

(2014) 12 PAT CK 0011

In the Patna High Court

Case No : Criminal Appeal (DB) Nos. 137, 140 and 317 of 2007

Yashin

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 107, 230, 231, 309, 313

Evidence Act, 1872 — Section 137, 138

Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 201

Citation : (2014) 12 PAT CK 0011

Hon'ble Judges : V.N. Sinha, J;Prabhat Kumar Jha, J

Bench : Division Bench

Advocate : Akhileshwar Prasad Singh, Sr. Advocate, Raj Kumar, Vijay Kumar, Sanjay Kumar, Advocate for the Appellant; A.K. Sinha, S.C. Mishra and S.B. Verma, A.P.Ps, Advocate for the Respondent

Judgement

Prabhat Kumar Jha, J.—These three criminal appeals arise out of judgment/order dated 13.01.2007/16.01.2007, passed by Additional Sessions Judge, F.T.C.-5, Kishanganj, in Sessions Trial No. 223 of 1983/Tr. No. 186 of 2006, whereunder 16(surviving), sole, 2 (surviving) appellants of the three appeals have been convicted for the offences under Sections 302/ 149, 379/ 149, 380/ 149, 323/ 149, 436/ 149, 342/ 149, 201/ 149, 147 and 364/ 149 of the Penal Code. Two surviving appellants of Cr. Appeal (DB) No. 317 of 2007 i.e. Afan Bhatia @ Afan Ali and Abdul Hannan have further been convicted for the offence under Sections 148, 302 of the Penal Code. Appellant Abdul Hannan has also been convicted for the offence under Section 27 of the Arms Act. 16 surviving appellants of Cr. Appeal (DB) No. 137 of 2007 have been directed to suffer imprisonment for life under Section 302/ 149 of the Penal Code, under Section 147 of the Penal Code to suffer R.I. for two years, under Section 436/ 149 of the Penal Code to suffer R.I. for 10 years, under Section 379/ 149 of the Penal Code to suffer R.I. for 3 years, under Section 380/ 149 of the Penal Code to suffer R.I. for 7 years, under

Section 323/ 149 of the Penal Code to suffer R.I. for one year, under Section 342/ 149 of the Penal Code to suffer R.I. for one year, under Section 364/ 149 of the Penal Code to suffer R.I. for 10 years and under Section 201/ 149 of the Penal Code to suffer R.I. for 7 years. Appellants Afan Ali @ Afan Bhatia and Abdul Hannan of Criminal Appeal (DB) No. 317 of 2007 have also been directed to suffer imprisonment for life as also to pay fine of Rs. 50,000/- (fifty thousand) each for the offence under Section 302 of the Penal Code. They have further been directed to suffer R.I. for 3 years under Section 148 of the Penal Code, under Section 436/ 149 of the Penal Code to suffer R.I. for 10 years, under Section 379/ 149 of the Penal Code to suffer R.I. for 3 years, under Section 380/ 149 of the Penal Code to suffer R.I. for 7 years, under Section 323/ 149 of the Penal Code to suffer R.I. for one year, under Section 342/ 149 of the Penal Code to suffer R.I. for one year, under Section 364/ 149 of the Penal Code to suffer R.I. for 10 years and under Section 201/ 149 of the Penal Code to suffer R.I. for 7 years. Appellant Abdul Hannan has further been directed to suffer R.I. for 7 years under Section 27 of the Arms Act.

2. Prosecution case, as set out in the fardbeyan of the informant Ravi Lal Hansda (P.W. 27), resident of Village Lakshmipur (Santhal Tola), P.S. Dighal Bank, District Purnea recorded by Sub-Inspector Ram Deo Roy, Officer-in-Charge, Dighal Bank Police Station on 29.07.1983 at 18:15 hours in front of the house of the informant in Village Santhal Tola, Lakshmipur is that on 29.07.1983 around 11:00 A.M. he was ploughing his plot in the block of land situate south of his house. In the same block of land his co-villagers Mangal Hansda (P.W. 22), Mandal Soren (P.W. 3) were also ploughing their plot. Suddenly, informant saw 400-500 Bhatias coming/running towards them from western side armed with lathi, spear, gadasa and sickle. The mob was being led by Accused No. 24 Afan Bhatia, Accused No. 28 Zalil Bhatia, Accused No. 29 Wahab Bhatia, Accused No. 18 Nesh Mohammad, Accused No. 5 Abdul Hannan, Ajij Madar, Mantu Bhatia, Accused No. 4 Sikandar Bhatia, Eklesh Bhatia, Atabul Bhatia, Accused No. 12 Abdul Wadud, Taleb Bhatia, Sajjad Bhatia, Ilias Bhatia, Hazi Javed Ali, Accused No. 17 Tafzul Haque, Wazid Ali, Accused No. 25 Abdul Salam, Accused No. 28 Abdul Zalil, Accused No. 7 Sher Mohammad, Accused No. 27 Sazed Ali, Accused No. 10 Altaf Hussain, Arshad Ali, Accused No. 15 Abdul Khabbir, Accused No. 16 Tafazul Haque, all residents of Village Lakshmipur (Bhatia Assortment). Many others were also following the mob from behind. No sooner Accused No. 24 Afan Bhatia reached near Kanhu Kisku, he assaulted Kanhu Kisku on his head with lathi, whereafter Kanhu Kisku fell down and thereafter Afan Bhatia slit his neck. Having killed Kanhu Kisku, Accused No. 24 Afan Bhatia assaulted Chhinu Pagla with lathi on his head and also slit his neck. Others assaulted the ladies engaged in planting paddy with lathi. Informant having become frightened sprinted towards Nain Bhitha leaving behind his plough, bullocks in the field. Having sprinted to some distance informant looked behind and saw Bhatia mob running towards his village Santhal Assortment. From Haldawan side also many Bhatias armed with weapons were seen running/coming towards Santhal Assortment.

Due to fear informant concealed himself in the Jute field. After the miscreants went away from Santhal Assortment, the informant returned to his assortment and saw few ladies lying in injured condition and were weeping. Rengta Soren informed the informant that Accused No. 5 Abdul Hannan shot Jalpa Soren, who fell down, became restless and succumbed to the gun shot injury. Rengta Soren further informed the informant that amongst the miscreants of Bhatia Assortment, Lakshmipur he also identified Accused No. 23 Anishur Rahman, Accused No. 10 Altaf Hussain, Sultan, Abdul Tauf, Jarjish Moulvi, Afsar Ali, Maqbool Hussain and others. Lakhiram, son of Ram Soren (not examined) informed the informant that he identified amongst the miscreants Accused No. 30 Abdullah Bhatia assaulting Chhotka Soren with lathi on his head, who also fell down on the same place. It has further been stated in the fardbeyan that Bhatias also looted away utensils, cattle and other belongings from the different houses and before leaving the place of occurrence the miscreants also set the house of P.W. 16 Pitha Soren on fire, which has been raised to ashes. Co-villager P.W. 4 Manjhali Kisku, Kuthip Kisku (not examined), P.W. 26 Pendli Marandi, Genda Hansda (not examined) and others were also assaulted and injured with intention to kill. The occurrence has also been witnessed by Murmu, son of Hikma Murmu, Surya Kumar Hansda, son of Ram Hansda (both not examined) and others, who shall disclose their version. The Bhatias have carried the dead bodies of the four deceased. The Bhatias also looted away goods, cattle of other villagers as well, details of which villagers shall disclose. Informant thereafter furnished in the fardbeyan the details of his belonging, cattle which was taken away by the Bhatias from his field, house. Having given the description of the belongings informant further asserted in the fardbeyan that the miscreants also exploded bomb at the door-step of the house of P.W. 6 Jham Murmu. In the fardbeyan informant has further stated that the miscreants involved in the occurrence were not only Bhatias from Village Lakshmipur and Haldawan but also from Village Sidhi Maro and Kutwa Bhitha. The Bhatia miscreants also carried away the cattle from the outer area of the village. The value of the belongings looted away by the miscreants is around Rs. 25,000/-. Informant further stated in the fardbeyan that he and other co-villagers are in cultivating possession of 27 1/2 acres of land of Bihar Government for the last 12-13 years but for the last 3-4 years the Bhatias want to dispossess them from the lands for which case is pending in Court. It is again stated in the fardbeyan that informant and others were ploughing the aforesaid land when the occurrence took place. In the last but one paragraph of the fardbeyan informant claimed that the Bhatias named in the fardbeyan variously armed killed the four co-villagers of the informant, concealed their dead body, looted their belongings, cattle from the village as also from its outer area and injured others with intention to kill them. In the last paragraph of the fardbeyan informant asserted that his statement was read over to him in presence of two witnesses and he having understood, found the statement to be correct put his signature over the same. The two witnesses of the fardbeyan are M/S. Rengta Soren (P.W. 15) and Chilasulal Yadav (not examined). Ram Deo Roy having scribed the fardbeyan forwarded the same to the Officer-in-Charge,

Dighal Bank Police Station for instituting a case with further endorsement that he has already taken up investigation of the case.

3. In the light of the aforesaid fardbeyan Sri Heera Prasad, Incharge Officer-in-Charge, Dighal Bank Police Station registered the First Information Report bearing Dighal Bank P.S. Case No. 52/83 on 29.07.1983 at 23.30 hours and dispatched the same from Police Station through Special Messenger. The date of dispatch is, however, not indicated in the column meant for the same but from perusal of the photo copy of the First Information Report in the brief it appears that the same was perhaps seen by the Magistrate in the Court on 30th July, 1983. First Information Report contains the name of 31 accused. During investigation witnesses named in the First Information Report as also others were examined by the Investigating Officer. Body parts of the four unknown was recovered on 04.08.1983 vide Inquest Reports Exhibits 3, 3/1, 3/2, 3/3, perusal whereof indicates that the two right leg below knee, two human headless skeleton up to thigh was recovered from east (place for bathing buffalo), west (marshy land) bank of river Kankai respectively. Besides seizure of utensil and other articles were made on 04.08.1983, 29.07.1983, 30.07.1983, 02.08.1983 vide seizure-list (Exhibit 4 to 4/9). In the light of the aforesaid material collected during investigation Investigating Officer Sri Ram Deo Roy submitted charge-sheet bearing No. 21/83 dated 11.09.1983 against 51 accused persons showing two others as absconders. After submission of charge-sheet Test Identification Parade was held on 25, 29.09.1983 in Kishanganj Jail in which P.W. 4 Manjhali Kisku, P.W. 5 Sona Murmu, P.W. 25 Fede Soren and P.W. 26 Pendli participated before the Test Identification Magistrate Braj Kishore Kashyap (P.W. 29) vide Test Identification Chart, Exhibits 5, 5/1, 5/2, 5/3, 5/4, 5/5, 5/6, 5/7. Perusal of Test Identification Chart indicates that the witnesses identified many of the accused persons. After commitment of the case to the Court of Sessions 30 accused persons were put on trial and charges were framed under order dated 30.03.1984. The accused persons, however, pleaded not guilty and claimed to be tried.

4. In support of the charges framed prosecution examined 34 witnesses. P.W. 1 Chhotka Murmu, P.W. 2 Som Kisku, P.W. 3 Mandal Soren, P.W. 4 Manjhali Kisku, P.W. 5 Sona Murmu, P.W. 6 Jham Murmu, P.W. 7 Chhote Ram Hansda, P.W. 8 Chunka Hansda, P.W. 9 Bhajan Tudu, P.W. 10 Basant Besra, P.W. 11 Mithi Ram Murmu, P.W. 12 Soma Soren, P.W. 13 Babu Ram Hansda, P.W. 14 Ficha Hansda, P.W. 15 Rengta Soren, P.W. 16 Pitha Soren, P.W. 17 Ram Besra, P.W. 18 Sakla Murmu, P.W. 19 Babulal Kisku, P.W. 20 Buddh Roy Hansda, P.W. 21 Mohan Soren, P.W. 22 Mangal Hansda, P.W. 23 Munshi Kisku, P.W. 24 Jhaban Soren, P.W. 25 Fede Soren, P.W. 26 Pendli, P.W. 27 Ravi Lal Hansda, P.W. 28 Heera Prasad Sub-Inspector who proved the formal First Information Report (Exhibit-2) and is also the author of seizure-list (Exhibit-4, 4/1). P.W. 29 Braj Kishore Kashyap is Judicial Magistrate who conducted Test Identification Parade on 25, 29.09.1983 under order from Chief Judicial Magistrate, Kishanganj, P.W. 30 Salil Kumar Sinha is the Officer-in-Charge of the police outpost located near village Lakshmipur,

P.W. 31 Ram Deo Roy is the Officer-in-Charge Dighal Bank Police Station and Investigating Officer of the case, P.W. 32 Bharat Nath Jha is Executive Magistrate, P.W. 33 Kishan Lal Yadav and P.W. 34 Narayan Prasad Yadav (both declared hostile) are the witnesses of Inquest Report (Exhibit 3 to 3/3). P.Ws. 1 to 11, 13 to 17, 20, 25 to 27 are the eye-witnesses of the occurrence, out of whom P.W. 27 Ravi Lal Hansda is the informant, P.W. 15 is the attesting witness of the fardbeyan as also eye-witness of the occurrence, P.W. 3 Mandal Soren and P.W. 22 Mangal Hansda are named in the fardbeyan as eyewitnesses. P.W. 26 Pendli is not only an eye-witness named in the fardbeyan but also suffered injury during the occurrence. P.Ws. 12, 18, 19, 21, 22, 23 and 24 have been tendered by the prosecution without examining them in Chief.

5. Now we proceed to consider the evidence of each of the eye-witnesses.

(i). P.W. 1 is Chhotka Murmu. He claimed himself to be present at the date, time, place of occurrence as at the time of occurrence he was planting paddy in his plot along with Bhutum Lal Tudu and Pendli Marandi @ Dulli Marandi (P.W. 26) and both P.W. 1 and P.W. 26 are brother and sister. P.W. 1 further claimed in his evidence that along with him others, namely, Chhinu Pagla (deceased), Kanhu Kisku (deceased), Mandal Soren (P.W. 3), Mangal Hansda (P.W. 22) and Rojilal Hansda (voluntarily corrected by the witness as Ravi Lal Hansda) (P.W. 27) were ploughing the adjoining plots. Besides the aforesaid persons Kurhia Kisku (not examined) was ploughing the plot of Jalpa. Besides the aforesaid persons others were also present in the outer area of the village. Babu Lal Hansda, his son Ampu Hansda were planting paddy along with Fede Soren (P.W. 25) and Sona Muni (P.W. 5) in the plot of Budhi Lal @ Ravi Lal. Around 11:00 A.M. P.W. 1 saw a mob coming from the side of Bhatia Assortment (Tola) variously armed with lathi, farsa, sickle approaching Kanhu Kisku. Amongst the members of the mob P.W. 1 identified Accused No. 24 Afan Bhatia, Accused No. 27 Sajjad Madar, Accused No. 10 Altaf Hussain, Accused No. 5 Abdul Hannan and others (not appellant before this Court). He also identified them in dock. In Paragraph 8 of his evidence P.W. 1 stated that amongst the members of the mob Accused No. 24 Afan Bhatia assaulted Kanhu Kisku with lathi and slit his neck with sickle. He further stated in the same paragraph that while he was running away from the place of occurrence he turned around to look back and saw Accused No. 24 Afan Bhatia assaulting Chhinu Pagla with lathi and then slitting his neck with sickle. He also saw the mob running towards his assortment. Being frightened he returned to his assortment in the evening and saw Officer-in-Charge, policemen present in the village, his belongings worth Rs. 6,000/- looted away from his house by the Bhatias constituting the unlawful assembly. P.W. 1 also asserted in Paragraph 12 of his evidence that the house of Pitha Soren (P.W. 16) was set ablaze and reduced to ashes and that he found small bomb thrown in the court-yard of Jham Murmu (P.W. 6). P.W. 1 further confirmed in Paragraph 13 of his evidence that he visited the Police Station and identified the handle, head of his tube-well in the proceeding conducted by B.D.O. Saheb (P.W. 32). In Paragraph 21 P.W. 1 stated that he is not the informant of the case as Ravi Lal, son of Genda Hansda,

resident of his village is the informant. He further clarified in the same paragraph that he is not aware whether Investigating Officer examined Rengta Santhal as he was not interrogated by the police officer in his presence. P.W. 1 further confirmed in the same paragraph that he is aware that at the time of his deposition in Court Ravi Lal Hansda and Rengta Santhal are in judicial custody in Kishanganj Jail. In Paragraph 22 of his evidence P.W. 1 admitted that he was born in village Belgachhi within Thakurganj Police Station and came to village Lakshmipur 13-14 years earlier and settled in the vacant land of Bihar Government, adjoining whereto there was farm/raiyati land of the farmers. P.W. 1 also stated in the same paragraph that 15-20 Bhatias were settled in village Lakshmipur prior to the arrival of Santhal (s) in Village Lakshamipur. Some of the Bhatias were agriculturists conducting agricultural operation with the help of bullocks, he-buffalo and others were farm labourers. In Paragraph 29 P.W. 1 further stated that 3-4 years earlier also Bhatias created trouble over the lands-in-question but then assault had not taken place. In Paragraph 31 P.W. 1 stated that his police statement was noted on a sheet of paper but he does not remember whether he put his signature over the same. In the same paragraph P.W. 1 denied the suggestion that the present false case has been lodged against Bhatias with a view to deprive them of their possession of the lands-in-question. In Paragraph 42 P.W. 1 stated that he has also provided the Investigating Officer father's name of those whom he identified as members of the unlawful assembly. In the same paragraph he also stated that he knew them from before. In Paragraph 47 P.W. 1 stated that he along with Agnu Mahli (not examined) met the Officer-in-Charge, 6-7 policemen at Tal Gachh Hatia (market) and came along with them to his village. P.W. 1 also stated in the same paragraph that other villagers including Ravi Lal Hansda (P.W. 27), Rengta Soren (P.W. 15) also met the police party at Tal Gachh Hatia and came to the assortment (Tola) along with him and Agnu Mahli. In the same paragraph P.W. 1 further stated that he disclosed about the occurrence to P.Ws. 15, 27 at Tal Gachh Hatia itself. In Paragraph 50 P.W. 1 stated that Investigating Officer recorded the fardbeyan and the police statement of the witnesses in the assortment for about 3-4 hours, whereafter P.W. 1 went to the house of Mukhiya and remained there during the night. In Paragraph 53 P.W. 1 stated that village Singhimari is 2 1/2-3 kilometers away from his village in which there is a police camp but none of the policemen visited his village during the day before arrival of the Investigating Officer in the evening. In Paragraph 65 P.W. 1 stated that when he initially came to village Lakshmipur there was trouble with the Bhatias settled in the said village from before and he returned to village Belgachhi with his belongings but sometime later again came to village Lakshmipur and settled in Santhal Assortment whereafter there was no trouble. In Paragraphs 81, 82, 83 P.W. 1 stated that Officer-in-Charge and the police party arrived in the village in the evening of the occurrence and thereafter did not move out of the assortment to search for the dead body, cattle and other looted articles though request was made by the family members of the deceased to trace out the dead body and the looted articles including cattle. In Paragraph 85 P.W. 1 stated that east of Bhatia

assortment (Tola) there is 50-60 bighas of land under cultivation of the Santhals and it is incorrect to suggest that the same is under cultivation of Bhatias. In the same paragraph P.W. 1 denied the suggestion that Sarfuddin had taken settlement of the said land from Tagore Estate and thereafter sold the same to other raiyats. In Paragraph 87 P.W. 1 admitted that 50-60 Bighas of disputed land is under cultivating possession of the witness and other 15-20 Santhals named in the paragraph. In Paragraph 95 P.W. 1 clarified that the occurrence took place around 11:00 A.M. and the police party arrived in the village at 6:00 P.M. but in the meantime P.W. 1 and others neither confabulated to lodge the case nor went to the Police Station nor send any other person to inform the police about the occurrence. In Paragraph 103 P.W. 1 stated that he is not in a position to indicate the manner in which dead body of Kanhu Kisku and Chhinu Pagla was taken away by the members of the unlawful assembly. In Paragraph 104 P.W. 1 further stated that he has not informed the Chaukidar, Dafadar that marks of blood stains are available at the place of occurrence and that they should go to the place of occurrence and preserve the same. In the same paragraph P.W. 1 also admitted that he did not inform the Mukhiya also about the availability of the blood stains at the place of occurrence and that he should verify the same by visiting the place of occurrence. In Paragraph 120 P.W. 1 stated that members of the unlawful assembly had neither chased nor approached him nor is he aware that they chased other Santhals standing in the adjoining plot.

In view of the evidence of P.W. 1 in paragraphs 82, 83 and 120 it is submitted by the learned counsel for the appellants that full cross-examination of the Investigating Officer (P.W. 31) was necessary to seek clarification from him about his failure to proceed for recovery of the dead body in the evening of the occurrence after inspection of place of occurrence. It is also submitted that P.W. 1 is perhaps not an eye-witness of the occurrence and in any case he has not asserted any overt act on the part of the appellants of Criminal Appeal (DB) Nos. 137, 140 of 2007, as such, according to learned counsel, there is no evidence on record to suggest that the appellants of aforesaid two appeals shared the common intention/object with the two assailants i.e. the appellants of Criminal Appeal (DB) No. 317 of 2007.

(ii). P.W. 2 Som Kisku has stated in his evidence that about one year earlier on a Friday he along with his father Kanhu Kisku was trimming ridge with a spade. Around 11:00 A.M. a mob variously armed came from Bhatia Assortment near the plot of his father when others were also working in the adjoining plots as they were either ploughing the plot or planting paddy. His father, Chhinu Pagla, Manuj were ploughing the plot. Soren Mandal (P.W. 3), informant Ravi Lal (P.W. 27), Mangal Hansda (P.W. 22) were ploughing their own plots. Kurhia was ploughing the plot of Jalpa. Others were planting paddy in their fields. Pendli (P.W. 26), Ghutum Lal and Chhote Ram Hansda (P.W. 7) were planting paddy in the field of Hikma (not examined). Sona Muni (P.W. 5), Fede Soren (P.W. 25) were planting paddy in the plot of informant Budhi Lal. Ampu, Babu Ram were

planting paddy in their own plots. In Paragraph 2 P.W. 2 stated that his sister Manjhali Kisku (P.W. 4) had come to the plot to serve meal. In Paragraph 4 P.W. 2 stated that Accused No. 24 Afan Bhatia assaulted his father with lathi, his father turned around and fell down. Accused No. 24 thereafter slit his neck with a sickle. Chhinu Pagla was also assaulted by Accused No. 24 with lathi, his neck was also slit by him with the sickle. In Paragraph 5 P.W. 2 stated that members of unlawful assembly assaulted others. In Paragraph 6 P.W. 2 stated that he identified amongst others Accused No. 24 Afan Bhatia, Accused No. 28 Abdul Zalil, Accused No. 26 Abdul Wazed, Accused No. 10 Altaf Hussain, Accused No. 13 Abdul Kuddush as the members of the unlawful assembly. In Paragraph 11 P.W. 2 stated that he concealed himself in jute field, returned to his house in the night between 7:00-8:00 P.M., found all belongings looted away, details whereof is also furnished by him in the same paragraph. In Paragraph 13 P.W. 2 admitted that his police statement was not recorded by the Investigating Officer in the night of occurrence though he reached the assortment in the same evening between 6:00-7:00 P.M. P.W. 2 further stated in the same paragraph that his police statement was recorded on Sunday i.e. after two days of the occurrence. In Paragraph 18 P.W. 2 stated that trouble with Bhatia men for possession over the lands-in-question had begun 12 years earlier which continued for sometime and resolved thereafter without intervention of the residents of the two assortments. In the same paragraph P.W. 2 further stated that he does not remember the period during which the dispute subsisted. In Paragraph 20 P.W. 2 stated that he all alone concealed himself in Channi jute field but is not aware about the name of the raiyat of the said jute field and the place where others concealed themselves. In Paragraph 29 P.W. 2 stated that the unlawful assembly of 400-500 men was led by Accused No. 24. After arrival members of the unlawful assembly did not surround his plot, spread out in the area and Accused No. 24 assaulted his father with lathi and slit his neck with sickle. In Paragraph 30 P.W. 2 stated that he ran east-north of his plot without being restrained, chased by any member of the unlawful assembly. In Paragraph 34 P.W. 2 stated that from the jute field his assortment was not visible. In the same paragraph P.W. 2 further stated that while he remained concealed in jute field he had not seen anyone either coming or going but heard the gun shot. In the jute field itself P.W. 2 realized that evening has set in whereafter he returned to his village between 8.00-9.00 P.M. In Paragraph 35 P.W. 2 admitted that he met Rengta Soren (P.W. 15) in the night of occurrence in the assortment and that in the same evening Investigating Officer made queries from him about the occurrence but did not record his statement, although, he informed the Investigating Officer about the assault but did not name members of the assembly whom he identified at the time of occurrence and that recorded his police statement furnishing the name of the assailants and others on Sunday. In Paragraph 36 P.W. 2 stated that he does not remember that he met the informant P.W. 27 Ravi Lal Hansda before recording his police statement on Sunday. In the same paragraph he further stated that he is not aware about the contents of the police statement of others recorded in Friday night. In the same paragraph he also stated that he does not

remember the number of persons whose police statement was recorded in Friday night. In Paragraph 40 P.W. 2 stated that while recording his police statement on Sunday he informed the Investigating Officer about his belongings which were looted away from his plot and the house. In Paragraph 44 P.W. 2 stated that he asked P.W. 4 Manjhi Kisku about her well being and that she informed him that she was carried away by the members of the unlawful assembly and was thrown in the pond 2-3 times and that one Bhatia asked her whether she wants to return to her house then she replied in affirmative and came to the house of Bidhi Lal Mushar (not examined) in village Nain Bhitha and that he does not remember the further disclosure made by P.W. 4 to him. In Paragraph 46 P.W. 2 stated that his police statement was recorded by the Investigating Officer on Sunday at 10:00 A.M. while the Investigating Officer was sitting in the house of Ficha Hansda (P.W. 14) and the house of P.W. 14 is further south of his house. In Paragraph 51 P.W. 2 stated that before recording his police statement he had not spoken to any of his co-villager/caste men. Earlier P.W. 2 informed his wife and one resident of village Malmali about the occurrence when he had gone to village Malmali to bring back his wife. In the same paragraph P.W. 2 furnished the name of one Ghuma, resident of village Malmali to whom he disclosed about the occurrence when he went to village Malmali to bring back his wife and denied the suggestion that the name of Ghuma is being furnished by him after being prompted to disclose his name and that Ghuma is 40-45 years old and he reached the house of Ghuma in village Malmali at 10.00 A.M.

In view of the evidence of P.W. 2 in Paragraphs 13, 35 learned counsel for the appellants submitted that perhaps he is not an eye-witness of the occurrence as he did not name the assailants in the evening of occurrence though he met the Investigating Officer in the evening of the occurrence. His evidence is also fit to be rejected as there is contradiction between his evidence in Paragraph 5, 30. In Paragraph 5 P.W. 2 stated that members of the unlawful assembly assaulted others present at the place of occurrence but allowed P.W. 2 to leave the place of occurrence without being restrained, chased as has been stated by P.W. 2 himself in Paragraph 30 of his evidence. In this connection evidence of P.W. 1 in Paragraph 120 is also relevant as P.W. 1 stated in Paragraph 120 that none of the members of the unlawful assembly either restrained him at the place of occurrence or chased him from the place of occurrence.

(iii) P.W. 3 Mandal Soren is named as a witness of the occurrence in the fardbeyan. He deposed that on the date of occurrence he was ploughing his purchased land situate south of the assortment. In the same block others including Chhinu Pagla was also ploughing his plot which was obtained from Bihar Government. Mangal Hansda (P.W. 22), informant Ravi Lal Hansda (P.W. 27), Kanhu Kisku (deceased) were ploughing their own plots. Kurhia Kisku was ploughing the land of deceased Jalpa Soren. Besides those ploughing the plot others were planting paddy in the same outer area. Pendli (P.W. 26), Chhotka Murmu (P.W. 1), Ghutum Lal (not examined) were planting paddy in the field of Hikma. Fede Soren (P.W. 25), Sona Muni (P.W. 5) were planting paddy in the field

of informant Budhi Lal. Babu Ram (P.W. 13) and Ampu (not examined) were planting paddy in their own field. In Paragraph 2 P.W. 3 stated that Som Kisku (P.W. 2) was trimming ridge in the field of Kanhu Kisku (deceased). Manjhali (P.W. 4) sister of P.W. 2 also came to the plot after sometime to serve meal. In Paragraph 3 P.W. 3 stated that the mob of Bhatias comprising 500-600 men variously armed were seen coming towards the place of occurrence led by Accused No. 24 Afan Bhatia and that Accused No. 24 assaulted Kanhu Kisku, Chhinu Pagla with lathi and slit their neck with sickle. P.W. 3, however, managed to escape from the place of occurrence and concealed himself in jute field, which is at some distance from the place of occurrence. In Paragraph 4 P.W. 3 identified amongst the members of the mob Accused No. 24 Afan Bhatia, Accused No. 29 Abdul Wahab, Accused No. 28 Abdul Zalil, Accused No. 19 Abdul Rauf. In Paragraph 11 P.W. 3 identified Accused No. 24 in Court. In Paragraph 14 P.W. 3 stated that he is unable to identify Accused No. 28 Abdul Zalil about whom he has asserted in his police statement that he identified Accused No. 28 as a member of the unlawful assembly. From Paragraph 15 of the evidence of P.W. 3 it appears that the Presiding Officer made inquiry from the accused persons present in the dock as to whether Accused No. 28 Abdul Zalil is present in the dock then Accused No. 28 raised his hand and said that he is present as also disclosed his father's name. In Paragraph 16 P.W. 3 stated that members of the unlawful assembly also assaulted other Santhals working in different plots and that P.W. 3 ran towards east, returned to the assortment/house in the night and saw all his belongings looted away, details whereof is given in the same paragraph. In Paragraph 21 P.W. 3 stated that at the time of occurrence he was ploughing the land which he purchased from Doman Lal Harizan and his mother. In the same paragraph P.W. 3 stated that he is not aware that Doman Lal Harizan and his mother executed the sale-deed after obtaining permission from his uncle. He also stated in the same paragraph that he purchased 6 acres 74 decimals of land by two sale-deeds after payment of Rs. 2400/-. Both the sale-deeds were executed on the same day. One of the two sale-deeds is available at his house which the witness undertook to file in Court. The other sale-deed has been given to the lawyer in Kishanganj for obtaining bail. The sale-deed has been obtained in his name and the name of three others namely, Hikma Murmu, Sankh Hembram and Som Marandi (all the three not examined). In Paragraph 26 P.W. 3 admitted that on the date of his deposition P.Ws. 27, 15 were in jail custody. In the same paragraph P.W. 3 further stated that he is not aware that both had gone to jail in connection with the case lodged by Mazrul Bhatia but he is aware that some Bhatia had lodged the case in which both had gone to jail and he furnished his sale-deed for securing their release on bail. In Paragraph 29 P.W. 3 denied the suggestion that he came to the village after hearing about arrival of Officer-in-Charge in the village. P.W. 3 further asserted in the same paragraph that he met the Officer-in-Charge in the village in the night of occurrence itself at the house of Rengta Soren (P.W. 15) and his statement was recorded in torch light but the same was not read over to him by the Investigating Officer and that he did not put his signature over any paper. In Paragraph 33 P.W. 3 stated that

he and others had initially come to village Lakshmipur 15 years earlier. A case under Section 107 Cr. P.C. was initiated 2-3 years thereafter against the witness in which Santhals and Mushars were on one side and Bhatias were on the opposite side. P.W. 3, however, is not aware about the name of Bhatias who were parties to the aforesaid proceeding. In Paragraph 35 P.W. 3 stated that after the occurrence he came to village at about 8:00 P.M. and met his wife on the veranda of his house. Later at 1:00 A.M. P.W. 3 went to the house of Rengta, Headman of his village to meet the Investigating Officer of the case where he did not see Ravi Lal Hansda (P.W. 27) although P.W. 3 remained there for half an hour. In Paragraph 53 P.W. 3 stated that he is aware that in the present occurrence assertion has been made that two male, three female suffered injury and that he saw them being assaulted. Those who became injured during the occurrence were not surrounded by the members of the unlawful assembly. Members of the unlawful assembly, however, chased them with a view to assault. Ampu was chased to a distance of 8-9 ft. and then assaulted. Kurhia Kisku was chased to a distance of 12 ft. and then assaulted. In the same paragraph P.W. 3 stated that he is not in a position to state the number, name of the persons who chased Ampu, Kurhia Kisku. In Paragraph 54 P.W. 3 stated that three female folks were also chased and then assaulted. In the same paragraph P.W. 3 further asserted that while running he turned around to look back and saw members of the unlawful assembly chasing the female folks towards east and assaulting them. In the same paragraph P.W. 3 stated that he is not in a position to provide the name, number of the members of the unlawful assembly who chased, assaulted the female folks. In Paragraph 60 P.W. 3 stated that Accused No. 24 Afan Bhatia slaughtered Kanhu Kisku by sickle in the same manner in which goats are slaughtered. Santhals residing in the assortment had not raised alarm but Manjhli Kisku (P.W. 4), daughter of Kanhu Kisku did raise alarm near the dead body of her father. In the same paragraph P.W. 3 further stated that he had not seen heavy shower of blood over the clothes of P.W. 4 Manjhali Kisku and that P.W. 3 had not seen P.W. 4 running away from the place of occurrence. P.W. 2 Som Kisku had also run away from the place of occurrence along with him and that he is not aware about the direction in which P.W. 2 ran away. In Paragraph 64 P.W. 3 stated that he remained standing while Kanhu Kisku was being slaughtered. While so standing P.W. 3 had no idea that Chhinu Pagla will also meet the same fate. Chhinu Pagla was not apprehended, brought near Kanhu Kisku but was killed in the same field in which he was ploughing the land. It took 2-3 minutes to slaughter Kanhu Kisku. There was distance of 60 steps between Kanhu Kisku and Chhinu Pagla. 10-12 members of the unlawful assembly followed Accused No. 24 Afan Bhatia when he approached Chhinu Pagla, others remained in the field of Kanhu Kisku. In Paragraph 74 P.W. 3 admitted that Singhimari Police Camp is at a distance of 1 1/2 Kos from the jute field but he is not aware that in the Police Camp there are eight sepoy, one Havildar and one Sub-Inspector posted. In the same paragraph P.W. 3 also denied the suggestion that he has given false evidence.

Learned counsel for the appellants submitted that from the evidence of P.W. 3 itself, it is evident that he is a close associate of the informant Ravi Lal Hansda, Rengta Soren (P.Ws. 27, 15) as he furnished his sale-deed by way of security for obtaining their release on bail in connection with the case lodged by the Bhatias concerning the present land dispute. P.W. 3 having named Accused No. 28 Abdul Zalil in his police statement as a miscreant and member of the unlawful assembly but failed to identify him in Court, his identification of Accused Nos. 19, 24 may also not inspire confidence, as it is very much evident from his deposition that he knew the accused persons from before and is involved with them in the dispute for securing possession of the lands-in-question right from the beginning when Santhals came to village Lakshmipur 15 years earlier and the possibility of P.W. 3 falsely implicating them cannot be ruled out.

(iv) P.W. 4 Manjhali Kisku is the sister of P.W. 2. She had come to the place of occurrence around 11:00 A.M. to serve meal to her deceased father Kanhu Kisku and her brother P.W. 2. In paragraph 3 of her evidence she identified Accused No. 24 Afan Bhatia as the assailant of his father. In Paragraph 4 P.W. 4 further stated that she was also apprehended by the members of the unlawful assembly, given one lathi blow and taken away by the members of unlawful assembly along with the dead body of her father towards Bhatia Assortment and then thrown in a ditch along with the dead body of her father. The ditch is further east of Bhatia Assortment (Tola). In Paragraph 5 P.W. 4 claimed that members of the unlawful assembly asked her to run away otherwise she may also be killed. In the same paragraph P.W. 4 further stated that from the ditch she went to Nain Bhitha village in the house of Bidhi Lal Mushar and informed him about the occurrence who took her to the house of Uchit Lal, whose house is also located in Nain Bhitha village. P.W. 4 further claimed that Uchit Lal was also informed about the occurrence and from the house of Uchit Lal witness claimed that she came back to her assortment. In Paragraph 7 of her evidence P.W. 4 claimed that she went to the place of occurrence along with the Investigating Officer, police party, P.W. 27 and P.W. 15. P.W. 4 further claimed in Paragraph 8 of her evidence that she had shown her injury to the Investigating Officer, who referred her to a doctor vide requisition dated 29.07.1983 (Exhibit-6) issued by A.S.I. Salil Kumar Sinha (P.W. 30). Perusal of injury-report dated 30.07.1983 issued at 5:30 P.M. (Exhibit-7) indicates that P.W. 4 suffered abrasion of 2.5 cm. X 1 cm. In Paragraph 9 P.W. 4 claimed that besides Accused No. 24 Afan Bhatia she also recognized some other members of the unlawful assembly. P.W. 4 further stated in the same paragraph read with Paragraph 16 of her evidence that she appeared in the Test Identification Parade held in Kishanganj Jail after 1 1/2 months of the occurrence in which she identified five members of the unlawful assembly. Her aforesaid evidence was objected to by the counsel for the defence on the ground that Test Identification Parade was held in Kishanganj Jail after completion of investigation, submission of charge-sheet and commitment of the case to the Court of Sessions, which was also noted beneath her evidence recorded in Paragraph 9. In Paragraph 10 P.W. 4 identified Accused No. 24 Afan Bhatia. In

Paragraph 12 P.W. 4 identified Accused No. 10 Altaf Hussain. In Paragraph 21 P.W. 4 admitted that after the occurrence she returned back to her village from village Nain Bhitha around sun-set and came to the house of Rengta where Investigating Officer was present from before and along with the Investigating Officer she came to the place of occurrence and after returning from the place of occurrence to the house of Rengta her police statement was recorded. In Paragraph 22 P.W. 4 stated that she had shown the ditch to the Investigating Officer in which she along with the dead body of her father was thrown by the members of the unlawful assembly. Investigating Officer himself did not go into the ditch but another person entered the ditch to confirm the presence of the dead body in the ditch whose name is not known to her. Neither the dead body nor the apparels of her father was found in the ditch. In Paragraph 24 P.W. 4 asserted that she participated in the Test Identification Parade along with Pendli (P.W. 26) Fede (P.W. 25), Ampu (not examined) who is a male and dumb. P.W. 4 further stated in the same paragraph that for Test Identification Parade she and others went along with the informant Budhi Lal, who himself did not participate in the Test Identification Parade. In Paragraph 26 P.W. 4 stated that she knew only Accused No. 24 amongst the residents of Bhatia Tola from before. In the same paragraph P.W. 4 further denied the suggestion that she and other residents of Santhal Assortment were working as farm labourers in the field of Bhatias and knew them from before. In the same paragraph she also denied the suggestion that she knew Accused No. 19 Abdul Rauf from before as he has earlier treated her. In Paragraph 29 P.W. 4 asserted that she did state before the Investigating Officer that she identified five members of the unlawful assembly by their face and she can identify them if required. In Paragraph 30 P.W. 4 denied the suggestion that she was made to recognize Accused No. 10 Altaf Hussain and others before putting them on Test Identification Parade. In the same paragraph she further denied the suggestion that accused persons have been falsely implicated in the case. In Paragraph 32 P.W. 4 stated that she reached the house of Bidhi Lal in village Nain Bhitha in the afternoon straight after coming out from the ditch. In the same paragraph P.W. 4 further stated that after she was thrown in the ditch few of the Bhatias asked her if she wants to escape she may run away but she did not run rather moved slowly towards village Nain Bhitha as she was under fear and came straight to the house of Bidhi Lal as she had earlier come to his house once for serving as labourer. In Paragraph 36 P.W. 4 again stated that she came back to her village around sun-set where Investigating Officer and police party has already arrived and informant Ravi Lal as also Rengta were present. In Paragraphs 37, 38 P.W. 4 further stated that she gave her account of the occurrence to Rengta and Ravi Lal after she reached the house of Rengta where Investigating Officer and police party were present from before. The Investigating Officer was doing paper work in torch light by recording the statement of Ravi Lal. In the same paragraph P.W. 4 further stated that while she disclosed her version of occurrence to Rengta Investigating Officer and Ravi Lal were also present. In the same paragraph P.W. 4 further stated that after she disclosed her version to Ravi Lal Investigating Officer did not record his

statement. P.W. 4 also stated that after she disclosed her version to Ravi Lal Investigating Officer asked her about her well-being but did not record her statement then. In Paragraph 40 P.W. 4 clarified that when she came to the house of Rengta she did not see any other villager except Ravi Lal and Rengta. In Paragraph 47 P.W. 4 stated that after Friday evening she never saw police party taking steps to arrest the residents of Bhatia Tola. In the same paragraph she also denied the suggestion that she knew the residents of Bhatia Tola by name from before as she served them as a farm labourer.

Learned counsel for the appellants assailed the evidence of P.W. 4 and submitted that it was mere a chance that P.W. 4 had come to the place of occurrence to serve meal to her deceased father Kanhu Kisku and brother P.W. 2 and then identified Accused No. 24 Afan Bhatia as the assailant of her father for the reason that she served him as a farm labourer from before but declined the suggestion because of the land dispute for securing possession of the lands-in-question. It was also submitted that her identification of Accused No. 10 Altaf Hussain as member of the unlawful assembly is further vitiated as the said identification was conducted in Kishanganj Jail after submission of charge-sheet and case having been committed to the Court of Sessions without permission from the trial Court, as would appear from the objection taken by the defence counsel and noted by the trial Judge beneath Paragraph 9 of her evidence. Learned counsel for the appellants submitted that testimony of P.W. 4 is not trustworthy in view of the evidence of P.Ws. 1, 2, 3 that they were neither assaulted nor chased by the members of the unlawful assembly and it was only P.W. 4 who was apprehended and taken away by the unlawful assembly and then thrown in the ditch along with the dead body of her father but allowed to come out of the ditch to enable her to come to the house of Bidhi Lal in village Nain Bhitha to inform him about the occurrence. Bidhi Lal took her to the house of Uchit Lal in village Nain Bhitha, who was also informed about the occurrence by P.W. 4 but thereafter neither P.W. 4 nor Bidhi Lal nor Uchit Lal took any steps to furnish information about the occurrence to the police camp situate near the place of occurrence village.

(v) P.W. 5 Sona Murmu claimed that on the date, time of occurrence she had come to the southern outer area of the village for planting paddy along with her sister Fede Soren (P.W. 25) who is wife of informant Budhi Lal. Others were ploughing the adjoining plots or were planting paddy or trimming ridge of the adjoining plots, meanwhile, a mob of 400-500 Bhatias variously armed with lathi, sickle and spear came and killed Kanhu Kisku and Chhinu Pagla. P.W. 5 claimed that she identified the assailants by face before she ran away first to Village Loha Garha and then to Poa Khali in the house of her uncle Upna Besra (not examined) and fell ill. She returned to Lakshmipur 1 1/2 months after she recovered from illness. P.W. 5 participated in Test Identification Parade conducted in Kishanganj Jail. In Court P.W. 5 identified Accused No. 19 Abdul Rauf, Accused No. 5 Abdul Hannan, Accused No. 3 Matiur Rahman, Accused No. 13 Abdul Kuddush, Accused No. 29 Abdul Wahab, Accused No. 15 Abdul Khabbir by

holding their hands and stated that they were also identified by her as the member of the unlawful assembly. In this connection, Presiding Officer has made a note beneath Paragraph 3 of her evidence that she had taken 10 minutes to identify the aforesaid accused persons present in the dock. In Paragraph 8 P.W. 5 declined the suggestion that she knew the accused persons from before whom she identified in the Test Identification Parade as also in Court today as she was working in their field as farm labourer. In Paragraph 10 P.W. 5 accepted that she did not record her statement before the police. In Paragraph 17 P.W. 5 stated that on the date of occurrence she was harvesting paddy in the field of her brother-in-law informant Budhi Lal and that Budhi Lal was not present in the field. Her sister Fede Soren (P.W. 25) was present but she did not run away along with her to village Loha Garha, which is at a distance of 2 1/2 Kos from the place of occurrence. In Paragraph 21 P.W. 5 stated that there is no animosity with the residents of Bhatia Tola and that she is not aware whether other Santhals visit Bhatia Tola or not. In the same paragraph she further admitted that Bhatias whom she has identified she has no animosity with them and that Bhatia Tola is visible from her house. In the same paragraph P.W. 5 refuted the suggestion that south-west assortment (Tola) is known as Afan Assortment. Learned counsel for the appellants assailed the evidence of P.W. 5 on the ground that her statement was never recorded by the police and she appeared in the Test Identification Parade on 25.09.1983 after the case was already committed to the Court of Sessions and the identification made by P.W. 5 in the Test Identification Parade is of no assistance to the prosecution. In this connection, it was pointed out that those who were identified by P.W. 5 in Court as the members of unlawful assembly were identified because of her association with them as she has stated in Paragraph 21 that she had no animosity with any of the residents of Bhatia Tola. It is submitted on behalf of the appellants that had P.W. 5 been present at the place of occurrence she must have identified the assailants but the assailants having not been identified by her, identification of the members of the unlawful assembly without any overt act appears to be doubtful.

(vi) P.W. 6 Jham Murmu at the time, date of occurrence was at his residence in Santhal Assortment. He heard noise and came out of his house on the road where he saw Chhotka Soren (P.W. 1), Bhajan Tudu (P.W. 9), Chunka Hansda (P.W. 8) and Mithi Ram Murmu (P.W. 11). P.W. 6 also saw members of the unlawful assembly chasing Chhotka Soren who was assaulted by Accused No. 30 Abdullah Bhatia (died during pendency of the appeal) by lathi. Having come on the road P.W. 6 and others did not escape initially but after hearing sound of gun shot they ran to escape the assault but were not chased by the members of the unlawful assembly. Amongst the members of the unlawful assembly P.W. 6 identified Accused No. 5 Abdul Hannan, Accused No. 10 Altaf Hussain, Accused No. 9 Abdul Samed. In Paragraph 14 P.W. 6 stated that some of the Santhal residents of his assortment also have agricultural land and others are engaged as farm labourers. Bhatias were also working as farm labourers and were known to him. In the same paragraph P.W. 6 further stated that just behind his house Ajij

had some agricultural land and it is incorrect to suggest that in order to grab the said land entire family of Ajij has been identified by him. In Paragraph 17 P.W. 6 stated that he recorded his police statement in the night of occurrence and did state before the Investigating Officer that he concealed himself in jute field wherefrom he returned to his house in the evening. In Paragraph 18 P.W. 6 stated that after returning to the village P.W. 6 met Rengta Soren (P.W. 15) where Investigating Officer was also present. P.W. 6, however, does not remember whether he met the informant Ravi Lal at the same time. In Paragraphs 20, 21 P.W. 6 stated that he stayed for the whole night at the house of Rengta Soren (P.W. 15) and also claimed that he gave the details of the belongings looted away from his house. In Paragraph 22 P.W. 6, however, admitted that he does not remember whether he informed the Investigating Officer that at the time of occurrence itself another mob of Bhatias from the side of village Haldawan variously armed also came to the place of occurrence. In the same paragraph P.W. 6 further denied the suggestion that he has not seen any mob and that he generally resides in Village Daku Para and that he has deposed falsely. In Paragraph 28 P.W. 6 admitted that on the date of occurrence there was no rain and men were ploughing their field. Heavy rain took place in the morning of Saturday, which led to collection of water in the field. In Paragraph 32 P.W. 6 admitted that those Santhals whom he had seen standing on the road had finished their work in the field and that he had not seen the mob coming from village Haldawan. In the same paragraph P.W. 6 further admitted that he does not remember whether he had informed the Investigating Officer that he had seen two mobs coming, one from the northern side and another from south-western side. In the same paragraph P.W. 6 further stated that the Government Advocate did not read his evidence to him.

Learned counsel for the appellants submitted that in view of the evidence of P.W. 6 in Paragraph 14 it may not be safe for this Court to rely on his testimony as the possibility of his identifying the accused persons with a view to grab their land cannot be ruled out.

(vii) P.W. 7 Chhote Ram Hansda was also at his house at the date, time of occurrence. Having heard the alarm he also came out of his house and saw a mob of 400-500 Bhatias variously armed with lathi, spear, farsa and gun. Amongst the members of the unlawful assembly he identified Accused No. 29 Abdul Wahab, Accused No. 6 Altaf Hussain, Accused No. 19 Abdul Rauf, Accused No. 22 Abdul Barik, Accused No. 5 Abdul Hannan, Accused No. 12 Abdul Wadud and others. While deposing P.W. 7 identified Accused No. 29 Abdul Wahab, Accused No. 19 Abdul Rauf, Accused No. 5 Abdul Hannan and Accused No. 9 Abdul Samed by holding their hand. He further stated in Paragraph 3 of his evidence that Accused No. 5 Abdul Hannan shot Jalpa who fell down by the road side in a paddy field from which paddy had already been harvested. Having seen the assault witness ran away and returned to his home in the evening and found that all his belongings had been taken away. In Paragraph 4 P.W. 7 stated that he knew the accused persons for the last two years. In the same paragraph P.W. 7

stated that he served as farm labourer of Accused No. 5 and other accused persons. In Paragraph 5 P.W. 7 admitted that he is having difficulty in identifying Accused No. 9 Abdul Samed as much time has passed. It may be noted here that P.W. 7 recorded his deposition on 19.08.1985 i.e. after little more than two years of the occurrence. P.W. 7 admitted enmity with the Bhatias in Paragraph 7 of his evidence for the last 10-11 years as they wanted to oust the Santhals on the ground that Bhatias are residents of the area from before. In Paragraph 16 of his evidence P.W. 7 admitted that he returned to the village in the evening but did not meet the informant P.W. 27 Ravi Lal or any other person in the village. He further stated in the same paragraph that members of the unlawful assembly did no harm to him. In Paragraph 19 P.W. 7 stated that Accused No. 5 Abdul Hannan never served as ration shop dealer and then clarified that once he was appointed as ration shop dealer and was distributing sugar, kerosene oil to the villagers of entire Lakshmipur village but no dispute was ever raised with regard to the distribution of sugar, kerosene oil by Accused No. 5. In Paragraph 24 P.W. 7 stated that at the time of occurrence it was harvesting time of summer paddy but it is incorrect to suggest that on the date of occurrence summer paddy of Ajj was forcibly harvested, he lodged a criminal case in that regard, P.W. 7 is an accused in the said case and has falsely deposed in the present case.

Learned counsel for the appellants submitted that in the light of the evidence of P.W. 7 presence of informant and other villagers in the village in the evening of the occurrence is doubtful as P.W. 7 after his return to the village in the evening of occurrence could not meet either the informant or P.W. 15 or any other villager who returned to the village in the evening. Learned counsel for the appellants further submitted that identification of the accused persons by P.W. 7 is not to be relied upon as he knew them from before the occurrence while serving as farm labourer. He also knew Accused No. 5 as ration shop dealer.

(viii) P.W. 8 Chunka Hansda was also at his house at the date, time of occurrence. He heard the noise and came out of his house on the road where he met Chhotka Murmu (P.W. 1), Bhajan Tudu (P.W. 9), Nidhi Ram Murmu (not examined) Jham Murmu (P.W. 6) and also saw on the road Rengta Soren (P.W. 15), Soma Soren (P.W. 12), Moto Murmu (not examined), Chhote Ram Hansda (P.W. 7), Basant Besra (P.W. 10) and Jalpa Soren (deceased) who was ahead of them. Having come out of the house P.W. 8 saw mob of Bhatia men coming from south-west side, variously armed with spear, sickle, lathi etc. P.W. 8 and others including Rengta Soren ran towards north. According to P.W. 8 40-50 men from amongst the mob chased him and others. Chhotka Soren was 10-15 ft. behind P.W. 8. P.W. 8 saw Abdullah assaulting Chhotka Soren with lathi on his head which led to his fall. P.W. 8 identified amongst the members of the unlawful assembly Accused No. 5 Abdul Hannan, Accused No. 19 Abdul Rauf, Accused No. 13 Abdul Kuddush. In Paragraph 3 of his evidence P.W. 8 further stated that after running some distance P.W. 8 stopped, whereafter the members of the unlawful assembly again chased him and he ran to a jute field and concealed himself there. Amongst the accused persons witness identified in court Accused No. 19

Abdul Rauf, Accused No. 5 Abdul Hannan, Accused No. 13 Abdul Kuddush and appellant Abdullah who died during pendency of the appeal. In Paragraph 6 P.W. 8 stated that he and others, namely, Chhote Ram, Bhajan Tudu, Basant Besra, Ravi Lal Hansda, Rengta Soren have come to Purnea 6-7 days earlier and are staying in Purnea at the same place. In Paragraph 10 P.W. 8 stated that he learnt after two days on Sunday that other villagers have also been assaulted, by that time police had already come to the village on foot as also on horse-back. In Paragraph 12 P.W. 8 stated that he ran along with Jham Murmu (P.W. 6), Bhajan Tudu (P.W. 9), Nidhi Ram Murmu (not examined) and concealed himself in jute field alone after running a distance of half a mile and further clarified that he is not aware about others. In Paragraph 14 P.W. 8 stated that he did inform the Investigating Officer that amongst the members of the unlawful assembly he had seen Bhatias resident of village Haldawan but had not informed the police that at the same time mob of Bhatia people from village Haldawan side also came variously armed. In the same paragraph he denied the suggestion that having hatched a conspiracy he is recording deposition which is not true. In Paragraph 18 P.W. 8 stated that while he was running away the members of the unlawful assembly were at a distance of 40-50 ft. and that he could not identify any of the members of the unlawful assembly. In the same paragraph he further stated that another unlawful assembly had not come from village Haldawan. In the same paragraph P.W. 8 further stated that the unlawful assembly which he had seen comprised of Bhatia men from both Haldawan, Lakshmipur village and that he could not recognize the men from Haldawan. As the mob approached P.W. 8 and others, they ran away. In Paragraph 20 P.W. 8 stated that after sunset he gradually came to his village from the jute field but did not notice any police presence in the village. In Paragraph 21 P.W. 8 stated that he did not ask the police to recover the stolen belongings nor did he and others visited Bhatia Tola and policemen also did not visit Bhatia Assortment in his presence.

Learned counsel for the appellants submitted that from the evidence of P.W. 8 in Paragraph 18 itself, it is evident that he saw the members of unlawful assembly from a distance of 40-50 ft. and could not identify any of them. In the circumstances, his claim to have identified Accused No. 5 becomes doubtful. In this connection learned counsel further referred to his evidence in Paragraphs 20, 21 that after his return to the assortment in the evening he did not notice any police personnel as also did not ask the police to recover the stolen belongings, which is indicative of the fact that perhaps he neither saw the occurrence nor had returned to the village after sun-set.

(ix). P.W. 9 Bhajan Tudu was also at his residence in Santhal Assortment at the date, time of occurrence. Having heard the noise he also came out of his house on the road along with Senghi Ram, Chunka Hansda (P.W. 8), Chhotka Soren (deceased), Jham Murmu (P.W. 6), ahead of P.W. 9 and others in the south-west side was P.W. 15 Rengta Soren, P.W. 12 Soma Soren, P.W. 10 Basant Besra, Moto Murmu (not examined), P.W. 7 Chhote Ram Hansda, further ahead of them near the house of P.W. 16 Pitha Soren was Jalpa. A big mob of Bhatia men came from

south-west side variously armed with lathi, sickle and farsa. P.W. 9 having heard gun shot ran towards northern assortment (tola) and saw P.W. 7 Chhote Ram Hansda, P.W. 15 Rengta Soren running ahead of him. Chhotka Soren, however, lagged behind. P.W. 9 turned around and saw Chhotka Soren limping being chased by 40-50 men out of whom Abdullah assaulted him with lathi which led to his fall. From amongst the members of the unlawful assembly P.W. 9 identified Abdullah (died during the pendency of the appeal), Accused No. 13 Abdul Kuddush, Accused No. 19 Abdul Rauf, Accused No. 20 Md. Yashin, Accused No. 22 Abdul Barik, Accused No. 6 Altaf, Accused No. 9 Abdul Samed, Accused No. 8 Abdul Hamed and then proceeded to identify Accused No. 9 Abdul Samed, Accused No. 8 Abdul Hamed, Accused No. 20 Md. Yashin, deceased appellant Abdullah, Accused No. 13 Abdul Kuddush, Accused No. 19 Abdul Rauf, Accused No. 22 Abdul Barik and Accused No. 6 Altaf by holding their hand and calling their name. In Paragraph 3 P.W. 9 stated that 2-3 years prior to the occurrence he knew the accused persons. In Paragraph 8 P.W. 9 stated that after coming out of his house he did not see the unlawful assembly going towards the agricultural plot. He also stated in the same paragraph that he had not heard any noise or alarm being raised from the side of the agricultural plot. He further stated in the same paragraph that for the first time he noticed the mob while the mob was at a distance of 200 yards from him and that he ran towards north. In Paragraph 12 P.W. 9 stated that at a distance of 100 yards away from the assortment Chhotka was assaulted and at that time he (P.W. 9) was 15-20 steps ahead of him and was running as also turning around to see what is happening. Chhotka was assaulted but P.W. 9 did not see any blood oozing out from him. While turning around the members of the unlawful assembly were identified by the witness and that only Chhotka and 40-50 members of the unlawful assembly were behind P.W. 9 and others. In Paragraph 13 P.W. 9 stated that P.W. 15 Rengta Soren, Moto Murmu (not examined), P.W. 12 Soma Soren, P.W. 10 Basant Besra, P.W. 7 Chhote Ram Hansda ran ahead of him and after having run half a mile he and others concealed themselves in a jute field. Witness then clarified that he alone concealed himself in jute field as when he reached the jute field, Rengta and others were running little ahead of him and further clarified that they were running together fore and aft. In Paragraph 14 P.W. 9 stated that after coming out of the jute field he did not call for Rengta and others as while returning to village he was fearful. In the same paragraph P.W. 9 further stated that the distance between jute field where he concealed himself and Tal Gachh market is 400-500 yards but he never thought of going to Tal Gachh. Having reached near the village P.W. 9 did not call any of the villagers as he had not come to the village through road but has come though the ridge of the agricultural plot. In the same paragraph P.W. 9 further stated that having returned to the village he did not find that P.W. 15 Rengta and others have come back to the village. He also could not meet the informant P.W. 27 Ravi Lal Hansda and went straight to his house where he could not meet anyone and found all his belongings removed and then went to search the family members after waiting in the house for 10 minutes. In the same paragraph P.W. 9 also stated that while returning to the

village and going to search for family members he did not meet any of the villagers. In Paragraph 15 P.W. 9 stated that while he remained concealed in the jute field he did not meet any other person and further stated that he was not informed in the jute field that police has already arrived in the village. In the same paragraph he also stated that he had not stated before the Investigating Officer that he came to the village after he learnt that police party has already arrived in the village. In the same paragraph P.W. 9 declined the suggestion that in the present case Bhatias have been falsely implicated because of old enmity. In Paragraph 22 P.W. 9 stated that the jute field in which he concealed himself does not belong to a Bhatia but is of a Yadav of village Tal Gachh whose name he does not know. In the same paragraph he further stated that his forefathers had come to Village Lakshmipur for hunting and when they saw that there is large vacant land of Bihar Government available, they again came to Village Lakshmipur on second occasion for raising their houses and at that time Bhatias were already in cultivating possession of the lands in Village Lakshmipur. In Paragraph 23 P.W. 9 stated that his name is not Kate Santhal and then further stated that accused persons of this case has not lodged any case against him and other Santhals. P.W. 9 admitted that informant Ravi Lal P.W. 27 is his brother-in-law. He is not aware that when the hearing of the case was taken up informant Ravi Lal (P.W. 27) and other Santhals were in jail custody in Kishanganj jail. In the same paragraph he also admitted that he earlier heard that Accused No. 29 Abdul Wahab lodged a case against informant Ravi Lal six years ago. In the same paragraph P.W. 9 denied the suggestion that he is not a resident of Village Lakshmipur and that in order to support the case of his brother-in-law he has deposed falsely. In Paragraph 29 P.W. 9 stated that he has no information about the murder of Saifuddin and the dacoity committed in his house. In the same paragraph P.W. 9 further stated that he is not aware that whether Jarjis earlier used to live west of the river and that he has landed property in the village. He further stated in the same paragraph that 40-50 Bighas of land of Bihar Government located west of the river is under cultivating possession of the Santhals. Few Bhatias are also in cultivating possession of their 100-200 Bighas of land but there are other Bhatia men who do not have any land in their possession. There has never been any quarrel for cultivation of the lands. The cattle of Santhal, Bhatia(s) graze together and there may be 400-500 cows, she-buffaloes in Lakshmipur village. The cattle graze on both western, eastern bank of the river. In Paragraph 30 P.W. 9 admitted that he and others had no information from before that Bhatia men having formed an unlawful assembly are going to attack them and that he had not seen Bhatia men collecting at one place, and when he first saw the unlawful assembly, it was noon and before running he had not seen the mob.

Learned counsel for the appellants submitted that from the evidence of P.W. 9 it is quite evident that he is the brother-in-law of the informant and has deposed only with a view to support his case and it may not be safe for this Court to place reliance on his evidence.

(x) P.W. 10 Basant Besra is the father-in-law of the informant (P.W. 27) Ravi Lal @ Budhi Lal and father of P.W. 25 Fede Soren and P.W. 5 Sona Murmu. On the date, time of occurrence P.W. 10 was also at his residence and having heard the alarm he also came to the road from his house and saw P.W. 15 Rengta, P.W. 12 Soma Soren, P.W. 7 Chhote Ram Hansda, Moto Murmu (not examined) standing on the road. Little ahead near the house of Pitha, Jalpa was also standing. P.W. 10 saw a mob of Bhatia men variously armed with gun, lathi, spear etc. coming. Accused No. 5 Abdul Hannan shot causing injury to Jalpa who fell down. In Paragraph 4 P.W. 10 stated that amongst the members of the unlawful assembly he identified Accused No. 5 Abdul Hannan, Accused No. 29 Abdul Wahab, Accused No. 19 Abdul Rauf and Accused No. 13 Abdul Kuddush, all of them are Bhatia Muslims and thereafter proceeded to the dock to identify Accused No. 29 Abdul Wahab, Accused No. 19 Abdul Rauf, Accused No. 5 Abdul Hannan and Accused No. 13 Abdul Kuddush by holding their hand and calling their name. In Paragraph 5 P.W. 10 stated that he and others first ran to west and then to north and concealed themselves in a jute field. Other villagers were also running behind them. While running P.W. 10 also saw Pitha Soren (P.W. 16), Jham Murmu (P.W. 6), Sakla Murmu (P.W. 18), Babu Ram Hansda (P.W. 13) working in the adjoining field. In Paragraph 6 P.W. 10 stated that after he returned to his house he found all his belongings removed. In Paragraph 7 P.W. 10 stated that the unlawful assembly comprised of 1000-500 men and they were coming fore and aft to the field and the road. The field had already been ploughed through which members of unlawful assembly came and the same belong to Bhatia men. After the fall of Jalpa P.W. 10 ran away. In Paragraph 15 P.W. 10 admitted that Accused No. 5 Abdul Hannan is an agriculturist but the witness is not aware about the extent of his farm land but his plots are located in the western side of Santhal Assortment. In the same paragraph P.W. 10 admitted that since he came to Lakshmipur he had seen Hannan and his father cultivating the lands and that Accused No. 5 never indulged in any other fight with the Santhals except the present one and that Hannan is not a dealer. In the same paragraph P.W. 10 denied the suggestion that Hannan has not killed Jalpa and that Jalpa has concealed himself in Morang area of Nepal and the present false case has been instituted. In Paragraph 17 P.W. 10 stated that he did not meet P.W. 27 Ravi Lal next morning of the occurrence and that he met him after 6-7 days of the occurrence. In Paragraph 29 P.W. 10 stated that he has never seen bow, arrow as also any one shooting arrow. In Paragraph 41 P.W. 10 stated that he had not gone to see the place where Jalpa had fallen and that none of the male, female and children of the assortment (Tola) came to see Jalpa after his fall. The house of Pitha Soren (P.W. 16) is nearest from the place where Jalpa had fallen. In Paragraph 43 P.W. 10 has stated that the house of Mehar Ali is situate west of his house and he knows Mehar Ali for 7-8 years and that P.W. 10 has never worked for him. In the same paragraph P.W. 10 further stated that he is not aware about the approach of his house as he has never gone to his house. He further stated in the same paragraph that he has not seen Mehar Ali assaulting anyone but he was a member of the unlawful assembly. In the same paragraph P.W. 10 further

stated that on the noise created by the members of the unlawful assembly women had not come out from their houses, only 10 male came out, 5 of them ran in fore and aft formation. Others ran west of the village. The members of the unlawful assembly did not ask the villages to stop.

Learned counsel for the appellants submitted that from the evidence of P.W. 10 it is quite evident that he is the father-in-law of the informant and has deposed only with a view to support his case and it may not be safe for this Court to place reliance on his evidence.

(xi) P.W. 11 Mithi Ram Murmu was also inside his house on the date, time of occurrence. He heard noise coming from the southern western direction and came out on the road where he met P.W. 8 Chunka Hansda, P.W. 9 Bhajan Tudu, P.W. 2 Som Kisku and deceased Chhotka Soren and saw a mob coming from west-south direction. P.W. 15 Rengta Soren, Moto (not examined) P.W. 7 Chhote Ram Hansda and others were standing ahead of P.W. 11 and others. Members of the unlawful assembly resorted to firing and witness and others ran away. Deceased Chhotka Soren was at the rear and was being chased. The witnesses and others were also chased by 50-60 men. Appellant Abdullah (deceased) assaulted Chhotka Soren on his head with lathi who fell down. From amongst the members of the unlawful assembly P.W. 11 identified Accused No. 18 Nesh Mohammad, Ajj Madar, Accused No. 22 Abdul Barik, Accused No. 20 Md. Yashin, Accused No. 10 Altaf Hussain, Accused No. 29 Abdul Wahab, Accused No. 24 Afan Bhatia and deceased appellant Abdullah. Others were also identified but witness is not able to identify them in court and then the witness proceeded to identify Accused No. 29 Abdul Wahab, Accused No. 20 Md. Yashin, deceased appellant Abdullah, Accused No. 24 Afan Ali @ Afan Bhatia but wrongly identified Accused No. 26 Abdul Wased as Accused No. 28 Abdul Zalil and by holding the hand of Abdul Wased said that Abdul Zalil is not being presently recognised by him because of passage of time. It may be noted here that the witness recorded his testimony on 13.09.1985 i.e. just after 2 years, 2 months of the occurrence. In Paragraph 3 of his evidence P.W. 11 stated that members of the unlawful assembly were variously armed with lathi, sickle, farsa and gun. Having heard the gun shot P.W. 11 ran towards north and concealed himself in jute field. Ahead of him were P.W. 15 Rengta Soren, P.W. 7 Chhote Ram Hansda, Moto Murmu (not examined), P.W. 12 Soma Soren. While running P.W. 11 saw P.W. 18 Sakla Murmu, P.W. 19 Babu Lal Kisku, P.W. 16 Pitha Soren, P.W. 6 Jham Murmu working in the paddy field. P.W. 11 further stated in Paragraph 18 of his evidence that when he returned to his assortment home in the evening he did not find anyone present in the home and he also did not look for anyone in the village. There was no light and it was completely dark in the village and there was none available in the house of the witness also. P.W. 11 came out of the jute field after sunset, setting of darkness and then came to his village. Having not found anyone in the house P.W. 11 waited in the house for 2-3 minutes and then returned to village Tal Gachh in the night itself reaching there between 8:00-9:00 P.M. The distance between Tal Gachh and Lakshmipur Santhal Assortment is one and quarter Kos.

P.W. 11 returned to Lakshmipur Santhal assortment the following day after sunset but could not meet any male co-villager there. After return to Lakshmipur Santhal Assortment P.W. 11 could not understand that police officer and men have come to the assortment as he could not meet anyone in the same night. P.W. 11 met the Investigating Officer for the first time on Sunday morning. P.W. 11 in Paragraph 19 stated that he had not seen Haldawan village and is not aware as to what is the location of the said village but has heard the name of the village. In the same paragraph P.W. 11 further asserted that he had not informed the Investigating Officer that he had seen one another mob coming from Haldawan village side. In the same paragraph P.W. 11 further stated that he is not able to recall the father's name of Accused No. 10 Altaf Hussain but father's name of Accused No. 6 Altaf, who is present in the dock, is Nazar Mohammad and he is known to him.

Learned counsel for the appellants submitted that the testimony of P.W. 11 is also not to be trusted as he recorded his police statement on Sunday morning i.e. after two days of the occurrence without giving any explanation for such delay and that he also knew the accused persons from before whom he claims to have identified as members of the unlawful assembly.

(xii) P.W. 12 Soma Soren, P.W. 18 Sakla Murmu, P.W. 19 Babu Lal Kisku, P.W. 21 Mohan Soren, P.W. 22 Mangal Hansda, P.W. 23 Munshi Kisku and P.W. 24 Jhaban Soren have been tendered by the prosecution, as such, their evidence is not being discussed.

(xiii) P.W. 13 Babu Ram Hansda at the date, time of occurrence was transplanting paddy in his plot situate in southern outer area of the village along with his son Ampu who is deaf and dumb. P.W. 26 Pendli, P.W. 5 Sona Murmu, P.W. 25 Fede Soren, Ghutum Lal (not examined), P.W. 1 Chhotka Murmu were also planting paddy in the adjoining field. Kurhia Kisku (not examined) was planting paddy in the field of Jalpa. Kanhu Kisku, Chhinu Pagla (both deceased), informant P.W. 27 Ravi Lal Hansda, P.W. 3 Mandal Soren, P.W. 22 Mangal Hansda were ploughing their land. P.W. 26 Pendli, P.W. 1 Chhotka Murmu and Ghutum Lal (not examined) were planting paddy in the field of Ekma. P.W. 25 Fede Soren, P.W. 5 Sona Murmu were planting paddy in the field of P.W. 27 Ravi Lal @ Budhi Lal. P.W. 2 Som Kisku was trimming the ridge in the field of his father Kanhu Kisku. P.W. 4 Manjhali Kisku, daughter of Kanhu Kisku has also come to the place of occurrence to serve meal to her father and brother Som Kisku. From the western side an unlawful assembly of Bhatia men variously armed with sickle, lathi, farsa etc. came. Kanhu Kisku was assaulted by Accused No. 24 Afan Bhatia with lathi who fell down and thereafter Afan slit his neck. Chhinu Pagla was also assaulted by Afan Bhatia with lathi and after he fell down, his neck was also slit by him. Other members of the unlawful assembly began to assault the other Santhals present in the field whereafter P.W. 13 ran towards east and concealed himself in a jute field. His son Ampu was also assaulted, injured and came running behind P.W. 13 in the jute field. In Paragraph 7 P.W. 13 stated that amongst the

members of the unlawful assembly he identified Accused No. 24 Afan Bhatia, Accused No. 27 Sazed Ali, Accused No. 5 Abdul Hannan and others whose name the witness does not remember. The witness identified Accused No. 5 by holding his hand but could not identify the other three accused persons present in the dock, even though he was allowed 15 minutes time to recognise them and then said that their face has changed as they have sported beard and moustache in the meanwhile. In Paragraphs 17, 18, 20 and 21 P.W. 13 has described the manner of assault on the person of Kanhu Kisku and Chhinu Pagla and stated that he saw Kanhu and Chhinu being killed by Afan Bhatia from some distance and having seen the assault on the person of Chhinu Pagla P.W. 13 ran away from the place of occurrence leaving the two dead bodies without raising any alarm. In Paragraph 22 P.W. 13 stated that when he came out from the jute field in the evening he met his son Ampu in the outer area of the village but could not meet any other villager. In the same paragraph P.W. 13 further stated that he did not disclose to the villagers that Kanhu Kisku and Chhinu Pagla were slaughtered. The witness, however, clarified in the same paragraph that he disclosed such fact to Kurhia Kisku, P.W. 25 Fede Soren, P.W. 26 Pendli @ Dulli Marandi after going to their houses and they also confirmed the same stating that they were also assaulted. In Paragraph 28 P.W. 13 stated that earlier he and other Santhals had no dispute with the Bhatias concerning summer paddy. In the same paragraph P.W. 13 denied the suggestion that the differences arose between the Santhals and the Bhatias because of the harvesting of summer paddy. In the same paragraph he further denied the suggestion that he has deposed falsely after being prompted to do so. In Paragraph 29 P.W. 13 stated that he met the Investigating Officer on Saturday morning whereafter Investigating Officer sent him, his son Ampu to hospital. In Paragraph 32 P.W. 13 has stated that in the night following the occurrence he could not meet the Investigating Officer and further stated that his house is 3 houses away from the house of P.W. 15 Rengta in the east north direction. In Paragraph 34 P.W. 13 stated that the apparel of Ampu was drenched with blood and there was blood stains in the jute field where he and Ampu concealed themselves but he did not show that place to the Investigating Officer as on the date of occurrence Investigating Officer did not examine him but forwarded his injured son and P.W. 13 to the hospital for treatment vide requisition dated 29.07.1983 (Exhibit-6/3) on the basis of which doctor examined Ampu on 30.07.1983 at 9:00 A.M. and found three incise, one lacerated and two abrasion on his person vide injury report (Exhibit 7/3). In the same paragraph P.W. 13 denied the suggestion that he has falsely deposed because of the previous enmity.

Learned counsel for the appellants submitted that there is serious contradiction in the evidence of P.W. 13 as he is not sure about the fact that he and his son Ampu concealed themselves together in jute field or that he met Ampu after coming out of the jute field in the outer area of the village in the evening. In this connection learned counsel also pointed out that P.W. 13 is not sure whether he met the Investigating Officer along with his son in the evening of occurrence or

on Saturday morning. Having pointed out to the aforesaid contradictions learned counsel for the appellants further submitted that P.W. 13 has not identified any of the appellants, as such, his evidence is of no consequence to them.

(xiv) P.W. 14 Ficha Hansda on the date, time of occurrence was present at the place of occurrence as he was engaged in uprooting the paddy seedling. While uprooting the paddy seedling he heard noise coming from west south direction. Soon thereafter he saw an unlawful assembly of Bhatia men coming from the same direction armed with gun, lathi, farsa and sickle. Jalpa was standing near by the side of the road south-west of the witness. Amongst the members of the unlawful assembly P.W. 14 identified Accused No. 5 Abdul Hannan armed with gun, Accused No. 13 Abdul Kuddush, Accused No. 10 Altaf Hussain, Accused No. 20 Md. Yashin, Accused No. 22 Abdul Barik, Accused No. 26 Abdul Wased. Accused No. 5 Abdul Hannan shot Jalpa who turned around and fell in the field. Being fearful P.W. 14 took to heels and came to the house of Ugra Mohan in Village Tal Gachh. In court P.W. 14 identified Accused No. 5 Abdul Hannan, Accused No. 13 Abdul Kuddush, Accused No. 20 Md. Yashin, Accused No. 10 Altaf Hussain by holding their hand. Accused No. 26 Abdul Wased was represented and his identification was waived, as such, he also stood identified by P.W. 14. In Paragraph 10 P.W. 14 admitted that he did not inform Ugra Mohan about the occurrence and then stated that even after being informed Ugra Mohan Babu did not ask him to take any action in the matter. In Paragraph 12 P.W. 14 stated that some of the accused persons are of village Lakshmipur but he is not aware about the place of residence of the other accused persons and further stated that he does not remember whether the four persons whom he has identified as member of the unlawful assembly were seen by him earlier or not. In Paragraph 13 P.W. 14 stated that before uprooting the paddy seedlings he was ploughing the land and after ploughing was over, the oxen were taken home by his wife who had come to serve him meal, which he took around noon in 2 minutes and while taking meal he did not hear any noise. After taking meal he began to uproot the paddy seedling. While he was proceeding to uproot the paddy seedling he saw the unlawful assembly, at that time he was alone uprooting the paddy seedling. While proceeding to uproot paddy seedling P.W. 14 saw unlawful assembly in the south-west direction which was at a distance of 80-90 ft. not intervened by jute field and the unlawful assembly was clearly visible to him but at that time he could not identify the members of the unlawful assembly. After covering some distance P.W. 14 again saw the members of the unlawful assembly and then ran in the east-north direction. While running away P.W. 14 did not meet any of his villagers. Having run for half a mile witness began to walk swiftly and went to the house of Ugra Mohan Babu and only met him and not others of his village as also did not raise any alarm but there is no reason as to why alarm was not raised in his village as well. In Paragraph 14 P.W. 14 stated that in the evening after sunset co-villager P.W. 22 Mangal Hansda also came to the house of Ugra Mohan in village Tal Gachh whereafter both interacted with each other and returned to the village after darkness set in and met Ampu, Kurhia Kisku (both not

examined), P.W. 25 Fede Soren and P.W. 13 Babu Ram Hansda. Blood was oozing out from the head of P.W. 25 Fede Soren. Ampu was also bleeding. Kurhia was injured but the witness does not remember whether blood was oozing out from his person. The witness further said in the same paragraph that the 3 injured did not show their injury to him. There was blood smeared on the person of Ampu. Injury of Kurhia was seen by P.W. 14 in the darkness itself. Kurhia suffered injury on his hand but the witness does not remember in which hand he suffered injury.

Learned counsel for the appellants submitted that aforesaid evidence of P.W. 14 appears to be doubtful as he did not record his police statement which would appear from his evidence in Paragraph 9.

(xv) P.W. 15 Rengta Soren was also at his house on the date, time of occurrence and heard noise coming from west south direction and came out on the road from his house. Ahead of P.W. 15 deceased Jalpa was moving and stood by the side of the road south east of the house of P.W. 16 Pitha Soren. P.W. 15 was behind Jalpa also standing on the eastern side of the road. P.W. 7 Chhote Ram Hansda, P.W. 10 Basant Besra, Moto Murmu (not examined), P.W. 12 Soma Soren also came and stood near him. In Paragraph 3 P.W. 15 stated that Moto Murmu is presently ill and suffering from tuberculosis and is unable to move. In Paragraph 4 P.W. 15 stated that he saw an unlawful assembly of Bhatia men coming from west south direction. Accused No. 5 Abdul Hannan shot Jalpa who fell in the adjoining eastern field. Amongst the members of the unlawful assembly P.W. 15 identified Accused No. 5 Abdul Hannan, Accused No. 10 Altaf Hussain and others whose name he does not remember. The witness identified Accused No. 10 Altaf Hussain, Accused No. 5 Abdul Hannan and others by holding their hand and calling their name. In Paragraph 5 P.W. 15 stated that after Jalpa was shot the witness and others ran towards north, concealed themselves in the jute field as members of the unlawful assembly chased them. In Paragraph 9 P.W. 15 stated that 16-17 years earlier 80-85 Santhal household settled in village Lakshmipur. After settling in village Lakshmipur Santhals began to cultivate lands of the Bihar Government. 16-17 years earlier in village Lakshmipur there were 7-8 households of Bhatias. In the same paragraph P.W. 15 stated that the Santhals had submitted application for settlement of the land in the Block as also in Kishanganj but the application was not heard. In Paragraph 10 P.W. 15 stated that before the occurrence Bhatias had filed litigation for dispossessing Santhals. In the same paragraph P.W. 15 further stated that on the date of occurrence sub-inspector came to the village in the evening and he was shown the place of occurrence by him, P.W. 27 Ravi Lal and P.W. 4 Majhali Kisku. In Paragraph 15 P.W. 15 stated that Jarjis has 4-5 Bighas of land west of the river which is in his possession and the Santhal does not have any land south of the land of Jarjis which is west of Balu assortment (Tol) and has not been seen by the witness and is in possession of Bhatia men. In Paragraph 17 P.W. 15 stated that the road is south-west of his house on which vehicles ply. In the same paragraph P.W. 15 further stated that after coming out of the house he saw members of the unlawful assembly on the south west side of the road and identified those who

have been named above. Having seen the unlawful assembly P.W. 15 remained standing for 6-7 minutes and took to heels after Jalpa was shot. At the time Jalpa was shot he was 20-25 ft. south-west of P.W. 15 and the members of the unlawful assembly were 10-15 ft. further south-west of Jalpa. The unlawful assembly comprised of 500-1000 men. Road bisects between Santhal, Bhatia Assortment but the witness did not escape through the same road as he ran away through fields in which paddy stood planted. In Paragraph 20 P.W. 15 stated that he identified the members of the unlawful assembly from a distance of 25 ft. In the same paragraph he further stated that he escaped along with 10 others but all of them ran separately and he is not aware where they went. In the same paragraph witness confirmed that he concealed himself 4-5 hundred ft. south of the school in the jute field. So long he concealed himself in the jute field none could see him. He remained in the jute field until evening. There is no road by the side of the jute field. The road is at some distance on the eastern side of the field. In Paragraph 23 P.W. 15 stated that he met P.W. 4 Manjhali Kisku in the evening between 6:00-7:00 P.M. as she had come to him. He further stated in the same paragraph that on the date of occurrence it rained around 4:00 P.M. while he concealed himself in the jute field. There was mud in the way. During the night it rained heavily, the Investigating Officer was also shown the place of occurrence while it rained heavily. According to P.W. 15 knee-deep water had collected but witness himself clarified in the next sentence that there was water collected in the field in bits and pieces. At the place of occurrence plough and oxen were not found when Investigating Officer visited the place of occurrence with the help of torch light. In Paragraph 24 P.W. 15 stated that Investigating Officer was informed that the unlawful assembly of Bhatia men had carried away the four dead bodies which should be recovered whereafter 10-12 policemen were sent to search the dead bodies but the dead bodies were not found. The policemen who went to search the dead bodies were accompanied by P.W. 15, P.W. 4 Manjhali Kisku and informant P.W. 27 and the search for the dead bodies was also made in the ditch situate east of Bhatia Assortment (Tola) but not in Bhatia Assortment. The ditch where the dead bodies were searched is outside Bhatia Assortment where none of the Bhatias were present. The search continued for half an hour but the policemen inspite of being asked to search the dead bodies in the houses of Bhatia men did not go to Bhatia Assortment to search the dead bodies. In the same paragraph P.W. 15 further stated that while the dead bodies were being searched it rained heavily. In Paragraph 33 P.W. 15 admitted that he along with the informant Ravi Lal remained in Kishanganj jail for about 3 months in connection with a case concerning forcible harvesting of paddy crop. Aforesaid case was lodged by Accused No. 5 Abdul Hannan 2-3 years prior to the lodging of the present case. Father's name of Abdul Hannan is Ajj Madar. In the same paragraph witnesses stated that he is neither aware about the name of the brother of Abdul Hannan nor does he know him. In Paragraph 39 P.W. 15 stated that members of the unlawful assembly were armed with lathi, gun, spear, gandasa and not with arrow. Members of the unlawful assembly did not use any weapon. Shot was fired by Accused No. 5 Abdul Hannan who lodged

false case against him and informant Ravi Lal alias Budhi Lal in which both remained in jail custody for 3 months and denied the suggestion that because of the aforesaid enmity Accused No. 5 has been falsely implicated in the present case. In Paragraph 40 P.W. 15 stated that he did inform Ravi Lal that Accused No. 5 Abdul Hannan shot Jalpa and that he disclosed the name of the members of the unlawful assembly whom he identified to Ravi Lal. In Paragraph 41 P.W. 15 stated that before arrival of the Investigating Officer in the village P.W. 15 met Ravi Lal and informed him about the name of the persons whom he had identified as members of the unlawful assembly and Ravi Lal also disclosed the name of the persons whom he identified but the witness does not remember either the number or name of the persons about whom Ravi Lal informed him that he had identified. Lakhi Ram (not examined) also disclosed the names of the persons whom he had identified but P.W. 15 does not remember their name as well. After 3-4 minutes of interaction between P.W. 15 and Ravi Lal Investigating Officer came in the village. In the same paragraph P.W. 15 denied the suggestion that both P.W. 15 and 27 had decided not to spare Accused No. 5 and to implicate all his family members.

Learned counsel for the appellants submitted that P.W. 15 is a highly interested witness and uncle of the informant and with the aid and assistance of the informant is trying to secure possession over 27 1/2 acres of Government land in the area. In this connection it is pointed out that P.W. 15 had earlier lodged a case against Bahadur Hansda for outraging the modesty of his daughter in which informant examined himself as a witness in support of P.W. 15 and his daughter. From the fardbeyan of the present case itself it will appear that the same was lodged after P.W. 15 and the informant interacted with each other and both had gone to jail together in connection with the case lodged by the Bhatias for forcible harvesting of paddy from the lands-in-question and in the aforesaid background, according to learned counsel, it may not be safe for this Court to rely on the evidence of P.W. 15.

(xvi) P.W. 16 Pitha Soren on the date, time of occurrence was ploughing the field of Jeet Lal Yadav. P.W. 18 Sakla Murmu was transplanting paddy and P.W. 19 Babu Lal Kisku was uprooting paddy seedling in the adjoining field. Bhagwan Soren (not examined) was dressing the ridge in the same plot in which P.W. 16 was ploughing the land. P.W. 16 heard noise coming from the south west corner and then proceeded towards his village, also heard gunshot and saw P.W. 15 Rengta, P.W. 6 Jham Murmu, Chhotka (deceased), Moto Murmu (not examined) and others running towards him and being chased by 40-50 Bhatia men. Chhotka Soren was assaulted by deceased appellant Abdullah Bhatia by lathi whereafter he fell down and died. P.W. 16 from amongst the members of the unlawful assembly identified Accused No. 7 Sher Mohammad, Accused No. 15 Abdul Khabbir and proceeded to identify in the dock deceased Abdullah and then stated that others cannot be identified by him at this stage as presently they have sported beard and earlier they were without beard and more than two and half years have gone by. In Paragraph 6 P.W. 16 has admitted that he did not inform

the Investigating Officer in his police statement that his house has been set ablaze and reduced to ashes. In Paragraph 7 P.W. 16 stated that he returned back to the assortment after the occurrence late in the night and slept in the verandah of Soma Soren. Soma Soren also came to the village after P.W. 16 and thereafter P.W. 16 informed Soma Soren as to where he had gone after the occurrence but did not ask him about the place where Soma Soren had gone after the occurrence. In the same paragraph P.W. 16 stated that he did not ask Soma Soren about the arrival of the police and further stated that in the night following the occurrence it rained heavily, as such, P.W. 16 did not even attempt to look for policemen in the village. In the morning P.W. 16 went in search of his child and did not look for policemen. In Paragraph 9 P.W. 16 stated that he is aware about the father's name of the accused persons whom he identified as member of the unlawful assembly. In the same paragraph he further stated that he asked his wife as to where did she run away then she informed that at the time members of the unlawful assembly came to the assortment she ran away. In the same paragraph P.W. 16 denied the suggestion that he has deposed falsely. In Paragraph 10 P.W. 16 admitted that he has settled in village Lakshmipur 14-15 years earlier from village Ghomtalla. In the same paragraph P.W. 16 stated that he also knew the name of others whom he identified as members of the unlawful assembly besides the five named by him but then clarified that he is not aware about the names of others nor did he identify them as members of the unlawful assembly. In Paragraph 11 P.W. 16 stated that he had not seen Jalpa running away from the place of occurrence as he only saw 7-8 Santhals running away towards north. In Paragraph 21 P.W. 16 stated that the occurrence took place between 11:00 and 12:00 A.M. and he heard the noise in the field itself and then proceeded from the field. After proceeding from the field P.W. 16 heard sound of bomb explosion but not while he remained at the field. In the same paragraph P.W. 16 clarified that before hearing the noise in the field he has not heard either the sound of explosion of bomb or gun shot. After hearing the noise he heard sound of bomb explosion or gun shot. Having moved 40-50 ft. south of the field P.W. 16 heard gun shot and then he stated that he saw from the field itself P.W. 15 Rengta Soren, Moto Murmu (not examined), P.W. 6 Jham Murmu, Chhotka Soren (deceased), 7-8 persons in all running but they were not raising any alarm. Witness thereafter clarified that he did not see from the plot anyone running and then further clarified that he also did not see any lady or child running away from the field. In the same paragraph P.W. 16 stated that he did not speak to Rengta and others whom he had seen running away. In Paragraph 23 P.W. 16 stated that when he proceeded from the field he neither met anyone nor saw anyone coming out of the village. Having proceeded 30-35 ft. from the field P.W. 16 saw the unlawful assembly and identified the members of the unlawful assembly from a distance of 200-250 ft. Rengta and others did not come running to his field. Having identified the members of the unlawful assembly P.W. 16 also took to heels. While running P.W. 16 did not see anyone coming towards the village. In Paragraph 24 P.W. 16 stated that all the accused persons are resident of Lakshmipur and with them he has no animosity and that

he is not aware that Accused No. 5 Abdul Hannan is literate or not but admitted that house of Abdul Hannan is 500-600 ft. away from his house. In the same paragraph he further admitted that Accused No. 5 Abdul Hannan did not lodge any case against him for forcible harvesting of paddy but he lodged such false case against other Santhals. In Paragraph 25 he denied the suggestion that he himself set ablaze his house.

Learned counsel for the appellants submitted that the testimony of P.W. 16 is not worth placing reliance as according to the prosecution case his house has been set ablaze but such fact was not disclosed by the witness to the Investigating Officer (P.W. 31) which is evident from Paragraph 6 of the evidence of P.W. 16.

(xvii) P.W. 17 Ram Besra on the date, time of occurrence was dressing the ridge in the field of Moto Murmu in presence of Durga Murmu and Budhrai Hansda as they were uprooting the paddy seedlings in the same field. The three have not been examined as witness in the trial court. P.W. 17 heard noise coming from west-south direction and also saw a mob of Bhatia men coming. At the same time P.W. 17 saw Jalpa Soren (deceased), P.W. 15 Rengta Soren, P.W. 10 Basant Besra, P.W. 12 Soma Soren, P.W. 7 Chhote Ram Hansda, Moto Murmu (not examined) ahead of the house of P.W. 16 Pitha Soren. Member of the unlawful assembly, Accused No. 5 Abdul Hannan shot Jalpa Soren, who fell down in the field by the side of the road in which there was water. P.W. 17 identified Accused No. 5 Abdul Hannan and three others as the members of the unlawful assembly as he knew them from before. P.W. 17 further stated in Paragraph 4 of his evidence that after fall of Jalpa he ran to Village Tal Gachh and concealed himself in the house of Hiralal Yadav and informed him about the occurrence and those whom he identified as assailant and members of unlawful assembly. In Paragraph 11 P.W. 17 further stated that it was not agreed with Hiralal to seriously institute the case. In the same paragraph P.W. 17 further stated that Hiralal did not go along with him to any place and denied the suggestion that Accused No. 5 Abdul Hannan has been falsely implicated in the case as he lodged a false case against Santhals for forcible harvesting of paddy by them and that he deposed falsely. In Paragraph 13 P.W. 17 stated that he came back to his house in the evening after the occurrence but did not meet the Investigating Officer or any other villager as they did not come to his house. In the morning witness went in search of his family members. It is further stated in the same paragraph that he has no animosity with the Bhatias of places other than Lakshmipur.

Learned counsel for the appellants submitted that the testimony of P.W. 17 is not fit to be relied as he did not record his police statement about the occurrence in the evening of occurrence, although he was available in the assortment in the evening but recorded the same after more than four days of the occurrence. From the evidence of P.W. 17 it is also evident that earlier he served as share cropper of Bhatias but such arrangement was cancelled and he had become inimical to them.

(xviii) P.W. 20 Budhrai Hansda on the date, time of occurrence was uprooting

paddy seedlings in the field of Moto Murmu (not examined) along with Durga. P.W. 17 Ram Besra was dressing the ridge. Chhotka Hembram @ Murmu (P.W. 1) was ploughing the field. P.W. 20 heard noise coming from west-south direction and saw unlawful assembly of Bhatia men coming towards his assortment. Jalpa was standing ahead of the house of Pitha Soren (P.W. 16). P.W. 20 also saw at the same place P.W. 15 Rengta Soren, P.W. 12 Som Soren, P.W. 6 Jham Murmu, P.W. 10 Basant Besra, P.W. 7 Chhote Ram Hansda. Accused No. 5 Abdul Hannan, a member of unlawful assembly shot Jalpa, he fell down in the field east of the road. Amongst the members of unlawful assembly P.W. 20 identified Accused No. 5 Abdul Hannan and others as he knew them from before. P.W. 20 also identified Accused No. 5 and others in the dock by holding their hand and calling their name. In Paragraph 5 P.W. 20 further stated that he worked as a farm labourer on the date of occurrence. Accused No. 5 Abdul Hannan is also an agriculturist and the witness knows father of Accused No. 5 and that he had not met any of the family members of Accused No. 5 on the date of occurrence. In Paragraph 6 P.W. 20 further stated that the members of the unlawful assembly were armed with spear, pike and that he saw the unlawful assembly for the first time at a distance of 300-400 ft. from Rengta and others as while coming members of unlawful assembly were raising noise. The witness ran away no sooner he saw Jalpa falling, as such, he is not in a position to state whether Rengta and others had run away or not. The witness, however, saw smoke of gun powder billowing as also heard sound while running. P.W. 20 further stated in the same paragraph that as he ran away from the place of occurrence he could not meet any Manjhi. In Paragraph 8 P.W. 20 stated that he returned to his assortment home in the evening but at that time Investigating Officer and the police party had not come to the assortment. In the same paragraph he further stated that Accused No. 5 Abdul Hannan had not lodged any case against him for forcible harvesting of paddy and that he is not aware whether any such case was lodged against other villagers. P.W. 20 further denied the suggestion that Accused No. 5 has been implicated in the present case as he had lodged false case of paddy harvesting against the witness and others and that he deposed falsely. In Paragraph 10 P.W. 20 further stated that after he returned to the assortment he could not meet P.W. 15 Rengta Soren or P.W. 27 Ravi Lal Hansda or any other villager nor did he see any of the villagers in the assortment and met the Investigating Officer, police party in the morning and that during night remained in the village. In the morning also P.W. 20 could not meet the villagers as he was searching his family members. In the morning P.W. 20 left the village after sun rose to a considerable height. In Paragraph 13 P.W. 20 stated that he returned to his village in the evening as he was informed by Hira Lal that police party had already reached his village though Hira Lal did not accompany him and P.W. 20 came alone. After return of the witness in the assortment there was heavy rain, as such, he remained confined to his house and did not come out to meet the police party. Police party was also not seen moving in the village and recorded his statement after three days of the occurrence.

Learned counsel for the appellants submitted that the evidence of P.W. 20 is not worth placing reliance as he does not appear to be an eye-witness of the occurrence as he recorded his police statement after three days of the occurrence on the pretext that it was raining heavily after he returned to the village in the evening and remained confined to his house, in the next morning went in search of his family members. The version of witness that it was raining heavily is incorrect in view of the categorical statement of P.W. 6 that it rained heavily only on Saturday morning and not in the Friday evening when the police party came to the village and recorded the fardbeyan as also police statement of other witnesses. In this connection learned counsel for the appellants also pointed out that P.W. 20 knew the accused persons as also those whom he identified from before, which fact he himself admitted in his evidence, as such, it is not safe for this Court to rely on his evidence.

(xix) P.W. 25 Fede Soren is the wife of the informant P.W. 27 Ravi Lal @ Budhi Lal. On the date, time of occurrence she was planting paddy in her plot along with her sister P.W. 5 Sona Muni. A mob comprising of Bhatia men variously armed with sickle, lathi, pike, spear etc. came from west. Others including Kurhia (not examined) Mangal Hansda (P.W. 22) Kanhu Kisku (deceased), Mandal Soren (P.W. 3) Chhinu Pagla (deceased) were also working in the adjoining plots. Members of the unlawful assembly assaulted the witness with lathi. They also assaulted Kanhu Kisku with lathi who fell down and his neck was slit. Hikma was also assaulted. Chhinu Pagla was also assaulted and his neck slit. In Paragraph 3 P.W. 25 stated that she identified Accused No. 19 Abdul Rauf amongst the members of unlawful assembly as also others but is not aware about their names. In Paragraph 4 P.W. 25 stated that she had gone to Kishanganj Jail for participating in the Test Identification Parade in which she identified Accused No. 19 Abdul Rauf who is not present in Court, is represented through counsel and his identification is waived. In Paragraph 6 P.W. 25 stated that she did not know any of the Bhatias from before including their name and those who have been identified by her are residents of Lakshmipur and were seen by her in Lakshmipur. They are not agriculturist but are farm labourers not engaged by her and others. P.W. 25 further stated in the same paragraph that she has not named any of the members of the unlawful assembly as the assembly comprised of men with beard and did not comprise of Dickoos (local men) and further denied the suggestion that she has deposed falsely. In Paragraph 7 P.W. 25 stated that unlawful assembly comprised of several men and did not raise noise but came swiftly. Having seen the unlawful assembly P.W. 25 became fearful as they came in the field, by that time plantation was complete in 10 katha of land. P.W. 25 also stated in the same paragraph that members of unlawful assembly, who were identified by her, were known to her from before. In Paragraph 8 P.W. 25 stated that after lodging of the case she went to the police station where Officer-in-Charge having arrested the accused persons brought them and she first identified the five men in the police station. In the same paragraph P.W. 25 further stated that she went to participate in the Test Identification Parade in jail

premises after 10-12 days of the occurrence. In the same paragraph she further denied the suggestion that after being tutored she proceeded to identify the members of the assembly. In Paragraph 10 P.W. 25 further stated that she had seen the members of the unlawful assembly and that police party had put siege on the Bhatia Assortment and as and when Bhatia men used to come out of their residence police used to apprehend them and that Bhatia men ran towards north. In Paragraph 11 P.W. 25 further stated that 15-20 men, women were working in the adjoining field and they were also surrounded by the unlawful assembly. Some of them, however, managed to escape. Those men, women, who succeeded in making good their escape, were also assaulted by the members of the unlawful assembly. She further stated in the same paragraph that the Investigating Officer had instructed her that she will have to come to jail premises for participating in the Test Identification Parade. In the same paragraph P.W. 25 further stated that it was the Investigating Officer who took her to the jail premises for participating in the Test Identification Parade.

Learned counsel for the appellants submitted that testimony of P.W. 25 Fede Soren, wife of the informant does not inspire confidence in view of her candid admission in paragraphs 8, 11 of her evidence that after lodging of the case she went to the police station where Officer-in-Charge having arrested the accused persons brought them to the police station and P.W. 25 first identified the accused persons in the Police Station and that she has come to participate in the Test Identification Parade in Kishanganj Jail along with the Investigating Officer which is also indicative of the fact that she was under police influence to identify the suspects in the Test Identification Parade. It further appears that Test Identification Parade having been held on 25, 29.09.1983 after submission of charge-sheet without obtaining permission from the court no reliance is required to be placed on such Test Identification Parade.

(xx) P.W. 26 Pendli @ Dulli Marandi is the wife of P.W. 22 Mangal Hansda. On the date, time of occurrence she was planting paddy in the field of Hikma along with Chhotka and Ghutum Lal. P.W. 25 Fede Soren, P.W. 5 Sona Muni were also planting paddy in their adjoining field. P.W. 13 Babu Ram and his son Ampu were planting paddy in their field. Chhinu, Kanhu (both deceased), P.W. 22 Mangal Hansda, P.W. 3 Mandal Soren, P.W. 27 Ravi Lal and Kurhia were ploughing the adjoining land. Others present were also working in the adjoining field. A mob of unlawful assembly of Bhatia men variously armed with lathi, sickle and other weapons came from western direction and resorted to violence. Initially assault was made on the person of Kanhu Kisku who fell down whereafter his neck was slit by sickle. Chhinu Pagla was also assaulted by lathi and after he fell down his neck was also slit. P.W. 26 also suffered assault by lathi from Mazrul Bhatia (not appellant before this Court). The witness claimed that she identified the members of the unlawful assembly and after being assaulted ran away. In Paragraph 4 P.W. 26 asserted that she had come to Kishanganj Jail for participating in the Test Identification Parade and identified four members of the unlawful assembly out of whom deceased appellants Ilias and Abdullah were

again identified by her in Court at the time of her deposition. In Paragraph 7 P.W. 26 stated that in the unlawful assembly many miscreants were there but they did not surround the witness and others from all sides. Members of unlawful assembly only went to those who were working in the field where the witness was also planting paddy. The witness clarified in the same paragraph that only one of the members of the unlawful assembly had come near her, others were at some distance. Members of the unlawful assembly had put on Gudri. The occurrence took place when the sun was right on the head. In Paragraph 8 P.W. 26 stated that in the evening police party had come to the village and the Investigating Officer recorded police statement in the night itself. P.W. 25 Fede also recorded her police statement in the same evening. P.W. 26, however, did not meet the Investigating Officer thereafter. In Paragraph 9 P.W. 26 stated that after two months of the occurrence she had come to jail premises for participating in the Test Identification Parade. In Paragraph 10 she stated that she had come to jail premises on four occasion for participating in the Test Identification Parade along with P.W. 25 Fede Soren but both did not participate in the Test Identification Parade on the same day. On the first occasion P.W. 25 Fede Soren P.W. 4 Manjhli and Ampu (not examined) participated in the Test Identification Parade. Ampu Soren is a male and there is no other person in Lakshmipur village whose name is Ampu Soren. The witness further clarified in the same paragraph that Ampu Soren is not the brother of Jalpa Soren (deceased). The witness further stated in the same paragraph the manner in which she and others participated in the Test Identification Parade in Kishanganj Jail premises independent of each other and they met each other only after they came out of the jail premises. In Paragraph 12 P.W. 26 stated that she knows her co-villager Pitha Soren (P.W. 16), Moto Ram Hansda (not examined) Babu Ram Hansda (P.W. 13) but is not aware as to whose land is abutting the house of Babu Ram Hansda (P.W. 13) in the south west side and who is cultivating the same. In the same paragraph witness further stated that the said land is under cultivating possession of Bhatias but she had not seen who amongst the Bhatias is in cultivating possession and harvesting the crop from the same and that she had not seen the face of the person who is cultivating, harvesting the crop from the said land. In Paragraph 13 P.W. 26 admitted that her house is north of the house of P.W. 13 Babu Ram at a distance of 100-125 steps. In the same paragraph she further stated that she did not cast her vote in the Mukhiya election and she is not aware as to who is the Mukhiya of the village and that she does not work as a labourer. In Paragraph 14 P.W. 26 stated that in the last Test Identification Parade she identified four suspects. In second Test Identification Parade she had not identified any of the suspects. In Paragraph 15 P.W. 26 stated that he cannot identify Sarpanch Ilias by his name and that it is not correct to suggest that Surpanch Ilias was known to her from before and that she is not aware that Surpanch Ilias has land south-west of the house of P.W. 13 Babu Ram. P.W. 26 further declined the suggestion that she had not come to Kishanganj Jail for participating in the Test Identification Parade and some other person participated in the Test Identification Parade on her behalf.

Learned counsel for the appellants submitted that it is strange that though P.W. 26 is an eye-witness of the first part of the occurrence, which took place in the field where Kanhu Kisku and Chhinu Pagla were assaulted by lathi and after their fall their neck was slit but she has not identified the two assailants although she identified other members of the unlawful assembly who did not commit any overt act, as such, her presence at the place of occurrence is doubtful. In any case P.W. 26 having participated in the Test Identification Parade after submission of charge-sheet, identification made by her is of no assistance to the prosecution.

(xxi) P.W. 27 Ravi Lal @ Budhi Lal is the informant of the present case. He has supported the version recorded in the fardbeyan and has further stated in his evidence that on the date, time of occurrence he was ploughing his plot in the southern block of the outer area of the village in which there was water and after ploughing paddy seedlings were to be transplanted. In the adjoining fields P.W. 22 Mangal Hansda, deceased Kanhu Kisku P.W. 3 Mandal Soren, deceased Chhinu Pagla were ploughing their plots. Kurhia Kisku was ploughing land of Jalpa. In the adjoining fields there was also water and the land was being ploughed for plantation of paddy seedlings. P.W. 22 Mangal Hansda was also ploughing his land south-west of the land of the informant. P.W. 3 Mandal Soren was ploughing the land south-west of the land of the informant. Kanhu Kisku was ploughing land straight south of the land of the informant. Chhinu Pagla was ploughing land west-north of the land of the informant. Kurhia Kisku was ploughing land south of the land of the informant. In Paragraph 2 informant stated that P.W. 26 Pendli @ Dulli, P.W. 1 Chhotka Murmu, Ghutumlal Kundu (not examined) Hilia Murmu (not examined) were planting paddy seedlings. P.W. 25 Fede Soren, P.W. 5 Sona Muni were planting paddy in the field of the informant. In the same paragraph informant further stated that P.W. 25 is his wife. P.W. 13 Babu Ram Hansda and his deaf and dumb son Ampu (not examined) were planting paddy seedlings in their own field. P.W. 2 Som Kisku, son of Kanhu Kisku was trimming ridge in the plot of his father. P.W. 4 Manjhali Kisku, daughter of Kanhu Kisku had come to the plot to serve meal to his father, brother. In the same paragraph informant further stated that the aforesaid persons were engaged in plantation of paddy seedlings in the plot adjoining to his plot. In Paragraph 3 of his evidence informant stated that a mob of 400-500 Bhatia men variously armed with lathi, sickle, spear, gandas and other weapons suddenly appeared from western direction. The unlawful assembly was being led by Accused No. 24 Afan Bhatia. Just on arrival Accused No. 24 assaulted Kanhu Kisku with lathi, who fell down and Accused No. 24 slit his neck, immediately thereafter Accused No. 24 came near Chhinu Pagla, also assaulted him on his head with lathi whereafter Chhinu Pagla also fell down and Accused No. 24 Afan Bhatia slit his neck. The other members of the unlawful assembly assaulted those engaged in transplantation of paddy seedlings. Informant having become fearful left his plough, oxen and ran towards Nain Bhitha village. After covering some distance informant turned around and saw Bhatia men running towards his village. Informant having covered some distance concealed himself in a jute field. In Paragraph 4

informant stated that in the jute field he heard sound twice which appeared to be the sound of gun shot and explosion of bomb. Around sun-set informant returned to his village, met P.W. 15 Rengta Soren and P.W. 4 Manjhli Kisku. Rengta disclosed that Jalpa Soren was shot by Accused No. 5 Abdul Hannan and died. Rengta further informed the informant that amongst the members of the unlawful assembly he identified Accused No. 19 Abdul Rauf, Accused No. 10 Altaf Hussain and others whose name the informant does not remember. In Paragraph 5 informant stated that all the belongings of his house stood removed. The plough, oxen were also taken away, house of P.W. 16 Pitha Soren was set ablaze and raised to ashes, bomb was exploded in the court-yard of P.W. 6 Jham Murmu. In Paragraph 6 informant stated that he learnt that Chhotka Soren was also killed and Ghutum Lal disappeared, who is even now traceless. In the same paragraph informant further asserted that the dead body of the four deceased was made to disappear by the members of the unlawful assembly, their belongings amounting to Rs. 25000-30000/-(from all the houses of Santhal Assortment) was also taken away. In repeat Paragraph 6 informant stated that he and other Santhals settled in Village Lakshmipur 18-19 years earlier on 4-5 bigha vacant land of Bihar Government and thereafter cultivated 27 1/2 acres of land, which was also nearby and the same is in cultivating possession of the Santhals. In the same paragraph informant further stated that at the time of settlement of Santhals in village Lakshmipur 12/13 Bhatias were already settled in an Assortment which was further west of Santhal Assortment. In the same paragraph informant further stated that at the time of occurrence the population of Bhatias has grown to 1200 household in the same assortment. In Paragraph 7 informant stated that three years earlier Bhatias created trouble in connection with plantation of paddy seedlings by him and other Santhals which was seized, later B.D.O. Saheb got the paddy harvested and gave the paddy to them. In the same paragraph informant further asserted that present occurrence has been caused to secure their displacement from Village Lakshmipur. In Paragraph 8 of his evidence informant stated that after his return to the village in the evening police officer came to his village to whom he disclosed about the occurrence, which was noted, read over to him and he having found the contents true put his signature over the same. P.W. 15 Rengta Soren and Chikaru Lal Yadav (not examined) also put their signature over the fardbeyan. In the same paragraph informant further stated that having recorded his fardbeyan the Investigating Officer further interrogated him. In Paragraph 9 informant stated that at the time of arrival of the Investigating Officer in the village it was raining lightly. Investigating Officer recorded the statement of P.W. 15 Rengta Soren and others and went to the place of occurrence along with the informant, P.W. 15 Rengta Soren and P.W. 4 Manjhali Kisku and saw the same. In the previous night, prior to the occurrence there was rain and water had collected in the field. In Paragraph 12 informant stated that amongst the members of the unlawful assembly he identified Accused No. 24 Afan Bhatia, Accused No. 27 Sajjad Ali, Accused No. 29 Abdul Wahab, Accused No. 28 Abdul Zalil, Accused No. 7 Sher Mohammad, Accused No. 12 Abdul Wadud, Accused No. 3 Matiur Rahman @

Mantu, Accused No. 5 Abdul Hannan, Accused No. 15 Abdul Khabbir and then proceeded to the dock and by holding the hand of Accused No. 28 Abdul Zalil, Accused No. 24 Afan Bhatia and others identified them. In Paragraph 15 informant deposed that he identified Accused No. 10 Altaf Hussain amongst the members of the unlawful assembly but he is not present in dock. In Paragraph 18 informant admitted that he along with Rengta had gone to jail on the same day and were also released on the same day after three months. In Paragraph 19 informant stated that when he first saw the unlawful assembly he does not remember whether he had seen the members of unlawful assembly armed with rifle or gun. In the same paragraph informant further stated that he had not seen any member of the unlawful assembly wielding gandasa and spear as also firing gun shot. In Paragraph 21 informant stated that the case in which he had gone to jail Accused No. 5 Abdul Hannan was not the pairvikar of the informant of the said case and that he is acquainted with Ajij Madar, the father of Accused No. 5 and full brother of Accused No. 5 is Accused No. 3 Mantu @ Motiur Rahman and that he is not aware as to whether Accused No. 21 Akhilesur Rahman is the son-in-law of Ajij Madar. In Paragraph 22 informant stated that he is acquainted with Accused No. 19 Abdul Rauf from before and that he had not seen him as a member of unlawful assembly. In the same paragraph informant further stated that those who were identified by Rengta as members of unlawful assembly were not seen by him as the members of the unlawful assembly. In the same paragraph informant also stated that he had earlier seen gun, crackers but not bomb and that gun shot sounds like a bang but there is less sound when a bomb explodes. Informant also stated in the same paragraph that he had not seen any smoke billowing. In Paragraph 23 of his evidence informant stated that the place where Jalpa floundered he had not gone to that place. Later, he went to the same place along with the Investigating Officer in the same night. There was water even in the field in which Jalpa had fallen and that his belongings were not found at that place. In the same paragraph informant further asserted that he had gone to the field where chaukidar had also come. In the field empty of the cartridge fired from the gun along with the belongings of Jalpa was not found. P.W. 15 Rengta is the full brother of Jalpa and he had also accompanied the informant when he came to the field looking for the dead body and other incriminating articles. In Paragraph 31 informant stated that he first saw the members of unlawful assembly at a distance of 65-70 steps and that they were moving swiftly without raising any noise. Having seen the unlawful assembly informant did not become fearful. Chhinu Pagla was at a distance of 75-80 steps west-north from the informant. Kanhu Kisku was at a distance of 45-50 steps south of the informant. In the same paragraph informant further clarified that he was east rather little south from Chhinu Pagla and north from Kanhu Kisku. The unlawful assembly did not surround the informant and others. In Paragraph 32 of his deposition informant stated that he took to heels after he saw Kanhu Kisku and Chhinu Pagla being assaulted. When Chhinu and Kanhu were being assaulted members of the unlawful assembly were not near the informant and were at a distance of 50-60 steps from him. Having run a distance of 400-500 steps

informant turned around to look back. In the same paragraph informant further stated that none of the members of the unlawful assembly chased him and reiterated that he stopped, turned around for a while to look back and thereafter ran 200-250 steps to conceal himself in the jute field wherefrom village Nain Bhitha is one kilometer east-north. Informant further stated in the same paragraph that he was alone in the jute field. In the same paragraph informant further stated that in the jute field he understood around sunset that members of unlawful assembly may have left by now. There is a market in village Tal Gachh and that he had not gone to village Nain Bhitha or Tal Gachh to inform anyone about the occurrence. In the same paragraph informant further stated that after coming out of the jute field he did not go to the police station but after his return to the village Investigating Officer arrived there. In Paragraph 33 informant stated that after he reached the village P.W. 15 Rengta P.W. 4 Manjhali Kisku, Kurhia Kisku and Ampu Hansda (both not examined) came to him. P.W. 25 Fede Soren, P.W. 26 Pendli @ Dulli Marandi also came to him. Informant also looked for the other Santhals but could not meet anyone of them. All the aforesaid persons had collected at the house of P.W. 15 Rengta, by that time Investigating Officer had already come to the village. In the same paragraph informant further stated that at the time Investigating Officer came to the house of P.W. 15 Rengta only Rengta and the informant were present. Later, after 2-3 minutes others came when they learnt that the Investigating Officer has already arrived. In Paragraph 34 informant claimed that he did inform the Investigating Officer that he concealed himself in the jute field and that he came out of the jute field while the sun was setting. He also stated in the same paragraph that he informed the Investigating Officer that after the members of the unlawful assembly left Santhal Assortment he returned to his assortment and such fact is also mentioned in the fardbeyan that sometime after the members of unlawful assembly left Santhal Assortment he returned to the assortment. In the same paragraph informant further stated that he does not remember that he informed the Investigating Officer that after he returned to the assortment around sun-set he and others thought that the Bhatia members of the unlawful assembly may again attack them in the evening/night and in order to save themselves were about to leave for Yadav assortment, saw the Investigating Officer and came to him to record their statement. In Paragraph 38 informant stated that Accused No. 29 lodged a case against him in which he remained in jail. In the same paragraph informant further stated that Sita Tudu had lodged a false case against him in the Panchayat and at the relevant time Sarpanch was Accused No. 1 Ilias who died during the pendency of the appeal and that informant filed application under Section 73 of the Panchayat Raj Act for transfer of the case from Panchayat to Court in which he is not aware that Ilias submitted report against him. Informant also admitted in the same paragraph that he is the pairvikar in the present sessions trial. In Paragraph 39 informant stated that village Loha Gara is at a distance of two kilometers west-north from village Lakshmipur but he is not acquainted with any of the Bhatia resident of village Loha Gara. Informant also stated in the same paragraph that he is acquainted

with accused Zalil, son of Lal Bhatia for the last three years and by the side of Santhal Assortment accused Zalil has no land. In the same paragraph informant denied the suggestion that no occurrence, as alleged, had taken place and present false case has been lodged with a view to ensure removal of Bhatias. Informant also denied the suggestion that the accused persons have been falsely implicated because of enmity. He also denied the suggestion that on the date of occurrence accused Ilias was distributing money in Mangura from 11:00 A.M. until evening and that informant falsely deposed in the present case. In Paragraph 46 informant stated that when he first came to village Lakshmipur there was forest over the lands. None of the lands were under cultivation and that he settled in village Lakshmipur in the year 1971-72 and at that time habitants of village Lakshmipur were Mushars and Mohamdans and that he had met them. In the same paragraph informant denied the suggestion that Santhals came to village Lakshmipur by night and raised their huts over the lands of Ajj Madar. In the same paragraph informant further stated that 85 huts were raised on the lands of Bihar Government after verifying the same from the map. Two maps were procured by Jalpa but from where the informant is not aware. It was Jalpa who disclosed that the lands-in-question is of Bihar Government and decided to raise hut over the said lands and at that time residents of Lakshmipur did not oppose raising of huts on those lands. In Paragraph 47 informant stated that trouble over the lands-in-question did not begin after two months as dispute over the same was raised after two years. Bhatia men initially lodged a false case of murder and setting ablaze a house. Santhals also lodged a case of elopement of a girl and setting ablaze a house against Bhatias. In the same paragraph informant further stated that he does not remember that he ever filed any case against Bhatias and also denied the suggestion that he lodged any case in the year 1971 that 1000-1500 Bhatia men attacked his house. In Paragraph 56 informant admitted that he did not take any steps for recovery of the looted property. He also stated in the same paragraph that he never visited the house of Bhatias. Informant also stated that he did ask the policemen to recover the stolen property. The miscreants had carried away the utensils required for cooking food. Informant also stated that ladies had asked the policemen to recover the dead bodies and that policemen had gone to search the dead bodies but he had not seen policemen proceeding to recover the dead bodies. Disappearance of the dead bodies from the place of occurrence was not discussed in the village and that he is not aware till the date of deposition as to what happened to the dead bodies.

Learned counsel for the appellants submitted that informant Ravi Lal Hansda @ Budhi Lal (P.W. 27) is also not reliable witness. In this connection it was pointed out that in repeat paragraph 6 informant stated that he and other Santhals settled in village Lakshmipur 18-19 years earlier on 4-5 Bighas land of Bihar Government and began to cultivate 27 1/2 acres of land which was also nearby and the same is in cultivating possession of the Santhals. In the same paragraph informant further stated that at the time of settlement of Santhals in Village

Lakshmipur 12-13 Bhatias were already settled in an assortment which was further west of the Santhal assortment. In the same paragraph informant further stated that at the time of occurrence the population of Bhatias in the same assortment has increased to 1200 households. In Paragraph 7 informant further stated that three years earlier Bhatias raised trouble about plantation of paddy seedlings by him and other Santhals which was seized but B.D.O. Saheb later got the same harvested and produce was given to him and other Santhals. In the same paragraph informant further asserted that present occurrence has taken place for securing ouster of Santhals from Village Lakshmipur. In Paragraph 18 informant admitted that he along with P.W. 15 Rengta Soren had gone to jail on the same day and both were released after three months on the same day. In paragraph 21 informant stated that the case in which he had gone to jail Accused No. 5 Abdul Hannan was not the pairvikar of the informant of the said case but he is acquainted with Ajij Madar, the father of Accused No. 5 and full brother of Accused No. 5 is Accused No. 3 Mantu @ Motiur Rahman but he is not aware that Accused No. 21 Akhileshur Rahman is the son-in-law of Ajij Madar. In Paragraph 38 informant stated that Accused No. 29 lodged a case against him in which he remained in jail. In the same paragraph informant further stated that Sita Tudu had lodged a false case against him in the Panchayat and at that time Sarpanch of Gram Panchayat was Accused No. 1 Ilias and he filed application in the said case under Section 73 of the Panchayat Raj Act for transfer of the case from Gram Panchayat to Court. Informant also admitted in the same paragraph that he is the pairvikar of the Santhals in the present Sessions Trial. In Paragraph 39 informant stated that Village Loha Gara is at a distance of 2 K.M. west north from village Lakshmipur but he is not acquainted with any Bhatia of Village Loha Gara. Informant also stated in the same paragraph that he is acquainted with accused Jalil, son of Lal Bhatia for the last three years but by the side of Santhal Assortment Accused Jalil has no land. In the same paragraph informant denied the suggestion that no occurrence as alleged has taken place and present false case has been lodged only with a view to ensure removal of Bhatias from Lakshmipur. Informant also denied the suggestion that accused persons have been falsely implicated because of enmity. He also denied the suggestion that on the date of occurrence Ilias was distributing money in village Mangura from 11:00 A.M. until evening and that informant falsely deposed in the present case. In paragraph 46 informant stated that when he first came to Village Lakshmipur there was forest over the lands. None of the lands was under cultivation and that he settled in village Lakshmipur in the year 1971-72 and at that time habitants of Village Lakshmipur were Mushars and Mohamdans and that he had met them. In the same paragraph informant also denied the suggestion that Santhals came to Village Lakshmipur by night and raised their huts over the lands of Ajij Madar. In the same paragraph informant further stated that 85 huts were raised on the lands of Bihar Government after verifying the same from the map. Two maps were procured by Jalpa but from where the informant is not aware. It was Jalpa who disclosed that the lands-in-question is of Bihar Government and decided to raise huts over the said lands and at that time residents of Lakshmipur did not

oppose raising of huts on those lands. In paragraph 47 informant stated that trouble over the lands-in-question did not begin after two months as dispute over the same was raised after two years. Bhatia men initially lodged a false case of murder and setting ablaze a house. Santhals also lodged a case of elopement of a girl and setting ablaze a house against the Bhatias. In the same paragraph informant further stated that he does not remember that he ever filed any case against Bhatias and also denied the suggestion that he lodged any case in the year 1971 that 1000-1500 Bhatia men attacked his house. In Paragraph 56 informant admitted that he did not take any steps for recovery of the looted property. He also stated in the same paragraph that he never visited the house of Bhatias. Learned counsel also referred to the evidence of the informant in Paragraph 22 where he stated that members of the unlawful assembly who were identified by P.W. 15 Rengta were not seen by him is indicative of the fact that both informant and P.W. 15 Rengta were not present at the place of occurrence and they have named these appellants and others because of the previous enmity as also the fact that right from 1971-72 struggle is on between Santhal and Bhatias for possession of the 22 1/2 acres of vacant Government land in village Lakshampur.

(xxii) P.W. 28 Sub-Inspector Hira Prasad assisted the Investigating Officer in investigating the case as he recovered part of the four human bodies on 04.08.1983 at 1:30, 6:00 P.M. vide Inquest Report (Exhibit 3 to 3/3) as also seized torn gunny bag, mud bowl with brown patch, bamboo log of six ft., part of old striped coloured gamcha with light patch, bamboo beam of 3 1/2 ft. with patches, old torn banyan, small tobacco bag with patch similar to that of blood vide seizure-list drawn on 04.08.1983 at 2:15, 3:30 P.M. (Exhibit-4, 4/1).

(xxiii) P.W. 29 B.K. Kashyap is the Judicial Magistrate who conducted Test Identification Parade in Kishanganj Jail on 25,29.09.1983 in which P.Ws. 4, 5, 25, 26 participated after submission of charge-sheet and commitment of the case to the court of Sessions.

(xxiv) P.W. 30 Salil Kumar Singh is part Investigating Officer of the case as he was posted in the police camp established in Tal Gachh Village School and in the light of the instructions of the Investigating Officer searched the houses of Accused No. 15 Abdul Khabbir, Accused No. 16 Tafajul Hussain, Accused No. 23 Anisur Rahman, Accused No. 10 Altaf Hussain as also 7 others in Bhatia Tola, Lakshmipur in the morning following the occurrence and arrested them from their house. In Paragraph 1 of his evidence he further stated that he did not record statement of any of the witnesses.

(xxv) P.W. 31 Ram Deo Roy is the Investigating Officer of the case. On the date of occurrence he was Officer-in-Charge of Dighal Bank Police Station and heard rumour about the occurrence at the Police Station at 4:05 P.M. whereafter gave dictation to literate constable Gauri Shankar Jha about the rumour who entered the same in the Station Diary in his own handwriting which is marked Exhibit-8. After recording the Station Diary Entry Investigating Officer (P.W. 31) instructed

the literate constable to inform the superior officers about the rumour and himself proceeded along with armed force for the place of occurrence and after arrival at the place of occurrence met the informant Ravi Lal Hansda (P.W. 27). In Paragraph 2 P.W. 31 further stated that on the statement of Ravi Lal Hansda he recorded the fardbeyan (Exhibit-1) and forwarded the same to the Police Station for instituting a case under Section 302, 201 of the Penal Code and that at that time it was raining. In the same paragraph Investigating Officer further stated that he also issued instructions to inform the superior officers about the institution of the case. In Paragraph 3 of his evidence Investigating Officer stated that at the time of forwarding the fardbeyan Sri S.K. Sinha, Officer-in-Charge, Singhimari O.P. was also present in Lakshmipur Santhal Assortment. It has also been stated in the same paragraph that after forwarding the fardbeyan on arrival of Sri S.K. Sinha Investigating Officer along with P.W. 4 Manjhali Kisku, P.W. 15 Rengta Soren and the informant (P.W. 27) proceeded to the place of occurrence to prevent the mark of violence available at the place of occurrence from being lost due to rain. In Paragraph 4 of his evidence Investigating Officer has stated that the place of occurrence of the instant case is Plot Nos. 1671, 1672, 1673, 1674, 1675, which is land of Bihar Government, measuring an area of 40.45 acres. In the same paragraph Investigating Officer further stated that because of the rain and clouds it was dark and that he reached the place of occurrence at 7:00 P.M. and verified the place of occurrence with the help of his own torch light as also the torch light of the constables accompanying him. Place of occurrence/plots is at a distance of 600 yards south from the Lakshmipur Santhal Assortment and east of Bhatia Assortment bifurcated in several plots. In the plots there was 3-5 inches of water and on the southern side there was two Semal trees, one big and the other small. Informant pointed out the field in which Kanhu Kisku was assaulted and killed. Investigating Officer in his evidence has also furnished the names of the boundary raiyats of the said plot i.e. Tale Bhatia, P.W. 27 Ravi Lal Hansda, Lukhi Ram Soren (not examined) and P.W. 21 Mohan Soren. Having furnished the names of the boundary raiyats Investigating Officer further stated in his evidence that informant also indicated another nearby plot in which Kanhu Kisku was killed, which plot is at a distance of 154 steps from the big Semal tree. In that plot also there was 3-5 inches of water. Investigating Officer having visited that field noticed that the said field was partly ploughed and the ploughing suddenly stopped. The southern ridge of the said plot from the western end was found partly trimmed. The blood stains could not be noticed in the plots as there was water. In Paragraph 5 Investigating Officer stated that another plot was also shown to him in which at the relevant time Chhinu Pagla was ploughing the same and the name of the boundary raiyat of the said plot was also furnished i.e. of Dickmu Murmu, Laven Murmu (both not examined), P.W. 19 Babu Lal Marandi, Abhed Bhatia (not examined). Another adjoining plot was also shown to the Investigating Officer where Chhinu Pagla was assaulted and killed which plot is at a distance of 240 steps north and little west from the big Semal tree. In the said plot also there was 3-5 inches of water and as the plot was earlier ploughed blood stains could not be seen. Distance

between the two fields in which Kanhu Kisku, Chhinu Pagla were killed is 95 steps. The adjoining fields were also shown to the Investigating Officer where P.W. 22 Mangal Hansda, P.W. 3 Mandal Soren, Kurhia Kisku (not examined) and others were working and there was 4-5 inches of water in those plots as well and the plots were being ploughed but the ploughing of the plots was suddenly stopped. The plot which informant was ploughing at the time of occurrence is at a distance of 200 steps north from the big Semal tree. The plot which is said to have been ploughed by Kurhia Kisku at the time of occurrence is at a distance of 40 steps north east from the big Semal tree. The plot which was being ploughed by P.W. 22 Mangal Hansda at the time of occurrence is at a distance of 260 steps north west of the big Semal tree. Other three adjoining plots were also shown to the Investigating Officer in which paddy seedlings were planted on the same day and the other part of the said plot remained vacant and the paddy seedlings were found kept in the field at different places from which it appeared that the plantation of paddy seedlings was abruptly stopped. The distance of the aforesaid plots from the big Semal tree is 116 steps north. Investigating Officer was also shown the field in which P.W. 26 Pendli, P.W. 25 Fede Soren, P.W. 5 Sona Muni, were planting paddy seedlings, which is at a distance of 210 steps north west from the big Semal tree. Significant part of the said land was found planted with paddy seedlings. Summer paddy crop was found trampled in the adjoining field in which Kanhu Kisku is said to have been killed indicating that many persons had come to the said plot. A ditch was pointed out east of Bhatia Assortment in which there was water up to waist height. On the four corner of the ditch there was banana, Kacchu trees and the Investigating Officer was informed that in the same ditch dead body of Kanhu Kisku as also his daughter P.W. 4 Manjhali Kisku was thrown but Manjhali Kisku came out of the ditch and went away. Foot steps were found near the ditch. House of Sajjad Bhatia is situate 20 yards west of the ditch and south from the house of Sajjad Bhatia is the house of Mannan Bhatia. Dead body was searched in the ditch but the same was not found. The other place of occurrence of the present case is the Santhal Assortment of Village Lakshmipur. East of the assortment there is a north south road and further east of the said assortment is vacant land and further west north of the Santhal Assortment is Yadav Assortment at a distance of one kilometre and further west south of the Yadav Assortment at a distance of half kilometre is Lakshmipur Bhatia Assortment and further south of the said assortment there is another Bhatia Assortment at a distance of 600 yards. Further east there is the household of Mushars and one kilometre therefrom is village Tal Gachh. On the southern end of the Santhal Assortment there is a small house with verandah of P.W. 16 Pitha Soren and the house of Ram Soren is at a distance of 10-15 ft. from the house of Pitha Soren over which burnt foliage of gourd was found. On the eastern end of the road at a distance of 5 yards from the partially burnt house of Pitha Soren a spot was pointed out where Jalpa Soren was shot. In the adjoining field where Jalpa Soren is said to have fallen down after being shot at, one ft. water was found along with stem (Danthal) of the harvested paddy and at the same spot Investigating Officer also found dragging marks. There was,

however, no blood marks found in the plot. The plot in which Chhotka Soren was killed was also shown to the Investigating Officer which was at a distance of 200, 60 yards from the burnt house of P.W. 16 and the house of Chhotka Soren respectively. In the said plot also there was 4-5 inches of water. In the adjoining field also there was water. In Paragraphs 10, 11 of his evidence Investigating Officer stated that he did not find any cattle in the cattle shed of the different Santhals in Santhal Assortment. The house of Jalpa Soren was also found ransacked. Investigating Officer found food grains scattered in the house of Moko Man Kisku, Jham Murmu, Fia Hansda, Bapu Ram Hansda, Sagar Hansda, Modak Soren, Kurhia Kisku, Chhote Hembram, Lakhiram Hansda, Munni Soren, Fulmuni, Mangal Hansda, Budhrai Hembram and others. The door frame of the house of Chamak Hansda was found extracted recently. There was sign of bomb explosion in the courtyard of Jham Murmu and depicting the aforesaid two places of occurrence including other important sign-posts Investigating Officer got sketch map of the aforesaid plots, houses in three sheets drawn by a Government Amin, which is marked Exhibits-9, 9/1, 9/2 and 9/3. In Paragraph 13 Investigating Officer stated that P.W. 22 Mangal Hansda, P.W. 3 Mandal Soren, Kanhu Kisku, Chhinu Pagla (both deceased), Kurhia Kisku (not examined) were ploughing land in the southern part of the village in which there was water. Pendli @ Dulli, P.W. 1 Chhotka, Ghutum, P.W. 13 Babu Ram, Ampu (not examined), who is deaf and dumb, P.W. 25 Fede Soren, P.W. 5 Sona Muni were planting paddy in the plots which were shown to the Investigating Officer by the informant together with a trimmed ridge. In Paragraph 14 Investigating Officer stated that Sub Inspector S.K. Sinha came and told that dead bodies were not found. In the same paragraph Investigating Officer further stated that Ampu Hansda was seen by him who was deaf, dumb and through sign told the Investigating Officer about the occurrence and that he could identify the miscreants. Injury found on the person of Ampu Hansda was noted and he was referred for medical treatment. In Paragraph 15 Investigating Officer stated that he recorded the statement of Kurhia Kisku and that injuries found on her person was noted by S.I. S.K. Sinha and she was referred for medical treatment. Police statement of P.W. 4 Manjhali Kisku, P.W. 25 Fede Soren was also recorded and on their person also injuries were found. In Paragraph 16 Investigating Officer stated that police statement of P.W. 26 Pendli @ Dulli was recorded and on her person as well injury was found. Burnt bamboo piece was seized in presence of witness Jhapat Lal Yadav, Surendra Lal (Exhibit-4/2). In the same paragraph Investigating Officer stated that the case was supervised by Dy. S.P. In Paragraph 17 Investigating Officer stated that in presence of witnesses Jhapat Lal Yadav and Surender Lal iron wire net, 30 in number, together with glass piece, jute string and torn paper was seized vide seizure-list (Exhibit-4/3). In Paragraph 18 Investigating Officer stated that he recorded the police statement of P.W. 22 Mangal Hansda, P.W. 1 Chhotka Murmu, P.W. 13 Babu Ram Hansda, P.W. 6 Jham Murmu. In the same paragraph Investigating Officer further stated that Superintendent of Police, Collector also came to supervise the occurrence. In the same paragraph Investigating Officer also stated that he deputed S.I. S.K. Sinha to arrest the accused persons. Police

statement of P.W. 10 Basant Besra was also recorded. In Paragraph 19 Investigating Officer stated that he visited Lakshmipur Bhatia Assortment, searched the houses of the accused persons in presence of witnesses Bhagat Lal Yadav, Ganga Yadav but found the accused persons absconding. In the same paragraph he further stated that on the basis of confidential information he raided the house of Taslim Bhatia in presence of witness Bhagat Lal Yadav, Ganga Prasad and recovered one hand pump from his house vide seizure-list Exhibit-4/4 prepared in presence of the aforesaid two witnesses. In Paragraph 20 Investigating Officer stated that house of Accused No. 13 Kuddus Bhatia was searched in presence of aforesaid two witnesses and from the plot adjoining his house one farsa with a bamboo handle, sickle with wooden handle, was recovered vide seizure-list (Exhibit-4/5). In Paragraph 21 Investigating Officer stated that accused Haji Javed and 13 others were arrested on the next date of occurrence. On 30.07.1983 Accused No. 15 Abdul Khabbir and seven others were arrested. On 31.07.1983 Investigating Officer recorded the police statement of P.W. 7 Chhote Ram Hansda, P.W. 21 Mohan Soren, P.W. 14 Ficha Hansda, P.W. 9 Bhajan Tudu, Nidhi Ram (not examined), P.W. 2 Som Kisku, Fulmani Hembram (not examined), P.W. 25 Fede Tudu etc. In Paragraph 22 Investigating Officer stated that he along with A.S.I. Hira Prasad and armed force reached village Haldawan and searched for Lok Man Bhatia and Sohrab but they were found absconding. On the same day Investigating Officer visited Village Nayan Bhitha and recorded the statement of P.W. 28 Sakal Kisku and P.W. 1 Chhotka Murmu, P.W. 17 Ram Besra, P.W. 19 Babu Lal Kisku, Durge Murmu (not examined), Budhrai Hansda (not examined), P.W. 16 Pitha Soren, P.W. 23 Munshi Kisku, P.W. 8 Chunka Hansda, P.W. 2 Som Kisku, P.W. 12 Soma Soren. In Paragraph 23 Investigating Officer stated that on 02.08.1983 he arrested Md. Hussain and five others along with S.I. S.K. Sinha. On the same day S.I. S.K. Sinha also arrested Haji Abdul Majid, Abdul Majid and Rafik Alam. In Paragraph 24 Investigating Officer stated that on 02.08.1983 he seized aluminium vessel with stripe sides etc. from a ditch abutting west of the house of Tale Bhatia which was filled with water in presence of witnesses Jhapat Lal Yadav and Surendra Lal (both not examined). In Paragraph 25 Investigating Officer stated that he searched for the dead bodies but the same was not found, whereafter he arranged for Master Net which was laid in Kankai river to recover the dead bodies. Further statement of P.W. 8 Chunka Hansda was taken. Nejamuddin, resident of Bhatia Bhitha and Abdul Rahman, resident of Do Girija, both within Dighal Bank Police Station were arrested on 04.08.1983 while they were trying to run away. In Paragraph 26 Investigating Officer stated that on 04.08.1983 he recovered right leg below knee of unknown human being of which bone and flesh appeared burnt from Kankai river, inquest whereof was prepared by A.S.I. Hira Prasad in presence of two witnesses vide seizure-list (Exhibit-3/2). On the same day Hira Prasad prepared another Inquest Report of a skeleton (Exhibit-3/3). The skeleton was also sent for forensic examination. In Paragraph 27 Investigating Officer further stated that on 04.08.1983 Hira Prasad produced another seizure-paper by carbon process made by him which was marked Exhibit-4/6. In Paragraph 28

Investigating Officer stated that on 14.08.1983 he learnt that Accused No. 24 Afan Bhatia and eight others have surrendered in the court of S.D.J.M., Kishanganj and the papers concerning the lands in dispute were shown to him. Requisition for putting up recovered aluminium vessel with stripe sides on Test Identification Parade was submitted on 23.09.1983 and after completing investigation charge-sheet was submitted. On 25.11.1988 further examination of Investigating Officer (P.W. 31) was deferred at the request of learned A.P.P. to 26.11.1988. On 26.11.1988 further examination of P.W. 31 could not proceed as defence lawyer S.A. Majeed left for his heavenly abode and with the consent of the Investigating Officer 15.12.1988 was fixed as the date for his further examination. On 15.12.1988 Investigating Officer could not appear in court for his further examination and as per request of the learned A.P.P. 20.01.1989 was fixed as the date for his cross-examination. On 20.01.1989 also Investigating Officer or any other prosecution witness did not appear and the matter was posted on 15.02.1989 with direction to the Investigating Officer and other witnesses to appear on that day. On 15.02.1989 the Presiding Officer was on Casual Leave, the witnesses including P.W. 31 also did not appear and the matter was adjourned to 13.03.1989. On 13.03.1989 the Presiding Officer was transferred and the witnesses were also not present and the matter was posted to 21.04.1989. On 21.04.1989 also no witness was present. Presiding Officer also had not joined and the matter was posted to 26.05.1989. On 26.05.1989 a Time Petition was filed by the learned A.P.P. for producing the witnesses. Summons were issued against the Investigating Officer Ram Deo Roy through Superintendent of Police, Saharsa with direction to the A.P.P. to produce the witnesses on the next date i.e. 21.06.1989. On 21.06.1989 no witness was present. Learned A.P.P. filed a Time Petition to adjourn the matter till 17.07.1989. Time Petition was allowed and the matter was posted to 17.07.1989 with direction to the A.P.P. to produce the Investigating Officer on the next date. On 17.07.1989 also no witness was present and learned A.P.P. filed a Time Petition which was allowed with direction to the learned A.P.P. to produce the Investigating Officer on the next date posting the matter on 09.08.1989. On 09.08.1989 also no witness was present and learned A.P.P. filed a Time Petition again which was allowed with direction to the A.P.P. to take steps at his own end to produce the Investigating Officer on the next date 06.09.1989. On 06.09.1989 Investigating Officer did not come to depose and the matter was posted to 03.10.1989. On 03.10.1989 also no witness was present and a Time Petition was filed by the A.P.P. which was allowed with direction to the A.P.P. to produce the Investigating Officer and the matter was adjourned to 25.11.1989. On 25.11.1989 also no witness was present and the matter was again adjourned to 18.12.1989 with direction to the A.P.P. to produce the Investigating Officer. On 18.12.1989 also no witness was present and summons were again issued to the Investigating Officer through Superintendent of Police, Saharsa and the matter was adjourned to 24.01.1990. On 29.01.1990 record was put up and matter was adjourned to 16.02.1990 as the witness was not present on that day. On 16.02.1990 witness was also not present and the learned A.P.P. requested to

issue warrant of arrest for appearance of the Investigating Officer who at that time was posted at Chhatapur Police Station, Saharsa and the matter was adjourned to 28.02.1990. On 28.02.1990 also no witness was present and the learned A.P.P. again filed a Time Petition for producing the witnesses which was allowed and the matter was posted to 14.03.1990 on which date also no witness came to depose and a Time Petition was filed by the A. P.P. which was also allowed with direction to take necessary steps posting the case to 22.03.1990. On 22.03.1990 also Investigating Officer did not turn up to depose. P.W. 32 Bharat Nath Jha, Executive Magistrate was examined and discharged and the office was directed to write a letter to the Director General of Police, Bihar requesting him to direct the Investigating Officer to depose in the case. Matter was posted to 24.04.1990. On 24.04.1990 Investigating Officer did not turn up for deposition and a Time Petition was filed by the A.P.P. which was allowed with the same direction as issued earlier and the matter was posted to 02.06.1990. On 02.06.1990 Investigating Officer was present for his examination but on account of the Presiding Officer being on leave he could not be examined and the matter was posted to 10.07.1990 on which date also the Investigating Officer came for his evidence but due to paucity of time the witness could not be examined and the matter was posted to 20.08.1990 on which date the Investigating Officer did not come to depose and filed an application praying therein to grant him time on the ground of his illness. Matter was again adjourned to 28.08.1990 on which date Investigating Officer was examined. In Paragraph 29 Investigating Officer stated that he saw injuries on the person of P.W. 26 Pendli Marandi @ Dulli Marandi and sent P.W. 4 Manjhali Kisku, P.W. 25 Fede Soren, Kurhia Kisku (not examined), Ampu Hansda (not examined) to Dighal Bank Hospital for treatment as also collected their injury-report. In Paragraph 30 of his examination-in-chief P.W. 31 stated that he identified the signature of A.S.I. Hira Prasad on the seizure-list prepared through carbon process which was marked Exhibit-4/7, 4/8. On 02.08.1983 Investigating Officer searched the house of accused Tale Bhatia and found a ditch in the western portion of his house and recovered therefrom 12 articles mentioned in the seizure-list (Exhibit-4/9). In Paragraph 32 Investigating Officer stated that on 01.09.1983 Test Identification Parade was conducted by P.W. 32 Bharat Nath Jha. Cross-examination of P.W. 31 was made in part on behalf of accused Ajij Madar and 15 others on the same date (28.08.1990) and in Paragraph 33 P.W. 31 stated that he entered Station Diary Entry No. 431 dated 29.07.1983 at 04:05 P.M. but by that time he was not aware about the name of any accused person. The Investigating Officer further stated in the same paragraph that at 06:08 P.M. he reached the place of occurrence village and visited the place of occurrence at 07:00 P.M. His further cross-examination was thereafter deferred at the request of Ajij Madar and 14 other accused persons as also other set of accused persons and also on the ground of illness of Investigating Officer (P.W. 31) to 09.10.1990 on which date he did not appear and the matter was adjourned to 12.11.1990. On 12.11.1990 Investigating Officer did not appear and the matter was adjourned to 06.12.1990 for his appearance. On that date also he did not appear

and the matter was again posted to 13.01.1991. On 15.01.1991 also P.W. 31 did not turn up for further cross-examination and the matter was adjourned to 04.02.1991 on which date also P.W. 31 did not turn up and the matter was again posted to 12.03.1991 for his examination. On 12.03.1991 also P.W. 31 did not turn up and the matter was adjourned to 08.04.1991 and thereafter on several dates the matter was adjourned for securing his attendance i.e. 02.05.1991, 03.06.1991, 01.07.1991, 29.07.1991, 27.08.1991, 25.09.1991, 14.11.1991, 06.02.1992, 03.03.1992, 16.04.1992, 14.05.1992, 20.05.1992, 29.06.1992, 29.07.1992, 07.09.1992, 01.10.1992, 26.11.1992, 18.12.1992, 15.01.1993, 15.02.1993, 16.03.1993, 30.03.1993, 16.04.1993, 30.04.1993, 16.06.1993, 30.06.1993, 09.09.1993, 24.09.1993, 11.10.1993, 24.11.1993, 03.01.1994, 21.01.1994. In the order-sheet dated 08.02.1994 the trial court noticed for the first time that Investigating Officer (P.W. 31) has superannuated and issued summons at his home address fixing 12.04.1994 as the date for his appearance. The Investigating Officer (P.W. 31) did not appear on 12.04.1994 and the matter was adjourned to 20.04.1994 and thereafter on several dates i.e. 20.04.1994, 30.04.1994, 17.06.1994, 22.08.1994, 20.09.1994, 14.11.1994, 14.02.1995, 28.02.1995, 21.03.1995, 10.04.1995, 27.04.1995, 01.06.1995, 14.07.1995, 18.07.1995, 28.08.1995, 12.09.1995, 13.09.1995, 20.09.1995, 19.12.1995, 21.12.1995, 26.01.1996, 01.03.1996, 30.03.1996, 19.04.1996, 20.05.1996, 17.06.1996, 20.07.1996, 20.08.1996, 13.09.1996, 10.10.1996, 22.11.1996, 06.01.1997, 15.02.1997, 15.03.1997, 15.04.1997, 20.05.1997, 11.06.1997, 30.07.1997, 01.09.1997, 29.09.1997, 22.12.1997, 20.01.1998, 09.02.1998, 05.03.1998, 03.04.1998, 04.05.1998, 05.06.1998, 06.06.1998, 08.06.1998, 21.07.1998, 06.08.1998, 28.08.1998, 21.09.1998, 05.11.1998, 03.12.1998, 21.12.1998, 27.01.1999, 22.02.1999, 22.03.1999, 22.4.1999, 20.05.1999, 21.06.1999, 23.07.1999, 24.08.1999, 22.09.1999, 13.10.1999, 16.11.1999, 14.12.1999, 15.01.2000, 16.02.2000, 18.02.2000, 13.04.2000, 12.05.2000, 09.06.2000, 10.07.2000, 11.08.2000, 14.09.2000, 08.11.2000, 03.01.2001, 06.02.2001, 15.03.2001, 16.04.2001, 15.05.2001, 15.06.2001, 16.07.2001, 14.08.2001, 10.09.2001, 09.10.2001, 01.12.2001, 04.01.2002, 28.01.2002, 28.02.2002, 20.03.2002, 22.04.2002, 15.05.2002, 15.06.2002, 16.07.2002, 16.08.2002, 12.11.2002, 29.11.2002, 02.01.2003, 03.02.2003, 17.03.2003, 29.04.2003, 30.05.2003, 30.06.2003, 02.08.2003, 29.08.2003, 03.11.2003, 03.12.2003, 16.01.2004, 13.02.2004, 16.03.2004, 12.06.2004, 02.07.2004, 06.07.2004, 08.07.2004, 03.08.2004, 30.09.2004, 05.11.2004, 07.12.2004, 11.01.2005, 14.02.2005, 29.03.2005, 06.06.2005, 20.07.2005, 03.08.2005, 11.08.2005, 15.09.2005, 26.09.2005, 05.10.2005, 21.10.2005, 09.11.2005, 15.12.2005, 30.12.2005, 18.01.2006, 30.01.2006, 21.02.2006, 09.03.2006, 27.03.2006, 20.04.2006, 03.05.2006, 06.05.2006, 16.05.2006, 03.06.2006, 17.06.2006, 23.06.2006, 10.07.2006, 20.07.2006 until 31.07.2006, on which date P.Ws. 33, 34 were examined and discharged in absence of Investigating Officer (P.W. 31) without concluding his cross-examination and matter was again posted to 07.08.2006 and thereafter on 11.08.2006, 18.08.2006, 26.08.2006, 11.09.2006, 15.09.2006, 18.09.2006, 25.09.2006, 09.10.2006 on which date

prosecution evidence was closed without concluding the cross-examination of the Investigating Officer (P.W. 31) fixing 17.10.2006 as the date for recording 313 Cr. P.C. statement of accused persons. On 17.10.2006 the Presiding Officer of the court below was on leave and the matter was adjourned to 04.11.2006 for recording the 313 Cr. P.C. statement of the accused persons. On 04.11.2006 the statement of 30 accused persons was recorded under Section 313 Cr.P.C. and 06.11.2006 was fixed for examination of defence witness. On 06.11.2006 defence counsel sought for adjournment to produce defence witness which was allowed and matter was fixed for 08.11.2006. On 08.11.2006 defence counsel further prayed for time to produce defence witness and the matter was again adjourned to 13.11.2006. On 13.11.2006 also defence counsel took further time for 15.11.2006. On 15.11.2006 the matter was again adjourned to 20.11.2006 and thereafter to 24.11.2006 and finally to 30.11.2006 on which date the defence counsel filed petition to summon the Investigating Officer for his further cross-examination. Petition filed on 30.11.2006 to summon the Investigating Officer (P.W. 31) for his further cross-examination was rejected under order dated 30.11.2006 on the ground that the said application has been filed belatedly with a view to delay the disposal of the trial. The representation of 21 accused persons through lawyer was also rejected and their bail bonds cancelled with direction to the office to issue non-bailable warrant of arrest for their appearance and the matter was adjourned to 11.12.2006 for production of defence witnesses. On 11.12.2006 again the matter was adjourned to 14.12.2006 for production of defence witnesses. On 14.12.2006 counsel for the defence submitted before the court that defence is not inclined to examine any witness and the matter was adjourned to 15.12.2006 for argument on behalf of the prosecution. The matter was argued on behalf of the prosecution on 15.12.2006 in part and the matter was adjourned to 18.12.2006 for further argument on behalf of the prosecution which was completed on 18.12.2006 and then the matter was adjourned to 19.12.2006 for hearing the argument on behalf of the defence and the argument on behalf of the defence continued on 22.12.2006, 23.12.2006, 27.12.2006 and then matter was fixed on 30.12.2006 for reply on behalf of the prosecution. On 30.12.2006 the trial court having concluded the argument on behalf of the parties fixed 13.01.2007 for judgment on which date the impugned judgment convicting the appellants was pronounced fixing 16.01.2007 for hearing on the point of sentence on which date having heard counsel for the parties the trial court passed the order of sentence.

6. Learned counsel for the appellants of Criminal Appeal (DB) Nos. 137, 140 of 2007 submitted that appellant Nos. 5, 6, 8, 17, 19 to 23 of Criminal Appeal (DB) No. 137 of 2007 and the sole appellant of Criminal Appeal (DB) No. 140 of 2007 were accused nos. 20, 03, 06, 13, 19, 22, 26, 09, 08 and 21 before the trial Court and they were not named as accused in the fardbeyan though fardbeyan of the case was recorded by the informant P.W. 27 Ravi Lal Hansda @ Budhi Lal in consultation with P.W. 15 Rengta Soren as P.W. 15 informed P.W. 27 about other members of the unlawful assembly whom he identified after he heard the noise

and came out of his house on the road and saw the unlawful assembly approaching Santhal Assortment and Accused No. 5 Abdul Hannan fired gun shot causing death of Jalpa. In this connection learned counsel further pointed out that as the informant P.W. 27 had no occasion to see the aforesaid appellants he has not named or identified them in Court. Learned counsel for the appellants of Criminal Appeal (DB) No. 137 of 2007 further submitted that appellant nos. 7, 9 to 12, 14, 16 though named in the fardbeyan as accused nos. 21, 24, 20, 19, 03, 11, 22 but have neither been named nor identified by the informant in Court, as such, they appear to have been named in the fardbeyan at the instance of Rengta Soren (P.W. 15). P.W. 15, however, has neither named nor identified appellant nos. 7, 9, 10, 11, 12, 14 in Court. In the circumstances, their identification by other prosecution witnesses does not inspire confidence as both the appellants and the witnesses are residents of Lakshmipur village in adjoining assortments and knew each other from before and were on inimical terms on account of the land dispute as both sides wanted to cultivate the lands of Bihar Government for which parties were on litigating terms and resorted to filing of cases against each other, which is very much evident from the evidence of the prosecution witnesses itself and the papers concerning the lands were also shown to the Investigating Officer (P.W. 31) by the parties as has been admitted by him in Paragraph 28 of his deposition. In view of the land dispute and the fact that the appellants of both the aforesaid appeals have not been seen by any of the prosecution witnesses committing overt act during the occurrence their presence as member of the unlawful assembly was merely of an onlooker and they cannot be said to have shared common object or intention to assault and kill Kanhu Kisku, Chhinu Pagla, Jalpa Soren and Chhotka Soren as their killing is the individual act of those who have assaulted or shot them. In this connection evidence of the prosecution witnesses is very clear that the members of the assembly including the appellants had come very near to the deceased and the witnesses yet the appellants have not committed any overt act against the deceased or the witnesses and their mere presence at the place of occurrence is not sufficient to maintain their conviction. In this connection learned counsel for the appellants referred to the judgment of the Supreme Court in the case of K.M. Ravi and others Vs. State of Karnataka (2009) 16 Supreme Court Cases 337 Paragraph 10 and submitted that mere presence alone at place of occurrence per se is not sufficient to hold every member of the unlawful assembly to be criminally liable for the offences committed by the other member of the assembly. There must be sufficient evidence on record to show that other members of the unlawful assembly also intended to or knew the likelihood of commission of offence by the others. In the instant case, according to learned counsel, there is no evidence that appellants either intended or knew the likelihood of commission of offence by Accused Nos. 5, 24 and Accused No. 30 Abdullah. On similar lines learned counsel further relied on the judgment of the Supreme Court in the case of Nagesar Vs. State of Chhatisgarh, and submitted that in the reported case though P.W. 8 had mentioned the names of the appellants in his testimony as having been present at the place of occurrence but

has not attributed any overt act to them in the attack made on the deceased or on the witness himself and appreciating such fact both were granted benefit of doubt by the Apex Court.

7. Learned counsel next referred to the statement of the appellants recorded under Section 313 Cr.P.C. and submitted that from the question put to the appellants while recording their statement under Section 313 Cr.P.C. it does not appear that the appellants were given opportunity to explain the circumstances appearing against them in the evidence, as perusal of Question No. 2 put to the appellants would indicate that each of the appellant was asked to explain that he with the help of others assaulted Kanhu Kisku on head and killed Jalpa Soren by firing gun shot but such is not the evidence led against them as from the evidence of the prosecution witnesses it only appears that appellants were the members of unlawful assembly without there being any further evidence to show that they played any active part in killing the deceased. Learned counsel for the appellants in support of the proposition that the appellants were not given the opportunity to explain the circumstances appearing against them in the evidence relied on the judgment of the Supreme Court in the case of State of Punjab Vs. Hari Singh and Others, and submitted that it is well settled that a circumstance about which the accused was not asked to explain cannot be used against him and pointed out that the appellants are said to be the members of the unlawful assembly of which three other members individually assaulted the deceased but from Question No. 2 put to the appellants it will appear that they have been asked to explain the evidence that they assaulted/shot fire on the deceased. Perusal of the aforesaid judgment indicates that in the said case respondent was convicted for the different offences under the N.D.P.S. Act for possessing psychotropic substance. The High Court acquitted him taking note of the question put to him under Section 313 Cr.P.C. as no question relating to possession of the psychotropic substance, much less conscious possession of the said substance was put to him. For similar proposition learned counsel for the appellants also relied on the judgment of the Supreme Court in the case of Inspector of Customs, Akhnoor J and K Vs. Yash Pal and Another, and in the case of Sujit Biswas Vs. State of Assam, and submitted that as the case of the prosecution that the appellants as members of the unlawful assembly also shared the object of murder with the three assailants was not put to the appellants the same case cannot be used against them in evidence.

8. Learned counsel for the appellants also submitted that P.Ws. 12, 18, 19, 21, 22, 23, 24 have been tendered for cross-examination by the defence without recording their examination in chief and thereby procedure as envisaged under Section 138 of the Evidence Act has been violated only with a view not to unfold the true prosecution case as from perusal of the prosecution evidence itself it will appear that each of the aforesaid tendered prosecution witnesses was present at the place of occurrence and had witnessed the occurrence but as they were not likely to implicate the appellants as the member of the unlawful assembly they have not been examined in chief and have been tendered for being cross-

examined by the defence. Reliance in this connection is placed on the judgment of the Supreme Court in the case of Sukhwant Singh Vs. State of Punjab, and it is submitted that had the aforesaid prosecution witnesses been examined in chief they may not have implicated the appellants and only with a view to prevent such eventuality the prosecution did not examine the aforesaid witnesses in chief and tendered them for cross-examination contrary to law.

9. Learned counsel for appellant no. 1 of Criminal Appeal (DB) No. 317 of 2007, Accused No. 24 Afan Bhatia submitted that though he is said and found to be the assailant of Kanhu Kisku and Chhinu Pagla but such finding is fit to be set aside as the dead body of the aforesaid two deceased was never recovered along with the live stock of the prosecution party which appellant Afan Bhatia and others are said to have taken away from the place of occurrence plot and the residences of the members of prosecution party in Santhal Assortment after setting ablaze of two houses. From the examination-in-chief of P.W. 30 Sub-Inspector S.K. Sinha itself, it is evident that on the instruction of the Investigating Officer (P.W. 31) raid was conducted in Bhatia Assortment of village Lakshmipur in the succeeding morning of the occurrence i.e. 30.07.1983 and 11 Bhatia men including four appellants were arrested from the Assortment but neither the live-stock nor the dead bodies could be recovered either from the assortment or from its vicinity including the ditch in which P.W. 4 Manjhali Kisku was thrown along with the dead body of her father Kanhu Kisku by the members of the unlawful assembly. In this connection evidence of the Investigating Officer (P.W. 31) in paragraph 4 is also relevant, as according to him he visited the place of occurrence field and the ditch on the date of occurrence at 7:00 P.M. and found waist-deep water in the ditch. From the further evidence of the Investigating Officer in Paragraph 21 it is further evident that raid was conducted in Bhatia Assortment in the morning of 30.07.1983 and 13 Bhatia men were arrested from the assortment itself. In this background counsel for the appellant Afan Bhatia submitted that it is surprising that neither the dead bodies of the four deceased nor the cattle, live stock taken away from the field and the houses of the Santhals could be traced though raid was conducted not only in the Bhatia Assortment of village Lakshmipur but also in the Bhatia Assortment of village Haldawan wherefrom also another mob had come to the place of occurrence at the time of occurrence.

10. Learned counsel for appellant Afan Bhatia next submitted that perusal of four inquest reports dated 04.08.1983 (Exhibits 3 to 3/3) itself make it evidently clear that the part of dead bodies recovered on 04.08.1983 by A.S.I. Heera Prasad (P.W. 28) was that of four unknown human beings and cannot be connected with the four deceased. In this connection evidence of P.W. 33 Kishan Lal Yadav and P.W. 34 Narayan Prasad Yadav, the two Inquest witnesses, is also relevant as they have also not supported that the dead body parts of four unknown was recovered in their presence.

11. Learned counsel further submitted that from the evidence of the Investigating Officer (P.W. 31) it is evident that he began recording his

examination-in-chief on 04.08.1988 which continued until 28.08.1990 on which date he was partly cross-examined as well on behalf of accused Ajij Madar and 14 others in which he accepted the fact that he heard rumour about the occurrence at Dighal Bank Police Station on 29.07.1983 at 4:05 P.M. whereafter he recorded Station Diary Entry No. 431 and proceeded for the place of occurrence village reaching there at 6:08 P.M. and then recorded the fardbeyan of informant Ravilal Hansda @ Budhilal and after recording the fardbeyan inspected the place of occurrence field and the ditch at 7:00 P.M., whereafter his further cross-examination was deferred for 09.10.1990 at the request of Ajij Madar, 14 others as also other set of accused persons including the Investigating Officer who was unwell. On 09.10.1990 Investigating Officer did not appear for further cross-examination and the matter was adjourned to 12.11.1990 and to subsequent dates until 04.11.2006 when without completing the cross-examination of the Investigating Officer statement of the appellants under Section 313 Cr.P.C. was recorded and the matter adjourned to 06.11.2006 for examining defence witness. To examine the defence witness matter continued to be adjourned until 30.11.2006 when a petition was filed on behalf of the appellants to summon the Investigating Officer for completing his cross-examination which was rejected by the trial Court on the same day. It is submitted that on account of failure of the prosecution to complete the cross-examination of the Investigating Officer the appellants suffered immensely as they had no opportunity to confirm from the Investigating Officer about the previous police statement of the eye-witnesses whose attention they had drawn towards their previous police statement and the witnesses had declined the suggestion. Learned counsel also submitted that failure of the prosecution to make available P.W. 31 for completing his cross-examination has prejudiced their defence as they could not subject him to the searching cross-examination on the different aspects of investigation about failure of the investigating team to recover the live-stock and the dead bodies and to conduct the Test Identification Parade on 25, 29.09.1983 after submission of charge-sheet on 11.09.1983 as failure to recover the live-stock and the dead bodies put a serious question mark over the veracity of the prosecution story.

12. Learned counsel for appellant Afan Bhatia finally submitted that on merit also identification of the appellant Afan Bhatia by P.W. 1 is not to be relied upon for the reason that his name is not included in the fardbeyan as the one who was present at the time of occurrence though he has claimed in his evidence that on the date, time of occurrence he was in his own plot planting paddy. From Paragraph 42 of his evidence it would appear that he knew the name of the appellant Afan Bhatia as also his father from before and because of the enmity as disclosed by him in Paragraph 65 he has perhaps named, identified the appellant Afan Bhatia in Court. From Paragraph 53 of his evidence it would appear that P.W. 1 was not present in the village on the date of occurrence for the whole day. In this connection learned counsel also referred to the evidence of P.W. 1 in Paragraphs 7, 8, 72 to 76, 77, 81, 82, 85, 103, 118.

13. Learned counsel for appellant Afan Bhatia further assailed the evidence of P.W. 2 Som Kisku, son of deceased Kanhu Kisku as he is also not named in the fardbeyan as the one who was present at the time of occurrence although he was trimming ridge and his deceased father Kanhu Kisku was ploughing the same field yet he has not been named in the fardbeyan as the one present at the place, time of occurrence. He returned to the village after sunset and has claimed that he met the Investigating Officer but did not record his statement which was recorded as per his own version in Paragraph 13 of his evidence on Sunday i.e. after two days of the occurrence and he perhaps named the appellant Afan Bhatia as the assailant of his father because of the previous enmity and land dispute. Reference in this connection was made to the evidence of P.W. 2 in Paragraphs 18, 20, 29, 30, 34, 35, 36, 40, 44, 46, 51.

14. Learned counsel also assailed the evidence of P.W. 3 Mandal Soren as he claimed in his evidence that on the date, time of occurrence he was ploughing his purchased field in the same block of land in which deceased Kanhu Kisku and Chhinu Pagla were ploughing their lands and that having escaped the assault he managed to run away and concealed himself in jute field wherefrom he returned to the village at 8.00 P.M. and came to the house of P.W. 15 Rengta Soren where his statement was recorded by the Investigating Officer in torch light between 12.00-1.00 A.M. over which he did not put his signature. In this background it is submitted that it is not understandable as to why P.W. 3 being aware of the police outpost in village Singhimari, which is at a distance of 1 1/2 kos from the jute field in which P.W. 3 had concealed himself, did not approach the outpost for the whole day until his return to the village at 8.00 P.M. In this connection reference is made to the evidence of P.W. 3 in Paragraphs 16, 21, 29, 33, 53, 54, 60 and 64.

15. Learned counsel for appellant Afan Bhatia also assailed the identification of Afan Bhatia made by P.W. 4 Manjhali Kisku, daughter of deceased Kanhu Kisku on the ground that amongst the members of unlawful assembly she knew only Afan Bhatia from before as would appear from her evidence in Paragraph 26 and also on the ground of her claim that she was also taken away by the members of the unlawful assembly along with the dead body of her father and thrown in the ditch and allowed to come out of the ditch to escape from the clutches of the unlawful assembly which had carried her along with the dead body of her father and thrown her into the ditch. Reference in this connection is made to the evidence of P.W. 4 in Paragraphs 3, 22, 26, 29.

16. Learned counsel also assailed the identification of appellant Afan Bhatia made by P.W. 13 Babu Ram Hansda on the ground that from Paragraph 7 of his evidence itself it will appear that P.W. 13 could not identify Afan Bhatia in Court and raised the excuse that time has elapsed and accused has sported beard in the meanwhile. The occurrence took place on 29.07.1983 and the evidence of P.W. 13 was recorded on 04.10.1985 i.e. little more than two years after the occurrence and in case P.W. 13 had any difficulty in identifying Afan Bhatia

because of his beard and moustache the Presiding Officer of the Court ought to have facilitated his identification by asking the accused to appear again in the dock after getting his beard and moustache shaved. Reference in this connection is made to the evidence of P.W. 13 in Paragraphs 7, 20, 21, 22, 28, 29, 32, 34.

17. Learned counsel also assailed the identification of Afan Bhatia by the informant P.W. 27 Ravilal Hansda @ Budhilal with reference to his evidence in Paragraphs 12, 17, 30, 31, 46, 56, 57. In this connection he submitted that perusal of the entire evidence of the informant would indicate that there is serious land dispute between the Bhatias resident of Bhatia Assortment, Lakshmipur and the Santhals resident of Santhal Assortment, Lakshmipur for obtaining cultivating possession of 27 1/2 acres of Government land for which criminal case was lodged three years earlier by Accused No. 5 Abdul Hannan and others in which informant and P.W. 15 both had gone to jail and Afan Bhatia was a witness in the said case and because of the said land dispute he has been implicated in the present case and failure to produce the Investigating Officer for cross-examination has seriously prejudiced his case to establish his defence that it was because of the land dispute he has been falsely implicated in the case.

18. Learned counsel for the appellant Afan Bhatia in support of the aforesaid submissions placed reliance on the judgment of the Supreme Court in the case of Akil @ Javed Vs. State of NCT of Delhi, and referred to the provisions contained in Chapter XXVIII of the Code of Criminal Procedure particularly Section 231 and Submitted that it has been specifically provided under Section 230 Cr.P.C. that the Sessions Judge should proceed to take all such evidence as may be produced in support of the prosecution and that in his discretion may permit cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further examination. He also referred to Section 309 Cr.P.C. in Chapter XXIV and submitted that in every trial the proceeding is to be conducted as expeditiously as possible in particular when examination of witnesses has once begun the same shall be continued from day to day until all the witnesses in attendance have been examined. Having referred to the aforesaid provisions learned counsel submitted that in the instant case charges were framed on 30.03.1984 and the examination of important witnesses other than Investigating Officer was over prior to 10.05.1988 whereafter examination of Investigating Officer (P.W. 31) was taken up on 04.08.1988 which continued until 28.08.1990 when he was partly cross-examined and his further cross-examination was adjourned on joint prayer of the accused persons as also the Investigating Officer who was unwell but P.W. 31 never appeared thereafter for completing the cross-examination and the trial proceedings was adjourned from time to time to secure his attendance. From perusal of order dated 08.02.1994 it further appears that P.W. 31 superannuated in the year 1994, the trial proceedings, however, continued to be adjourned but he never appeared. Appellants having noticed such fact requested the Court below vide petition dated 30.11.2006 to summon the Investigating Officer for completing his cross-examination but the said request of the appellants and others was rejected under

order dated 30.11.2006 observing that request has been made belatedly. In the aforesaid background, it is submitted that failure to make available the Investigating Officer for completing his cross-examination has caused serious prejudice to the appellants as they could not subject him to searching cross-examination and his evidence on record is fit to be ignored if not expunged from the records of the trial Court. The appellant of the reported case was identified by P.W. 20 of the said case on 18.09.2000 as the one who attempted to molest the complainant (P.W. 17) and when the deceased raised protest the appellant shot him and thereafter the deceased fell down. The trial Court having recorded the said evidence on 18.09.2000 adjourned the case for cross-examination of P.W. 20 by two months i.e. 18.11.2000 on which date P.W. 20 stated that the identity of the appellant on the earlier occasion was at the instance of Inspector Rajendra Gautam who tortured him to make such statement. Supreme Court having noticed the provisions of Sections 230, 231, 309 of the Code of Criminal Procedure observed that there was no justification for the trial Court to adjourn the case by two months for cross-examination of the witness and chose not to rely on the subsequent statement of the witness made during cross-examination as in the said case appellant was identified during the occurrence not only by P.W. 20 but also informant (P.W. 17) and other eyewitnesses, namely, P.Ws. 19, 23, 25 and there was nothing on record to question the identification of the appellant made by P.Ws. 17, 19, 23, 25.

19. Learned counsel for appellant no. 2 in Criminal Appeal (DB) No. 317 of 2017, Accused No. 5 Abdul Hannan submitted that though appellant Abdul Hannan is said to be the member of the unlawful assembly who shot dead Jalpa Soren while he was standing on the road and has been identified by P.Ws. 7, 10, 14, 15, 17, 20 yet was not seen by the informant as member of the unlawful assembly which first visited the field and then came to the road where appellant Abdul Hannan shot Jalpa Soren which fact was disclosed to the informant by Rengta as would appear from the fardbeyan is fit to be disbelieved. In support of such submission learned counsel has raised following five submissions:

(i) According to learned counsel manner of occurrence as alleged and found by the court below had never taken place. In this connection learned counsel pointed out that according to prosecution case the mob of 400-500 Bhatias came running towards Santhals within their sight which is most unnatural that having seen the Bhatias variously armed the Santhals will remain present at the place of occurrence to be assaulted. There is no evidence that having seen the Bhatias Santhals either ran away or defended themselves by giving suitable reply to the Bhatias. In this connection learned counsel referred to the evidence of P.W. 16 Pitha Soren Paragraph 21 who stated that the mob initially exploded bomb and thereafter firing was resorted. Learned counsel further submitted that according to prosecution case bomb was also exploded in the courtyard of P.W. 14 Fichha Hansda but the same is not supported either by Fichha Hansda or by the objective finding of the Investigating Officer as he did not find any sign of bomb explosion in the courtyard of Fichha Hansda. According to learned counsel further

prosecution case is that land was being ploughed for the purpose of planting paddy seedlings which was also going on and before leaving the place of occurrence the witnesses left the seedlings, plough and the bullocks at the place of occurrence but the Investigating Officer has not found any paddy seedlings, bullocks and the plough at the place of occurrence though there is allegation that the bullocks and the plough were taken away by the Bhatia mob. Learned counsel also pointed out that there is no sign of setting ablaze any house in Santhal Assortment found by the Investigating Officer. Counsel also pointed out that two persons were killed by slitting their throat with profuse bleeding, one sustained gun shot and the fourth sustained lathi injury, the dead bodies of the four fell at the place of occurrence but no trace of blood was found at the place of occurrence. The explanation of the prosecution that it was washed away by the rain, according to learned counsel, is absurd as rain water accumulated in the field close by and remained stagnant, therefore, some inch of blood must have been found at least to suggest that four persons were killed.

(ii) So called one of the deceased of the case Jalpa Soren was never killed and is alive settled in Nepal. In this connection reference is made to the evidence of P.W. 7 in Paragraph 2 that members of the unlawful assembly assaulted Jalpa. In the same paragraph P.W. 7 further stated that Accused No. 5 Abdul Hannan assaulted Jalpa with gun and he fell down in paddy field. In this connection he also referred to the deposition of P.W. 7 in Paragraph 29 where he denied the suggestion that he stated before the Investigating Officer that he saw Jalpa in the evening going through the road. Learned counsel next referred to the evidence of P.W. 10 Basant Besra Paragraph 15 where he denied the suggestion that Jalpa is settled in Nepal. In this connection learned counsel pointed out that suggestion is not proof and cannot take place of evidence but according to him defence by putting such suggestion has challenged the prosecution to prove the death of Jalpa caused by fire-arm and failure of the prosecution to prove such fact should enable this Court to acquit Accused No. 5 Abdul Hannan of the charge of having shot dead Jalpa Soren.

(iii) Accused No. 5 Abdul Hannan has been implicated at the instance of P.W. 15 Rengta Soren and informant P.W. 27 Ravilal Hansda @ Budhilal, which would appear from the evidence of P.W. 15 in Paragraph 33 and P.W. 27 in Paragraph 18 where they have stated that they were in jail together in forcible paddy harvesting case which was instituted by Accused No. 5 Abdul Hannan. It is further apparent that father of Abdul Hannan Ajij Madar, the brother-in-law of Abdul Hannan Eklesh Bhatia, the own brother of Abdul Hannan Montu @ Matibul and brother-in-law of Abdul Hannan Doctor Rauf have been made accused in the present case, which according to learned counsel, is indicative of the fact that there was sufficient reason to implicate Accused No. 5 falsely.

(iv) Learned counsel further submitted that the informant P.W. 27 Ravilal Hansda and P.W. 15 Rengta Soren were not present at the place of occurrence when the occurrence took place. In this connection learned counsel for Accused No. 5

pointed out that informant P.W. 27 and P.W. 15 are the two leaders of the Santhals, which would appear from the evidence of P.W. 14 Paragraph 9 where he has clearly stated that P.W. 15 is the Sardar of Santhals and with reference to the aforesaid evidence learned counsel submitted that it is not understandable that if the two were present and occurrence was over by 1.00 P.M. the matter is not reported by them till 06:15 P.M. It has also come in the evidence of P.W. 16 Paragraph 21 that he had seen Rengta and 7-8 others running away from the field itself and that he heard sound of gun shot/bomb explosion after he covered 40-50 ft. from the field by moving towards south and in the light of the said statement learned counsel for Accused No. 5 concluded that before Jalpa was shot Rengta and 7-8 others had run away from the road and could not have seen Jalpa being shot by Accused No. 5. Learned counsel also submitted that P.W. 14 Fichha Hansda be also disbelieved as he did not record his police statement, which would appear from Paragraph 9 of his evidence.

(v) Learned counsel also submitted that from the evidence of the informant P.W. 27 Ravilal Hansda it will appear that he learnt about Jalpa Soren being shot by Accused No. 5 from P.W. 15 Rengta Soren and with reference to the said evidence it is submitted that it is not understandable that after 1.00 P.M. till 6.00 P.M. the two had sufficient time to know about the occurrence but Accused No. 5 was not named at the first instance. Learned counsel finally submitted that Accused No. 5 cannot be held guilty for the offence under Sections 302/ 149 of the Penal Code as from the submission noted above it cannot be said beyond all reasonable doubt that Jalpa Soren was killed by Accused No. 5 by inflicting fire-arm injury and in such situation his conviction under Section 302 of the Penal Code simpliciter cannot be sustained. Even assuming for the sake of argument Accused No. 5 was a member of unlawful assembly then it will have to be decided whether the assembly was unlawful and what was its common object and the common object was within the knowledge of the appellant. Obviously, the object of the mob was to take possession of the lands which belong to them from Santhals. Aforesaid object was never unlawful and the said object is within Section 141 of the Penal Code, therefore, according to learned counsel, the assembly cannot be said to be an unlawful assembly. It is true that some of the members of the assembly were armed and other members of the assembly knew the said fact but from such knowledge it cannot be inferred that the assembly will commit murder. The knowledge which can be derived is that those arms may be used for taking possession of the lands if resisted by the Santhals. Aforesaid object of taking over possession by no means can be said to be unlawful as the Bhatias were perfectly justified to take possession of their own land and to use arms in exercise of their right of private defence. Thus, according to learned counsel, the appellant cannot be held guilty either for the offence under Section 302 of the Penal Code or Sections 302/ 149 of the Penal Code. In this connection reference is made to the judgment of the Supreme Court in the case of Santosh Vs. State of Madhya Pradesh, .

20. Appraisal of ocular prosecution evidence suggests that in the outer area of

village Lakshmipur Santhal Assortment a mob of 400-500 Bhatia men led by Accused No. 24 Afan Bhatia and others including appellants came on 29.07.1983 around noon from western direction variously armed with lathi, sickle, gandasa and spear, killed Kanhu Kishku, Chhinu Pagla both ploughing different plot nearby for paddy transplantation. Informant (P.W. 27), P.Ws 1, 2, 3, 4, 5, 14, 16, 17, 20, 25, 26 were also present in the adjoining plots on the date, time of occurrence conducting agricultural operation in the plot. Aforesaid witnesses claim to have seen killing of Kanhu Kishku and Chhinu Pagla by Accused No. 24 but succeeded in running away from the place of occurrence. P.Ws. 27, 2, 3 concealed themselves in jute field nearby. P.Ws. 14, 16, 17, 20 claimed in their evidence that they ran to village Tal Gachh in the house of Ugra Mohan, Hardev Harijan, Heera Lal (none of the three examined). P.Ws. 14, 16 went to the house of Ugra Mohan, Hardev Harijan respectively. P.Ws. 17, 20 went to the house of Heera Lal. P.W. 5 went to village Loha Gara, Poa Khali. P.Ws. 1, 25, 26 have not indicated in their evidence the place where they remained after running away from the place of occurrence plot until their return to the assortment in the evening. P.W. 4 Manjhli Kishku, however, claimed that she was also assaulted, carried by the miscreants along with the dead body of her father Kanhu Kishku, thrown in a ditch situate further east of Bhatia Assortment but allowed to come out of the ditch to enable her to come to village Nain Bhitha in the house of Bidhilal Mushar (not examined) and then to the house of Uchit Lal (not examined) in the same village.

21. P.Ws. 6, 7, 8, 9, 10, 11, 15 claimed in their evidence that on the date, time of occurrence they were at their residence in Santhal Assortment. Having heard the noise raised by the unlawful assembly of Bhatia men came to the road and saw Accused No. 5 Abdul Hannan amongst the members of the unlawful assembly firing shot on Jalpa Soren, who had also come on the road from his house and was standing there. Jalpa Soren having suffered gun shot injury fell in the adjoining plot. Deceased appellant Abdullah (Accused No. 30) chased Chhotka Soren and assaulted him with lathi who also fell down. P.Ws. 6, 7, 8, 9, 10, 11, 15, however, managed to run away from the road and concealed themselves in jute field. Aforesaid witnesses except P.W. 15 further claimed that they remained in the jute field until sun-set and returned to the assortment in the evening, by that time police had already arrived in the assortment. P.Ws. 15, 27 claimed that by the time they returned to the assortment the police had not come there, it reached after their return to the assortment. The witnesses further claimed that four dead bodies, belongings of Santhals including bullocks, cattle were also taken away by the unlawful assembly of Bhatia men. The house of P.W. 16 Pitha Soren was burnt to ashes and bomb exploded at the entrance of the house of P.W. 6 Jham Murmu.

22. Investigating Officer recorded the fardbeyan on 29.07.1983 at 6:15 P.M., proceeded to inspect the place of occurrence plot(s), ditch in the same evening at 7:00 P.M. in which Manjhali Kisku (P.W. 4) and dead body of her father was thrown in presence of P.W. 4, 15, 27 but dead body was not found in the ditch.

He also recorded statement, noticed injury on the person of P.Ws. 4, 25, 26 and others, forwarded them for medical examination. Injury Report of P.W. 26 is, however, not on record. In the same evening Investigating Officer inspected the house of P.W. 16 Pitha Soren and P.W. 6 Jham Murmu at 11:45, 11:55 P.M. in presence of Jhopa Lal Yadav, Surendra Lal Yadav (both not examined) and found ashes, semi burnt bamboo piece in the house of Pitha Soren (P.W. 16) and evidence of explosion of bomb in the courtyard of Jham Murmu (P.W. 6) vide seizure-list (Exhibits-4/2, 4/3). Having made preliminary investigation, seizure Investigating Officer in the same night instructed P.W. 30 S.K. Sinha to visit Bhatia Assortment and arrest the accused persons. From the evidence of S.K. Sinha (P.W. 30), Investigating Officer (P.W. 31) it is evident that both came to Bhatia Assortment in the night/morning between 29-30.07.1983, searched the houses, arrested Accused Nos. 10, 15, 16, 23 as also seven others from their house in Bhatia Assortment. The dead bodies were, however, not found either in any house of the Bhatia Assortment or in the ditch in which Manjhali Kisku (P.W. 4) was thrown along with the dead body of her father. During further investigation also none of the dead bodies could be found though from the evidence of Investigating Officer it is evident that efforts to recover the same was made until 04.08.1983 when Master Net was laid in Kankai river. Two right legs below knee in burnt condition and two headless skeleton of unknown human being was, however, recovered/seized from the east, west bank of Kankai river respectively on 04.08.1983 vide seizure-list (Exhibits-3, 3/1, 3/2 and 3/3). The four body parts recovered from the bank of Kankai river were in such condition that the same could neither establish the identity of the person nor be subjected to post mortem. In a case in which identity of the deceased is established but if dead body is not found, post mortem examination of the deceased is not conducted, failure to recover the dead body and to conduct post mortem may not be fatal. In this connection, reference be made to the judgment of the Supreme Court in the case of Ramjee Rai and Others Vs. State of Bihar, . It is now well established that corpus delicti need not be proved. Discovery of the dead body is a rule of caution and not of law. In the event, there exist strong, direct or substantial evidence leading to inescapable conclusion that a person has died and that the accused persons have committed the murder, judgment of conviction can be recorded even in absence of the dead body. In this connection, further reference be made to the judgment of the Supreme Court in the case of Badshah and Others Vs. State of U.P., in which placing reliance on the judgment in the case of Ramjee Rai (supra) it was held that in the event of murder of an abducted person, either by direct or presumptive evidence, an inference of murder can safely be drawn, in respect whereof, it would not be necessary to prove the corpus delicti. In the instant case, corpus delicti of the four deceased having not been found, their cause of death, as deposed by the eye-witnesses, having not been corroborated by the medical evidence, there being serious enmity between the prosecution party and the accused persons of the instant case from 1971-72 when members of the prosecution party came to settle in Village Lakshmipur and struggle arose between Santhals and Bhatias for taking

control of 27 1/2 acres of Government land, yet, it may be safe to rely exclusively on the ocular evidence of the prosecution witnesses to maintain their conviction though the Investigating Officer (P.W. 31) in spite of more than 100 adjournments spanning into several years right from 1990 till 2006 failed to appear for cross-examination to answer the searching question(s) of the defence with regard to his failure to recover the four dead bodies, cattle and other belongings of Santhals said to have been taken by the Bhatias, although inspection of the ditch, raid to arrest the accused persons from Bhatia Assortment was conducted by him and P.W. 30 in the same evening/night between 29-30.07.1983 and few of the accused persons were also arrested in the same night/succeeding morning from Bhatia Assortment. Failure of the Investigating Officer (P.W. 31) to appear for cross-examination has not prejudiced the accused persons their right to fair trial. For failure of the prosecution to recover the dead body, oxen, cattle said to have been driven away by the members of the unlawful assembly from Santhal Assortment and to satisfactorily explain its conduct by making available the Investigating Officer for further cross-examination, it cannot be concluded that the prosecution has not been able to prove its case beyond all reasonable doubt. Sections 137, 138 of the Evidence Act provide for examination-in-chief, cross-examination of a witness as also order of examinations. The party who calls a witness shall examine him and his examination is called examination-in-chief. The examination of the same witness by the adverse party is called cross-examination. It is the jurisprudence of law that cross-examination is an acid test of the truthfulness of the statement made by the witness in examination-in-chief. The objects of cross-examination are : (i) to destroy or weaken the evidentiary value of the witness of his adversary (ii) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adverse party (iii) to show that the witness is unworthy of belief by impeaching the character, credit of the witness. The questions to be addressed in course of cross-examination are to test his veracity and to shake his credit. In the instant case, failure of P.W. 31 to appear for cross-examination has prevented the defence from asking him about the steps which he took to trace the dead bodies, recover the cattle, as according to P.W. 1, in the evening of occurrence, P.W. 31 did not go out of the assortment to search for the dead bodies, cattle as claimed by him in his examination-in-chief. P.W. 31 having not appeared for cross-examination in spite of more than 100 adjournments prevented the defence from impeaching his evidence by putting searching questions but the defence has not been prejudiced on that score. In this connection, reference may be made to the judgment of the Supreme Court in the case of Bachan Singh and Another Vs. State of Bihar, in which evidence of the Investigating Officer was not recorded as he had gone to Pakistan but his examination has not prejudiced the defence. Supreme Court maintained the conviction of those who committed the overt act but acquitted others against whom no overt act was alleged.

23. It is also necessary to observe that the prosecution witnesses are not only

inimical but also related to each other as P.Ws. 5, 9, 10 are the sister, brother, father-in-law of the informant (P.W. 27). P.W. 25 is the wife of the informant. P.W. 15 is the uncle of the informant. The other witnesses are also related either to the informant or the four deceased. In the aforesaid background, we proceed to examine the merit of the other prosecution witnesses as well. Informant (P.W. 27) has admitted in Paragraph 6 of his evidence that he and other Santhals settled in village Lakshmipur in the year 1971-72 on 4-5 bighas of land of Bihar Government and at that time 12-13 Bhatia families were already settled in the village. He also admitted in Paragraphs 46, 47 of his evidence that at the time of arrival of Santhals in village Lakshmipur there was forest all around and the lands were not under cultivation. Struggle for taking cultivating possession of the lands in question with the Bhatias had begun within two years of their arrival in village Lakshmipur. Santhals lodged a case of elopement of a girl and setting ablaze a house against the Bhatias. In Paragraph 7 informant further admitted that three years earlier Bhatias raised dispute about forcible paddy plantation/harvesting, which was seized by the Block Development Officer, who gave the produce to him and other Santhals. In the same paragraph he further stated that the present occurrence has taken place for securing ouster of Santhals from village Lakshmipur. In Paragraph 18 informant further admitted that he along with P.W. 15 Rengta Soren went to jail on the same day and released on bail after three months also on the same day. It is also evident from his evidence in Paragraph 21 that he is not only well acquainted with the Bhatias, aware about their inter se relationship but also on litigating terms with them besides the present case as in Paragraph 38 he admitted that Accused No. 29 lodged a case against him in which he remained in jail custody. In the same paragraph he further admitted that Sita Tuddu lodged a false case against him in the Gram Panchayat and at that time Surpanch of Gram Panchayat was Accused No. 1 Ilias in which he had filed application under Section 73 of the Panchayat Raj Act for transfer of the case from Gram Kutchery to the Court but he is not aware whether Accused No. 1 submitted report against him.

In view of the aforesaid assertion of the informant, undoubtedly, he is an eye-witness of the occurrence as he was ploughing the adjoining field where Kanhu Kisku and Chhinu Pagla were killed by Accused No. 24 and other Santhals present were assaulted by the unlawful assembly of 400-500 Bhatia men, the members of the unlawful assembly, somehow, allowed the informant to run away and to conceal himself in jute field, is not an attempt by him to become an eye-witness of the occurrence. The two deceased, namely, Kanhu Kisku and Chhinu Pagla and other injured were never on litigating terms with the Bhatias yet were killed, injured by the unlawful assembly. Informant who was litigating for the lands-in-question right from 1971-72 anyhow managed to escape and conceal in jute field. Having concealed in jute field informant remained there until evening and perhaps on account of fear did not approach the police camp in village Singhimari. Around sun-set he returned to the assortment and met P.W. 15 Rengta Soren and Lakhiram (not examined). P.W. 15 disclosed that Jalpa Soren

was shot by Accused No. 5 Abdul Hannan. Lakhiram disclosed that Chhotka Soren was assaulted by Accused No. 30 Abdullah. After arrival in the assortment informant, P.W. 15 and Lakhiram did not take any steps either to inform the police camp in village Singhimari or to Dighal Bank Police Station but shared amongst themselves the name of the miscreants whom they had seen in the assembly. In this connection evidence of the informant in Paragraph 22 is relevant as there he has categorically stated that the members of the unlawful assembly, who were identified by P.W. 15, were not seen by him. The claim of the informant that at the time of occurrence he was present at the place of occurrence and was ploughing the field, however, appears to have been contradicted in the light of the evidence of his sister-in-law P.W. 5 Sona Murmu in Paragraph 17 where she stated that at the time of occurrence she was also at the place of occurrence and was planting paddy seedlings in one of the plots but had not seen the informant at the place of occurrence plot but is not material.

24. P.W. 4 Manjhali Kisku is the daughter of deceased Kanhu Kisku and sister of P.W. 2 Som Kisku. She had come to the place of occurrence plot to serve meal to her father and brother as her father was ploughing the field and her brother P.W. 2 was trimming the ridge of the same field. In the adjoining plot P.Ws. 1, 3 were also carrying out agricultural operation. P.W. 4 also suffered injury during the occurrence and was taken away by the unlawful assembly along with the dead body of her father and then thrown in the ditch east of Bhatia Assortment along with the dead body of her father but allowed to come out of the ditch so as to enable her to come to village Nain Bhitha in the house of Bidhi Lal Mushar, who took her to the house of Uchit Lal in the same village but neither she nor Bidhi Lal nor Uchit Lal (both not examined) chose to inform either the police camp in village Singhimari or to Dighal Bank Police Station about the occurrence may be on account of fear. She also did not take any steps to get herself examined by any doctor until she was referred by the Investigating Officer for medical examination in the evening. P.Ws. 1, 2, 3 were conducting agricultural operation in the adjoining plot when Accused No. 24 leading unlawful assembly came to the place of occurrence, mounted assault on the deceased Kanhu Kisku and members of the unlawful assembly assaulted P.W. 4. P.Ws. 1, 2, 3 were spared and did not suffer any injury on their person. P.W. 4 being injured is an eye-witness of the occurrence, she having reached village Nain Bhitha, met Bidhi Lal, Uchit Lal and the two should have informed either Dighal Bank Police Station or Singhimari Out Post about the occurrence. From conjoint reading of her evidence in Paragraphs 9, 16 it further appears that she appeared in the Test Identification Parade held in Kishanganj jail after 1 1/2 months of the occurrence in which she identified five members of the unlawful assembly including Accused No. 10 Altaf Hussain, Accused No. 19 Abdul Rauf but aforesaid Test Identification Parade can also not be relied upon as the said Test Identification Parade was held in Kishanganj jail after completion of investigation, submission of charge-sheet and commitment of the case to the court of Sessions without obtaining order of the Court, which fact is noted beneath her evidence in Paragraph 9. Her medical

report (Exhibit-7) is fit for placing reliance as requisition for her examination is dated 29.07.1983 (Exhibit-6) and she got herself examined on 30.07.1983 at 5:30 P.M. vide injury-report (Exhibit-7) and an abrasion of 2.5 cm. X 1 cm. was found on her person.

25. P.W. 25 Fede Soren is the wife of the informant. She is also said to have suffered injury at the time of occurrence while planting paddy in the field. Her evidence is also to be considered in the same light as that of her husband (P.W. 27). It may further be stated here that she also took part in the Test Identification Parade conducted in Kishanganj jail in which she identified Accused No. 5 Abdul Hannan and others but such identification can also not be relied upon as the same was conducted after submission of charge-sheet without obtaining permission of the Court and her evidence in Paragraph 8 that after lodging of the case she went to the police station where Officer-in-Charge having arrested the accused persons brought them in the police station and she first identified the five men in the police station and thereafter participated in the Test Identification Parade in jail premises.

26. P.W. 26 Pendli @ Dulli Marandi is the wife of P.W. 22 Mangal Hansda. At the time of occurrence she was also planting paddy in the field of Hikma along with Chhotka and Ghutum Lal. P.Ws. 25, 5 were planting paddy in the adjoining plot. According to the witness she suffered injury during the occurrence but her injury report is not even on record. Identification made by P.W. 26 in the Test Identification Parade held in Kishanganj jail after submission of charge-sheet is not to be relied upon as the said Test Identification Parade was held after submission of charge-sheet without permission of the Court. In Paragraph 12 P.W. 26 admitted that Pitha Soren (P.W. 16), Moti Ram Hansda (not examined), Babu Ram Hansda (P.W. 13) are her co-villagers and she is not aware as to whose land is abutting the house of Babu Ram Hansda but admitted that the said land is in cultivating possession of Bhatias and they are harvesting the crop from the same but she had not seen the face of those who cultivate, harvest the crop from the said land.

27. P.Ws. 1, 2, 3, 5, 13, 14, 16, 17, 20 also claim that at the time of occurrence they were carrying out agricultural operation near the place of occurrence plot but somehow succeeded in running away from the place of occurrence. P.Ws. 1, 2, 3, 13, 14 concealed themselves in jute field. P.W. 5 went to village Loha Gara and then to Poa Khali in the house of his uncle Upna Besra (not examined). P.W. 16 came to village Tal Gachh in the house of Hardeo Harizan (not examined). P.Ws. 17, 20 also came to village Tal Gachh in the house of Hira Lal but neither P.Ws. 5, 16, 17, 20 nor Upna Besra nor Hardeo Harizan nor Hira Lal Yadav took any steps to inform either Singhimari Out Post or Dighal Bank Police Station about the occurrence, may be on account of fear but the four are the eye-witness of the occurrence. P.Ws. 1, 2, 3, 13, 14 returned to the assortment after sun-set. P.W. 1 in Paragraphs 81, 82, 83 categorically stated that the Officer-in-Charge, Dighal Bank Police Station and the police party arrived in the assortment

in the evening of the occurrence but did not move out of the assortment to search for the dead body, cattle and other looted articles though request was made by the family members of the deceased to trace out the dead body and the looted articles including cattle. From the evidence of P.W. 1 it further appears that the settlement of the lands-in-question was obtained by Sarfuddin from Tagore estate who sold the lands to the raiyats but suggestion to that effect was denied by P.W. 1. It is, thus, evident from his evidence also that there is serious land dispute between the parties as both sides are claiming settlement one from Tagore estate and the other from the Government.

From the evidence of P.W. 2 in Paragraphs 13, 35 it is evident that he did not name the assailants in the evening of occurrence though he met the Investigating Officer in the evening of occurrence, perhaps for the reason that he was under fear on account of severity of assault. From Paragraph 5 of the evidence of P.W. 2 it further appears that unlawful assembly assaulted others but allowed him to leave the place of occurrence without being restrained, chased, as has been stated by him in Paragraph 30 of his evidence, which is perhaps natural as all the other members of the prosecution party could not have been assaulted by the members of the unlawful assembly.

Evidence of P.W. 3 is also fit to be relied, even though he is a close associate of the informant and P.W. 15, furnished his sale-deed by way of security for obtaining their release on bail in connection with the case lodged by the Bhatias concerning the present land dispute.

28. P.W. 15 is the uncle of the informant and also an eye-witness of the occurrence. At the time of occurrence he was at his house but having heard the noise made by the unlawful assembly came to the road and saw Jalpa Soren being shot by Accused No. 5 Abdul Hannan whereafter he and other Santhals, who were on the road, ran to conceal themselves in jute field until evening. P.W. 15 and others, however, could not meet each other while they remained concealed in jute field. In the evening P.W. 15 returned to the assortment, met the informant and informed him that Jalpa Soren has been shot by Accused No. 5. He also disclosed the name of other members of the unlawful assembly to the informant. Both P.W. 15 and the informant, however, did neither take any steps to inform the police camp at village Singhimari nor to Dighal Bank Police Station and stayed back in the assortment. P.W. 15 though on litigating terms with the Bhatias from before and also having gone to jail earlier did not take any steps to either inform the police camp at village Singhimari or to Dighal Bank Police Station about the occurrence on account of fear.

29. P.Ws. 6, 7, 8, 11 on the date, time of occurrence were also at their residence. They having heard noise came to the road, after Jalpa was shot ran away to conceal themselves in jute field and returned to the assortment in the evening but like P.W. 15 Rengta Soren who returned to the assortment in the evening did not take any steps to inform either the police camp in Village Singhimari or the police station about the occurrence. In Paragraph 14 P.W. 6

admitted that just behind his house Aziz Bhatia had agricultural land but denied the suggestion that in order to grab the said land entire family of Aziz has been identified by him as members of the unlawful assembly. Perennial land dispute between the parties being admitted, yet it is safe to rely on the evidence of the aforesaid prosecution witnesses. Failure of the Investigating Officer and the investigating team to find the dead bodies and to collect evidence of violence from the place of occurrence plot, road, assortment duly supported by the seizure witnesses cannot be a ground to reject the prosecution version, although, none of the seizure witnesses has come forward to support the seizure of the incriminating articles in the night of 29.07.1983 from the houses of Pitha Soren, Jham Murmu.

In Paragraph 16 P.W. 7 admitted that he returned to the assortment in the evening but did not meet the informant or any other person in the assortment. In view of his aforesaid evidence presence of informant and others in the assortment during evening, however, cannot be doubted. In Paragraph 19 P.W. 7 admitted that Accused No. 5 Abdul Hannan was appointed as ration shop dealer and was distributing sugar, kerosene oil to the villagers of entire Lakshmipur village but no dispute ever arose with regard to distribution of sugar, kerosene oil by Accused No. 5. P.W. 7 having not met the informant and others in the assortment in the evening of occurrence his presence in the assortment on the date of occurrence and the identification of Accused No. 5 by him cannot become doubtful.

P.W. 8 also claimed to have returned to the assortment in the evening of occurrence but did not notice any police personnel is, however, not indicative of the fact that he neither saw the occurrence nor returned to the assortment after sun-set as claimed by him.

P.W. 11 is also to be trusted even though he recorded his police statement after two days of the occurrence on Sunday morning without giving any explanation for such delay as he knew the accused persons from before whom he claimed to have identified as members of the unlawful assembly.

P.Ws. 9, 10 are the brother, father-in-law of the informant and their testimony also inspire confidence as their presence is not disputed.

30. In view of the findings recorded in Paragraphs 22 to 29 above, matter is not required to be remanded with direction to the prosecution to make available P.W. 31 for further cross-examination, as we are satisfied that further cross-examination of Investigating Officer has not prejudiced the defence. In the circumstances, appellants of Criminal Appeal (DB) Nos. 137, 140 both of 2007 are granted benefit of doubt as they are neither alleged nor found to have committed any overt act. Their presence at the place of occurrence may be as an on-looker of the assault being committed by Accused No. 24 Afan Bhatia and Accused No. 5 Abdul Hannan. Their appeals are allowed. They are on bail, are directed to be discharged from the liabilities of their respective bail bonds.

31. So far Criminal Appeal (DB) No. 317 of 2007 is concerned, the same is dismissed. Appellant No. 1 is in custody. Appellant no. 2 is on bail, his bail bond is cancelled with direction to surrender in the court below forthwith to serve out reminder of his sentence.

Prabhat Kumar Jha, J.

I agree.