to the ground. Then he saw that P.W. 3 went crawling into the Tungighar. At that time the deceased Nihali Bewa went there and stood at the door of the room. She was given a katari blow on her neck by R. 1 Kirtan Bhuyan and she died at the spot. In cross-examination he admitted that a criminal case had been filed against his son Amar Nahak and P.W. 3 along with two others on the allegation that they snatched away a gold necklace from the neck of Kakila Dei, the wife of one Magi Naik. He also admitted that two criminal cases were instituted against him by R. 1 Kirtan, R. 2 Hazari, R. 3 Ainthia, R. 4 Chintamani, R. 5 Mani and some others. He also admitted that a criminal case has been filed against him by one Krushna Chandra Mohapatra on the allegation that he had committed theft along with others.

18. P.W. 11 Hadu Naik is the Grama Rakhi of village Bhaliadihi. He stated that on the date of occurrence he came out of his home on hearing a hulla and went to the bari side of Shama Mohanty and found that some paddy bundles were

missing. Then he went to the house of P.W. 3 and called him. He asked P.W. 3 if he had committed theft, but he denied. He stated that by that time many villagers had gathered there, but he could not see whether the accused persons were present there. He went to the beat-house and informed the constable about the occurrence. While returning from the beat-house, he heard from one Hina Behera that P.W. 3 had killed the deceased. Thus, he did not support the prosecution case about the assault on P.Ws. 3, 8 and the deceased Nihali Bewa and was cross-examined by the public prosecutor. He resiled from his previous statements made before the police during investigation of the case.

19. We have carefully considered the contentions advanced on both the sides. We are also not unmindful of the fact that we are dealing with an appeal against acquittal. Even so, we find that the reasons given by the trial Court for holding that the eyewitnesses are unreliable is utterly unsustainable. The mere fact that there are discrepancies in the statements of the eye-witnesses was no ground in jumping to the conclusion that the prosecution case was false. In our opinion, the discrepancies are of minor nature and do not affect the material facts of the case. At any rate, they do not in any sense make the prosecution version improbable. Every witness on the scene of occurrence cannot give an identical account of what happened. Discrepancies are bound to occur especially with the lapse of time when the evidence after a long period after the date of occurrence. Discrepancies in regard to matters of detail occur even in the statements of truthful witnesses, particularly when they are examined to depose to events which happened long before their examination. Such discrepancies are" hardly a ground to discard the evidence of the witnesses outright when there is general agreement and consistency in regard to the substratum of the prosecution case. All the eye-witnesses have with one voice and with complete unanimity implicated Respondent No. 1 as the author of the murder. Their version gains valuable corroboration from, the F.I.R. which was lodged within a few hours after the occurrence. The statement of P.W. 3 was recorded by the I.O. on the date of occurrence immediately after his arrival at the spot. It is not shown that P.W. 3 has made any contradictory statement before the I.O. The approach of the trial Court to the whole case seems to us to have been affected by an over-emphasis of minor defects in the case which are magnified into major defects. Discrepancies do not necessarily demolish the testimony of the witnesses. It is the duty of the Court to scrutinise the evidence with more than ordinary care and sift the grain from the chaff. But it cannot disbelieve the material facts and reconstruct a story out of the rest. The finding of the trial Court that P.W. 3 might have caused the death of the deceased is not supported by any iota of evidence. The suggestion made to P.W. 3 that he was responsible for the murder can only be described as a fantastic suggestion. The suggestion appears to have been made just for the sake of making a suggestion. The mere fact that P.W. 3 was living with the deceased would hardly be a reason to hold that he caused the death of the deceased in order to grab her properties. From the mere fact that Respondent No. 1 had informed the police that P.W. 3 had killed the deceased

and no case was registered by the police on such information, the trial Court should not have jumped to the conclusion that the investigation was perfunctory. At any rate no evidence was led by the Respondents to show that P.W. 3 had any motive to commit the murder of the deceased. The finding of the trial Court that there is a strong suspicion that P.W. 3 might have committed the murder is based on surmises and conjectures.

20. The occurrence took place near the house of P.W. 2 Uchhab Naik. One Banchha Naik admittedly is the neighbour of P.W. 2. He was cited as a witness in the charge-sheet and was also present in Court, but he was not examined at the trial. The trial Court drew an adverse inference against the prosecution due to his non-examination. There is, however, no evidence that Banchha Naik was present at the scene of occurrence and had witnessed the assault. P.W. 9 denied the presence of Banchha Naik at the scene of occurrence. The trial Court was, therefore, not justified in drawing an adverse inference against the prosecution. Even assuming that Banchha Naik was present and had seen the occurrence the prosecution was not bound to examine all the eyewitnesses.

The trial Court has also commented upon the non-examination of Hare Krushna Mohanty, Chakradhar Ray and Agadhu Pradhan who are residents of Jagannath Sahi and were examined by the Investigating Officer during investigation of the case. The occurrence took place in Khadal Sahi and it appears from the evidence of the I.O. that Jagannath Sahi is adjacent to Khadal Sahi. It was elicited from P.W. 9 that some persons of Jagannath Sahi had come out at the time of occurrence. The evidence of the witnesses does not, however, show that the persons of Jagannath Sahi had seen the occurrence of assault. Non-examination of the persons of that street does not, therefore, materially affect the prosecution case.

21. The wearing clothes of P.W. 3 were seized by the I.O. and were found to be stained with blood. According to the prosecution, the wearing clothes of P.W. 3 were stained with the blood coming out of the injuries on his person. P.W. 3, however, made conflicting statements. At first he stated that he had no bleeding injuries on his person. Subsequently, he corrected himself and stated that his wearing clothes were stained with blood coming out of the bleeding injuries on his person, and also with the blood sprinkled over his body when Respondent No. 1 Kirtan Bhuyan raised the katari at him after dealing the fatal blow on the neck of Nihali Bewa. The trial Court held that the blood stains found on the clothings of P.W. 3 must be that of the deceased Nihali Bewa and P.W. 3 might have caused the death of Nihali Bewa. In our opinion, this is simply a surmise. It has come but in the evidence of the eye-witnesses that while Nihali Bewa was standing near the body of P.W. 3 the Katari blow was dealt on her neck. Thus, the blood coming out of the injuries on the neck of Nihali Bewa might have fallen on the body of P.W. 3. As mentioned earlier, there is absolutely no evidence on the record to show that P.W. 3 had caused the death of Nihali Bewa.

22. According to the evidence of the eye-witnesses, the Respondents assaulted

P.W. 3 by giving fist blows, slaps, kicks and also by giving pokes by lathis and bamboo portion of bhalli and bhusa. The doctor (P.W. 4) found only a bruise on the left leg and an abrasion on the right leg of P.W. 3. The trial Court held that the medical evidence was inconsistent with the direct evidence of the eye-witnesses and, as such the evidence of the witnesses was unreliable. Similarly, the eye-witnesses stated that P.W. 8 was dragged and was given fist blows and kicks and was pushed to the ground as a result of which her glass bangles were broken. The doctor (P.W. 4) found a bruise and an abrasion on the right wrist of P.W. 3 and opined that the bruise could be caused by fall on the ground and the abrasion could be caused by the broken glass bangles. No doubt the doctor stated that the bruises could not be caused by dragging. But his evidence that the abrasion could be caused by the broken glass bangles has not been shaken by cross-examination. The seizure of broken glass bangles from the spot corroborates the evidence of the witnesses. In our opinion, there is no inconsistency between the direct evidence of the eye-witnesses and the medical evidence regarding the cause and nature of the injuries.

23. The prosecution case was that the occurrence of assault took place when the accused persons accused P.W. 3 of having committed theft of paddy sheaves of Matia Patra. P.Ws. 1, 3 and 5 supported the prosecution case in this respect. P.Ws. 2, 8, 9 and 10 stated to have seen the incident of assault but they did not speak anything as to whether P.W. 3 was charged by the accused persons with having committed, theft of paddy sheaves of Matia Patra. P.W. 6 stated that the members of the mob were accusing P.W. 3 that he had committed theft of paddy sheaves belonging to one Shama Mohanty. He did not say that P.W. 3 was charged with having committed theft of paddy sheaves of Matia Patra. It is in the evidence of the I.O. (P.W. 12) that a case u/s 370, Indian Penal Code has been registered against P.W. 3 for having committed theft of paddy sheaves from the bari of Shama Mohanty. The Trial Court entertained a doubt about the prosecution case on account of such discrepancy. In our opinion, such discrepancy does not affect the substratum of the prosecution case. It is just possible that paddy sheaves of both Matia Patra and Shama Mohanty were stolen on the date of occurrence. The fact remains that P.W. 3 was charged with having committed theft of paddy sheaves and when he denied he was assaulted. In view of the direct evidence of the eye-witnesses about the incident of assault the question of motive for the occurrence is immaterial.

24. Now coming to the charge u/s 148, Indian Penal Code all the eye-witnesses have stated that the Respondents along with many others came in a body and dragged P.W. 3 out of his house took him to the house of P.W. 2 and committed assault on him. It was not for an innocent purpose that a large number of persons came in a body at the early morning being armed with deadly weapons. As soon as they came to the place, the first thing that was done was an attack on P.W. 3. He was practically chosen for the attack. It is as clear as noon-day that the common object of the unlawful assembly was to give a beating to P.W. 3. There was, however, no common object to commit murder. The nature of the

injuries inflicted on P.W. 3 clearly shows that neither the common object was to kill nor is it possible to infer that any member of the mob had the knowledge that the death was likely to be caused in prosecution of the common object of assault.

25. We shall now proceed appearing against each of the accused individual liability.

(a) Respondent No. 1 Kirtan Bhuyan: His presence at the mob is deposed to by all the witnesses: P.W. 3 implicated him as one of his assailants. His evidence is supported by P.Ws. 1, 8 and 9. The evidence of the witnesses about the assault on P.W. 3 is supported by the medical evidence. All the witnesses have uniformly stated that he dealt the kirtan blow on the right side of the neck of Nihali Bewa as a result of which she died at the spot. In the absence of any evidence it is not possible to agree with the trial Court that P.W. 3 might have killed the deceased. There is overwhelming evidence on the record to show that this Respondent is the author of the murder. He is, therefore, to discuss the evidence persons to find out their to be held guilty under Sections 148, 323/149 and 302, Indian Penal Code.

(b) Respondent No. 2 Hajari Padhan P.Ws. 1, 3, 5, 6, 8, 9 and 10 deposed about his presence in the mob. P.Ws. 1, 2, 3 and 6 have stated that he snatched away the chadar from the body of P.W. 3. All the eye-witnesses unanimously stated that he committed assault on P.W. 3 along with others. There is, however, no specific evidence that he had any deadly weapon with him. He is, therefore, to be held guilty under Sections 147 and 323/149, Indian Penal Code.

(c) Respondent No. 3 Ainthia Swain: P.W. 3 implicated him as one of his assailants. P.Ws. 8, 9 and 10 supported him in this respect. According to P.Ws. 5 and 6 this Respondent was not present in the mob. In view of the conflicting version of the witnesses a doubt arises about his participation in the crime. He is therefore, entitled to the benefit of doubt.

(d) Respondent No. 4 Chintamani Jena: He was implicated by P.W. 3 as one of his assailants. P.Ws. 1, 2, 5, 6, 8, 9 and 10 corroborated the evidence of P.W. 3 in this respect. There is no specific evidence to show that he was armed with a deadly weapon. He is, therefore, to be held guilty under Sections 147 and 232/149, Indian Penal Code.

(e) Respondent No. 5 Mani Bhuyan: P.W. 8 implicated this Respondent as one of her assailants. Her evidence was corroborated by P.Ws. 1, 2, 3, 5, 6, 9 and 10. According to the witnesses, the glass bangles of P.W. 8 were broken as a result of the assault. The Investigating Officer seized broken glass bangles from the spot. The doctor P.W. 4 examined P.W. 8 on 22-1-1976 and found injuries on her person. According to the doctor, the bruise on the wrist could be caused by fall on the ground with the wrist resting on the ground and the abrasion on the wrist could be caused by broken glass bangles. The evidence of the witnesses shows that when P.W. 8 protested, this Respondent along with Respondent No. 1 Nila Jena gave her fist blows, made her naked and pushed her to the ground. There is

no evidence that this accused was armed with any deadly weapon. He is therefore, to be held guilty under Sections 147 and 323/149; Indian Penal Code.

(f) Respondent No. 6 Sukuru Swain: He was implicated by P.W. 3 as one of his assailants. P.Ws. 1, 2, 5, 6, 8 and 10 also implicated this Respondent as one of the assailants of P.W. 3. The doctor P.W. 4, examined, P.W. 3 on the date of occurrences and found one bruise on the left leg and one abrasion on the right leg of P.W. 3. In the doctor's opinion; the injuries could be caused by a blunt, weapon. He specifically stated that the bruise on the left leg could be caused by pokes given by lathi or bamboo portion of the bhalli and the abrasion on the right leg could be caused by the body coming in contact with the lathis or bamboo portions of the bhalli with slight pressure. The eye-witnesses have stated that P.W. 3 was given fist blows, slaps and also pokes with lathis and bamboo portions of bhalli and bhusa. Thus, the medical evidence is not in any way inconsistent with the direct evidence of the eye-witnesses. There is no specific evidence that this Respondent had any deadly weapon with him. He is, therefore, to be held guilty under Sections 148 and 323/149, Indian Penal Code.

(g) Respondent No. 7 Nila Jena: This Respondent was implicated by P.W. 3 as one of his assailants. P.Ws. 1, 6, and 8 supported P.W. 3 in this respect. P.W. 8 also implicated this Respondent as one of her assailants and she was corroborated in this respect by P.Ws. 1, 3, 5, 6 and 9. As indicated earlier, her glass bangles were broken as a result of the assault and the broken glass bangles were seized from the spot. The medical evidence is not inconsistent with the evidence of the witnesses. There is no evidence that this Respondent was armed with any deadly weapon. He is, therefore, to be held guilty under Sections 147 and 323/149, Indian Penal Code.

26. In the result, the appeal is allowed in part. The order of acquittal so far as Respondents 1, 2, 4, 5, 6 and 7 are concerned is set aside. Respondent No. 1, Kirtan Bhuyan is Convicted u/s 302, Indian Penal Code and sentenced to undergo imprisonment for life. He is also convicted under Sections 148 and 323/149, Indian Penal Code and sentenced to undergo rigorous imprisonment for six months on each count. All the sentences shall run concurrently.

Respondent No. 2 Hajari Pradhan, Respondent No. 4 Chintamani Jena, Respondent No. 5 Mani Bhuyan, Respondent No. 6 Sukuru Swain, Respondent No. 7 Nila Jena are convicted under Sections 147 and 323/149, Indian Penal Code and sentenced to undergo rigorous imprisonment for six months each on each count. The sentences awarded against each of the Respondents shall run concurrently.

The order of acquittal so far as it relates to Respondent No. 3 Ainthia Swain is maintained.

Respondents 1, 2, 4, 5, 6 and 7 are on bail. They should surrender to the bail bonds forthwith to serve out the sentences.

R.N. Misra, J.

27. I agree.