

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.518 of 2014**

Arising Out of PS. Case No.-33 Year-2012 Thana- CHAORI District- Bhojpur

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1. Bharath Roy Son of Late Vishnu Roy.
2. Uma Shankar Roy @ Uma Roy Son of Bharath Roy.
3. Sunil Roy Son of Sri Bharat Rai.
All resident of Village Purhara, P.S. Chauri, District Bhojpur.
- Appellants.
- Versus
- The State of Bihar
- Respondent.
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**WITH
CRIMINAL APPEAL (DB) No. 583 of 2014**

Arising Out of PS. Case No.-33 Year-2012 Thana- CHAORI District- Bhojpur

Shakuntla Devi W/O Sri Bharat Rai Resident of Village- Purhara, P.S.-
Chauri, District- Bhojpur.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In CRIMINAL APPEAL (DB) No. 518 of 2014)

For the Appellants : Mr. Ajay Kumar Thakur, Advocate.
Mr. Ravindra Kumar, Advocate.

For the State : Mr. Binod Bihari Singh, A.P.P.

For the Informant : Mr. Madanjeet Kumar, Advocate.

(In CRIMINAL APPEAL (DB) No. 583 of 2014)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate.
Mr. Ravindra Kumar, Advocate.

For the State : Mr. D.K.Sinha, A.P.P.

For the Informant : Mr. Madanjeet Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SANDEEP KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 27-02-2023

By these appeals, appellants/convicted accused are
challenging the Judgment dated 10th April, 2014 and Order dated
16th April, 2014 passed by the learned Adhoc Additional



Sessions Judge-I, Bhojpur, Ara, in Sessions Trial No.370 of 2012 between the parties thereby convicting them of offences punishable under Sections 302 read with 34 and 307 read with 34 of the Indian Penal Code. Appellants/convicted accused Bharath Roy, Uma Shankar Roy alias Uma Roy and Sunil Roy {in Criminal Appeal (DB) No.518 of 2014} were sentenced to suffer imprisonment for life till their natural death along with fine of Rs.2,00,000/- payable by each of them for the offence punishable under Section 302 read with 34 of the Indian Penal Code and in default of payment of fine, they are directed to undergo simple imprisonment for six months. For the offence punishable under Section 307 read with 34 of the Indian Penal Code, these appellants/convicted are sentenced to suffer imprisonment for life along with fine of Rs.1,00,000/- payable by each of them and in default of payment of fine, they are sentenced to suffer simple imprisonment for six months. Appellant/convicted accused Shakuntla Devi {in Criminal Appeal (DB) No.583 of 2014} is sentenced to suffer imprisonment for life along with a direction to pay fine of Rs.2,00,000/- and in default of payment of fine, to undergo simple imprisonment for six months for the offence punishable under Section 302 read with 34 of the Indian Penal Code. For



the offence punishable under Section 307 read with 34 of the Indian Penal Code, she is sentenced to suffer imprisonment for life apart from a direction to pay fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for six months. 50% of the amount of fine is directed to be paid to the family of the deceased persons. Both these appeals are being decided by this common Judgment as they are arising out of the same Sessions Case and the same Judgment and Order is impugned in both these appeals. For the sake of convenience, the appellants shall be referred to in their original capacity as “an accused” hereinafter.

2. Facts in brief leading to the prosecution of the accused persons projected from the police report can be summarized thus:

(a). Accused no.1 Bharath Roy is husband of accused no.4 Shakuntla Devi and father of accused no.2 Uma Shankar Roy and accused no.3 Sunil Roy. Deceased Kamlesh Roy and Satyendra Roy are his brothers. Deceased Bikash Roy and Vijay Roy are sons of deceased Kamlesh Roy. Deceased Shanti Devi is wife of deceased Satyendra Roy. According to the prosecution case, these accused persons have committed five murders, two amongst them were murders of real brothers of



accused no.1 Bharath Roy, two murders were those of his nephews and one murder was that of his sister-in-law.

(b). Prosecution witnesses, P.W.1 Akash Kumar @ Vikky Kumar is son of deceased Satyendra Roy, P.W.2 Shanti Devi is widow of deceased Kamlesh Roy, P.W.3 Sonam Kumari is daughter of deceased Satyendra Rai, P.W.4 Rubi Kumari, who is First Informant in this case, is daughter of deceased Kamlesh Roy and P.W.5 Runam Kumari is daughter of deceased Kamlesh Roy. P.W.6 Jitendra Roy, who is turned hostile to the prosecution after proving the formal documents, i.e., inquest notes, is real brother of accused no.1 Bharath Roy and deceased Kamlesh Roy as well as deceased Satyendra Roy.

(c). According to the prosecution case, all four accused persons so also all five deceased and prosecution witnesses Akash Kumar @ Vikky Kumar, Shanti Devi, Sonam Kumari, Rubi Kumari, Runam Kumari and Jitendra Roy were resident of village-Purhara falling within the jurisdiction of Police Station-Chaori in District-Ara. Accused No.1 Bharath Roy was Manager of Thakur Bari situated in the village. Rinku Devi, Mukhiya of the village had paid an amount of Rs.30,000/- for repair of said Thakur Bari to Satyendra Roy (since deceased). Said Satyendra Rai in turn had handed over that



amount to accused no.1 Bharath Roy. However, according to the prosecution case, accused no.1 Bharath Roy still insisted on payment of amount given by Mukhiya Rinku Devi and had along with his family members murderously assaulted six persons from the prosecution party out of which five succumbed to the wounds inflicted on them leaving behind sole survivors P.W.1 Akash Kumar @ Vikky Kumar son of deceased Satyendra Roy.

(d). It is averred by the prosecution that members of the prosecuting party including the deceased had set up two brick-kilns in the vicinity of their house and near the field. At about 8 to 08.30 A.M. of 31.05.2012, P.W.1 Akash Kumar @ Vikky Kumar accompanied by his father Satyendra Roy (since deceased), mother Shanti Devi (since deceased), his uncle Kamlesh Roy (since deceased) and his cousin Bikash Roy (since deceased) and Vijay Roy (since deceased) had been to the said brick-kilns for routine work. When they were breaking coal for the purpose of firing the brick-kilns, all accused persons came at the brick-kiln. They were armed with knives and lathies. Accused no.1 Bharath Roy demanded money from Satyendra Roy (since deceased) and started abusing. When he was informed that money has already been paid, accused no.1



Bharath Roy snatched knife from accused no.2 Uma Shankar Roy and gave blows thereof on chest of Kamlesh Roy. Accused No.3 Sunil Roy had given blow of knife on chest of P.W.1 Akash Kumar @ Vikky Kumar. When his father Satyendra Roy was pulling him back, accused no.3 Sunil Roy had given blows of knife on chest of Satyendra Roy. Accused No.2 Uma Shankar Roy snatched the knife from accused no.1 Bharath Roy and gave blow thereof on chest of Vijay Roy. Accused No.3 Sunil Roy gave a blow of knife on the neck of Bikash Roy. In a similar way, accused no.4 Shakuntla Devi snatched the knife from accused no.3 Sunil Roy and gave blow thereof on chest of Shanti Devi , wife of Satyendra Roy. All injured fell down. P.W. 4 Rubi Kumari was also assaulted by lathi by the accused persons.

(e). The injured were then taken to the Sadar Hospital, Ara but while on the way, Kamlesh Roy, Bikash Roy, Satyendra Roy and Shanti Devi succumbed to the injuries sustained by them. Vijay Roy was referred to the P.M.C.H. Patna but on the way, he also succumbed to the injuries. P.W.1 Akash Kumar @ Vikky Kumar was required to take medical treatment for one and half months at the P.M.C.H. Patna for the wound suffered by him.



(f). In the meanwhile, Police Station-Chaori had received information about “Maar-Peet” at village-Purhara at about 09.00 A.M. of 31.05.2012. P.W.9 Rana Ran Vijay Kumar then went to village-Purhara and recorded the First Information Report lodged by P.W.4 Rubi Kumari at the village itself at 11.00 A.M. He claims to have found six injured persons near the brick kiln at the field and at Karaha (water channel) in the field. He claims to have sent those injured by police vehicle and public transport vehicle to the Sadar Hospital, Ara. The F.I.R. lodged by P.W.4 Rubi Kumari has resulted in registration of Crime No.33 of 2012 at Police Station-Chaori against the accused persons for the offences punishable under Sections 341, 323, 324, 325, 326, 307, 447, 302 read with 34 of the Indian Penal Code.

(g). During the course of investigation, P.W.9 Rana Ran Vijay Kumar, the Investigating Officer, had visited the spot of the incident. He found 8 lathies as well as one shoe of Foeve Company apart from a cover of knife. Those articles were seized by him. From search of house of accused persons, he seized a pair of shoes of accused no.3 Sunil Roy, which were stained with blood, one shoe of accused no.1 Bharath Roy, which was stained with blood and mobile phones vide Seizure



Memo (Ext.7). Confessional statements of accused no.2 Uma Shankar Roy and that of Bharat Roy were recorded and two knives stained with blood came to be seized under Seizure Memo (Ext.8) at about 7 P.M. of 31.05.2012. The Investigator took inquest notes upon examining dead bodies and those were dispatched for autopsy. Injured P.W.4 Rubi Kumari was also sent for medical examination.

(h). P.W.10 Dr. Ashok Kumar Pandey had performed post-mortem examination on dead body of Satyendra Roy, Kamlesh Roy and Shanti Devi on 31.05.2012 at the Sadar Hospital, Ara. P.W.11 Dr. Rajiv Kumar, Medical Officer at Primary Health Centre, Peero, had medically examined P.W.4 Rubi Kumari on 01.06.2012. P.W.12 Dr. Arun Kumar Singh of P.M.C.H. Patna had conducted post-mortem examination on dead body of Vijay Kumar on 01.06.2012. P.W.13 Dr. T.A. Ansari of the Sadar Hospital, Ara, had medically examined P.W.1 Akash Kumar @ Vikky Kumar on 31.05.2012.

(i). Routine Investigation followed and had resulted in filing of the chargesheet against all four accused persons for the offences punishable under Sections 447, 341, 323, 324, 325, 326, 307 and 302 read with 34 of the Indian Penal Code.



(j). After committal of the case, the learned trial court had framed the charge and explained it to the accused persons. They pleaded not guilty and claimed trial.

(k). In support of prosecution case, the prosecution has examined in all 13 witnesses. Those are:

(i). P.W.1 Akash Kumar @ Vikky Kumar. He claims to be an injured eye witness.

(ii). P.W.2 Shanti Devi, widow of deceased Kamlesh Roy who is claiming to be an eye witness.

(iii). P.W.3 Sonam Kumari, daughter of deceased Satyendra Roy who is claiming to be an eye witness.

(iv). P.W.4 Rubi Kumari, daughter of deceased Kamlesh Roy who is claiming to be an eye witness.

(v). P.W.5 Runam Kumari, daughter of deceased Kamlesh Roy who is claiming to be an eye witness.

(vi). P.W.6 Jitendra Roy, who turned hostile to the prosecution.

(vii). P.W.7 Rajendra Roy, Panch witness on seizure. He also turned hostile to the prosecution.

(viii). P.W.8 Harinandan Singh, ASI of Police Station-Chaori. He brought seized articles before the court during trial.

(ix). P.W.9 Rana Ran Vijay Kumar, the Investigating Officer.



- (x). P.W.10 Dr. Ashok Kumar Pandey, Medical Officer of Ara-an Autopsy Surgeon .
- (xi). P.W.11 Dr. Rajiv Kumar, Medical Officer of Primary Health Centre, Peero who had examined P.W.4 Rubi Kumari.
- (xii). P.W.12 Dr. Arun Kumar Singh, Autopsy Surgeon at P.M.C.H., Patna.
- (xiii). P.W.13 Dr. T.A. Ansari, Medical Officer of Sadar Hospital, Ara, who had examined P.W.1 Akash Kumar @ Vikky Kumar on 31.05.2012.

(l). Defence of the accused persons was that of total denial. They alleged that members of the prosecuting party indulged in “Maar-Peet” against them causing injuries to them and they are falsely implicated in the crime in question. It is also defence of the accused persons that the counter case in respect of the incident is also registered on the basis of F.I.R. lodged by accused No.2 Uma Shankar Roy. However, they did not enter in defence by examining defence witnesses.

(m). After hearing the parties, by the impugned Judgment and Order, the learned trial court was pleased to convict and sentence the accused persons as indicated in the opening para of this Judgment. Feeling aggrieved thereby, accused no. 1 Bharath Roy, accused no. 2 Uma Shankar Roy @



Uma Roy and accused No. 3 Sunil Roy have preferred Criminal Appeal (DB) No. 518 of 2014 whereas accused no. 4 Shakuntla Devi has preferred Criminal Appeal (DB) No. 583 of 2014 which are being decided by this common Judgment.

3. We have heard Mr. Ajay Kumar Thakur, the learned counsel appearing for the appellants at sufficient length of time. He argued that evidence of prosecution shows that on two occasions, two different police officers visited spot of the incident and took the injured to the hospital. P.W.2 Shanti Devi has admitted in her cross-examination that A.S.I. Upadhayaya of Police Station Chaori came on the spot first in point of time and took some of the injured to the hospital. Her evidence shows that within one minute police came on the spot. It is further argued that P.W.4 Rubi Kumari has admitted in her cross-examination that police came on the spot at 10:00 A.M. and had arrested the accused persons in 1½ to 2 hours. It is further argued by placing reliance on evidence of P.W.5 Runam Kumari that accused persons were taken to the hospital by police for treatment and injured from her family were taken to the hospital by public transport vehicle by Bhuwar, P.W.6 Jitendra Rai and P.W.2 Shanti Devi. By relying on evidence of P.W.9 Rana Ran Vijay Kumar, the learned counsel for the appellants argued that



evidence of this witness shows that he visited the spot of the incident at 10.15 A.M. and saw six persons lying injured near the brick-kilns and claims to have dispatched these injured to the Ara Hospital with PSI Surendra Paswan. In submission of the learned counsel for the appellants, this evidence goes to show that even prior to taking the injured from the prosecuting party for treatment, accused persons were taken for medical treatment to the hospital at Peero by police officer named Upadyaya who is not examined by the prosecution in this case. Next submission of the learned counsel for the appellants is to the effect that the FIR lodged by P.W.4 Rubi Kumari had actually reached to the concerned court of the Chief Judicial Magistrate on 02.06.2012 and this delay in sending the F.I.R. to the court indicates concoction by the prosecution. It is further submitted that place of the occurrence is not proved by the prosecution as the Investigating Officer says that the place of occurrence is in the field and at Karaha (water channel) in the field of Krishna and others. Coal dust was not seen on dead bodies though it is alleged by the prosecution that they were breaking coal. This fact is established from the inquest report. By placing reliance on testimony of hostile witness P.W.6 Jitendra Roy, it is argued that A.S.I. Harinandan who has



recorded the statement of this witness at the hospital is also not examined by the prosecution. It is also submitted that though the prosecution claimed that the assault is also by lathies, medical evidence is not supporting the prosecution case on this aspect as no injuries by lathies were found on the persons of the deceased as well as the injured. Evidence of the Investigating Officer shows that eight lathies were seized vide Seizure Memo (Ext.6) from the harvested field and those lathies were stained with blood. Evidence on record shows that all deceased got incised injuries except injury to P.W.4 Rubi Kumari and Bikash. This creates doubt in the prosecution case. The learned counsel for the appellants also argued that the investigation conducted by P.W.9 Rana Ran Vijay Kumar is totally defective. Evidence on record shows that accused persons were taken to the hospital by the very first police officer who reached on the spot of the incident. However, though none of the accused person is stated to be returned to the house thereafter, the Investigating Officer says that he arrested the accused persons at 03:00 P.M. and had effected recoveries from their house as well as well, at their instance. The Investigating Officer was confronted with injury report of the accused persons. It is submitted that the F.I.R. lodged by Raju Roy was not brought on record and he was not



examined. The accused persons were injured in the incident in question and the prosecution has not explained the injuries suffered by the accused persons in the incident in question. Therefore, on account of defective investigation, suppression of facts and the first version about the incident, delay in sending the F.I.R. to the concerned court, the incident resulting in registration of cross case so also due to non-explanation of injuries on the accused persons by the prosecution a serious shadow of doubt is casted on prosecution case entitling the accused persons for acquittal.

4. To buttress the submission so advanced, the learned counsel for the appellants relied on the following Judgments:-

- I. **Meharaj Singh (L/Nk.) Vs. State of U.P.**
reported in (1994) 5 Supreme Court Cases 188.
- II. **Thanedar Singh Vs. State of M.P.** reported in
(2002) 1 Supreme Court Cases 487.
- III. **Arjun Marik and Others Vs. State of Bihar**
reported in 1994 Supp (2) Supreme Court Cases
372.
- IV. **State of Rajasthan Vs. Teja Singh and Others**
reported in (2001) 3 Supreme Court Cases 147.
- V. **State of Bihar Vs. Harinandan Singh** reported
in 1970 (e) PLJR-HC 1753405.
- VI. **Ravishwar Manjhi and Others Vs. State of
Jharkhand** reported in (2008) 16 Supreme
Court Cases 561.
- VII. **Subramani and Another Vs. State of T.N.**
reported in AIR 2005 Supreme Court 1983.
- VIII. **Chotkau Vs. State of Uttar Pradesh** reported
in AIR 2022 Supreme Court 4688.



- IX. **State of Rajasthan Vs. Daud Khan** reported in (2016) 2 Supreme Court Cases 607.
- X. **Nallabothu Ramulu @ Seetharamalah and Others Vs. State of Andhra Pradesh** reported in (2014) 12 Supreme Court Cases 261.
- XI. **Suresh Singhal Vs. State (Delhi Administration)** reported in (2017) 2 Supreme Court Cases 737.
- XII. **Darshan Singh Vs. State of Punjab and Another** reported in (2010) 2 Supreme Court Cases 333
- XIII. **Anand Ramchandra Chougule Vs. Sidari axman Chougala and Others** reported in (2019) 8 Supreme Court Cases 50.
- XIV. **Kashiram and Others Vs. State of M.P.** reported in (2002) 1 Supreme Court Cases 71.
- XV. **Rizan and Another Vs. State of Chandigarh** reported in AIR 2003 Supreme Court 976.
- XVI. **Raghunath Vs. State of Haryana and Another** reported in (2003) 1 Supreme Court Cases 398.
- XVII. **Sudhir and Others Vs. State of M.P.** reported in AIR 2001 Supreme Court 826.
- XVIII. **Nathi Lal and Others Vs. State of U.P. and Another** reported in 1990 (Supp) Supreme Court Cases 145.
- XIX. **State of M.P. Vs. Mishrilal (Dead) and Others** reported in (2003) 9 Supreme Court Cases 426.

5. The learned Prosecutor supported the impugned judgment and order by arguing that eyewitnesses have supported the prosecution case.

6. We have considered the submissions so advanced. We have also perused the records and proceedings minutely. We have also gone through each and every Judgment cited on behalf



of the appellants.

7. According to the prosecution case, in all five persons were done to death by the accused persons in the morning hours near the brick-kiln at about 08:00 A.M. to 8:30 A.M. of 31.05.2012 at village Purhara in District Ara apart from an attempt to commit murder of P.W.1 Akash Kumar @ Vikky Kumar and hurt to P.W.4 Rubi Kumari. Therefore, at the outset, it is incumbent on the part of the prosecution to establish homicidal death of following persons which according to the prosecution case were murdered by the accused persons :-

1. Kamlesh Roy.
2. Bikash Roy
3. Vijay Roy.
4. Satyendra Roy.
5. Shanti Devi w/o Satyendra Roy.

The defence had not disputed the factum of death of these five persons occurring on 31.05.2012.

8. To establish homicidal death of these persons, the prosecution has relied on ocular version coming on record from the Autopsy Surgeons P.W.10 Dr. Ashok Kumar Pandey and P.W.12 Dr. Arun Kumar Singh apart from evidence of near and dear ones of the deceased as well as documentary evidence in



the form of inquest notes and reports of post mortem examination. Homicidal death of these persons is not in much dispute. P.W.1 to P.W.5 have candidly deposed about homicidal death of these five persons, who are closely related to them, occurring on 31.05.2012 and their evidence on this aspect is not challenged by the defence. Their evidence is gaining corroboration from the documentary evidence in the form of inquest notes at Exts-15, 15-1 to 15-4, which are proved by P.W.9 Rana Ran Vijay Kumar, the I.O. Evidence on record shows that on the way to the hospitals they succumbed to death.

8(a). P.W.10 Dr. Ashok Kumar Pandey, Medical Officer of the Sadar Hospital, Ara conducted post-mortem examination on dead bodies of four deceased, namely, Satyendra Roy, Kamlesh Roy, Bikash Roy and Shanti Debvi. It is in his evidence that on 31.05.2012, i.e., on the date of incident itself, at 01:50 P.M., he conducted post-mortem examination on the dead body of Satyendra Rai and found following anti-mortem injuries on the said dead body :-

- (i). Incised wound 2.3 cm x 0.3 cm on left side of chest below 4th intercostal space x cavity deep mid line.
- (ii) Incised wound 2.3 cm x 0.3 cm on right side of chest below 6th intercostal space x cavity deep.
- (iii) Incised wound 2.3” cm x 0.3” cm x muscle deep on right leg laterally.



This Autopsy Surgeon vouched that Satyendra Roy died due to Cardio Respiratory failure caused by hemorrhage and shock due to injuries no.(i) and (ii), which were caused by knife or any penetrating sharp cutting weapon. The report of post-mortem examination at Ext.17 is corroborating the version of this witness.

8(b). P.W.10 Dr. Ashok Kumar Pandey further deposed that thereafter he conducted post-mortem examination on dead body of Kamlesh Roy and had noticed the following two anti-mortem injuries on dead body :-

- (i) Incised wound 2.3 cm x 0.3 cm X cavity deep on left side of chest-quintero laterally in 4th inters coastal space.
- (ii) Incised wound 2.3 cm x 0.2 cm X cavity deep, on right side of upper abdomen.

As per version of this Autopsy Surgeon, Kamlesh Roy died due to cardio respiratory failure caused by hemorrhage and shock due to injuries no.(i) and (ii) which were caused by sharp cutting, penetrating weapon such as knife. The post-mortem report of Kamlesh Rai proved by this witness is at Ext.18 and the same is corroborating his testimony.

8(c). P.W.10 Dr. Ashok Kumar Pandey further testified that thereafter he conducted post-mortem examination



on dead body of Bikash Kumar Roy and found the following anti-mortem injury on his dead body :-

- (i) Incised wound 2.3 cm x 0.3 cm x muscle deep on left side of neck at its root.

This Autopsy Surgeon testified that Bikash Kumar died due to cardio respiratory failure caused by hemorrhage and shock caused by the injury to his neck. According to his version, the said injury is possible by sharp cutting weapon such as Chhura. The report of post-mortem examination of dead body of Bikash Kumar Roy is at Ext.19. Evidence of the autopsy surgeon is gaining corroboration from this document.

8(d). P.W.10 Dr. Ashok Kumar Pandey further stated that thereafter he conducted post-mortem examination on dead body of P.W.2 Shanti Devi and found the following anti-mortem injury on her chest :-

- (i) Incised penetrating wound 2.3 cm x 0.3 cm x cavity deep on left side of chest anteriorly in 5th inter costal space.

As per her version of this Medical Officer, Shanti Devi died due to cardio respiratory failure caused by hemorrhage and shock caused by the injury and the said injury is possible by sharp cutting penetrating weapon such as Chaku or Chhura. The post-mortem report proved by this witness is at Ext.20. In cross-examination, this Autopsy Surgeon has



reiterated that death was due to excessive bleeding and shock and he had not found any injury on dead bodies, caused by hard and blood substance.

8(e). Evidence on record shows that Vijay Kumar was referred to P.M.C.H. Patna but he died on the way. Post-mortem examination on his dead body was conducted on 01.06.2012 by P.W.12 Dr. Arun Kumar Singh of P.M.C.H. Patna. This witness deposed that he had found following anti-mortem injury on the dead body :-

- (i) One punctured (stabbed) wound of 2" x 1" x cavity deep of size on right side of chest, 5" right from mid line 5 1/2" right and above from umbilicus and 7" below from right nipple.

This injury had resulted in puncturing of the liver and diaphragm of the deceased. As per version of this Medical Officer the wound was caused by sharp and pointed weapon like Chhura.

8(f). This is all in evidence of the Autopsy Surgeons regarding the cause of death of five victims in this case. Evidence of both these Autopsy Surgeons shows that the victims succumbed to the wounds sustained by them on vital parts of their body. This evidence coupled with ocular evidence coming from near relatives of the victims and documentary



evidence in the form of inquest reports and post mortem reports is sufficient to hold that the prosecution has established the fact that Kamlesh Roy, Bikash Roy, Vijay Roy, Satyendra Roy and Shanti Devi w/o of Satyendra Roy died homicidal death on 31.05.2012.

9. Now, the question which falls for consideration is whether the accused persons or any of them have committed this offence of commission of murder of five persons. Prior to consideration of evidence on this aspect, it will be apposite to place on record medical evidence in respect of wounds suffered by P.W.1 Akash Kumar @ Vikky Kumar and P.W.4 Rubi Kumari, who are alleging to have suffered those injuries during the course of incident. This is necessary because if it is established that these two witnesses were injured in the incident in question then they assumes the character of 'injured witnesses'.

9(a). P.W.11 Dr. Rajiv Kumar was posted at Primary Health Centre, Peero and in pursuant to the official requisition of police on 01.06.2012, he medically examined P.W.4 Rubi Kumari. As per version of this Medical Officer, he found following injuries on person of Rubi Kumari at 09.45 A.M. of 01.06.2012:



(i) An abrasion on left forearm at extensor surface of forearm of about 2" x 1/4".

(ii) Swelling on left forearm at extensor surface.

This Medical Officer has proved the injury report of P.W.4 Rubi Kumari and it is at Ext.21. In cross-examination, he stated abrasion was superficial in nature and there was no external mark on swelling. Version of this Medical Officer thus shows that he noticed two wounds on the person of P.W.4 Rubi Kumari immediately on the next day of the incident, indicating that she sustained these injuries during the course of the incident dated 31.05.2012.

9(b). In a similar way, P.W.13 Dr. T.A. Ansari, Medical Officer of Sadar Hospital, Ara, had examined P.W.1 Akash Kumar @ Vikky Kumar on the date of the incident, soon after the incident, i.e., at about 10.15 A.M. of 31.05.2012. Evidence of this Medical Officer shows that he noticed incised wound over right chest of Akash Kumar @ Vikky Kumar of size 2" x 1/2" x deep cavity. P.W.13 Dr. T.A. Ansari has categorically deposed that condition of the injured was serious and as such he was referred to P.M.C.H., Patna for further treatment. As per version of this Medical Officer, the wound was caused by a sharp cutting weapons within 6 hours of his examination. The injury report of P.W.1 Akash Kumar @ Vikky



Kumar is at Ext.23 and the same is corroborating the version of this medical officers. There is nothing worth mentioning in cross-examination of this witness. It is thus crystal clear that P.W. 1 Akash Kumar @ Vikky Kumar had sustained this wound on his chest during the course of the incident which took place prior to about 2 hours to his medical examination.

10. We are thus having advantage of evidence of injured witness, namely, P.W.1 Akash Kumar @ Vikky Kumar in the case in hand. As stated above, this witness is proved to have suffered serious wound on his chest at the time of the incident and this fact is certified by P.W.13 Dr. T.A. Ansari, who had examined him soon after the incident. It is not even remotely suggested to P.W.1 Akash Kumar @ Vikky Kumar that he had sustained wound on his chest in some other incident than the incident in question, during the course of his cross-examination. Hence we see no reason to doubt the statement of this witness that he was injured in the incident in question. Principles of appreciation of evidence of injured witnesses can be found in catena of Judgments rendered by the Hon'ble Supreme Court. In the matter of **Bonkaya V/s. State of Maharashtra** reported in **1995 (2) SCC 447**, Hon'ble Supreme Court has held that injured witnesses are stamped witnesses



whose presence on the scene of occurrence admits no doubt and as being themselves victims, they did not leave the real assailants and substitute them with innocent persons. It is well settled that evidence of injured eye witness cannot be discarded in toto on the ground of inimical disposition towards the accused or improbabilities of narrating the details of actual attack. Evidence of the injured witness has to be scrutinized with caution taking into account the factum of previous enmity and tendency to exaggerate and to implicate as many as possible. Witnesses who are natural ones and are the only possible eye witnesses in the circumstances of a case cannot be said to be interested witnesses. A witness is interested only when he derives some benefit from the result of the litigation. Evidence of injured witnesses if otherwise reliable and trustworthy, then it carries more weight and cannot be thrown away merely because the same is not corroborated by any independent witness. Little Discrepancies cannot make evidence of injured witnesses unacceptable, when their evidence as a whole has a ring of truth.

11. As stated in foregoing paragraphs, one branch of the family headed by accused no.1 Bharath Roy had, according to the prosecution case, eliminated his two brothers,



two nephews and one sister-in-law. Five witnesses, who claim to have seen this incident of massacre are one son of the deceased, one widow and three daughters of deceased persons. Thus eye witnesses are closely related to the deceased and also to the accused persons. One may argue that eye witnesses being closely related to the victims of this offence are naturally having inimical dispositions against the accused persons. In this context, it is apposite to put on record the law relating to the appreciation of evidence of the related witnesses and the witnesses having enmity against the accused. In the matter of **Balraje alias Trimbak Vs. State of Maharashtra**, reported in **(2010) 6 SCC 673**, the Supreme Court has explained that when the eye witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to meticulously analyze the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the



same. Thus, close scrutiny of evidence of such type of witnesses is required to be done and if their evidence is found to be trustworthy, the same can be accepted. In **Dalip Singh v. State of Punjab, AIR 1953 SC 364**, the Supreme Court in paragraph-26 observed thus:

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”



Similarly, in **Masalti Versus State of U.P., A.I.R. 1965 SC 202**, following are the observations of the Supreme Court in paragraph-14:

“14. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected



because it is partisan cannot be accepted as correct.”

In **Harbans Kaur Versus State of Haryana, (2005) 9 SCC 195**, the Supreme Court has held thus in paragraph-6:

“6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.”

Similarly, in **Namdeo Versus State of Maharashtra, (2007) 14 SCC 150**, the following are the observations of the Supreme Court in paragraph-38:

“38. ... it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely



implicate an innocent one.”

12. Keeping in mind this position of law regarding appreciation of evidence of inimical as well as related witnesses, let us examine the version of alleged injured and eyewitnesses in order to ascertain whether they had actually witnessed the incident and their evidence is intrinsically reliable, inherently probable and wholly trustworthy in order to place explicit reliance on the same for recording conviction.

13. P.W.1 Akash Kumar @ Vikky Kumar, whose father Satyendra Roy has died in the incident in question and who had sustained serious incised wound on right side of his chest has deposed that at about 08.00 to 08.30 A.M. of 31.05.2012, he along with his father Satyendra Roy, mother Shanti Devi, uncle Kamlesh Roy and cousins Bikash Roy and Vijay Roy were at their brick kiln, breaking the coal for firing the brick kilns. At that time, accused no.1 Bharath Roy armed with lathi, accused no.2 Uma Shankar Roy armed with knife and lathi, accused no.3 Sunil Roy armed with knife and lathi as well as accused no.4 Shakuntla Devi armed with lathi came at that spot. P.W.1 Akash Kumar @ Vikky Kumar further testified that then accused no.1 Bharath Roy demanded money paid by Mukhiya Rinku from his father Satyendra Rai and his father



replied that money is already paid and nothing is in balance. Then, accused no.1 Bharath Roy while hurling abuses, snatched knife from his son accused no.2 Uma Shankar Roy and gave blows thereof on chest of Kamlesh Roy. P.W.1 Akash Kumar @ Vikky Kumar further stated that when he shouted, accused no.3 Sunil Roy gave a blow of knife on his chest and when his father Satyendra Roy tried to pull him back, accused no.3 Sunil Roy gave blows of knife on chest of his father Satyendra. His father Satyendra Roy fell down in Karaha (water channel) in the filed. P.W.1 Akash Kumar @ Vikky Kumar further stated while in the witness box that accused no.2 Uma Shankar Roy snatched knife from accused no.1 Bharath Roy and gave blows thereof on chest and abdomen of Vijay Roy. Accused no.3 Sunil Roy gave blow of knife on neck of Bikash Roy and assaulted Shanti Devi by lathi. He further stated that accused no.4 Shakuntla Devi snatched knife from accused no.3 Sunil Roy and gave a blow thereof on chest of Shanti Devi w/o Satyendra. He further testified that P.W.4 Rubi Kumari who is daughter of his uncle Kamlesh Roy was assaulted by accused no.3 Sunil Roy by means of lathi and, therefore, she ran away towards their house. As per version of P.W.1 Akash Kumar @ Vikky Kumar, then injured were taken to the hospital by public



transport vehicle but except Vijay Roy, all died on the way to the hospital and Vijay Roy died on the way from the Sadar Hospital to P.M.C.H., Patna. As per version of this witness, accused no.1 Bharath Roy is Manager of Thakur Bari in the village for repair of which Mukhiya Rinku had paid Rs.30,000/- to Satyendra Rai and Satyendra Rai had, in turn had already paid that amount to accused no.1 Bharath Roy. This is all what this injured witness says about the incident in question leading to the death of his five family members.

14. To test the veracity of version of this injured witness P.W.1 Akash Kumar @ Vikky Kumar, he was thoroughly cross examined by the defence. His cross-examination reveals that his house is situated at a distance of 100 yards from the brick-kiln where the incident took place. It is elicited from his cross-examination that they all were sitting at a distance of about 5 to 6 meters from the brick-kiln. In order to test truthfulness of his version, he was questioned about the weapons held by the accused persons during the course of his cross examination but he has reiterated correctly weapons held by all accused persons individually and has further answered that it was accused no.1 Bharath Roy, who was the first assailant to start assaulting the members of the prosecuting



party. He stated that they did not assault accused in defence and showed ignorance about the injuries on the accused persons. There is nothing in cross-examination of this witness to doubt his version. There is no suggestion to this witness that the accused persons or any of them were not present on the spot of the incident at the time of the incident.

If we compare evidence of this injured witness with medical evidence coming from the mouth of P.W.10 Dr. Ashok Kumar Pandey, P.W.11 Dr. Rajiv Kumar, P.W.12 Dr. Arun Kumar Singh and P.W.13 Dr. T.A. Ansari, then it is seen that version of this injured witness is perfectly in tune with the medical evidence on record, which we have already discussed in foregoing paragraphs. Suffice to reiterate that dead body of Satyendra Roy, as stated by this witness P.W.1 Akash Kumar @ Vikky Kumar, was found to be having two incised wounds on chest and dead body of Kamlesh Roy was found to be having two incised wound one on chest and another at abdomen. Dead body of Bikash Roy was found to be having one incised wound on the left side of neck. Dead body of Shanti Devi was also found to be having one incised wound on chest and dead body of Vijay Roy was found to be having one punctured wound on right side of chest. This witness from the medical



evidence on record is also proved to be having one incised wound on his chest requiring treatment as indoor patient at the P.M.C.H. for one and half months. As it is proved that this witness had suffered the wound on his chest in the incident in question, it is difficult to dislodge this clear, cogent and consistent version of P.W.1 Akash Kumar @ Vikky Kumar merely for the reason that he has shown ignorance to the wounds suffered by the accused persons which we will dwell upon in the later part of the Judgment. At this juncture, suffice to state that wounds suffered by the accused persons were simple in nature as seen from the injury certificates produced by them on record at Exhibit-B to B2. We are unable to find out anything from the evidence of this witness to disbelieve his version about the incident in question which he himself had witnessed and suffered a stab wound thereat.

15. P.W.2 Shanti Devi is widow of deceased Kamlesh Roy and as per her version, while sitting at the door of ladies room of her house, at about 08.00 to 08.30 A.M. of the date of the incident, she saw all accused persons proceeding from the front of her house towards her brick-kilns while armed with lathis and knives. So far as holding the weapons by the accused is concerned, her version is perfectly in tune with the



version of P.W.1 Akash Kumar @ Vikky Kumar. She further stated that her family members were at the brick-kiln, breaking the coal. She stated that she saw accused no.1 Bharath Roy taking knife from accused no.2 Uma Shankar Roy and assaulting Kamlesh Roy by that knife. She further testified that then accused no.2 Uma Shankar Roy took knife from the accused no.1 Bharath Roy and gave blow thereof to Vijay Roy. P.W.2 Shanti Devi further deposed that accused no.3 Sunil Roy gave blow of knife and lathi to P.W.1 Akash Kumar @ Vikky Kumar so also to Satyendra Roy and Bikash Roy. She further stated that accused no.4 Shakuntla Devi initially gave blow of lathi and thereafter that of knife taken from accused no.3 Sunil Roy to deceased Shanti Devi. She further deposed that accused no.3 Sunil Roy assaulted P.W.4 Rubi Kumari by means of lathi. As per version of P.W.4 Shanti Devi, she herself and Raju took injured by jeep to the Sadar Hospital, Ara and on the way, all injured except Vijoy Roy and Akash died. On the way to P.M.C.H. Patna, Vijay also died. She stated that P.W.4 Rubi Kumari was treated at Ara. She has also disclosed the reason for the incident, i.e. payment of money by the Mukhiya of the village to Satyendra Roy for the purpose of Thakur Bari.

Presence of all accused persons on the spot of the



incident i.e., at the brick kilns of the prosecution party is not at all challenged in the cross-examination of this witness also. In her cross examination, she stated that she had seen the incident which lasted for about half an hour from her door but she had not seen injuries on the person of the accused. As per her version, the brick kiln was at the distance of 20 steps on the eastern side of her house. She stated that after the incident police reached the spot in one minute and took some of the injured to the hospital. Injured left by the police went to the hospital subsequently. She stated that A.S.I. Upadhyay of Chaori Police Station had come there. She admitted that counter case is filed in respect of this incident by accused persons.

16. P.W.2 Shanti Devi is a rustic lady residing in remote village Purhara. Though the appellants are trying to make a capital of her statement in the cross-examination that A.S.I. Upadhyay came on the spot within one minute of the incident and though the appellants are attempting to show that A.S.I. Upadhyay had, in fact, taken the accused persons to the hospital immediately from the spot, we are unable to accept this interpretation of version of P.W.2 Shanti Devi by the appellants. The learned counsel for the appellants probably wants to take



aid of letters written by police officer Upadhyay while forwarding the accused persons to the hospital to show that, in fact, the accused persons had sustained grievous wounds and that they were taken to the hospital first by the police officer named Upadhaya. This submission is totally misconstrued. This witness had not stated that Police Officer Upadhaya was the first to reach on the spot or that said Upadhaya had taken the accused to the hospital after one minute from the incident. Injury reports on which appellants are placing reliance though not formally proved by examining the concerned medical witness, undoubtedly shows that injuries on the accused persons were simple in nature. Neither the injury certificate nor the forwarding letters of police shows that the accused persons were taken to the Primary Health Centre, Peero in the morning hours of 31.05.2012. In the matter of **Shivaji Sahabrao Bobade and another Vs. State of Maharashtra** reported in **(1973) 2 Supreme Court Cases 793**, the Hon'ble Supreme Court has reiterated that evidence of rural witnesses should not be judged by same standard of exactitude and consistency as that of urban witnesses, regard being kept for the way of life in rural areas. In the case in hand also scene of murder is rural and witnesses are rustics. Therefore, their behavioural pattern



and perspective habits are required to be judged keeping in mind these aspects and sophisticated approach cannot be adopted by the court while weighing and appreciating evidence of such villagers who have lethargic ways of life. If core of testimony of such rustic villager is truthful and in tune with the probability then their sluggish chronometric sense is required to be ignored. It is in this sense, we will have to appreciate statement of P.W.2 Shanti Devi coming on record from her cross-examination that police came within one minute of the incident and took some of the injured to the hospital. The printed F.I.R. itself shows that Police Station-Chaori is at a distance of several kilometers away from the place of the incident and, therefore, on the face of record, this statement of P.W.2 Shanti Devi cannot be construed to mean that it was A.S.I. Upadhyay from that police station who came on the spot immediately within one minute and took the accused persons to the Primary Health Centre, Peero. We, therefore, see no reason to disbelieve version of this witness regarding the mode and manner of assault which is perfectly in tune with the version of the injured witness P.W.1 Akash. She may not be perfectly correct in judging the distance between her house and brick-kiln where the incident took place but there is nothing in her cross-



examination to suggest that the spot of the incident was not visible from her house. There is no material in cross-examination of this witness to disbelieve her version.

17. The third witness is P.W.3 Sonam Kumari, who is daughter of the deceased Satyendra Roy. As per her version, she came out of her house when she heard hulla at the brick-kiln. She testified that she saw accused no.1 Bharath Roy quarreling with her father Satyendra Roy. As per her statement, then accused no.1 Bharath Roy took knife from accused no.2 Uma Shankar Roy and gave blows thereof on chest of Kamlesh Roy. She further stated that accused no.3 Sunil Roy gave blows of knife to Satyendra causing his fall in the Karaha. P.W.3 Sonam Kumari further stated that accused no.2 Uma Shankar Roy assaulted Vijay and Bikash by knife and accused no.4 Shakuntla Devi assaulted Shanti Devi by knife. She deposed that accused no.3 Sunil Roy gave a blow of knife to P.W.1 Akash Kumar @ Vikky Kumar. Then, as stated by this witness, P.W.2 Shanti Devi, P.W.6 Jitendra Roy and three-four persons took the injured persons to the hospital at Ara. She also disclosed the reason behind the incident as disclosed by other prosecution witnesses. Her cross-examination reveals that by standing at the spot of the incident, she saw who assaulted



whom but she expressed her ignorance about the police taking the accused persons to the hospital in injured condition. She stated that the incident of assault lasted for 5-7 minutes. From her cross-examination, it is elicited that body and clothes of her family members were having stains of coal as at the time of the incident they were breaking coal for firing the brick-kiln.

18. We have carefully examined evidence of P.W.3 Sonam Kumari in its entirety. She is also a natural witness to the incident in question, her house being located in the close proximity to the spot of the incident. The said spot was hardly at the distance of 100 yards from her house as seen even from the materials elicited from the cross examination of P.W.1 Akash Kumar @ Vikky Kumar. The incident has resulted in death of 5 adult persons due to wounds sustained by them. As such, the incident must have lasted for a fairly long time, giving an opportunity to this witness to see the incident. Accused persons are her close relatives. It is not shown that P.W.3 Sonam Kumari has personal enmity with them who are her uncle, aunt and cousins. Her evidence in no way gives inference that she is falsely dragging any of the accused persons in the crime in question. Her presence on the scene of the occurrence so also presence of the accused persons thereat is



established beyond reasonable doubt from her evidence which is not at all shattered in her cross-examination. Moreover, version of this witness P.W.3 Sonam Kumari is gaining full corroboration from evidence of injured witness P.W.1 Akash Kumar @ Vikky Kumar and another eye witness P.W.2 Shanti Devi.

19. P.W.4 Rubi Kumari is daughter of deceased Kamlesh Roy. She is the First Informant in this case. The F.I.R. lodged with promptitude by this witness is at Ext.5. Her evidence coupled with the evidence of P.W.9 Rana Ran Vijay Kumar, the Investigating Officer, goes to show that the F.I.R. statement of this witness (Ext.5) came to be recorded at 11.00 hours of 31.05.2012 at village Purhara itself where the incident took place at about 08.00 to 08.30 hours of that day. The contemporaneous documents, i.e., F.I.R. (Ext.5) reiterates this fact of recording of F.I.R. statement of this witness at 11.00 A.M. of that day.

As per version of P.W.4 Rubi Kumari, their brick-kiln was at a distance of 100 yards from her house. She further testified that at about 08.00 to 08.30 A.M. of 31.05.2012 her family members viz. Kamlesh Roy, Bikash Roy, Vijay Roy, Satyendra Roy, Shanti Devi and P.W.1 Akash Kumar @ Vikky



Kumar went to the brick-kiln for breaking the coal for firing the kiln. She heard shouts and, therefore, she went on the spot. This First Informant further testified that she saw the accused persons quarreling with Satyendra Roy over the issue of money. She stated that then accused no.1 Bharath Roy assaulted Kamlesh by means of knife, accused no.2 Uma Shankar assaulted Vijay by means of knife. P.W.4 Rubi Kumari vouched that accused no.3 Sunil Roy assaulted Satyendra Roy, Bikash Roy and Akash Roy by means of knife. She further stated that accused no.4 Shakuntla Devi assaulted Shanti Devi w/o Satyendra Roy, by means of knife and to her by means of lathi. This witness deposed about disclosing the incident to the police at her village itself and recording of her F.I.R. statement.

From cross examination of this witness, it is brought on record that accused no.1 Bharath Roy was demanding money of Thakur Bari and deceased Satyendra Roy was telling that the money is already paid. In cross examination, she stated that "Maar-Peet" lasted for one or two minutes. She stated that she is the first to give statement to the police disclosing the incident. As per her version in the cross-examination, the police came on the spot at 10.00 A.M. She stated that police arrested Bharath, Uma Shankar and Sunil but showed ignorance



about the injuries, if any, on the person of the accused. Time of arrest is not elicited from her cross-examination. Over all scrutiny of evidence of P.W.4 Rubi Kumari as such shows that accused persons never disputed their presence on the scene of the occurrence. Her evidence regarding presence of the accused persons on the scene of the occurrence is virtually not challenged at all. Presence of any of the accused persons on the scene of the occurrence is not challenged in cross-examination of any prosecution witness. On the contrary, accused persons are not disputing the fact that they had been to the spot of the incident for demanding money given by Mukhiya to the members of the prosecuting party for the purpose of repairing Thakur Bari. Even the certified copy of the F.I.R. lodged by Uma Shankar Roy which has resulted in registration of the cross case and which is at Ext.-A on the record of the trial court establishes presence of the accused persons on the scene of the occurrence at the time of the occurrence. Material elicited from cross examination of this witness cannot be read to mean that immediately on visiting the spot, police arrested the accused Bharath Roy, Uma Shankar Roy and Sunil Roy for taking them to the Primary Health Centre, Peero. Different sentences in cross examination of



P.W.4 Rubi Kumari cannot be conjointly read to mean this. Half hearted cross examination of P.W.4 Rubi Kumari by the defence does not allow us to infer that the accused persons were arrested at 10.00 A.M. itself by the police for carrying them to the Primary Health Centre, Peero. Evidence of P.W.4 Rubi Kumari is perfectly in tune with the F.I.R. lodged by her within two hours from the incident. Her evidence is gaining corroboration in material particulars from the version of other eye witnesses examined by the prosecution and there is nothing in her cross-examination to doubt her version about the incident. That apart P.W.4 Rubi Kumari is also an injured witness having suffered the injuries in the incident itself. On 01.06.2012, she was examined by P.W.11 Dr. Rajiv Kumar and she was found to have suffered an abrasion on her left forearm apart from swelling. There is no suggestion to this witness that the said injury was self inflicted injury. Therefore, presence of this witness on the scene of the occurrence in order to have an opportunity to her to witness the incident cannot be doubted in any manner. She is a witness of truth.

20. P.W.5 Runam Kumari is another daughter of deceased Kamlesh Roy and sister of P.W.4 Rubi Kumari. She is also an eyewitness to the incident. Her evidence shows that after



hearing hulla, she went from her house to the brick kiln which was just at a distance of 100 yards from her house. She claims to have seen accused No.1 Bharath demanding money from her uncle Satyendra. She disclosed that accused No.1 Bharath assaulted Kamlesh by taking knife from accused No.2 Uma Shankar. She stated that accused No.3 Sunil assaulted Satyendra Rai on chest by knife, Vikash on neck so also P.W.1 Akash. She testified that accused No.2 Uma Shankar assaulted Vijay by means of knife and accused No.4 Shakuntala assaulted deceased Shanti Devi by taking knife from Sunil. She had also stated that accused Shakuntala assaulted her sister- P.W.4 Rubi Devi by Lathi. She has spoken about death of her family members because of the wounds sustained by them. In cross-examination, she had shown ignorance on sustaining injuries by the accused persons. She stated that accused Bharath, Uma Shankar and Sunil were taken to the hospital for treatment. However, the time of taking them to the Hospital by police is not elicited from her during the course of her cross-examination and, therefore, such half hearted cross-examination cannot be stretched to mean that immediately after the incident, police took the accused persons to the hospital for treatment. This witness stated that injured persons from her family members were taken to hospital



by P.W.6 Jitendra, P.W.2 Shanti Devi and Bhuwar. Evidence of this witness is also totally in tune with evidence of other eye witnesses. The same is clear, cogent and consistent. There is nothing in cross-examination of this witness to discredit her version. Merely because she has shown ignorance in respect of injuries suffered by the accused persons, her substantive version cannot be jettisoned. Such suppression seems to be for the reason of fear of rejection of her testimony by the Court. No overwhelming importance can be given to this aspect.

21. P.W.6 Jitendra Roy is one of the brother of accused No.1 Bharath Roy and deceased Kamlesh and Satyendra. He had turned hostile to the prosecution on material aspects. Therefore, his evidence is of no assistance either to the prosecution or to the defence. His version which is consistent to the prosecution case regarding taking injured Satyendra, Kamlesh, Shanti Devi, Vikash, Vijay and Vikky to the hospital and about being a witness to the Inquest notes, which is in tune with the prosecution case at the most can be relied upon. According to prosecution case, this witness had also lodged the FIR while at the hospital but during substantive evidence before the Court he disowned this fact. Moreover, once it is seen that P.W.4 Rubi Devi had informed commission of cognizable



offence to police first in point of time resulting in registration of the FIR, subsequent disclosure of the incident to the police by somebody else cannot be treated as the FIR of the incident. Even if such statement is reduced into writing, it takes colour of the statement under Section 161 of the Cr.P.C. Hence, even police statement of this witness cannot be read in evidence to compare the same with the version in the F.I.R. of P.W.4 Rubi Devi and argument to that effect advanced by the learned counsel for the appellants deserves to be rejected.

22. P.W.7 Rajendra Roy who is also related to the prosecuting party and the accused party has turned hostile to the prosecution. However, his evidence which is consistent with the prosecution case and which is to the effect that in his presence P.W.4 Rubi Kumari had lodged the FIR and that FIR bears his signature can be accepted. Similarly, his evidence regarding effecting seizure by the police can be relied. However, on material particulars he has not supported the version of the prosecution. We are not getting any satisfactory reason to hold that this witness was deliberately made to turn hostile to the prosecution by the prosecution itself. Such argument advanced by the learned Advocate for the appellants is far fetched and cannot be accepted. This witness had feigned ignorance about



the incident though during investigation he claimed to have witnessed the incident. The FIR lodged by P.W.4 Rubi Kumari cannot be doubted merely because it contains signature of this hostile witness. It cannot be said that the FIR of P.W.4 Rubi Kumari is antedated only because this witness is resident of some other village.

23. These all are the private witnesses examined by the prosecution. Except P.W.6 Jitendra Roy and P.W.7 Rajendra Roy, all other prosecution witnesses have fully supported case of the prosecution of horrid murder of five members of their family. Evidence of all these witnesses regarding the mode and manner of the incident is clear, cogent and consistent. There is no iota of doubt emerging on record from cross-examination of any of this witnesses regarding presence of the accused persons on the scene of the offence at the time of the occurrence. All of them had identified the accused persons in dock as perpetrator of the crime in question. Except minor discrepancy regarding the time span during which the occurrence lasted and distance of their house from the brick kiln nothing more can be brought on record from cross-examination of these witnesses. They all had witnessed the incident of gruesome murders of five members of their family at the brick kiln. Principle as to how evidence of



such witnesses is to be appreciated can be found in the judgment of the Hon'ble Supreme Court in **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat** reported in **AIR 1983 Supreme Court 753**. It is held by the Hon'ble Supreme Court that overbearing importance cannot be given to minor discrepancies in evidence of witnesses. The reasons for this can be found in para-5 of the said judgment which reads thus:-

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed and the mental screen.

(2) Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the



moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful is liable to be overawed by the Court atmosphere and the piercing cross-examination made by the counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness some times so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him – perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

(8) Discrepancies which do not go to the root of the matter and shake the basis version of the witnesses, therefore, cannot be annexed with undue importance. More so when the all important “probabilities -factor” echoes in favour of the version narrated by the witnesses”.

24. If tested on these principles, evidence of eyewitnesses discussed by us in foregoing paras is certainly intrinsically reliable, inherently probable and wholly



trustworthy. There are no suggestions to these close relatives to the effect that they were not present on the scene of occurrence at the time of the incident. Their brick kilns were situated in the vicinity of their house and, as such, they become natural witnesses to the incident of murder of five members from their family in the incident in question. Similarly, these prosecution witnesses are also close relatives of the accused persons and, therefore, it cannot be said that they would falsely implicate the accused persons in the crime in question which took place for a paltry sum of rupees thirty thousand given by the Mukhiya for repair of Thakurbari. In absence of any material to that effect, it cannot be said that an innocent is dragged in the incident by any of the witness to satisfy his personal grudge. There are no suggestion to any of the witnesses that they are having any personal grudge against any of the accused persons. The documentary evidence relied and placed on record by the defence in the form of the FIR lodged by accused No.2 Uma Shankar cements presence of the accused persons on the spot of the incident at the time of the incident. Cautious scrutiny of evidence of the above stated eyewitnesses does not allow us to reject their testimony mechanically only because they are related to the deceased and the injured.



25. Now comes evidence of the Investigating Officer P.W.9 Rana Ran Vijay Kumar, Police Station Officer of Chaori Police Station. This witness has disclosed the line of investigation conducted by him. It is in evidence of P.W.9 Rana Ran Vijay Kumar that at about 9:00 A.M. of 31.05.2012 his Police Station received information that there is incident of “Maa-Peet” at village Purhara. Hence, by taking Sanaha entery he left the Police Station along with P.S.I Surendra Paswan, Harinandan Singh and others. He reached village Purhara at 10:15 A.M. He saw one female and five male injured persons lying in an unconscious condition near the brick kiln and at Karaha as well as field. He testified that those injured were sent to the Sadar Hospital, Ara, by Police Jeep with Surendra Paswan so also by the transport vehicle. Then he recorded statement of Rubi Kumari at about 11:00 A.M. and obtained her signature and signed that statement (Exhibit-5) after obtaining signature of P.W.7 Rajendra Roy. P.W.9 Rana Ran Vijay Kumar further deposed that house of the members of the prosecuting party was at a distance of 100 yards from the spot of the incident which was near the brick kiln and the field. He noticed coal lying there. Injured were lying in a pool of blood in Karha and the filed. The Investigating Officer had spoken about seizure of



cover of knife, broken bangles and eight sticks stained with blood from the spot of the incident vide seizure memo Ext-6. He had stated that he searched house of the accused persons and under seizure memo Ext.-7 had seized pair of blood stained shoes of accused No.3 Sunil, one blood stained shoe of accused No.1 Bharath as well as mobile phones. This seizure memo Ext.-7 dated 31.05.2012 shows that the seizures were effected after searching house of the accused persons and at that time i.e., 12:30 noon the accused persons were not present thereat. P.W.9 Rana Ran Vijay Kumar further deposed that thereafter returning to the Police Station at about 2:30 P.M. he registered Crime No.33 of 2012 against the accused persons by preparing formal printed FIR (Ext.-10). As per his version at 3:00 P.M. he arrested accused persons and recorded confessional statements of accused No.1 Bharath and accused No.2 Uma Shankar, which has resulted in recovery of two knives from the Well. Those knives were seized by him vide seizure memo (Ext.-8). These seizures, as seen from the documents at Ext.-8 were effected at 7:00 P.M. of 31.05.2012. The Investigating Officer proved the inquest reports Ext.-15, 15-1 to 15-4 of deceased persons and has also spoken about seizure of clothes of deceased persons.



26. During cross-examination P.W.9 Rana Ran Vijay Kumar has stated that village Purhara is about 13 to 14 Kms away from the Police Station and time of 1:15 hours is required to reach that village. Initially, this Investigating Officer during his cross-examination has stated that he had not seen injuries on the accused persons but thereafter has accepted the fact that he saw some injuries on accused persons. He stated that the accused persons might have been sent to the Primary Health Centre, Piro, under requisition signed by Police Officer named Upadhyay. The Investigator further admitted that at 11:30 P.M. of 31.05.2012 on report of accused No.2 Uma Shankar Roy, cross-case came to be registered vide Crime No.34 of 2012.

27. We have already taken note of the certified copy of the FIR in the cross-case registered at the instance of accused No.2 Uma Shankar Roy which is at Ext.-A on the record of the learned trial Court. Unfortunately, the cross-case was not tried along with the case in hand which ought to have been done in normal course. On this aspect the learned counsel for the appellants has relied on judgments in the matter of **Sudhir and others (supra)** as well as **State of M.P. Vs. Mishrilal (Dead) and Others (supra)**. At this juncture, it is apposite to quote observation of the Hon'ble Supreme Court in **Nathi Lal and**



Others Vs. State of U.P. and Another reported in 1990 (Supp)

Supreme Court Cases 145 which reads thus:

“2. We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross-case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same learned Judge one after the other.”



The rationale behind adopting this procedure is to avoid the conflicting judgments over the same incident. However, this rule of prudence is not observed in the case in hand but that does not result in vitiation of the trial. Ultimately, evidence in one case cannot be looked into while deciding the other case. Hence, we are supposed to decide the case in hand on its own merits as per the evidence adduced therein.

28. With the aid of this evidence of the Investigator it is vehemently argued that there is suppression of facts, suppression of the earliest version of the incident, delayed transmission of the FIR to the Court for bolstering up of the prosecution case by antedating it. It is argued that investigation conducted by him is defective. Planchora of case law is cited on these aspects on behalf of the appellants. For better understanding of this aspect, let us have a brief resume of the statutory provisions. Chapter- XII of the Code of Criminal Procedure 1973 (hereinafter referred to as the Code) deals with information to the police and their powers to investigate. Section 154 of the Code mandates that information of commission of cognizable offence, if given orally, should be reduced in writing by the Officer-in-Charge of a Police Station or under his direction. Such information is required to be signed



by the informant and the substance thereof is required to be entered in the prescribed book. That is how the FIR statement as well as the printed formal FIR is drawn by the police. If information of commission of cognizable offence is received or if Officer-in-Charge of the Police Station has reason to suspect commission of cognizable offence then as prescribed by Section 157 of the Code, he has to forward a report to the Magistrate empowered to take cognizance of such offence. Mandate of Section 157 thus requires forwarding of the FIR to the Magistrate forthwith. The word forthwith in Section 157(1) of the Code is to be understood in the context of the given facts and circumstances of each case. No straitjacket formula in respect of such time of forwarding the police report can be made applicable to all cases. Similarly only when ocular evidence is found to be unreliable and unacceptable then only a long delay in transmitting the police report as envisaged by Section 157 of the Code can make the prosecution case suspect. The delay by itself without anything more cannot assume any overbearing importance. Moreover for making out this point, foundational facts regarding the delay are required to be elicited from the Investigator or other relevant prosecution witnesses. At this juncture, it is just to quote relevant observation of the Supreme



Court in the matter of **State of Rajasthan Vs. Daud Khan** reported in **(2016) 2 Supreme Court Cases 607**, which is as follows:

“26.....

The purpose of the “forthwith” communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard.”

Similar is the ratio of rulings in Chotkau (Supra), Mehraj Singh (supra), Thander Singh (supra), Arjun Marik



(Supra) Teja Singh (supra), Harinandan Singh (supra) and Nallabothu Ramalu (supra) cited by the learned counsel for the appellants. Special report to the Magistrate or the concerned Court sent under Section 157 of the Code is one of the external check for determining whether the FIR was lodged at the time it is alleged to have been recorded. There can be valid reasons for the delay in dispatch of the FIR and the delay by itself cannot form the basis for inferring that the entire prosecution case is false and fabricated.

29. In the case in hand, entire argument of the learned counsel for the appellants that there is delay in transmitting the FIR to the competent Court is based on mere endorsements made by the learned C.J.M. on the printed FIR as well as the FIR statement of PW 4 Rubi Kumari which are at Exts.-10 and 15 respectively. The endorsement of the learned Chief Judicial Magistrate on both these documents is dated 02.06.2012 and that endorsement is to the effect that 'seen'. Thus, endorsement on both these documents is only to the effect that the learned Chief Judicial Magistrate had 'seen' these documents i.e., the FIR and printed FIR on 02.06.2012. These endorsements of the learned Chief Judicial cannot be stretched too long to mean that these documents reached in the Court of learned Chief Judicial



Magistrate on 02.06.2012. The printed FIR was prepared at 2:30 P.M. of 31.05.2012 and the FIR statement came to be recorded at 11:00 A.M. of 31.05.2012. In fact, in order to make out the point of delayed transmission of the FIR to the competent Court, the defence ought to have cross-examined P.W.9 Rana Ran Vijay Kumar for eliciting from him as to when he has dispatched special report as envisaged under Section 157 of the Code to the Competent Court. However, not a single question was put to the Investigating Officer during his cross-examination for making a foundation for raising such argument of delayed transmission of the FIR to the competent Court. The learned counsel for the appellants tried to make out a superstructure of this argument without there being any foundational fact for the same in cross-examination of the Investigating Officer. Hence, we find no merit in contention of the learned counsel for the appellants that the FIR was belatedly transmitted to the competent Court for antedating it or for bolstering up the prosecution case.

30. It was tried to demonstrate that Sanha entry in respect of the information received by P.W.9 Rana Ran Vijay Kumar at about 9:00 A.M. of 31.05.2012 is not produced on record and this amounts to suppression of material facts by the



prosecution. Mere information received on phone by a Police Officer without any details as regards to identity of accused or the nature of injuries caused to the victim as well as names of culprit cannot be treated as FIR nor such Sanha become relevant in order to ascertain first and earliest version of the incident. Evidence of P.W.9 Rana Ran Vijay Kumar is clear on this aspect. He has fairly disclosed that at 9:00 A.M. of 31.05.2012 he received information regarding “Maar-Peet” at Purhara. He was not cross-examined to elicit that at 9:00 A.M. itself, he was informed about the names of the assailants, names of the injured and other details of the incident. Hence, mere non-production of Sanha entry along with the charge sheet before the Court is of no consequence. However, out of curiosity we have gone through the record and proceedings and we noted that along with the police report/case-diary that Sanha entry is already enclosed. Hence, no substance can be found in this argument advanced on behalf of the appellants that the said Sanha entry was suppressed by the prosecution.

31. It was urged before us that accused persons were arrested by police immediately after the incident and then they were taken for medical examination but still defective investigation conducted by P.W.9 Rana Ran Vijay Kumar shows



that recoveries were effected from them when they were undergoing medical treatment in the hospital at Peero. We have noted chronology of events that took place during the course of investigation from evidence of P.W.9 Rana Ran Vijay Kumar and compared it with the contemporaneous documentary evidence. As per version of P.W.9 Rana Ran Vijay Kumar, the accused persons were arrested at 3:00 P.M. of 31.05.2012. However, prior to that he had effected seizure of Lathi, broken bangles, shoe etc. from the spot of the incident vide seizure memo (Ext.-6). It is seen from his evidence coupled with the documentary evidence that house of the accused persons came to be searched in their absence at about 12:30 noon of 31.05.2012 resulting in recovery of shoes, mobile phones etc. vide seizure memo Ext.-7. Presence of the accused persons at their house is not seen either from evidence of this witness or from contemporaneous seizure memo Ext-7. At about 7:00 P.M. of 31.05.2012 on the basis of confessional statement of the accused, as disclosed by P.W.9 Rana Ran Vijay Kumar, articles such as knife came to be recovered vide seizure memo Ext-8. Prior to that, the accused was already arrested at 3:P.M. as disclosed by this witness.

32. The defence, during the course of the trial had



placed on record police requisition forwarding the accused persons for medical examination to the PHC, Peero. On the backside of those requisitions the Medical Officer had written injury reports of accused Bharath Roy, Uma Shankar Roy and Sunil Roy. The learned trial Court had exhibited these documents as Exts-B, B/1 and B/2. As stated by us, injuries mentioned in those injury reports of these accused were certified to be simple in nature by the Medical Officer. There is nothing in these forwarding letters or injury reports to doubt version of P.W.9 Rana Ran Vijay Kumar and to hold that though the accused persons were taking medical treatment as indoor patients, their confessions were shown to have been recorded by the Investigating Officer at the Police Station at the same time. These documents as Exts-B, B/1 and B/2 do not show that the accused persons were admitted as indoor patients for their medical treatment at the Primary Health Centre, Peero, for simple injuries sustained by them. No effective cross-examination on this aspect is there on record. Therefore, it is not possible to hold that the investigation conducted by the Investigator is totally defective and overweight the trustworthy ocular evidence regarding the incident coming on record through the eyewitnesses. Taking such hyper technical view,



truthful evidence of the prosecution witnesses cannot be dislodged.

33. Now comes the argument of the learned counsel for the appellants that the accused persons were also injured in the incident in question as seen from the documents at Ext-B collectively, and the prosecution has not explained injuries sustained by the accused persons. Evidence of prosecution witnesses cannot be rejected outrightly on the ground that the prosecution witnesses have not explained the injuries on person of the accused. In such contingency, it becomes the duty of the Court to proceed to search out the truth from the material available on record with a view to find out how much of prosecution case is proved beyond all reasonable doubt. Approach of rejecting the prosecution case in its entirety for non-explanation of injuries sustained by the accused persons is totally erroneous. In the matter of **Mohan s/o Suryabhan Chandan, V/s. The State of Maharashtra through PSO Telhara,** reported in **1995 Cri. L.J.. 3022**, it is held in para 8 of this ruling thus :-

“It needs mention that the non-explanation of the injury on the person of the accused is the factor which is to be taken into account in judging the veracity of the prosecution case. However, no



obligation is cast on the prosecution to explain the injuries on the person of the accused in all the cases. The obligation is to be discharged in two types of cases (1) if very serious or severe injury is received by the accused and not superficial; and (2) the injury must have been caused at the time of occurrence in question. These aspects have been dealt by the Lordships of the Supreme Court in the case of Jagdish V., State of Rajasthan.”

34. The prosecution as such is not required to explain minor superficial injuries. Where the evidence adduced by the prosecution is clear and cogent so also probable, consistent and creditworthy then it certainly outweighs the effect of omission on the part of the prosecution to explain the injuries on the accused.

35. Now let us examine whether the right of private defence has to be pleaded specifically or it is open for the court to consider such plea if the same arises from the material on the record and whether in the case in hand the appellants are entitled for benefit of such plea. In the matter of **Munshi Ram and Ors. Vs. Delhi Administration** reported in (1968) 2 SCR 455, the Supreme Court has observed that it is not necessary to plead self defence but such plea is open for consideration if the same arises from the material available on the record. The learned counsel appearing for the appellants has rightly relied



on the Judgment in the matter of **Darshan Singh** (supra) on this point and in paragraph 58 of the said Judgment, this position has been vividly summarized thus:

“58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.



(v) *It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.*

(vi) *In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.*

(vii) *It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.*

(viii) *The accused need not prove the existence of the right of private defence beyond reasonable doubt.* (emphasis supplied)

(ix) *The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.*

(x) *A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”*

36. Burden to establish plea of self defence is always on the accused and he can show that he is entitled to exercise the right of private defence from the material on record brought by the prosecution by preponderance of probabilities. It is not necessary that for discharging the burden to establish



the plea of self defence, the accused must examine defence witnesses. Such plea can be taken by introducing the same in cross-examination of prosecution witnesses or by raising it in statement under Section 313 of the Code or by adducing defence evidence. Even if the plea of right of private defence is not introduced in these ways, it is still open for the defence to raise same during any stage by relying on probabilities and circumstances. To claim a right of private defence extending to voluntarily causing death, in this case the accused has to show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to them had they not exercised the right of private defence by assaulting the members of the prosecution party. Ultimately as envisaged by Section 99 of the Indian Penal Code, the right of private defence in no case extends to the inflicting or more harm than it is necessary to inflict. To appreciate the evidence on this aspect in the case in hand, it would be apposite to quote relevant observations of the Supreme Court in **V. Subramani and another** (supra) relied by the learned counsel for the appellants. Para-12 and 14 thereof (relevant portions) reads thus:

“12. The number of injuries is not always a safe criterion for determining who the



aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probablise the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. (See Lakshmi Singh v. State of Bihar, (AIR 1976 SC 2263). A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to



inflict severe and mortal injury on the aggressor. In order to find out whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting.....

14. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Similar view was expressed by this Court in Biran Singh v. State of Bihar (AIR 1975 SC 87). (See: Wassan Singh v. State of Punjab (1996) 1 SCC 458; Sekar alias Raja Sekharan . State represented by Inspector of Police, T.N. (2002 (8) SCC 354).

With this legal position on record, let us approach the case in hand in order to ascertain whether in this case of mass murders, the accused have probablised the plea of self defence.

37. During the course of trial, as stated by us in forgoing paragraphs, the defence had placed on record certified copy of the FIR in Crime No.34 of 2012 for offences under



Section 341, 323 and 504 read with Section 34 of the Indian Penal Code registered against the deceased accused and P.W.1 Akash Kumar @ Vikky Kumar. It is at Ext-A in the record and proceedings of the learned trial Court which had admitted it in evidence. Bare perusal of this FIR lodged by accused No.2 Uma Shankar Roy shows that the accused herein had been to the brick kiln of the deceased victims for demanding money. It is clear that the victims had not gone to the place of the accused persons. Trustworthy evidence of prosecution witnesses such as P.W.1 Akash Kumar @ Vikky Kumar, P.W.2 Shanti Devi, P.W.3 Sonam Kumari, P.W.4 Rubi Kumari and P.W.5 Runam Kumari shows that while going to the brick kiln of the victims of the crime in question, the accused persons had carried knives and lathis with them. It is not brought on record from the entire evidence adduced by the prosecution that the victims of the crime in question including P.W.1 Akash Kumar @ Vikky Kumar were armed with dangerous weapons. On the contrary evidence on record shows that all five deceased and P.W.1 Akash Kumar @ Vikky Kumar were breaking the coal at the brick kiln set up by them. We have already noted injuries sustained by five deceased persons leading to their death while deciding the question as to whether the prosecution has proved



that they died homicidal death. To repeat, deceased Satyendra Roy had sustained two incised wounds on his chest, deceased Kamlesh Roy had sustained one incised wound on his chest and the other at right side of abdomen. Deceased Vikash Roy had sustained incised wound at the root of his neck. Deceased Shanti Devi had sustained incised penetrating wound on her chest whereas deceased Vijay Kumar Roy had suffered punctured stab wound on his chest. All these deceased could not even reach to the hospital for getting medical treatment and they succumbed to the injuries suffered by them on the way to the hospital. It is only P.W.1 Akash Kumar @ Vikky Kumar who suffered incised wound on his chest could manage to survive by taking treatment for about one and half month at the P.M.C.H., Patna. As against this only three accused persons namely, accused No.1 Bharath Roy, accused No.2 Uma Shankar Roy and accused No.3 Sunil Roy were found to have sustained simple injuries in the nature of lacerated wounds, swelling, abrasion etc. All injuries suffered by these accused persons were reported by the Medical Officer to be simple in nature caused by hard and blunt object, as seen from their injury reports which are admitted in evidence by the learned trial Court. Evidence of P.W.9 Rana Ran Vijay Kumar, the Investigating Officer, shows that he found some sticks on



the scene of the occurrence. Thus, with such evidence on record it cannot be said that the accused persons have probablized the plea of their self-defence and in exercise of that right they are justified in culling five persons. It cannot be said that there was imminence of threat to safety of the accused persons who themselves had gone to the place of the occurrence armed with the deadly weapons. With this evidence, it cannot be held that the accused persons were not having any time to take recourse to the public authorities. In this view of the matter, it cannot be said that the appellants had probablized the plea of their self-defence and thereby justified the killing of five persons by assaulting them by means of sharp edged weapon. On the basis of surmises and speculations, it cannot be said that the appellants had acted in exercise of right of their private defence and thereby caused death of five persons who were closely related to them.

38. Insignificant argument that the inquest notes are not mentioning that clothes and bodies of the deceased were not stained with blood fails to impress us. The purpose of the inquest notes is not to check this aspect.

39. As discussed in forgoing paragraphs, we are of the firm view that evidence of eyewitnesses examined by the



prosecution, namely, P.W.1 Akash Kumar @ Vikky Kumar Kumar, P.W.2 Shanti Devi, P.W.3 Sonam Kumari, P.W.4 Rubi Kumari and P.W.5 Runam Kumari is trustworthy, reliable and free from all reasonable doubts. They are natural witnesses to the incident which took place at the brick kiln situated near their house. We see no reason to hold that the place of occurrence is not proved by the prosecution. Evidence of all these witnesses coupled with evidence of P.W.9 Rana Ran Vijay Kumar is clear on the aspect of place of occurrence which was near the brick kiln and at the field and water channel in that field were dead bodies were found. As the offence was committed at the brick kilns of the deceased which were situated in the vicinity of their house, presence of the family members of the deceased at the place of occurrence cannot be doubted and in this view of the matter they all have assumed the position natural witnesses to the crime in question. Evidence of these witnesses is clear and cogent. They withstood the rigor of cross-examination and their version is fully corroborated by the medical evidence adduced by the prosecution. It is not shown from the evidence that these eyewitnesses had desire to implicate some of the accused falsely. The accused persons are their close relatives. Hence, evidence of all these eyewitnesses deserves to be acted upon. It



is argued that prosecution has failed to examine relevant witnesses including Police Officer named Upathyay who had taken the accused persons to the Primary Health Centre, Peero and Police Officer Harinandan Singh who had recorded the FIR of hostile witness P.W.6 Jitendra Roy. There cannot be two FIRs in a case. Statement of hostile witness P.W.6 Jitendra Roy cannot be treated as FIR but it is police statement under Section 161 of the Code. As P.W.6 Jitendra has himself not supported the case of the prosecution, non-examination of A.S.I. Harinandan Singh, who had recorded his statement, is of no consequence. Similarly, when evidence adduced by the prosecution is sufficient to bring home the guilt to the accused then non-examination of other witnesses though available is of no consequence. If trustworthiness of the evidence adduced and available on record is establish then there may be other witnesses available who could also have been examined but were not examined cannot create any doubt in the prosecution case. It is only when available evidence suffers from infirmity and cannot be acted in absence of other evidence, which though available has been withheld from the Court then question of drawing adverse inference against the prosecution may arise. Such is not the case in hand. Hence, we find no merit in



submission of the learned counsel for the appellants that the prosecution has withheld material witnesses.

40. With the available evidence on record and from the proved circumstances we are of the considered opinion that the accused persons, in furtherance of their common intention had inflicted wounds on five deceased persons as well as on P.W.1 Akash Kumar @ Vikky Kumar. They caused simple hurt to P.W.4 Rubi Kumari. However, the question which now falls for consideration is whether the accused persons who acted in a league and inflicted blows on vital parts of five deceased persons, had committed the offence of murder punishable under Section 302 of the Indian Penal Code as well as the offence of attempting to commit murder of P.W.1 Akash Kumar @ Vikky Kumar punishable under Section 307 of the Indian Penal Code.

41. Culpable homicide is a genus and murder is its species. The Indian Penal Code practically recognizes three degrees of culpable homicide. Culpable homicide of the first degree is the gravest form which is defined as 'murder' and is made punishable under Section 302 of the IPC. The next may be termed as 'culpable homicide of second degree', which is made punishable under first part of Section 304 of the IPC. The last degree of culpable homicide is 'culpable homicide of third



degree' which is made punishable under second part of Section 304 of the IPC. Barring the cases covered by an exception to Section 300 of Indian Penal Code, culpable homicide is murder if an act by which the death is caused is done with the intention of causing death. Otherwise, for making out the offence of murder punishable under Section 302 of the IPC, the prosecution is firstly required to establish that a bodily injury is present on the victim. Secondly, the prosecution is required to establish nature and size of the injury on the victim. Then the prosecution is enjoined to prove that there was intention to inflict the particular injury, by adducing clear and cogent evidence for clarifying that such an injury was not accidental or unintentional. Possibility of injury of other kind intended by the appellant/accused is required to be ruled out. Lastly, the prosecution has to establish that the injury so caused was sufficient to cause death in the ordinary course of nature. If all these factors are established, then only the offence defined under Section 300 of the IPC and punishable under Section 302 of IPC is made out. Similarly, it is well settled that in the offence under Section 307 of Indian Penal Code all the ingredients of offence of murder are present except the death of the victim. As such where all ingredients of Section 300 of



Indian Penal Code are lacking, the accused cannot be convicted under Section 307 of Indian Penal Code. Section 307 of Indian Penal Code does not take into consideration the effect of the act of the accused except as a measure of punishment to be imposed on him. In order to constitute the offence under Section 307 of Indian Penal Code actus reus and the requisite mens rea both must concur and the intention precedes the act attributed to the accused. The offence punishable under Section 307 of the IPC is made out when the accused have intended to commit murder and in pursuance of that intention does any overt act towards commission of murder. In order to establish the offence punishable under Section 307 of the IPC, the prosecution is required to establish the intention or knowledge of committing murder and doing of an act towards it. Thus, Section 307 of the IPC contemplates intention or knowledge and not the consequence of the actual act done for the purpose of carrying out the intention.

42. Reverting to the facts of the case in hand, as noted by us, the accused persons had inflicted blows of sharp cutting weapons on vital parts of bodies of all five deceased persons. As seen from the medical evidence adduced by the prosecution, deaths of Kamlesh Roy, Bikash Roy, Vijay Roy, Satyendra Roy



and Shanti Devi were resulted because of cardio respiratory failure caused by haemorrhage and shock due to injuries sustained by them on vital parts of their body such as neck, chest and abdomen. Thus, we have no doubt in our mind that blows of sharp cutting weapons were inflicted by the accused persons on the victims with an intention to cause death of their victims. Seat of injury and the weapons used for causing wounds so also the force by which the blows were given on the victims makes it clear that the accused persons were knowing that they were likely to cause death of the victims by inflicting blows by sharp edged weapons. Therefore, the prosecution has established that in furtherance of their common intention, the appellants had caused murders of five victims, thereby committing the offence punishable u/s 302 R/w 34 of the Indian Penal Code. Similarly, it is proved from evidence on record that in furtherance of their common intention the accused persons had attempted to commit murder of P.W.1 Akash Kumar @ Vikky Kumar by inflicting blow of sharp cutting weapon on his chest leading to his hospitalization for a one and half month at P.M.C.H., Patna. The blow was inflicted on his chest with sufficient force making the intention to eliminate him crystal clear. Thus, the prosecution has also proved commission of the



offence punishable under Section 307 read with Section 34 of the Indian Penal Code.

43. As we have carefully gone through the entire case laws relied by the appellants and as we have acted upon the ratio which can be culled out from those rulings, we are not intending to reproduce the ratio by quoting relevant paragraphs from those judgments, for burdening this otherwise lengthy judgment.

44. In the result, both these appeals are devoid of merit and they are accordingly dismissed.

(A. M. Badar, J)

(Sandeep Kumar, J)

P.S./Mkr./Bhardwaj/
Aditi Sharma/-

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