

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.2 of 2024

Arising Out of PS. Case No.-111 Year-2021 Thana- DARIHAT District- Rohtas

The State of Bihar

... .. Petitioner

Versus

- 1. Aman Singh S/O Ajay Singh R/O -VillageKudrao/Khudraon, P.S.- Darihat, Distt-Rohtas
- 2. Sonal Singh S/O Ajay Singh R/O -VillageKudrao/Khudraon, P.S.- Darihat, Distt-Rohtas

... .. Respondents

with

CRIMINAL APPEAL (DB) No. 691 of 2024

Arising Out of PS. Case No.-111 Year-2021 Thana- DARIHAT District- Rohtas

- 1. Aman Singh S/O Ajay Singh R/O -VillageKudrao/Khudraon, P.S.- Darihat, Distt-Rohtas
- 2. Sonal Singh S/O Ajay Singh R/O -VillageKudrao/Khudraon, P.S.- Darihat, Distt-Rohtas

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In DEATH REFERENCE No. 2 of 2024)

For the Petitioner : Mr. Anil singh, Amicus Curiae
Mr. Manoj Kumar No.1, Advocate

For the Respondent : Mr. Xxxxx

(In CRIMINAL APPEAL (DB) No. 691 of 2024)

For the Appellants : Mr. Pratik Mishra, Advocate
Mr. Vatsal Vishal, Advocate
Mr. Raushan Kumar, Advocate
For the State : Mr. Manish Kumar No. 2, Addl. PP
For the Informant : Mr. Ansul, Sr. Advocate
Mr. Dharmendra Kumar Singh, Advocate
Mr. Eashiita Raj, Advocate
Mr. Manoj Kumar, Advocate
Mr. Sada Nan Roy, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)



Date : 22-01-2026

The death reference registered under Section 366 (1) of the Code of Criminal Procedure (in short 'CrPC') and the Criminal Appeal preferred by the two appellants are arising out of the judgment of conviction dated 2nd May, 2024 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 9th May, 2024 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions Judge-19, Rohtas at Sasaram (hereinafter referred to as 'the learned trial court') in Sessions Trial No. 10 of 2022 arising out of Darihat P.S. Case No. 111 of 2021 dated 13th July, 2021 registered under Section 302/34 of the Indian Penal Code (in short 'IPC').

By the impugned judgment and order, the appellants have been convicted for the offences punishable under Sections 302/34 IPC and have been sentenced to death.

2. The appellants Aman Singh and Sonal Singh in Criminal Appeal (DB) No. 691 of 2024 have prayed for setting aside the impugned judgment and order of the learned trial court. The prosecution case is based on the *fardbeyan* of Shakuntala Devi, wife of Late Vijay Singh, Resident of Village Khudrao, P.S.-Darihat, District-Rohtas recorded by ASI Bimlesh Kumar on 13th July, 2021 at 23:00 Hrs. near postmortem house, Sadar Hospital, Sasaram. In her



fardebayan (Exhibit '3'), the informant, who is wife of one of the deceased and has been examined as PW-4 in course of trial, has stated as under:-

On 13.07.2021 at 18:00 Hours, when her husband Vijay Singh and her son Deepak Singh were at home then, her *Pattidars*, namely, (1) Ajay Singh, (2) Sonal Singh and (3) Aman Singh started ploughing the disputed land adjacent to the house. When her husband and her son went to stop them, then they started abusing them and assaulted them with fist and *lathi*. Somehow, her husband and her son fled away from there to Rang Bahadur Singh's door. After some time, the accused persons while chasing came to Rang Bahadur Singh's door and they abused her husband and her son and also started assaulting them with *lathi/danda*. In the meanwhile, her younger son Rakesh Singh also came there from Dehri and on seeing his father and brother getting assaulted, after pacifying the fight he took his father and brother to his old house towards *kitta*. Then the above three accused persons armed with sword while chasing them reached *purana kitta* and started hitting her husband and sons with sword. Sonal Singh with an intention to kill, hit her elder son Deepak Singh as a result of which he got cut on his neck, face, cheek, head and chest and blood started oozing out and he became unconscious. Aman Singh attacked her younger son Rakesh Singh with sword in his hand with an intention to kill him, Rakesh got cuts on both his



hands, face, neck and head and fell unconscious. When her husband on seeing his children getting injured went to save them then Ajay Singh hit him with sword on his neck as a result of which he got a serious injury on his neck, he started bleeding profusely and he fell unconscious. Meanwhile, Gayatri Devi wife of Ajay Singh came with a spear in her hand and gave it to her husband and said that they should not be left alive, attack with this spear. Thereafter, the informant and her elder daughter-in-law reached there and asked for help from neighbouring people but no one came to help them. Thereafter, her niece Rajesh Singh, son of Rang Bahadur Singh came there and when he was getting all the injured to hospital, no villager came to help him. Then they informed the police. When police came, the police took her injured husband and two sons to hospital where doctor declared all three of them dead.

3. On the basis of the *fardbeyan* of the informant, Darihat P.S. Case No. 111 of 2021 dated 13th July, 2021 was registered under Section 302/34 IPC. The S.H.O. Darihat (PW-5) took over the responsibility of investigation upon himself. After investigation, PW-5 submitted a chargesheet on 30th April, 2021 vide Chargesheet No. 123 of 2021 under Section 302/34 IPC against the accused persons including the appellants. One of the charge-sheeted accused in this case namely Ajay Singh, who is the



father of the two appellants before this Court, absconded and he was declared a proclaimed offender.

4. The learned Magistrate took cognizance of the offence vide order dated 8th October, 2021 and committed the records to the court of Sessions where the session trial was registered. The learned Sessions Judge, Rohtas transferred the records of these appellants to the file of learned Additional Sessions Judge-XI for trial and disposal of the case. Charges were framed on 10th March, 2022 under Section 302/34 IPC against the appellants. The contents of the charges were read over and explained to them in Hindi which they denied and claimed to be tried.

5. In order to prove it's case, the prosecution examined as many as six witnesses and exhibited several documents. The list of witnesses and the exhibits marked on behalf of the prosecution are as under:-

List of Prosecution Witnesses

PW-1	Manish Kumar
PW-2	Sanju Devi
PW-3	Khushbu Kumari
PW-4	Shakuntala Devi
PW-5	Sudhir Kumar Singh
PW-6	Dr. Sidharath Raj Singh

List of Exhibits

Exhibit - P1-01	Signature of witness on seizure list
Exhibit - P2-01	Signature of Witness Sanju Devi on FIR
Exhibit - P3-02	Signature of Khushbu Kumari on FIR as witness



Exhibit - P4-03	Fardbeyan
Exhibit - P5-04	Short Signature of witness Sudhir Kumar Singh on Fardbeyan
Exhibit - P5-4/1	Formal FIR
Exhibit - P5-05	Seizure List
Exhibit - P5-X	Deceased Rakesh Kumar Singh alias Kanu Singh, Deepak Kumar Singh and Vijay Singh
Exhibit - P5-06	Chargesheet
Exhibit - P6-07	Postmortem Report of Deepak Kumar Singh
Exhibit - P6-7/1	Postmortem Report of Deceased Rakesh Kumar Singh
Exhibit - P6-7/2	Postmortem Report of deceased Vijay Singh
Exhibit -08	F.S.L Report

6. After completion of the evidence on behalf of the prosecution, the statement of the accused persons-appellants was recorded under Section 313 CrPC. In their statements, they claimed innocence and contended that they were innocent and have been falsely implicated in this case.

7. The defence did not adduce any oral or documentary evidence.

Findings of the Learned Trial Court

8. The learned trial court examined the oral and documentary evidences adduced on behalf of the prosecution and considered the submissions made on behalf of the prosecution as well as the defence. The discrepancies and anomalies in the prosecution evidence as pointed out by the learned defence counsel have been discussed by the learned trial court in the impugned judgment. In its ultimate analysis and conclusion, the



learned trial court rejected the contentions of the defence. Certain discrepancies have been held as not significant.

9. The learned trial court held that the defence has not pointed out to any material enough to cast any doubt over the credibility and reliability over the prosecution evidences. All the three material eyewitnesses are the widows of the deceased persons, they have lost their husbands in the alleged occurrence. No major male person in their family is alive. The learned trial court found that there cannot be any reason behind false implication of the accused persons. Conspicuously enough, the defence had not even dared to suggest that accused persons have been falsely implicated in this case. The defence did not suggest that the accused persons were not indulged in the occurrence. The learned court held that evidence of PW-2, PW-3 and PW-4 stands corroborated by the evidence of PW-5 and PW-6.

10. The learned trial court held that no material irregularity or defect has been pointed out in the evidence of the I.O. (PW-5). The evidence of the doctor (PW-6), who conducted the postmortem examination on the dead bodies and prepared postmortem reports of the dead bodies (Exhibit '7' '7/1' and '7/2'), has been held immensely crucial which corroborate the evidence of material eyewitnesses and helps conclusively proving the



prosecution evidences of material eyewitnesses supporting the prosecution case, the charges as well as the manner of occurrence of this case. The learned trial court has noticed that on dissection the doctor (PW-6) had reported that there was a fracture of frontal bone, brain matter lacerated and dark black collected in cranial cavity. The other injuries found by the doctor (PW-6) have been taken note of. All the injuries were found ante-mortem in nature caused by sharp cutting weapon of heavy nature. The trial court having noticed the FSL report (Exhibit '8'), which was proved in the light of the provision contained in Section 293 CrPC, held that the FSL report conclusively established that at the place of occurrence, as stated by the prosecution witnesses and police, the human dead bodies were found. The FSL report corroborated the prosecution evidences with respect to the place of occurrence. It further corroborated the recovery of sword from the place of occurrence because the doctor after having taken the blood stains from sword (*talwar*) had transmitted the same for test examination to Forensic Science Laboratory (FSL), Patna.

11. It has been held that the prosecution witnesses have consistently supported the time of occurrence, manner of occurrence, place of occurrence and genesis of occurrence. There is no ambiguity regarding time and date of occurrence. The trial



court held that the intention and motive of occurrence need not be reiterated, however, altogether there are five ante-mortem severe external injuries each at the person of the deceased Deepak Kumar Singh and Rakesh Kumar Singh. The dimensions of ante-mortem external injuries scream in high pitch to disclose the severity and brutality of the same. The injuries inflicted upon Vijay Singh is echoes by and large the same brutalities and mercilessness of accused persons. They have not only eliminated the chances of survival of the deceased persons rather they have adopted the most heinous and cruel manner to kill the deceased persons. The ultimate finding of the learned trial court is that the accused persons have committed an act with intention to causing inevitable death of the deceased persons. It has been held that the prosecution has proved its case beyond all reasonable doubts. The appellants have been held guilty of murder.

12. In the matter of award of sentence, the learned trial court has recorded the submissions advanced on behalf of the parties and the guidelines of the Hon'ble Supreme Court as laid down in case of **Machhi Singh vs. State of Punjab** reported in **AIR 1983 SC 957**. It also referred the principles relied upon by the Hon'ble Supreme Court in case of **Bachan Singh vs. State of Punjab** reported in **(1980) 2 SCC 684**. The learned trial court held



that in this case, three unarmed persons have been ruthlessly butchered by the sword wielding convicts for a dispute pertaining to a small piece of land. Altogether five ante-mortem severe massive external and internal injuries were inflicted on the person of each of the deceased. The trial court found that consequent upon the death of the deceased persons, no male major person has been left to perform the rights and rituals ordinarily required in Hindu family. The happiness, pleasure and celebrations of the surviving family members have been done away for whole of their lives. The trial court found that the family of the deceased has been left in huge dark and they are supposed to pass rest of their lives under tremendous shock and anguish.

13. The trial court further considered as to whether there can be a justification in life imprisonment of the convicts or not. The court held that the incessant tears of the widows and the children cannot be dried out, however, by way of capital punishment, their sufferings are supposed to be mitigated. They may console themselves if convicts are awarded capital punishment. They are supposed to lead a secure and peaceful lives. On the contrary, if the convicts are awarded life imprisonment, they are supposed to come out after 14 years, only to revive the wounds of the surviving family members of the deceased. The trial



court considered the aggravated factors which exist in this case. The nature and circumstances of the offence, the role of the accused in the commission of such a heinous crime of murder/massacre of the three deceased persons, the culpability of the deceased persons. The trial court held that in the facts of the case, the death penalty is the only sentence that can be given to the convicts for their offence under Section 302/34 IPC.

Submissions on behalf of the appellants

14. Mr. Pratik Mishra, learned counsel for the appellants, has raised the following issues/arguments:-

Unjustified delay in lodging the FIR

15. It is submitted that as per the case of prosecution, the occurrence took place on 13.07.2021 at 6:00 PM. The information regarding the occurrence was received at the police station on 13.07.2021 at 6:30 PM. It is evident that ASI Bimlesh Kumar had reached the place of occurrence and had prepared inquest reports of the three dead bodies. The inquest reports of the deceased Vijay Singh, Deepak Singh and Rakesh Singh were prepared at 7:35 PM, 7:40 PM and 7:45 PM respectively. The seizure list was also prepared on 13.07.2021 at 7:35 PM. Manish Kumar (PW-1) is a seizure witness at 7:35 PM but he is not a witness to the inquest reports which were prepared at the same time by A.S.I. Bimlesh Kumar. PW-1 is the brother of Khushboo Kumari (PW-3). He has



stated in his deposition that he reached Khudrao village on 13.07.2021 at 6:30 PM and when he reached there police were already present there but dead bodies were not there. Shakuntala Devi (PW-4, informant) has stated in paragraph '16' of her deposition that the police had reached between 6:30 PM and 6:45 PM. She has further stated in paragraph '18' of her deposition that she was near the dead bodies till 7:00 PM, and in the meanwhile, she had informed the co-villagers about the occurrence. In such circumstance, it is submitted that even as per prosecution case, the police had reached at the place of occurrence in no time and after reaching the place of occurrence, prepared the seizure list and inquest reports. The *fardbeyan* of the informant was, however, not recorded when police was preparing the inquest reports. *Fadbeyan* has been recorded at 11 PM in Sadar Hospital, Sasaram which is 40 kilometers away from place of occurrence. It is submitted that the delay in lodging of the FIR clearly indicates that the FIR has been lodged after much thought, deliberations, discussions and consultations. In this case, the delay of about four hours in lodging of the FIR would create doubt over the prosecution case.

Suppression of the earliest version (FIR is Ante-timed)

16. Learned counsel submits that the prosecution has suppressed the earliest version of the occurrence. The prosecution witnesses namely PW-4 and her daughter-in-law Khusboo Kumari



(PW-3) have disclosed in their deposition that police was informed of the occurrence at around 6:00 PM and on such information police arrived at the place of occurrence between 6:30 to 6:45 PM. PW-4 has stated in paragraph '16' of her deposition that it was Rang Bahadur Singh (father of Rajesh Singh) who had informed the police, however, Khusboo Kumari (PW-3) has stated in paragraph '13' of her deposition that it was Rajesh Singh who had informed the police on 13.07.2021 at around 6:00 PM and upon the information given by him, police had come to the place of occurrence. It is submitted that on the basis of information given by Rang Bahadur Singh and Rajesh Singh regarding commission of a cognizable offence, no entry was made in the General Diary. Manish Kumar (PW-1) has stated about the presence of Rajesh Singh and more than 50 persons at the police station which he had seen when he went to police station from the place of occurrence. PW-1 has stated that he saw Rajesh Singh giving information about the occurrence to the police at the police station. The I.O. (PW-5) in his evidence is absolutely silent about the First Information Report received by the police regarding commission of a cognizable offence.

17. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Allarakha Habib Memon**



and Ors. vs. State of Gujarat reported in **(2024) 9 SCC 546** (paragraph '17' to '20', '24' and '28').

18. To strengthen his submissions, learned counsel submits that Shakuntala Devi (PW-4) has stated in paragraph '16' of her deposition that when police arrived at the place of occurrence between 6:30 PM and 6:45 PM, police asked her to sign on a paper to which she signed without reading. Next day, at 11:00 A.M., she went to police station and lodged the case. PW-4 has further clarified that the only case she had dictated to the police was at Darihat P.S. She has stated in paragraph '15' that she had signed on the written report at 10:00-11:00 AM and that application was written by the police prior to her signature. It is stated that Sanju Devi (PW-2) who is one of the daughter-in-laws of the informant (PW-4) who signed on the FIR as a witness has stated in paragraph '3' of her deposition that she had signed on the FIR on 14.07.2021 (next day) at Darihat P.S. PW-2 has stated that the signature of PW-4 was already there and that before her signature, she did not meet the police. It is submitted that PW-2 has never stated in her entire evidence that she had gone to the Sadar Hospital, Sasaram.

19. It is pointed out that informant (PW-4) has stated that she had signed on the *fardbeyan* in presence of her elder



daughter-in-law but PW-2 has stated otherwise and has made a categorical statement that she did not meet police before her signature, therefore, the signature of PW-2 on the *fardbeyan* was not recorded at 11:00 PM on 13.07.2021. It creates doubt on the genuineness of the *fardbeyan* on record and seriously questions the truth of the story of prosecution case.

20. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Allarakha Habib Memon** (*supra*) (paragraph '23').

21. Khushboo Kumari (PW-3) who is the another daughter-in-law of PW-4 and has signed on the FIR has stated in paragraph '3' that even she had signed on the FIR on 14.07.2021 between 10:00 AM and 12:00 PM. She has stated that the signatures of Sanju Devi (PW-2) and Shakuntala Devi (PW-4) were already there. It is thus submitted that PW-2, PW-3 and the informant (PW-4) had signed on it at different time (next day i.e. on 14.07.2021). PW-3 has also not stated in her entire evidence that she had gone to Sadar Hospital, Sasaram. It is submitted that the delay in lodging of the FIR coupled with the fact that the earliest version has been suppressed and even the FIR is ante-timed would prove fatal to the prosecution.



22. Learned counsel submits that the seizure list was prepared on 13.07.2021 at 7:30 PM but at the top of it the case number, date and the sections under which the case has been registered are duly mentioned such as “Darihat P.S. Case No. 111/21 dated 13.07.2021 under Section 302/34 IPC”. It is submitted that when the *fardbeyan* was recorded at 11:00 PM and on that basis the formal FIR was lodged at 11:50 PM, the presence of case number on the seizure list which was prepared at 7:35 PM indicates that the FIR was already lodged at the time of seizure probably on the basis of the earliest information received. Hence the seizure list prepared at 7:35 PM contained P.S. Case Number and penal provisions. The seizure list witnesses are Rajesh Singh (not examined) and Manish Kumar (PW-1). PW-1 has stated in paragraph ‘12’ that he had signed on the seizure list at police station (not at the place of occurrence) and he did not remember the date of his signature. It is submitted that if a person will sign on the seizure list on the day it was recovered and seized, he will definitely remember that he had signed on it the very same day.

Non-recording of the statement and non-examination of the material witnesses in course of trial

23. Learned counsel submits that in this case several material witnesses were either not made chargesheet witnesses or



were not produced in trial as a court witness. One of the most important witnesses in this case is ASI Bimlesh Kumar who on receiving the earliest information reached the place of occurrence immediately, prepared the seizure list and inquest and had also recorded the *fardbeyan* of the informant. Submission is that surprisingly his statement was never recorded by the I.O. in course of investigation, hence he was not made a chargesheet witness. The I.O. (PW-5) has stated in paragraph '21' that ASI Bimlesh Kumar was still very much in service. In such circumstance, non-examination of ASI Bimlesh Kumar has caused serious prejudice to the defence. Further, it is submitted that PW-2, PW-3 and PW-4 have stated that it was Rajesh Singh who along with Sanoj Singh and Krishna Singh took the bodies to the hospital but none of these persons have been examined in course of investigation, they have not been made chargesheet witnesses and their non-examination during the trial has caused serious and irreparable prejudice to the defence. Learned counsel has relied upon the judgments in the case of **State of Madhya Pradesh vs. Ratan Singh** reported in **(2020) 12 SCC 630** (paragraph '5' to '9'), **Pulen Phukan & Ors. vs. State of Assam** reported in **(2023) 13 SCC 41** (paragraph '13') and **Sachin Kumar Singhraha vs. State of Madhya Pradesh** reported in **(2019) 8 SCC 371** (paragraph '17').



No one has witnessed the actual occurrence

24. Learned counsel for the appellants submits that during trial PW-2, PW-3 and PW-4 have claimed that they are eyewitnesses to the occurrence but in his submissions none of them would be an eyewitness. Referring to the deposition of Sanju Devi (PW-2) in paragraph '30', learned counsel submits that this witness has stated to have reached Khudraon after the occurrence and stayed there till 7:00 PM. She had come from Dehri along with Khusboo Kumari (PW-3). She has stated that when they reached Khudraon, all the injured were in unconscious condition. She has stated to have met police next day at Darihat Police Station between 8:00-9:00 AM. Thus, PW-2 has admitted in her evidence that she along with PW-3 had come from Dehri after the occurrence and saw the injured in unconscious condition. It is submitted that PW-2 and PW-3 cannot be put in the category of an eyewitness. It is stated that the I.O. (PW-5) has stated in paragraph '17' that in paragraph '43' (it is in fact paragraph '44') of the case diary he has mentioned that Khusboo Kumari (PW-3), wife of the deceased Rakesh Singh had received the information about the occurrence at Pali Road, Dehri and upon receiving such information she came there. From all these evidences on the record, learned counsel for the appellants would submit that PW-2



and PW-3 were not even present at the village Khudraon at the time when the occurrence took place. In such circumstance, it is submitted that the evidence of the informant (PW-4) has to be examined with great caution and requires heightened scrutiny.

The place of occurrence

25. Learned counsel for the appellants submits that in her *fardbeyan*, the informant has stated that there are three places of occurrence i.e., (i) the disputed land, (ii) door of Rang Bahadur Singh and (iii) the old house. She has stated in the *fardbeyan* that after the occurrence, she along with her daughter-in-law Sanju Devi (PW-2) ran and reached there and asked for help from the locals. The claim of the informant to have witnessed the occurrence along with PW-2 gets falsified from the evidence of none other but her own daughter-in-law Sanju Devi (PW-2) who has stated that she came there along with Khusboo Kumari (PW-3) after the occurrence. PW-2 has stated in paragraph '28' and '29' that she had never ever gone to the first place of occurrence and had absolutely no idea about the approximate distance between the second and the third place of occurrence. The informant examined as PW-4 on 28.07.2022 after PW-2 and PW-3 were already examined has changed the story of her *fardbeyan* of witnessing the occurrence with PW-2. A suggestion was given to her in paragraph



‘20’ that she had not witnessed the occurrence and the name of the appellants were not there in the earliest version. The informant is neither witness to inquest nor seizure which were prepared at the place of occurrence, therefore, her presence at village Khudrao at the relevant time could have been testified either by Rajesh Singh or ASI Bimlesh Kumar but they were neither made chargesheet witnesses nor examined during trial. However, Manish Kumar (PW-1) has stated in paragraph ‘6’ that he reached Khudrao at 6.30 PM. In his evidence, PW-1 has nowhere stated about the presence of the informant (PW-4) at the place of occurrence at 6.30 PM. He had stayed at the place of occurrence for 10-12 minutes but there was no discussion with anyone regarding the occurrence. He has stated that after the postmortem examination when he went to their house, the informant told him about the occurrence and the involvement of the appellants in the same.

26. It is submitted that after the postmortem, the dead bodies were taken to the Dehri house of the deceased and the cremation also took place at Dehri so PW-1 got information about the occurrence and the involvement of the appellants from the informant at Dehri after arrival of the dead bodies. It is submitted that on appreciation of the evidence of PW-4 and PW-1, it may be found that the name of the real culprit was not known and the



earliest version has been purposely suppressed just to falsely implicate the appellants. Presence of the informant at the place of occurrence and at the time of occurrence has not been corroborated by any other witness. It is submitted that the conduct of the informant shows that when she received information about the occurrence, she went to the police station next day to lodge a case which she had admitted in her evidence.

Time of occurrence has not been proved by the prosecution

27. Learned counsel for the appellants submits that as per the *fardbeyan*, the alleged occurrence took place in the disputed land (first place of occurrence) from where deceased went to the door of Rang Bahadur Singh (second place of occurrence) and then again in continuation near the old house (third place of occurrence). Therefore, as per the *fardbeyan*, the occurrence started at the first place of occurrence at 6:00 PM but Sanju Devi (PW-2) has stated in paragraph '28' that the fight between the parties in the field took place at 2.30 PM. She was informed about the fight by co-villagers, however, not a single co-villager has been examined in this case. On the other hand, Khusboo Kumari (PW-3) has stated in paragraph '1' that the two deceased namely Vijay Singh and Deepak Singh were assaulted at the disputed land (first place of occurrence) in the morning then



they ran and reached the house of Rang Bahadur Singh (second place of occurrence) where the third deceased Rakesh Singh also came, pacified the fight and they came back home, in the meanwhile, the appellants along with Ajay Singh came with swords in their hands and started assaulting them. It is thus submitted that the three witnesses PW-2, PW-3 and PW-4 are stating about three different time of occurrence i.e. morning, afternoon and evening, thus, on this score alone, the prosecution story is liable to be rejected.

28. To strengthen his submissions with regard to time of occurrence, learned counsel has relied upon the evidence of Dr. Siddhartha Raj (PW-6) who found rigor mortis present in all four limbs of all the deceased. It is submitted that the postmortem of Deepak Kumar Singh was conducted on 13.07.2021 at 10.40 PM. As per the informant, the time of occurrence is 6:00 PM. The doctor (PW-6) has stated in paragraph '15' that rigor mortis remains present on the four limbs upto 12 to 16 hours, according to environment. After 12 to 16 hours, it starts disappearing, according to the environment. According to Modi - A Textbook of Medical Jurisprudence and Toxicology, in general, rigor mortis sets in one to two hours after death and is well developed from head to foot in about 12 hours. Even the Review of Forensic



Medicine and Toxicology explains the order of appearance of rigor mortis. It is submitted that the fact that rigor mortis were present in all the four limbs as indicated in the postmortem report, shows that the occurrence was much prior to 6:00 PM as stated by PW-2 and PW-3.

Genesis of occurrence has not been proved by the prosecution

29. Learned counsel for the appellants submits that in this case, the prosecution has failed to prove the genesis of occurrence. It is submitted that from the evidence of Sanju Devi (PW-2) it would appear that wife of Kunj Bihari Singh had written her share of land to the mother of the appellant two to three years prior to the occurrence. She has stated that her father-in-law had already done verbal partition and the share of land of Anandi Kunwar (wife of Kunj Bihari Singh) was in possession of Ajay Singh (father of appellants) and the dispute was of the said land. Khushboo Kumari (PW-3) has stated that the dispute was between Ajay Singh and Vijay Singh and the disputed land was in possession of Ajay Singh. The I.O. (PW-5) has stated in his evidence in paragraph '18' that he did not investigate about the ownership, area and location of the said land. The submission is that even as per the evidence of the prosecution witnesses, the land was in possession of the accused persons and the mother of the appellants was the legal owner of the said land and it was the accused persons who came to stop them from ploughing the land.



30. Relying upon Section 110 of Indian Evidence Act, 1872- Burden of proof as to ownership, learned counsel submits that when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. It is submitted that there is not a single eyewitness to the first place of occurrence i.e. disputed land. The prosecution has neither exhibited any document nor brought any material on record to demonstrate and prove that the mother of the appellants was not the owner of the said land. Therefore, the prosecution has miserably failed to prove the genesis of the occurrence.

Medical Evidence falsifies the manner of occurrence

31. Learned counsel for the appellants submits that as per the *fardbeyan* of PW-4, deceased Vijay Singh and Deepak Singh were assaulted with fists, slaps, *lathi* and *danda* at the first place of occurrence. The two deceased were again assaulted with *lathi* and *danda* at the second place of occurrence. It is alleged that at the third place of occurrence Sonal assaulted Deepak with a sword and cut his neck, face, ears, chest and head and Aman assaulted Rakesh with a sword in his hand and cut his both hands, face, neck and head. Ajay is said to have assaulted Vijay on his neck with a sword. The informant (PW-4) has stated in paragraph '1' that the appellants and Ajay had cut various parts of the body of



the three deceased with swords. Thus, according to the prosecution witnesses, the weapons allegedly used in the occurrence are *lathi*, *danda* and sword.

32. The witnesses namely PW-2, PW-3 and PW-4 have nowhere stated in their evidence that the blunt side of the weapon (sword) was used in the assault. The doctor who conducted the postmortem examination on the body of the three deceased has been examined as PW-6. He found lacerated wounds on different parts of the bodies of the deceased persons and has opined that those were caused by sharp cutting weapons of heavy nature. In his cross-examination, in paragraph '5', PW-6 has stated that when any injury is caused by sharp cutting weapon, there will be incised injuries and also said that sharp weapon caused laceration. He has stated in paragraph '6' that even in this case the injuries are caused by hard and blunt weapon, the injuries will be incised as well as lacerated. This witness has stated that the injuries which he had found lacerated may be possible by fall. The injuries which he had mentioned in external examination, injury no. 5 fracture may be due to that. Learned counsel submits that the medical evidence does not corroborate the ocular testimony of the prosecution witnesses as to the weapons used in causing assault.



33. Learned counsel submits that the weapon said to have been seized was neither shown to the doctor nor produced in the court. Clothes of the deceased were not seized and the blood found on the weapon were not got matched with the blood of the deceased. The fact is that the seizure list was not prepared at the place of occurrence. The I.O. (PW-5) has stated that he had nowhere mentioned in the case diary as to when the weapon allegedly recovered was kept in the Malkhana and who was the custodian of the same. No effort was taken to match the blood found on the weapon with the blood of the three deceased, therefore, merely recovery of a weapon from the joint house of the appellants and the informant and blood found on the weapon cannot ipso facto enable the court to arrive at the conclusion that the same was used in the alleged offence. If the prosecution was so confident about the recovery, then what prevented them from showing the weapon to the doctor (expert) and ascertain whether such weapon would have caused such injuries on the persons of three deceased. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Sunil Kundu and Anr. vs. State of Jharkhand** reported in **(2013) 4 SCC 422** (paragraph '29') and **Allarakha Habib Memon** (*supra*) (paragraph '42' and '43').



34. Learned counsel for the appellants lastly submits that weakness in the defence cannot become the strength of the prosecution. It is submitted that the case of the prosecution has to stand on its own legs. Learned counsel submits that no explanation/false explanation by the appellants by any means relieve the prosecution to prove its case beyond shadows of all reasonable doubts. He relies on Section 101 of Indian Evidence Act. It is submitted that in criminal cases, the burden of proof is on the prosecution and Section 106 of the Indian Evidence Act is certainly not intended to relieve it. The word “especially” means facts that are pre-eminently or exceptionally within the knowledge of the accused. It is evident from the inquest report that the dead bodies were found at 7:15 PM near the house of the deceased, hence, not in the special knowledge of the appellants. The answer of the appellant Sonal Singh in his 313 CrPC statement that his hand was cut by the sword blow of Rajesh Singh was not recorded on oath, thus it is not an evidence. Whether such statement of the appellant was probable, true or completely false cannot be a basis of conviction. It is well settled in law that an adverse inference can be taken against the accused only and only if the incriminating materials stood fully established. In this connection, he has relied upon the judgments of the Hon’ble Supreme Court in the case of



Raj Kumar Singh vs. State of Rajasthan reported in (2013) 5 SCC 722 (paragraph '41' and '44'), **Satye Singh and Anr. vs. State of Uttarakhand** reported in (2022) 5 SCC 438 (paragraph '20'), **Vikramjit Singh @ Vicky vs. State of Punjab** reported in (2006) 12 SCC 306 (paragraph '13'-'15') and **Jaikam Khan vs. State of Uttar Pradesh** reported in (2021) 13 SCC 716 (Paragraph '73', '74', '76', '77', '84' and '85').

Submissions on behalf of the informant

35. Mr. Ansul, learned Senior Counsel representing the informant, submits at the outset that in this case, the records would show that the Investigating Officer has not acted fairly and has created a mess by deliberately omitting to do what ought to have been done. It is submitted that the accused persons/defence cannot be allowed to take benefit of such acts or omissions of the prosecution which seem to have been deliberately done to favour the accused persons, otherwise it would amount to give premium to the accused for the wrongs of the prosecution which in the present case is apparently committed designedly to favour the appellants.

36. Learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ram Bihari Yadav vs. State of Bihar** reported in (1998) 4 SCC 517



(paragraph '13') and **Harendra Rai vs. State of Bihar** reported in **(2023) 13 SCC 563** wherein the Hon'ble Supreme Court has held that the three main stakeholders in a criminal trial, namely the Investigating Officer, Public Prosecutor, and the Judiciary, all utterly failed to keep up their respective duties and responsibilities cast upon them. The Hon'ble Supreme Court has taken note of the subsequent conduct of the accused and has drawn adverse inference. The Hon'ble Apex Court has taken judicial notice of the judgment in the habeas corpus petition regarding conduct of the accused, the investigating agency, the Public Prosecutor and the Presiding Officer conducting the trial.

37. It is submitted that in this case, one of the chargesheeted accused, namely Ajay Singh, is still absconding. The conduct of the accused Ajay Singh, who is father of these appellants, may be found from the order dated 09.08.2021 and 16.08.2021 whereunder it is recorded that the accused, namely Ajay Singh and Gayatri Devi, were absconding and they were disposing of their assets, therefore, prayer was made to issue *kurki* warrant under Section 83 CrPC. On the request of the I.O., the learned court issued the *kurki* warrant under Section 83 CrPC, which the I.O. received. Publication was also done but they did not appear and are still at large.



38. Learned Senior Counsel submits that the submission on behalf of the appellants that the information given by Rang Bahadur Singh and Rajesh Singh regarding commission of a cognizable offence was not entered in the general diary by police and the I.O. (PW-5) is completely silent on this cannot be taken against the prosecution. It is submitted that when the I.O. (PW-5) came to be examined in course of trial, he has stated in paragraph '13' of his deposition that information of a quarrel/assault in village Khudraon was received in the police station and on that information, Bimlesh Kumar, ASI, had reached the police station but this witness has admitted that he had not recorded the statement of said ASI Bimlesh Kumar.

39. Learned Senior Counsel submits that it is evident from the statement of the I.O. (PW-5) that on the information received in the police station, ASI Bimlesh Kumar had reached the place of occurrence, therefore, he was a material witness but neither his statement was recorded by the I.O. nor he was examined in course of trial as a court witness. Not only the I.O., even the Public Prosecutor and the learned trial court failed to do their respective duties in the interest of justice. It is submitted that under Section 311 CrPC, the court has wide power at any stage of any inquiry, trial or other proceedings under the code to summon



material witness or examine persons present. Power to recall and re-examine a witness is also vested in the court. The edifice of Section 311 CrPC is based on the concept that it should be essential for the just decision of the case.

40. Learned Senior Counsel submits that the submissions of learned counsel for the defence that there is suppression of the earliest version and the FIR is ante-timed has no basis to stand. It is submitted that in this case, the occurrence took place on 13.07.2021 at 06:00 PM. It has come in evidence that ASI Bimlesh Kumar (not examined) had reached the place of occurrence and had prepared the inquest report of three dead bodies at 07:35 PM, 07:40 PM and 07:45 PM respectively. The seizure list was also prepared at the same time. PW-1, who is one of the seizure list witnesses, has admitted that he reached Khudraon village at 13.07.2021 at 06:30 PM and when he reached there, police were already present there but dead bodies were not there. PW-4 has though stated that she was near the dead bodies till 07:00 PM but she has stated in her *fardbeyan* recorded by ASI Bimlesh Kumar in Sadar Hospital, Sasaram on the same day at 11:00 PM that on information received by police, police came and took her husband and both the sons to hospital where they were declared dead.



41. It is submitted that Sadar Hospital, Sasaram is situated at a distance of 40 kilometers from the place of occurrence and the evidence of the doctor (PW-6) would show that he had conducted the postmortem on the dead bodies at 10:40 PM. In his evidence, PW-6 has stated that dead body was brought from Khudraon approx 40 kilometers from dead house and brought by Chowkidar 4/02 Vijay Kumar Ram and Rajesh Kumar Singh, cousin brother of dead person. Once again, the I.O. failed to make Vijay Kumar Ram and Rajesh Kumar Singh chargesheet witnesses, hence they have not been examined but it is evident that the dead body was brought from the village Khudraon and it was initially placed in the dead house from where they were brought to the doctor (PW-6) for conducting postmortem. It is, therefore, evident that all the three victims had died in the village and police reached there from where the dead bodies were lifted and taken to Sadar Hospital. I.O. (PW-5) had joined the Darihat Police Station as Officer-in-Charge on the same day at 21:15 Hrs. and he had registered the FIR at 23:50 Hrs.

42. It is submitted that Shakuntala Devi (PW-4) is the star witness of this case. She has narrated the manner of occurrence, place of occurrence and time of occurrence. She has stated in her examination-in-chief that she had given her statement



to Darogaji in the hospital. She identified her signature and the photographs present on the *fardbeyan* and also identified the signature of her two daughters-in-law, namely Sanju Devi and Khushboo Devi. At her instance, the *fardbeyan* has been marked Exhibit '3'. She has given the genesis of occurrence being land dispute. She has proved herself an eyewitness of the occurrence and denied the suggestion of the defence that neither her *gotiya* nor had she given the name of the accused persons in the information furnished to the police station but later on her signature was obtained. It is submitted that in paragraph '10' of her deposition, PW-4 has stated that her husband was engaged in agriculture work and she was regularly living in the house at Khudraon whereas her daughters-in-law used to visit during festivals.

43. Learned Senior Counsel submits that much has been argued on the statement of PW-4 recorded in paragraph '16' of her deposition, however, a close reading of the statements would show that the defence only tried to create a confusion by putting some leading questions. This witness has stated that the distance between the village Khudraon and Ayar Kotha Police Station is two kilometer. It is not known why the defence asked about the distance between Khudraon and Ayar Kotha Police Station. She



has stated that information of the occurrence was given by her *bhaisur* Rang Bahadur Singh to police station at 06:00 PM and on that information, Darogaji had come to village Khudraon. She has stated that Darogaji had come on 13.07.2021 between 06:30 PM - 06:45 PM but by that time, all the three persons had died. She has stated that Darogaji had taken her signature on a paper and she had put her signature thereon but she has not stated that she had made her statement before Darogaji. It is submitted that ASI Bimlesh Kumar has not been examined in this case. She has stated that she had gone to the police station and had got written the case again at Darihat Police Station. She has stated that she had not got written any case except the one which she had got written in Darihat Police Station. It is submitted that the I.O. (PW-5) had already taken over charge of the investigation on 13.07.2021 itself and he has stated that the case was already registered on 13.07.2021 at 11:50 PM. He has stated that the FSL team had visited the place of occurrence on 14.07.2021 at 12:00 noon and they had collected the blood-soaked soil.

44. It is also submitted that from the ordersheets of the learned jurisdictional Magistrate, it would appear that the FIR dated 13.07.2021 was received in the court of learned jurisdictional Magistrate on 14.07.2021. Two accused persons (the



appellants) were arrested and produced in court on 15.07.2021 and the I.O. (PW-5) filed an application through APO to send the material exhibit to FSL, Bihar, Patna. The said application was allowed by the learned court and the material exhibit was sent to the FSL, Patna for examination and report.

45. Mr. Anil Singh, Advocate assisted by Mr. Manoj Kumar No.1, Advocate has appeared as Amicus Curiae. Learned counsel submits that in this case he would endorse the submissions of learned senior counsel for the informant that the I.O. has deliberately and intentionally did not record the statement of the S.I. Bimlesh Kumar who had recorded the fardbeyan of PW-4 and had also prepared the seizure lists. He had not verified during investigation as to whom the disputed land belonged to, its area and the place where it is situated. In his deposition, he stated on 27.09.2022 that the FSL report had not yet been received although the same was sent to the court on 26.04.2022. The I.O. had, therefore, tailored the investigation in such a manner with a purposeful design that it may ultimately result in giving benefit of doubt to the accused. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Dayal Singh Vs. State of Uttranchal (2012) 8 SCC 263**, learned counsel submits that it has been the consistent view of the Hon'ble Supreme Court that if the



lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. In the case of **Paras Yadav v. State of Bihar (1999) 2 SCC 126**, the Hon'ble Supreme Court held that the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. Learned counsel has relied upon the recent judgments of the Hon'ble Supreme Court in the case of **Edakkandi Dineshan @ P. Dineshan & Ors. Vs. State of Kerela 2025 INSC 28** to submit that on account of defective investigation, the benefit would not accrue to the accused persons on that ground alone. Variance in statement of witnesses if minor would not drive their testimony unworthy. In **Goverdhan & Anr. Vs. State of Chhattisgarh (2025) 3 SCC 378**, their Lordships of the Hon'ble Supreme Court has reiterated that minor discrepancies in details not touching the core of the case do not affect credibility and corroboration cannot be expected with mathematical precision. It has been held that in case of rustic witnesses- appreciation of evidences from rural background witnesses, behavioural pattern and perceptive habits must be judged. Accordingly discrepancies,



contradictions and embellishments in essential parts do not militate against the core truth if there is impress of truth and conformity to probability. The plea of alibi requires substantiation by leading evidence.

46. It is submitted that keeping in view the judicial pronouncements when the evidences are examined, it would be found that the prosecution has duly proved the motive behind the occurrence. It is a land dispute which is the genesis of the occurrence and it has been the consistent case of the prosecution right from the fardbeyan to the deposition of the prosecution witnesses, who have fully supported the prosecution case. It is submitted that PW-2, PW-3 and PW-4 have duly supported the prosecution case and in this case PW-4 who is the informant of the case is the star witness.

47. Mr. Manish Kumar No.2, Advocate who is the learned Addl.P.P. in this case has defended the judgment and order of the learned trial court.

Consideration

48. Having heard learned counsel for the parties, learned Amicus Curiae and learned Addl.P.P. for the State as also on perusal of the learned trial court records, I find that the learned trial court has noticed and rightly so that when the prosecution



witnesses such PW-2, PW-3 and PW-4 came to depose, the defence has not even cared to suggest that the accused persons have been falsely implicated in this case. I find that in her examination-in-chief, PW-2 has stated that all the three accused persons came out with a sword from the house, Sonal Singh attacked on the neck of her husband by the sword, he also assaulted him on his chest and head whereafter he started bleeding and fell down becoming unconscious. This witness has precisely stated about the place of occurrence being the house of the deceased and the accused persons. She has narrated the manner of occurrence but in course of her cross-examination, the defence did not question the place of occurrence. In her cross-examination, this witness has stated in paragraph '13' that "*Humlogo ka makan ek hi hai.*" During her cross-examination, this witness has stated that *Marpit* had taken place at 2.30 PM on the plot but in the said *Marpit* no one was injured. This witness has stated in paragraph '30' that on the date of the occurrence she was in the house and whatever quarrel had taken place inside the house had happened in the verandah of the courtyard. She has stated that towards the southern verandah the two rooms are in possession of the accused persons. Blood had fallen on the said verandah. After the occurrence all the people were at the Darwaza. This witness has



stated that she reached Khudrao after the occurrence and had stayed till 7.00 PM. When she reached there all the people were unconscious. It is evident from the deposition of PW-2 that she had reached the place of occurrence which is the house of both the parties after the occurrence and had seen the immediate circumstances present at the place of occurrence. The defence did not suggest to this witness that the occurrence had not taken place at the place stated by her. As regards the place of occurrence and the time of occurrence the statement of this witness (PW-2) has not been questioned by the defence. The only question of the defence was that she had not seen the occurrence.

49. Khusboo Kumari (PW-3) has deposed that her husband was a contractor in the construction department and her Bhaisur was an engineer. Her father-in-law was engaged in agricultural work. The distance between the village Khudrao and her Dehri house is 12 ½ kms. She has stated that she had seen the dead body of her husband on 06.07.2021 at 6.00 PM on the street outside the Darwaza and three dead bodies were lying there. This street is 5 ft. in width and on both the sides of Gali there are houses. At a distance of ten steps from the Darwaza the dead body of Vijay Singh was lying and at a distance of 2-3 hands the dead body of Dipak Kumar and then at a distance of another 2-3 hands



the dead body of Rakesh Kumar were lying. From the evidence of PW-3 again it is evident that she had reached the place of occurrence immediately and had seen the dead bodies at 6 O' clock in front of the Darwaza of the house. The distance between Khudrao and her Dehri house is only 12 ½ kms, therefore, her immediate arrival at the place of occurrence cannot be doubted. The defence did not question the place, time and manner of occurrence as stated by PW-3. The only suggestion put to this witness was that she had not seen the occurrence from her own eyes as at the time of occurrence she was in Dehri. It is evident from the pattern of cross-examination of PW-2 and PW-3 that while cross-examining them the defence did not question there assertion that both the sides were living in the same house, the occurrence had taken place as stated in the said common house and the three deceased of the case died because of the repeated sword injuries inflicted upon their person. The defence did not suggest to these witnesses that the accused-appellants were not present in the house on the date and time of occurrence. It is evident from paragraph '5' of the deposition of PW-3 that in the common house in which the both the parties are living, there are six rooms, one Puja room and one kitchen in which her father-in-law and Ajay Singh (the absconder accused) were living and the



deceased Rakesh Kumar Singh and Dipak Kumar Singh were periodically visiting there from Dehri. Her father-in-law Vijay Singh was engaged in agricultural work.

50. In the case of **Ram Vijay Singh Vs. State of U.P. 2021 SCC OnLine SC 142**, the Hon'ble Supreme Court has discussed the settled position that *falsus in uno, falsus in omnibus* (false in one thing, false in everything) principle is foreign to our criminal law jurisprudence. A Three Judges Bench of the Hon'ble Supreme Court held that “..... **A part statement of a witness can be believed even though some part of the statement may not be relied upon by the Court....**” I, therefore, find from the evidence of PW-2 and PW-3, it can be safely deduced that their depositions with regard to the place of occurrence, time of occurrence and manner of occurrence have gone unquestioned.

51. Shakuntala Devi (PW-4) is the wife of Vijay Singh (one of the victims). She has deposed as an eye witness of the occurrence. She has given the genesis of the occurrence and has stated that the occurrence took place on 13.07.2021 at 6.00 PM. She has stated about the first occurrence which took place on the plot when Ajay Singh, Sonal Singh and Aman Singh had gone to plough the field, her husband Vijay Singh and son Dipak Singh had gone to tell them not to do so whereafter they were assaulted



by lathi, danda and fists blow. Vijay Singh and Dipak Singh had run away and reached to the Darwaza of Rang Bahadur Singh where also Ajay Singh, Sonal Singh and Aman Singh started assaulting them by lathi, danda, in the meantime, her youngest son Rakesh Singh reached and somehow took away his father Vijay Singh and brother Rakesh Singh from the clutch of the accused persons and took them to the old house. This witness has stated that behind them Ajay Singh, Sonal Singh and Aman Singh reached there and they took out sword from their house (room). She has narrated the occurrence in which Sonal Singh assaulted Dipak Singh by sword causing injuries on his neck, chest etc. whereafter he started bleeding and fell down becoming unconscious. Aman Singh assaulted her youngest son Rakesh Singh by sword and cut both the hands whereafter he was cut on his nose, mouth etc. as a result whereof he fell down and became unconscious. When her husband Vijay Singh ran to save his sons, Ajay Singh assaulted him by a sword on his neck causing cut of his neck and he started bleeding and fell down. Wife of Ajay Singh came with a spear and gave it to Ajay Singh and told him to kill everyone and not to leave anyone. This witness has stated that she was shouting but no one came to save them. Police reached then Sanoj Singh, Krishna Singh and Rajesh Singh all the three persons



lifted the injured and took them to Sadar Hospital, Sasaram where all the three injured were declared dead. PW-4 has stated that she had given her statement to Darogaji in the hospital. She identified her signature and photograph on the fardbeyan which was marked exhibit-3. She has identified the signature of her daughter-in-law Sanju Devi and Khusboo Singh. In her cross-examination, this witness has stated that house of the accused and her is the same and one. No partition of house has taken place. She has stated that in the Dehri house the children of Rakesh and Dipak were living and studying who were being looked after by their mothers. In paragraph '5', she has stated that she was visiting Dehri house sometimes and whenever she was going there she used to cook food for her husband. She has reiterated that in Khudrao all the co-sharers have the same and one house. Sonal and Aman were her Devars who were engaged in agriculture work in the village. She has stated that Kunja Singh had gifted his property to Gayatri Devi but when no partition had taken place as such gifting had no significance.

52. In paragraph '11' of her cross-examination, she has stated that she was regularly living in Khudrao house and her daughter-in-laws were visiting there during festivals. The defence has pointed out that during her cross-examination, this witness has



stated that she had put her signature on a written application at 10.00-11.00 AM and the application which was written was written by Darogaji. She has stated that distance of Ayarkotha police station from Khudrao village is two kilometers, her Bhaisur Rang Bahadur Singh had given information to the police station at 6.00 PM. On information, Darogaji had come to Khudrao in the evening of 13.07.2021 in between 6.30-6.45 PM, by that time all the three had died. She has stated that when Darogaji had come, she had got her signature but what was written on the paper was not read by her, she had put her signature. She has stated that on the next day, she had gone to Darihat police station and again got written her case. It is this statement of PW-4 present in paragraph '15' and '16' of her deposition which have been made a subject matter of discussions by learned counsel for the appellants.

53. It has been submitted that the first information given to police has been suppressed by the prosecution and the fardbeyan of this case is ante-dated and ante-timed. I, however, find no reason to accept this plea of learned counsel for the appellants. The informant (PW-4) is the wife of one of the deceased. The defence unlike PW-2 and PW-3 did not suggest her that she was not present in the village on the date of the occurrence and time of the occurrence. The defence only suggested that she had not seen the



occurrence by her own eyes but she denied the same. She also denied the suggestion of defence that in the information which was given by her gotiya or herself to the police station she had not given the name of these persons as accused but later on her signature was obtained.

54. PW-4 has proved the fardbeyan on which her photo and signature were present. The defence has not suggested to PW-4 that the fardbeyan was ante-dated and ante-timed. The fardbeyan was recorded by ASI Bimelsh Kumar on 13.07.2021 at 3.00 PM at Sadar Hospital, Sasaram near postmortem house, the statement of this ASI was not recorded by the I.O. and he has not been made a charge-sheet witness. The submission of learned senior counsel for the informant and learned Amicus Curiae that the I.O. was acting designedly with an intention to do something which may result into giving benefit of doubt to the accused, is a valid submission. The statement of PW-4 that her Bhaisur Rang Bahadur Singh had given information to the police station and Darogaji had come Khudrao between 6.30-6.45 PM on 13.07.2021 but by that time all the three persons had died, is fully consistent with the prosecution case. Her further statement in paragraph '16' that Darogaji had taken her signature but she had not read what were written on the paper and put her signature and then her statement that this is the



FIR which has been shown in the court proves the prosecution case that the Darogaji had obtained her signature on the fardbeyan which is the basis of the FIR. As stated above, she has proved her signature and photographs on the fardbeyan. Her further statement that on the next day, she had gone to Darihat police station to register/lodge/ written a case may be a result of her misunderstanding with regard to the statements recorded by the I.O. during investigation. For this purpose, I have found that on 14.07.2021, the I.O had recorded the restatement/further statement of the informant and her daughter-in-law Sanju Devi at their Dehri house. There is no material on the record to show that the informant had gone to Darihat police station on the next day of the occurrence and got written a case. The order-sheet of the learned trial court duly shows that on 14.07.2021, the FIR had already been received in the court of learned Judicial Magistrate and the learned Judicial Magistrate has seen the same. I am, therefore, of the considered opinion that the defence is not able to create any doubt that the First Information Report was ante-dated and ante-timed. This plea is liable to be rejected.

55. The defence has raised an issue with regard to delay in lodging of the FIR as, according to them, FIR was lodged with a delay of about 4 hours. It is well settled that a mere delay in



lodging of the FIR cannot be a ground to throw away the prosecution case. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the case of **Chotkau v. State of U.P.** reported in **(2023) 6 SCC 742**. The credibility of the prosecution witnesses would be required to be looked into. In this case, I find that the occurrence is said to have taken place at 6 O' Clock. Police arrived some where between 6.30-6.45 PM, three male persons of the family had been killed and as it appears from the evidences on the record the deceased Vijay Singh was residing with his wife (PW-4) in the village. Thus, PW-4 was left alone before arrival of her two daughter-in-laws namely, PW-2 and PW-3 at the place of occurrence. One can imagine the circumstances present on the spot where three dead bodies were lying, it could not be expected that the informant (PW-4) would have shown coherent and cohesive to first ask the police officer to record her fardbeyan. Bimlesh Kumar, ASI, who prepared the inquest report of the deceased persons has not been made a charge-sheet witness, therefore, he has not been examined by the prosecution. Only he could have been in a position to explain as to why he did not record the fardbeyan of PW-4 at the time of preparation of the inquest report. When PW-4 came in the witness box, the defence



did not call upon her to explain the delay and no question was put to her or the I.O.

In the case of **Chotkau** (supra), the Hon'ble Supreme Court has observed in paragraph '64' as under:-

“64. To come to the above conclusion, reliance was placed upon a decision of a three-Judge Bench in *Balram Singh v. State of Punjab*⁶. In *Balram Singh*⁶, the three-Judge Bench of this Court rejected the contention with regard to the delay in transmitting the FIR to the Magistrate, on the ground that : (SCC p. 291, para 10)

“10. ... while considering the complaint in regard to the delay in the FIR reaching the jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the jurisdictional Magistrate by itself would not in any manner weaken the prosecution case.”

(underline is mine)

56. The I.O. Sudhir Kumar Singh (PW-5) has proved the formal FIR which was written in the hand writing of Bimlesh Kumar Singh. Bimlesh Kumar had seized the blood-stained sword from the place of occurrence and had prepared the seizure list which has been proved by the I.O. (PW-5). He has also proved the photographs of the inquest reports which were marked Exhibit- 'X'. In course of investigation, he had entered the fardbeyan in the

6. (2003) 11 SCC 286 : 2004 SCC (Cri) 149



case diary and thereafter all the three inquest reports. He had gone to the place of occurrence in Khudrao village which is at a distance of three kilometers from Darihat police station. PW-5 has stated that he had gone to disputed land where both the parties had quarrel and physical assault. He has given the boundary of the plot. PW-5 has also given the description of second place of occurrence which is the under constructed house of Rang Bahadur Singh in village Khudrao. Thereafter, he has given the description of the third place of occurrence where actually three persons were killed. The I.O. has stated that it is common house made of brick and there is a street going north east-west to the said house. From the evidence of PW-5, it is noticed that near the place where the dead bodies were found, he had found huge amount of blood and PW-5 has found that from courtyard of the house to the main door and outside that blood in abundant quantity was lying. After inspection of the place of occurrence, he went to Dehri house of the informant where he recorded her restatement. He arrested Aman Singh and thereafter Suman Singh and both were produced in the court. He sent the seized exhibits to the FSL, Patna, obtained the postmortem report of all the three deceased and entered in the case diary. He had submitted the charge-sheet against (i) Aman Singh (ii) Suman Singh and two accused Ajay Singh and Gayatri



Devi who were shown absconding. The I.O. has proved the charge-sheet which is in his writing as exhibit- 6.

57. In his cross-examination, this witness has stated that he had joined Darihat police station on the same day at 9.15 PM. At 23.50 PM, the case was registered and investigation was started. He started writing the diary on 13.07.2021 at 23.50 hrs. He has stated that inquest reports were prepared before registration of the FIR, case number was written there in somebody else's handwriting which he cannot say, as he had not verified that who had written the same. PW-5 had not taken the statement of ASI Bimlesh Kumar. The information with regard to the occurrence was received in the police station that some quarrel had taken place in Khudrao police station and on this information Bimlesh Kumar had reached there. PW-5 had come to know about the place of occurrence from Mahal Chowkidar but he had not recorded the statement of Mahal Chowkidar in course of investigation. He has stated that FSL team had seized blood-soaked soil from the place of occurrence on 14.07.2021 at 12.00 Noon. On his request, FSL team had come but he had not recorded it in the case diary. PW-5 has stated that the FSL report had not been received. I, however, find that the FSL report had already been received long back which has been marked exhibit-8 without objection.



58. A perusal of the FSL report (Exhibits-8), it would appear that swab from four finger ring blood (Exhibit-A) to gauze swab blood (Exhibit-B) some grasses blood (Exhibit-C) some earth blood (Exhibit-D) some earth blood (Exhibit-E) swab taken from talwar blood (Exhibit-F) were sent to FSL. The result of the examination shows that the nature of the stains were human blood on all these exhibits. ABO grouping results of some of the exhibits have been mentioned, however, the prosecution did not collect the blood of the deceased for matching. The weapon seized by police was also sent to the FSL and the result of the examination has been noted as under:- (a) The exhibit marked 'A' noted in item (1) is a four finger knucle weapon of size (9.5X5.6) cm approximate. It is not a part of cartridge of fire-arm. It is not used in ballistics ammunition arms. It is evident from the FSL report that on all the exhibits which were sent to the FSL, blood were found and those were human blood. The defence has never suggested that at the place of occurrence no blood had fallen. It can be safely held in this case that the killing of all the three persons at the place of occurrence, time of occurrence and manner of occurrence have been duly proved by the prosecution beyond any reasonable doubt. The blood found from the verandah of the house to the main door and outside where the dead bodies were lying leaves no iota of



doubt that all the three persons were repeatedly attacked inside the common house where these appellants were very much present by a sword. The deceased being totally unarmed were repeatedly assaulted by a deadly weapon like talwar.

59. The postmortem reports which are exhibits-7, 7/1 and 7/2 respectively would prove that the deceased had suffered multiple injuries. The kind of injuries present on the body of the deceased by Dr. Sidharath Raj Singh, the Medical Officer of Sadar Hospital, Sasaram (PW-6) are being extracted hereunder for a ready reference:-

“Examination of Deepak Kumar Singh

Appearance-

Rigor mortis present in all four limbs, hair black, right eye open, left eye closed, mouth closed, face smeared with blood and clots, multiple lacerated wound over face and upper part of chest of various shape and sizes, multiple abrasion and bruises present over upper part of chest.

External examination-

Appearance as mentioned in column no. 6

1. lacerated over left side occipital bone, measure approx 6"x2"x bone deep.
2. A horizontal lacerated wound over right cheek extending till right pinna measure approx 8"x1" x bone deep.
3. Horizontal lacerated wound over left cheek 3"x2"x muscle deep.
4. Lacerated wound over neck (front) measure approx 4"x2"x cavity deep.
5. Lacerated wound over left forearm measure approx 8"x2"x bone exposed with Laceration of finger

On dissection:-

There is fracture of frontal bone, brain matter lacerated & dark blood collected in cranial cavity, there is fracture of right upper jaw, right pinna lacerated, there is fracture of larynx, collection of blood in larynx, thoracic bony cage intact, lungs are intact & pale, heart intact, right chamber of heart contained little amount of dark blood, left chamber empty, stomach contained semi solid food



particles, intestine small and large both contained liquid and faces, Liver, spleen and both kidneys are intact and pale, urine bladder contained 40 M.L urine. There is fracture of left radius and ulna. There is fracture of 1, 2, 3, and 4 metacarpal bones of left hand.

Opinion (1) All above mentioned injuries are antemortem in nature, caused by sharp cutting weapon of heavy nature. (2) Death is due to excessive hemorrhage and shock, due to above mentioned injuries, leading to C.R. failure. (3) Time elapsed between death and autopsy is approx withing 24 hours.

Examination of Rakesh Kumar Singh @ Kaju Singh aged about 37 years

Appearance -

Rigor mortis present in all four limbs, hair black, both eye open, lips apart, teeth visible, face smeared with blood and clots, multiple abrasion and bruises present over upper part of chest.

External examination -

Appearance as mentioned in column no. 6

1. Lacerated wound over neck measure approx 8"x1/2"x muscle deep.
2. Lacerated wound over vault of head measure approx 4"x2"x skin deep.
3. Massively lacerated left forearm and wrist.
4. Lacerated wound over right palm and wrist joint.
5. Depression of skull on occipital region.

On dissection:-

There is fracture of occipito parietal bone, brain matter underneath is lacerated, collection of dark blood in cranial cavity. There is no bony injury in neck, thoracic bony cage intact, lungs intact & pale, heart intact, right chamber of heart contained little amount of dark blood, left chamber empty, stomach contained semi digested food material, intestine small and large both contained gas, liquid and faces, Liver, spleen and both kidneys are intact and pale, urine bladder contained 40 M.L. of urine. There is fracture of left forearm and wrist (radius and ulna) joint, Muscles vein and artery are cut down. There is fracture of D/E Radius & ulna and 1, 2nd, 3rd, and 4th metacarpal bones, muscles, brain and artery are massively lacerated.

Opinion 1. All above mentioned injuries are antemortem in nature, caused by sharp cutting weapon of heavy nature. 2. Death is due to excessive hemorrhage and shock, due to above mentioned injuries, leading to C.R. failure. Time elapsed between death and autopsy is approx withing 24 hours.

Examination of Vijay Singh aged about 62 years, male
Appearance -



Rigor mortis present in all four limbs, hair white, moustache white, both eyes open, mouth closed, lacerated wound over both cheek and massively lacerated right side neck and smeared with blood and clots.

External examination -

Appearance as mentioned in column no. 6

1. Lacerated wound over right side of cheek in vertical position, measure approx 10"x2"x skin deep.
2. Lacerated wound over left cheek measure approx 8"x1/2" x skin deep.
3. Massively lacerated right side neck measure approx 8"x2" x cavity deep.

On dissection:-

Skull- intact, brain matter intact and pale. There is fracture of cervical bone 4, 5 and 6, Massively laceration of muscles, vein and artery on right side of neck. Thoracic bony cage intact, lungs intact & pale, heart intact, right chamber of heart contained little amount of dark blood, left chamber empty, stomach contained semi digested food material, intestine small and large both contained gas, liquid and faces, Liver, spleen and both kidneys are intact and pale, urine bladder contained 40 M.L. of urine.

- Opinion**
1. All above mentioned injuries are antemortem in nature, caused by sharp cutting weapon of heavy nature.
 2. Death is due to excessive hemorrhage and shock, due to above mentioned injuries, leading to C.R. failure.
 3. Time elapsed between death and autopsy is approx withing 24 hours.”

60. The doctor has opined that all the above injuries were ante-mortem in nature, caused by sharp cutting weapon of heavy nature.

61. Learned counsel for the appellants has strenuously argued that the lacerated wounds cannot be caused by a sword/talwar. In this regard, he has relied upon the Modi- A Textbook of Medical Jurisprudence and Toxicology. It is also his submission that rigor mortis was present on all the four limbs which in general sets in one to two hours after death and is well developed from head to foot in about 12 hours. Thus, it is his



submission that the occurrence was much prior to 6.00 PM. I am, however, not impressed with this submission. The Doctor (PW-6) has stated that “rigor mortis remains present on the four limbs up to 12 to 16 hours according to the environment”.

A perusal of the evidence adduced by the doctor (PW-6) would show that rigor mortis were present in all four limbs. In his cross-examination, he has stated that all the injuries were ante-mortem in nature, caused by sharp cutting weapon of heavy nature. He has further opined that when any injury is caused by sharp cutting weapon, there will be incised injuries. He has further stated that sharp weapon caused laceration. In paragraph ‘14’ of his deposition, he has stated that rigor mortis remains present on the four limbs up to 12 to 16 hours. After 12 to 16 hours, it starts disappearing, according to environment. The doctor has opined that the time elapsed between death and autopsy is approximately within 24 hours. In this regard, when I examine the case laws on the subject, I find no reason to take a view that the death had occurred much before 6:00 PM as claimed by learned counsel for the appellants. The finding of PW-6 is consistent with the Modi’s Text and Standard Indian Forensics Scenarios. It is scientifically said that if the death is sudden (for example, hemorrhage, stabbing), rigor mortis may be accelerated. The date of occurrence



in this case is 13.07.2021, which normally remains hot during this period with the onset of monsoon, sometimes it is raining. In such circumstance, where the death has been caused with sharp-cutting heavy weapon and injuries like massive lacerated wounds have been found, and the doctor has recorded that death is due to excessive hemorrhage, it is highly likely that the rigor should set in and would spread over the limbs.

62. In the case of **Baso Prasad & Ors. vs. State of Bihar** reported in **(2006) 13 SCC 65**, the Hon'ble Supreme Court has observed, *inter alia*, with regard to the presence of rigor mortis in the following words:-

“..... The start of rigor mortis depends on the temperature and weather conditions...”

63. So far as the submissions of learned counsel for the appellants on the nature of weapon is concerned, I find that the witnesses are consistent that the appellants had repeatedly assaulted the deceased persons with sword. In this regard, I find that sword injuries causes serious, penetrating wounds from cuts (slicing or thrusts), causing damage to skin, muscles, tendons and vital organs. The heavier swords can cause fractures and blunt force trauma characteristics. A lacerated wound may occur from a sword when the blade's edge tears through skin and tissue, often



with a crushing or stretching action creating irregular, ragged edges, unlike the clean cuts of an incised wound, and can result from heavy blows or dragging the blade, leading to severe tissue damage, bleeding, and potential deep internal injuries. A heavy blow or dragging a sharp edge across skin can stretch and tear the tissue. A close perusal of the findings recorded by PW-6 in the postmortem reports would show that the kind of injuries found on the persons of the deceased corresponds to the nature of weapon i.e. sword (तलवार). I do not have any iota of doubt that the prosecution case with respect to the weapon of crime has also been proved beyond all reasonable doubts.

64. The result of overall analysis of the entire materials which I have discussed hereinabove is that the prosecution has fully proved its' case beyond all reasonable doubts. PW-4 in this case is a natural eye witness. She has narrated the entire occurrence. The place of occurrence is a common house in which both the parties were living and the occurrence has taken place inside the said house. The deceased persons were attacked by a deadly weapon like talwar repeatedly by the accused persons due to an enmity on account of a land dispute. I have already pointed out the pattern of cross-examination of the defence. In course of their cross-examination of the prosecution witnesses, the defence



has not suggested that these appellants were not present in the house on the date and time of the occurrence or they did not possess the talwar which was the weapon of crime and seized from their house. In course of their statement under Section 313 Cr.P.C. the appellant did not deny the land dispute, they did not deny the occurrence which had taken place in the common house, they did not deny the fact that the deceased persons were attacked by talwar by the appellants as a result of which the deceased received several injuries, started bleeding, fell down and became unconscious whereafter they were declared dead. For the first time, the appellant Aman Singh said that he was innocent and at the time of occurrence he had gone with his brother Sonal Singh to Darihat police station. Sonal Singh has stated that he was innocent, at the time of occurrence he was in Darihat police station, his hand was cut by the sword attacked given by Rajesh Singh and he had gone with Aman Singh to lodge the FIR. The explanation of alibi offered by the appellants in their 313 Cr.P.C. statements have no leg to stand rather it appears that they have made false statements while recording their statements under Section 313 Cr.P.C. It is nowhere their case that they were in Darihat police station at the time of occurrence. When the I.O. (PW-5) came to depose, the defence did not whisper this in course of his cross-examination.



65. I, therefore, find that in this case the prosecution case fully stands on its own legs. There is no reason to interfere with the impugned judgment of the learned trial court whereby these appellants have been convicted for the offences punishable under Section 302/34 IPC. I affirm the judgment of conviction dated 2nd May, 2024 passed in Sessions Trial No. 10 of 2022 arising out of Darihat P.S. Case No. 111 of 2021 and the direction of the learned trial court to the District Legal Services Authority, Rohtas, Sasaram for award of maximum compensation under the scheme to each of the three widows. The compensation must be paid, if not already paid, within a period of one month from the date of this judgment.

On the point of sentence

66. Learned counsel for the appellants has submitted that keeping in view the developments which have taken place in the matter of sentencing, this Court may modify the death sentence awarded to the appellants to a life imprisonment. In this regard, learned counsel submits that the learned trial court has though referred the judgments of the Hon'ble Supreme Court in the case of **Bechan Singh Vs. State of Punjab 1980 (2) SCR 864** and **Machhi Singh & Ors. Vs. State of Punjab (1983) 3 SCC 470: 1983 Supreme Court Cases (Cri) 681**, the learned trial court has not taken into consideration the mitigating circumstances including that



there are chances of reformation of the appellants. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Navas @ Mulanavas Vs. State of Kerala (2024) 14 SCC 82**. The attention of this Court has been drawn towards various case laws discussed by the Hon'ble Supreme Court to lay down the principle of proportionality. Paragraphs '78' and '79' of the judgment in the case of **Navas @ Mulanavas** (*supra*) read as under:-

“78. A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty they would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the *Swamy Shraddananda*¹⁰ principle too. Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in *V. Sriharan*¹³.

79. Illustratively, in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:

10. *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113
13. *Union of India v. V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695



- (a) the number of deceased who are victims of that crime and their age and gender;
- (b) the nature of injuries including sexual assault if any;
- (c) the motive for which the offence was committed;
- (d) whether the offence was committed when the convict was on bail in another case;
- (e) the premeditated nature of the offence;
- (f) the relationship between the offender and the victim;
- (g) the abuse of trust if any;
- (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society.

Some of the positive factors have been:

- (1) age of the convict;
- (2) the probability of reformation of convict;
- (3) the convict not being a professional killer;
- (4) the socio-economic condition of the accused;
- (5) the composition of the family of the accused;
- and
- (6) conduct expressing remorse.”

67. I have considered the submissions on the point of sentencing keeping in view the facts and circumstances of this case. I find that the learned trial court has considered this aspect of the matter in the impugned order of sentence, in detail. The learned trial court has noticed that in this case altogether three unarmed persons have been ruthlessly butchered by these appellants who were armed with sword, for a dispute pertaining to a small piece of land. Altogether five antemortem severe massive external and internal injuries inflicted on the person of each deceased. The dimensions of the antemortem external injuries detailed in the postmortem



report speaks the story of brutality/savagery adopted by the convicts.

68. The learned trial court has further taken into consideration the fact that upon death of the deceased person, no male major person has been left to perform the rites and ritual, ordinarily required in Hindu family. The happiness, pleasure and celebrations of the survival family members have been done away for whole of their lives. It has been observed that the children of the family have lost the moment of happiness for whole of their lives. Consequent upon the demise of all three male members of the family, a huge dark hole has been created, wherein these female members have to lead rest of their agony and suffocating lives. We should not loose sight of the permanent scar which has been left in the mind and soul of the three women, whose husbands have been done to death by their own blood.

69. The learned trial court has further noticed that none of the convicts was injured in the occurrence, the severity and brutalities of the offences committed by the convicts would no way justify their acts. The other two accused persons have been absconding till date and they have not surrendered before the court nor they have been arrested. The matter could have been resolved



through civil litigation but the temperament of the convicts did not suit the same.

70. In paragraphs '79', '80' and '81' of its order, the learned trial court has considered as to whether there can be justification in life imprisonment of the convicts or not? I reproduce these three paragraphs of the order of the learned trial court hereunder for a ready reference:

“ **79.** This court has to consider as to whether there can be justification in life imprisonment of the convicts or not? As delineated above; altogether 3 male persons of the same family have been brutally and incessantly assaulted upon to eliminate them for ever; in order to retain a small piece of land, situated by the side of their house. No major male family member survives to look after the female members and children, if any, of the family. They are supposed to lead a terrific lives; filled with shock, anxiety, misery as well as poverty. One of the deceased persons was Engineer whereas another was a contractor. Obviously, they were the earning members of the family and the livelihood of the family depended upon their earnings. After ghastly murder of these deceased persons, there is no any major male person to look them after and to care for their needs and livelihood. These convicts have done away the source of livelihood of surviving family members of the deceased persons. Since the death of the deceased persons, the incessant tears of their widows and the children, if any, cannot be dried out, however, by way of capital punishment, their sufferings are supposed to be mitigated. They may console themselves if convicts are awarded capital punishment. They are supposed to lead a secured and peaceful lives. And contrary to it, if convicts are awarded life imprisonment; they are supposed to come out after 14 years, only to revive the wounds surviving family members. Altogether, 3 widows



have been deprived from putting vermilion on their heads. They have been deprived of their pride and dignity. The happiness and celebrations have, now, no meaning for them as well as for their children, if any. The widows are supposed to be the living dead bodies, leading a life of indignities, shock and poverty. Imprisonment of life is routine punishment which hardly can heal their wounds. Considering the above facts and circumstances, this court is of the strong view that the act of commission of murder of the deceased persons, under given fact and circumstances, come under sphere of the rarest of rare category. Therefore, in my view, imprisonment for life is inadequate and in no way justifiable and same cannot be conscientiously be exercised, having regard to the nature and circumstances of the case. Therefore, the option of exception, ie capital punishment, has to be opted for the sake of justice.

80. The aggravating factors which exist in this case are as follows:-

- a. Nature and circumstances of the offence: - So far, nature and circumstances of the crime are concerned; it is stated that murder/massacre of the deceased persons was committed, consequent upon the trivial land dispute pertaining to a small piece of land situated by the side of the joint house of informant and the convicts. The offences of murder of 3 deceased persons did not result consequent upon spur of the moment rather same resulted after an interval of time. The deceased persons kept on escaping and the convicts kept on chasing them wherever they went and finally the deceased were incessantly and brutally assaulted upon to be eliminated for ever. There is no any evidence; available with the record suggesting counter attack by the deceased persons or causing any injury on the person of the convicts.
- b. Both the convicts have, as delineated above, played a major role to execute the commission of such a heinous crime of murder/massacre of the 3 deceased persons.
- c. So far, the culpability of the deceased persons is concerned, save and except an attempt to prevent the convicts from cultivating the disputed land, deceased



persons had played no role in the said culpability of the offence.

d. So far, post circumstances are concerned; the entire surviving family members have been left with incessant tears, shock, poverty and agony. The surviving family members have been permanently deprived of happiness, celebrations and dignity.

e. So far, the circumstances leading to the offence are concerned; the same have been detailed above time and again. It need not reiterated. There was no any such circumstance to justify the commission of the massacre.

f. So far, mitigating factors are concerned; there is any fact to mitigate the seriousness of the penalty. If the convicts are sentenced for life imprisonment, they are supposed to come out after 14 years and they are supposed to create havoc and terror in the minds of surviving family members of the deceased persons and even in society.

81. In view of above delineations, this court comes to the conclusion that it is an exceptional crime of murder wherein the 3 persons were brutally, incessantly and severely assaulted with deadly weapons, i.e. swords by the convicts to leave no probability for their survival. The option to impose sentence of imprisonment of life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances”

71. I have once considered as to whether there can be any justification in imposing a life imprisonment or a special sentence upon the convicts or not. As discussed hereinabove, the aggravating factors in this case are not leaving any room for the mitigating factors to take a view that life imprisonment or a special sentence to the appellants would be justified. I, therefore,



confirm the death sentence in Death Reference No. 2 of 2024 and dismiss the Cr. Appeal (DB) No. 691 of 2024 preferred by the appellants.

(Per: HON'BLE MR. JUSTICE SOURENDRA PANDEY)

72. I have gone through the judgment recorded by my esteemed brother, Hon'ble Mr. Justice Rajeev Ranjan Prasad. While I entirely agree with the views expressed above, I am reminded of the great epic "Mahabharat" which is a tale of devastating feud over land and power between cousins. The Kauravas were the aggressors, who attempted to kill relatives for property or to seize the reign of the empire. Mahabharat culminates with a message that aggressors meet a tragic end as divine punishment for their "adharm", i.e. to try to kill their brother (cousins) to seize power.

73. The story of Mahabharat leads us to one and only one conclusion that the appellants, who were the aggressors should be punished for their sin/crime, which has not only taken the three human lives but have also killed three women who after losing their husbands have become lifeless, their children have been left to cry all over their lives and therefore I uphold the conviction of the appellants. I agree that it is one of the rarest of the rare cases in which the option to impose sentence of imprisonment of life or a



special sentencing cannot be consciously exercised. I confirm the sentence imposed by the learned trial court.

74. This Court acknowledges the assistance rendered by Mr. Anil Singh and Mr. Manoj Kumar No.1, the two learned Advocates as Amicus Curiae during the hearing. In token of their assistance, we direct that each of them shall be paid a consolidated sum of Rs. 15,000/- (Rupees Fifteen Thousand) by the Patna High Court Legal Services Committee within one month from the date of receipt of a copy of this judgment.

(Rajeev Ranjan Prasad, J)

Sourendra Pandey, J:- I agree.

(Sourendra Pandey, J)

Rishi/Arvind-

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