

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No. 56 of 1989

Arising Out of PS.Case No. -38 Year- 1983 Thana -Gayghat District- Muzaffarpur

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The State of Bihar

----- Appellant.

-VS-

1. Mahendra Rai@Harendra Narain Singh S/o Bhagat Rai, vill.: Jamalpur Kodai, PS - Gayaghat, Dist. Muzaffarpur.
2. Methur Rai S/o. Rai of village- Jamalpur Kodai, P.S. Gayaghat, District Muzaffarpur. **(Dead)**
3. Jagrit Rai son of Mahtab Rai, of village: Kodai, P.S., Gayaghat, District Muzaffarpur. **(Dead)**
4. Krishna Nandan Rai son of Hira Lal Rai.
5. Meetaram Rai son of Sukan Rai
6. Ganesh Rai son of Charitar Rai
7. Ram Ekbal Rai son of Jogi Rai
8. Prit Lal Rai son of Dukhit Rai **(Dead)**
9. Ramashish Rai son of Dhanushi Rai,
Respondents No. 4 to 9 are resident of village: Jamalpur Kodai, P.S. Gayaghat, District Muzaffarpur.
10. Sitaram Rai son of Fakira Rai of village Kalyani, P.S. Gayaghat, District Muzaffarpur.
11. Sheo Shankar Rai S/o Mahtab Rai @ Dukhit Rai, Vill. Jamalpur Kodai, PS Gaighat, Dist. Muzaffarpur. **(Dead)**

..... Respondents.

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with

Criminal Appeal (DB) No. 267 of 1989

Arising Out of PS.Case No. -38 Year- 1983 Thana -Gayghat District- Muzaffarpur

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1. Shiv Shankar Rai, son of Mahatab Rai. **(Dead)**
 2. Mahendra Rai alias Harendra Narain Singh, son of Bhagat Rai
 3. Methur Rai, son of Mahatab Rai. **(Dead)**
 4. Jagrit Rai, son of Mahatab Rai. **(Dead)**
 5. Krishnandan Rai S/o. Hira Lal Rai
 6. Ram Udar Rai, son of Prem Rai.
 7. Siya Ram Rai, son of Khakhan Rai, **(Dead)**
 8. Mita Ram Rai, son of Sukan Rai.



9. Ganesh Rai, son of Charittar Rai
10. Ram Lal Rai, son of Bhogi Rai.
11. Ram Ekbal Rai son of Jogi Rai.
12. Prit Lal Rai, son of Dukhit Rai. **(Dead)**
13. Ram Binay Rai, son of Prem Rai.
14. Panchan Rai alias Ram Prabhanjan Rai, son of Prem Rai.
15. Ramashish Rai, son of Dhanukhi Rai.
16. Parichhan Rai S/o Bhawne Rai **(Dead)**
17. Batahu Rai, son of Bhukhit Rai. **(Dead)**
18. Pragash Rai, son of Mahanth Rai. **(Dead)**
19. Prem Rai, son of Bhawne Rai. **(Dead)**
20. Kapildeo Rai, son of Prem Rai.
21. Ramadhar Rai, son of Subudh Lal Rai. **(Juvenile)**
22. Ishwar Rai son of Ghetharu Rai. **(Dead)**
23. Lakshmi Rai, son of Ram Swaroop Rai. **(Dead)**
24. Siya Saran Rai son of Khakhan Rai
25. Prem Rai, son of Bkhogi Rai **(Dead)**
26. Kapildeo Rai, son of Sukan Rai.
27. Nagendra Rai, son of Batahu Rai. **(Dead)**
28. Jogi Rai, son of Hari Nandan Rai. **(Dead)**
29. Upendra Rai, son of Hari Nandan Rai. **(Dead)**
30. Chandradeo Rai, son of Chalitar Rai. **(Dead)**
31. Sukh Nandan Rai, son of Chalitar Rai.
32. Bujhawan Rai S/o. Hira Lal Rai
33. Ram Sringar Rai S/o. Hira Lal Rai
34. Vidya Nand rai S/o. Bhujawan Rai **(Juvenile)**
35. Saukhi Rai, son of Basu Rai. **(Dead)**
36. Phekan Rai, son of Asharfi Rai
37. Khakhanu Rai, son of Methur Rai.
38. Rama Nand Rai, son of Mahendra Rai. **(Juvenile)**



- 39.Subudh Lal Rai, son of Bishuni Rai.
40.Ramhit Rai, son of Khakhan Rai.
41.Nand Kishore Rai, son of Prem Rai.
42.Garbhu Rai, son of Charittar Rai.
43.Shiva Chandra Rai, son of Sukhdeo Rai.
44.Sukhdeo Rai, son of Ramshray Rai. **(Dead)**
45.Jugut Lal Rai alias Nirmal Rai, son of Lakshmi Rai.
46.Kanhai Rai, son of Janak Rai.
47.Sita Ram Rai, son of Fakira Rai.
48.Nirsu Rai alias Nuja Rai, son of Rudal Rai.

Appellant No. 1 to 45 are resident of Village- Jamalpur Kodai, Police Station- Gaighat, Distt. Muzaffarpur.

Appellant no. 46 is resident of village Harkhauli, Police Station- Gaighat, Distt. Muzaffarpur.

Appellants no. 47 and 48 are resident of village Kalyani, Police Station - Gaighat, Distt. Muzaffarpur.

..... Appellants
Versus
The State of Bihar
..... Respondent

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**With
Criminal Appeal (DB) No. 279 of 1989**

Arising Out of PS.Case No. -38 Year- 1983 Thana -Gayghat District- Muzaffarpur

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Jagannath Ravidas son of Sri Bitto Ravidas, Child Development Project Officer, Lapung Block Ranchi, resident of Ratanpur, P.O. Ratanpur, P.S. Lakshmipur Via Gidhour, District. Munger.

..... Appellant
Versus
The State of Bihar
..... Respondent

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Appearance :

For the Appellants (Cr.Appeal DB No. 267/89 & 279/89):-

1. Sri Suraj Narayan Yadav, Adv.
2. Sri Saroj Kumar
3. Sri Amish Kumar (Amicus Curiae)

For the State:-

1. Ajay Mishra, A.P.P.



2. A.K.Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)
Date: 03-08-2017

Since all the aforesaid three appeals pertain to the same occurrence, all the three appeals were heard together and are being disposed of by this common judgment.

2. Govt. Appeal No. 56 of 1989 has been preferred primarily for altering the conviction and sentence of 11 respondents namely 1. Mahendra Rai @ Harendra Narain Singh (appellant no. 2 in Cr. Appeal DB No. 267/89), 2. Methur Rai (appellant no. 3, died), 3. Jagrit Rai (appellant no. 4, died), 4. Krishna Nandan Rai (appellant no. 5), 5. Meetaram Rai (appellant no. 8), 6. Ganesh Rai (appellant no. 9), 7. Ram Ekbal Rai (appellant no. 11), 8. Prit Lal Rai (appellant no. 12, died), 9. Ramashish Rai (appellant no. 15), 10. Sitaram Rai (appellant no. 47) and 11. Sheo Shankar Rai (appellant no. 1, died). They were tried by the learned Trial Court and the learned Trial Court convicted them under Section 302/149 of the Indian Penal Code. However, in the present appeal, it was prayed that instead of convicting them under Section 302/149 of the Indian Penal Code, they were required to be convicted under Section 302 of the Indian Penal



Code with other sections. However, so far as sentence is concerned, all the 11 respondents in Govt. Appeal No. 56 of 1989 were sentenced to undergo rigorous imprisonment for life besides sentence for other sections.

3. In this appeal i.e. Govt. Appeal No. 56 of 1989, during pendency of the same, respondent no. 2 (Methur Rai), respondent no. 3 (Jagrit Rai), respondent no. 8 (Ram Prit Rai @ Prit Lal Rai) and respondent no. 11 (Sheo Shankar Rai) died and in Cr. Appeal (DB) No. 267 of 1989, after their death, an interlocutory application was filed for expunging their name. Since the appeal stood abated in respect of aforesaid dead persons, by order dated 22-08-2013, their cases were directed to be abated.

4. In Cr. Appeal (DB) No. 267 of 1989, 48 (forty eight) persons are appellants, out of whom:-

- (i) Appellant no. 1 (Shiv Shankar Rai S/o Mahtab Rai),
- (ii) Appellant no. 3 (Methur Rai S/o Mahtab Rai),
- (iii) Appellant no. 4 (Jagrit Rai S/o Mahtab Rai),
- (iv) Appellant no. 7 (Siya Ram Rai S/o Khakhan Rai),
- (v) Appellant no. 12 (Prit Lal Rai S/o Dukhit Rai),
- (vi) Appellant no. 16 (Parikshan Rai S/o Bhone Rai),
- (vii) Appellant no. 17 (Batahu Rai S/o Bhukhit Rai),
- (viii) Appellant no. 18 (Pragash Rai S/o Mahant Rai),
- (ix) Appellant no. 19 (Prem Rai S/o Bhavte Rai),
- (x) Appellant no. 22 (Ishwar Rai),



(xi) Appellant no. 23 (Lakshmi Rai),
(xii) Appellant no. 25 (Prem Rai S/o Bhogi Rai),
(xiii) Appellant no. 27 (Nagendra Rai),
(xiv) Appellant no. 28 (Jogi Rai),
(xv) Appellant no. 29 (Upendra Rai),
(xvi) Appellant no. 30 (Chandradeo Rai),
(xvii) Appellant no. 35 (Saukhi Rai) and
(xviii) Appellant no. 44 (Sukhdeo Rai) died during the pendency of the appeal and thereafter, by order dated 22-08-2013, on petition filed on behalf of the appellants i.e. I.A. No. 1029 of 2012 and I.A. No. 154 of 2013, their case stood abated. Now, present appeal survives in respect of remaining appellants. During pendency of this appeal, three appellants i.e. appellant no. 21 (Ramadhar Rai S/o Subudh Lal Rai), appellant no. 34 (Vidya Nand Rai S/o Bujhawan Rai) and appellant no. 38 (Rama Nand Rai S/o Mahendra Rai) claimed their juvenility and it was asserted that at the time of occurrence, they were juvenile. On an interlocutory application filed on behalf of the aforesaid appellants i.e. I.A. No. 1182 of 2013, this Court by an order dated 26-08-2013, referred the matter to the Juvenile Justice Board, Muzaffarpur to conduct an enquiry and submit report regarding their claim of juvenility. Thereafter, a report was received and after receipt of report by an order dated 16-05-2014, it was



directed that claim of juvenility under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 shall be considered at the time of hearing of the appeal. Accordingly, the case of the aforesaid three appellants shall be discussed after discussion of case of the remaining appellants.

5. Similarly, Cr. Appeal (DB) No. 279 of 1989 has been preferred by sole appellant namely Jagannath Ravidas, who at the relevant time was posted as Circle Officer and he has also been held guilty and convicted under Section 302 r/w 109, 436/109, 379/109, 324/109 and 323/109 of the Indian Penal Code.

6. Short fact of the case is that on 29-03-1983 at about 5:00 PM (17 hours), Sub-Inspector of Police Sri Vijay Mandal recorded *fardebayan* of one Tej Narayan Choudhary S/o Uma Kant Choudhary in the village Jamalpur Kodai, police station Gaighat. In the *fardebayan*, Tej Narayan Choudhary, which was recorded at his door in the Jamalpur Kodai village, disclosed that on the same date at about 10:30 A.M., his cousin brother Braj Bhushan Choudhary, Lalan Choudhary and Krishnadeo Choudhary had gone to bring his pump set from western boring where Ramashish Rai S/o Dhanprit Rai (appellant no. 15), Ganesh Rai (appellant no. 9), Umesh Rai S/o Dhanprit Rai, Prit Lal Rai S/o Dukhit Rai (appellant no. 12), Jagrit Rai S/o Mahtab Rai (appellant no. 4) of



village Kodai stopped them from bringing back the pumping set. Thereafter, some altercation took place. In the meanwhile, Chandra Shekhar Choudhary (P.W.40) and his son-in-law (Indradeo Jyoti @ Mahanth Ji) also went there. Thereafter, Yadava peoples started gathering there and amongst them, one gave *lathi* blow. Ramprit Rai @ Pritlal Rai (appellant no. 12) tried to give knife blow on Mahanth Ji, but the blow hit Umesh Rai. Thereafter, the informant's uncle and cousin brought back the pump set. After about half an hour, five to six thousand Yadava, who were of village Kodai, Piraudha, Misrauly and Kalyani, surrounded the house of his uncle Chandra Shekhar Choudhary. In the meanwhile, the police officer of Gaighat police station and the Block Development Officer arrived there with armed force and they tried to convince them. In the meanwhile, Circle Officer of Gaighat (Jagannath Ravidas, appellant of Cr.Appeal DB No. 279/89) followed by Mukhiya Mahendra Rai @ Harendra Narain Singh (appellant no. 2) arrived there. At that very time, Yadava people ignited heap of straw, thereafter, Mahanth Ji, son-in-law of Chandrashekhar Choudhary, fired in air. The Circle Officer took the gun from Mahanth Ji and showed the said gun to the mob of Yadavas and he left the place alongwith his force by jeep. Immediately thereafter, Yadavas reached near the house of



Chandra Shekhar Choudhary (PW40). The police officer proceeded towards the mob whereafter, the mob retreated. He further disclosed that Mahendra Yadav exhorted the people to ignite the fire. Prit Lal Rai S/o Dukhit Rai (appellant no. 12), Methur Rai S/o Mahatab Rai (appellant no. 3), Jagrit Rai S/o Mahatab Rai (appellant no. 4), Mita Ram Rai S/o Sukan Rai (appellant no. 8), Siya Ram Rai S/o Khakhan Rai (appellant no. 7), Siya Saran Rai S/o Khakhan Rai (appellant no. 24), Khakhanu Rai S/o. Methur Rai (appellant No. 37) and Krishna Nandan Rai S/o Hira Lal Rai (appellant no. 5) all of village Jamalpur Koida put on fire the *kharhi* (tall grass) and thereafter, they set the house of Chandra Shekhar Choudhary (P.W.40) on fire and all the Yadavas surrounded the house. In the meanwhile, police officer fired, but even then the accused persons proceeded and they assaulted Block Development Officer by means of *lathi* and also tried to snatch the rifle of force. Thereafter, the police retreated. The informant further stated that Chandra Shekhar Choudhary and his family members, to save themselves from the heat of fire, started fleeing away, thereafter, the afore-mentioned Yadavas surrounded them and started inflicting *lathi, bhala, farsa* blow, in which, son-in-law of Chandra Shekhar Choudhary (P.W.40) namely Indradeo Jyoti @ Mahanth Ji, grand son-in-law (Dr.



Indranand Mishra), son Braj Bhushan Choudhary and Lalan Choudhary @ Ravi Bhushan Choudhary, due to said injury, died instantly, whereas Anil Jha son of Mahanth Ji died in Patna Hospital. The informant further disclosed that wife of Chandra Shekhar Choudhary (PW-40) and wife of Krishna Deo Choudhary (PW-22) also received serious injuries. The house of Chandra Shekhar Choudhary was turned to ashes. He also stated that accused persons even looted the articles from the house of Chandra Shekhar Choudhary and snatched ornaments from the person of female inmates. The informant in his fardbeyan further stated that besides him, other villagers namely Rama Kant Jha (dead), Umakant Choudhary (dead), Raj Kumar Jha (PW-20), Shobha Kant Jha (PW-3), Nagendra Jha (PW-36), Devendra Jha (PW-25), Jayweer Jha (PW-10) etc. had witnessed the occurrence and also identified following accused persons:- 1. Batahu Rai, 2. Ramanand Rai, 3. Nagendra Rai, 4. Uchit Rai, 5. Mahendra Rai @Harendra Rai, 6. Surendra Rai, 7.Methur Rai, 8.Jagrit Rai, 9.Shiv Shankar Rai, 10. Rampriti Rai, 11.Jogi Rai, 12.Upendra Rai, 13.Shivchandra Rai, 14.Chandradeo Rai, 15. Sukhnandan Rai, 16. Bujhawan Rai, 17. Rijhan Rai, 18.Ram Singar Rai, 19. Krishna Nandan Rai, 20. Vidya Nand Rai, 21. Parishan Rai, 22.Prem Rai, 23.Ram Udar Rai, 24.Nand Kishore Rai, 25.Ram Vijay Rai, 26.



Kapildeo Rai, 27. Nageshwar Rai, 28. Saukhi Rai, 29. Fekhan Rai, 30. Khakhan Rai, 31. Siya Ram Rai, 32. Siya Saran Rai, 33. Ramhit Rai, 34. Sita Ram Rai, 35. Kapildeo Rai, 36. Subudh Lal Rai, 37. Ramadhar Rai, 38. Garbhu Rai, 39. Ganesh Rai, 40. Prem Rai, 41. Ram Lal Rai, 42. Dhanukhi Rai, 43. Ramashish Rai, 44. Ganesh Rai, 45. Ishwar Rai, 46. Rajendra Rai, 47. Ram Vijay Rai, 48. Sukhan Rai, 49. Ram Eqbal Rai.

7. The informant claimed that all the aforesaid accused persons were resident of Jamalpur Kodai. He claimed that besides aforesaid accused persons, Yadavas from village Piraudha, Kalyani and Misraulia were also participant regarding whom details can be given by Sri Chandra Shekhar Choudhary and his other family members including inmates and details of looted property shall be provided by Chandra Shekhar Choudhary himself.

8. After recording fardbeyan of the informant, on the same date at about 20:30 hrs. (8:30 P.M.), a formal F.I.R., vide Gaighat P.S. Case No. 38 of 1983, was registered and investigation commenced. During investigation, besides F.I.R. named accused, name of other accused persons also transpired and as such, chargesheet was submitted against 67 accused persons, whereas chargesheet against 17 accused persons was submitted showing them as absconder. The case of one of the absconder accused



namely Nandlal Mahto was stayed as per the order of High Court and during investigation itself, one accused namely Dhanukhi Rai S/o Dhidhar. Rai died and as such, his name was expunged, vide order dated 19-09-1986. Chargesheet was submitted on 26-06-1983. Case of absconder accused was separated and case of about 76 accused persons was committed to the court of sessions by order dated 25-01-1985 and it was numbered as Sessions Trial No. 21 of 1985, whereas case of five accused persons was committed by order dated 22-07-1985 and their case was numbered as Sessions Trial No. 127 of 1985. Subsequently, by order dated 21-09-1985, Sessions Trial No. 21 of 1985 and Sessions Trial No. 127 of 1985 was directed to be amalgamated and in the case, on 06-02-1986, charges were framed against accused persons.

9. In so far as Cr. Appeal (DB) No. 267 of 1989 is concerned, we are dealing with the charges in respect of surviving appellants only. Accordingly, there is no need to elaborate regarding the case of appellants, who had already died and their case has abated. Charges against the surviving appellants are as follows:-

Appellant no. 2 Mahendra Rai @ Harendra Narayan Singh S/o Bhagat Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 302, 324 r/w 34 I.P.C.



Appellant no. 5 Krishna Nandan Rai S/o Hira Lal Rai for offence under Sections 148, 436, 302 r/w 149, 302, 324 r/w 34 and 379 I.P.C.

Appellant no. 6 Ram Udar Rai S/o Prem Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 8 Mita Ram Rai S/o Sukan Rai for offence under Sections 148, 436, 302 r/w 149, 302, 324 r/w 34 and 379 I.P.C.

Appellant no. 9 Ganesh Rai S/o Charittar Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 10 Ram Lal Rai S/o Bhogi Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 13 Ram Binay Rai S/o Prem Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 14 Panchan Rai W Ram Prabhanjan Rai S/o Prem Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 15 Ramashish Rai S/o Dhanukh Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 302, 324 r/w 34 I.P.C.

Appellant no. 20 Kapildeo Rai S/o Prem Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 21 Ramadhar Rai S/o Subudh Lal Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 24 Siya Saran Rai S/o Khakhan Rai for offence under Sections 148, 436, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 26 Kapildeo Rai S/o Sukan Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149 I.P.C.



Appellant no. 31 Sukh Nandan Rai S/o Chalitar Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

Appellant no. 32 Bujhawan Rai S/o Hira Lal Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

Appellant no. 33 Ram Singar Rai S/o Hira Lal Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

Appellant no. 34 Vidya Nand Rai S/o Bhujawan Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

Appellant no. 36 Fekan Rai S/o Asharfi Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 I.P.C.

Appellant no. 37 Khakhanu Rai S/o Methur Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

Appellant no. 38 Rama Nand Rai S/o Mahendra Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 39 Subudh Lal Rai S/o Bishuni Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149 I.P.C.

Appellant no. 40 Ramhit Rai S/o Khakhan Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

Appellant no. 41 Nand Kishore Rai S/o Prem Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

Appellant no. 42 Garbhu Rai S/o Charittar Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

Appellant no. 43 Shiva Chandra Rai S/o Sukhdeo Rai for offence under Sections 147, 436 r/w 149, 302



r/w 149, 325 r/w 34 I.P.C.

Appellant no. 45 Jugat Lal Rai @ Nirmal Rai S/o Lakshmi Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149 I.P.C.

Appellant no. 46 Kanhai Rai S/o Janak Rai for offence under Sections 148, 436 r/w 149, 302 r/w 149, 324 r/w 34 I.P.C.

Appellant no. 47 Sita Ram Rai S/o Fakira Rai for offence under Sections 436, 302 r/w 149, 302 I.P.C.

Appellant no. 48 Nirsu Rai @ Nuja Rai S/o Rudal Rai for offence under Sections 147, 436 r/w 149, 302 r/w 149, 325 r/w 34 I.P.C.

10. The appellant of Cr. Appeal (DB) No. 279/1989 Jagannath Ravidas was charged for offence under Sections 109 r/w Section 302, 324, 325, 436 and 379 of the Indian Penal Code.

11. To establish the charges, the prosecution examined altogether 46 witnesses, out of whom, P.W.-2 (Tej Narain Choudhary), P.W.-3 (Shobha Kant Jha), P.W.-4 (Usha Mishra), P.W.-5 (Saraswati Devi W/o Mahanth Indradeo Choudhary), P.W.-6 (Langat Singh), P.W.-8 (Ram Bahadur Paswan, Choukidar), P.W.-10 (Jayweer Jha), P.W.-13 (Shyam Sundar Choudhary), P.W.-14 (Tripit Jha), P.W.-15 (Ram Dayal Singh), P.W.-16 (Awadhesh Singh), P.W.-17 (Upendra Paswan), P.W.-18 (Kedar Singh), P.W.-19 (Ram Sringar Singh), P.W.-20 (Raj Kumar Jha), P.W.-22 (Krishnadeo Choudhary, nephew of Chandra Shekhar Choudhary, P.W.-40), P.W.-23 (Dukh Haran Sahni, servant in the house of



Chandra Shekhar Choudhary, P.W.-40), P.W.-24 (Ambika Singh), P.W.-25 (Devendra Jha), P.W.-26 (Trilok Jha), P.W.-27 (Jagarnath Singh), P.W.-33 (Mithila Devi D/o Dhanurdhari Choudhary), P.W.-34 (Murti Devi W/o Dhanurdhari Choudhary), P.W.-35 (Uma Devi W/o deceased Braj Bhushan Choudhary), P.W.-36 (Nagendra Jha), P.W.-37 (Rita Choudhary, W/o deceased Ravi Bhushan Choudhary), P.W.-38 (Maheshwar Devi W/o Chandra Shekhar Choudhary, P.W.-40), P.W.-40 (Chandra Shekhar Choudhary) were examined as eye-witness to the occurrence. Amongst aforesaid witnesses, P.W.-4 (Usha Mishra, W/o deceased Dr. Indranand Mishra), P.W.-5 (Saraswati Devi, W/o deceased Mahanth Indradeo Choudhary), P.W.-34 (Murti Devi W/o Dhanurdhari Choudhary), P.W.-35 (Uma Devi W/o deceased Braj Bhushan Choudhary), P.W.-37 (Rita Choudhary W/o deceased Ravi Bhushan Choudhary), P.W.-38 (Laheshwari Devi W/o Chandra Shekhar Choudhary, P.W.40) and P.W.-40 (Chandra Shekhar Choudhary) had received injuries in the occurrence and they were ocular witness to the entire occurrence. So far as P.W.-7 (Satya Narain Singh), P.W.-9 (Sita Ram Paswan), P.W.-21 (Urmila Devi W/o Krishnadeo Choudhary), P.W.-29 (Susheel Kumar Jha, S/o Lalwir Jha), P.W.-30 (Poonam Kumari D/o deceased Mahanth Indradeo Jyoti) and P.W.-31 (Abhay Kumar S/o deceased Mahanth



Indradeo Jyoti) are concerned, were tendered for their cross-examination.

12. Dr. Binod Kumar Mehta, Tutor in the Department of Forensic Medicine, S.K.M. College, Muzaffarpur, who conducted *autopsy* on the dead-body of (i) Mahanth Indradeo Jyoti, (ii) Braj Bhushan Choudhary, (iii) Dr. Indranand Mishra and (iv) Ravi Bhushan Choudhary, was examined as P.W.-1, whereas, Dr. Ram Krishna Pd. Singh, Associate Professor, Deptt. of Forensic Medicine, PMCH, Patna, who had conducted *post-mortem* examination on the dead-body of Anil Kumar Jha, was examined as P.W.-46.

13. P.W.-28 (Sundar Kant Jha) is witness to the seizure list relating to blood stained soil and towel.

14. P.W.-32 (Shyam Nandan Jha) is the formal witness, who had identified writing and signature of Sub-Inspector of Police (Vijay Mandal, P.W.-41) on seizure list.

15. P.W.-11 (Ram Sajeevan Paswan) was declared hostile.

16. P.W.-39 (Rajendra Jha) is the formal witness, who had proved the skech map of the place of occurrence, which was marked as Ext. ' 5'.

17. Sri Amrendra Kumar Singh, who at the relevant time



was posted as Special Judicial Magistrate, Muzaffarpur, recorded statement of ten injured persons (witness) on 10-04-1983 and two injured witness on 08-04-1983 under Section 164 of the Cr.P.C. was examined as P.W.-42, whereas Dr. Upendra Nath, Resident Surgical Officer, D.M.C.H., Department of Surgery, who on the requisition of S.I. of Gayghat had examined the injury on the person of Chandra Shekhar Choudhary (P.W.-40), Mani Kumari (not examined), Maheshwari Devi (P.W.38), Uma Devi (P.W.35), Satyendra Jha (not examined), Sarswati Devi (P.W.5), Anil Kumar Jha (deceased), Urmila Devi (P.W.21), Murati Devi (P.W.34), Ram Chandra Mahto (not examined), Abinash Choudhary (not examined), Dauli (not examined), Arvind Kumar (not examined), Smt. Usha Mishra (P.W.-4), Rita Devi (P.W.37), Punam Kumari (P.W.30) and Doyal Mona (not examined), was examined as P.W.-43.

18. P.W.-44 (Dr. Snehansu Gupta, Assistant Professor, S.K.Medical College, Muzaffarpur) had examined the injuries of Ajay Kumar Choudhary (not examined) and Munish Kumari (not examined) and P.W.-45 (Dr. Birendra Prasad), who was posted as Asstt. Professor, S.K.Medical College, Muzaffarpur had examined injury of Dauli (not examined), Punam Kumari (PW-30), Rita Choudhary (P.W.37), Usha Mishra (PW.4), Ram Chandra (not



examined), Murati Devi (not examined), Urmila Devi (P.W.21), Saraswati Devi (PW-5), Satendra Kumar (not examined), Uma Devi (PW-35), Mona (not examined) and Chandra Shekhar Choudhary (P.W.40).

19. It is pertinent to mention that after conclusion of the prosecution evidence, since the learned trial court found that there was no material to proceed against some of the accused persons, the learned trial Judge exercising power under Section 232 of the Cr.P.C. acquitted 18 accused persons namely 1. Rajdeo Singh, 2. Amar Rai, 3. Subudh Lal, 4. Hira Rai, 5. Ram Sevak Singh, 6. Ram Ratan Rai, 7. Chalitra Rai, 8. Mahendra Raut, 9. Dayali Singh, 10. Surendra Singh Yadav, 11. Sushil Singh, 12. Sheo Chandra Rai, 13. Ram Dhaneshwar Rai, 14. Maheshwar Rai, 15. Uchit Rai, 16. Khakhan Rai, 17. Sone Lal Rai and 18. Uchit Rai. The order of acquittal of aforesaid 18 persons was passed on 20-01-1988 and thereafter, on 04-01-1989, statement of remaining accused persons under Section 313 of the Cr.P.C. was recorded. Thereafter, to disapprove the prosecution case from the defence side, altogether 13 witnesses were examined, whose names are as follows:-

1. D.W.-1 Raj kishore Rai,
2. D.W.-2 Habib Ahmad



3. D.W.-3 Raj Kishore Rai
4. D.W.-4 Vidya Sagar Choudhary
5. D.W.-5 Yogendra Thakur
6. D.W.-6 Ashok Kumar Mahto
7. D.W.-7 Kowari Rai
8. D.W.-8 Ram Kumar Rai
9. D.W.-9 Jeevnath Rai
10. D.W.-10 Jeevan Rai
11. D.W.-11 Dr. Manoranjan Kumar Srivastava
12. D.W.-12 Vishwanath Prasad, and
13. D.W.-13 Rajendra Prasad

20. Thereafter, Sri Shiva Bachan Singh, learned 3rd Additional Sessions Judge, Muzaffarpur, vide judgment dated 5th of June, 1989 in Sessions Trial No. 21 of 1985 and Sessions Trial No. 127 of 1985, convicted all the appellants in Cr. Appeal (DB) No. 267 of 1989 The aforeaid appellants were convicted in the following manner:-

| Appellants No. 1 to 48 in Cr. Appeal (DB) No. 267 of 1989 | CHARGES FRAMED U/S. | CONVICTED U/S. | |
|--|---|---------------------------|---------------|
| 1. D Sheo Shankar Rai, S/o. Mahatab Rai. | 148,436 r/w 149, 302 r/w 149, 302 | 302 r/w 149, 436 r/w 149, | 147 |
| 2. Mahendra Rai @ Harendra Narain Singh, S/o. Bhagat Rai | 148,436 r/w 149, 302 r/w 149, 302, 324 r/w 34 | 302 r/w 149, 436 r/w 149, | 148 |
| 3. D Methur Rai, S/o. Mahatab Rai. | 148,436,302 r/w 149, 302, 324 r/w 34 and 379 | 302 r/w 149, | 436, 148, 379 |
| 5. Krishnandan Rai S/o. Hira Lal Rai | | 302 r/w 149 | 436, 148, 324 |
| 8. Meta Ram Rai, S/o. | | 302 r/w 149, | 436, 148 |



| | | | |
|--|---|------------------------------|----------|
| Sukan Rai. | | | |
| 12. D Prit Lal Rai, S/o Dukhit Rai. | | 302 r/w 149, | 436,148 |
| 4. D Jagrit Rai, son of Mahatab Rai. | 148,436,436 r/w 149,302 r/w 149, 302,324 r/w 34 | 302 r/w 149, | 436, 148 |
| 6. Ram Udar Rai, son of Prem Rai. | 148,436 r/w 149,302 r/w | 302 r/w 149, 436 r/w 149, | 148 |
| 7. D Siya Ram Rai, S/o Khakhan | 149,324 r/w 34 | 302 r/w 149, | 436, 147 |
| 9. Ganesh Rai, son of Charittar Rai | | 302 r/w 149, 436 r/w 149, | 148 |
| 10. Ram Lal Rai, S/o. Bhogi Rai. | | 302 r/w 149, 436 r/w 149, | 148 |
| 13. Ram Binay Rai, son of Prem Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 14. Pancham Rai @ Ram Prabhanjan Rai, S/o. Rai. | | 302 r/w 149, 436 r/w 149, | 148 |
| 16. D Parichhan Rai S/o Bhawne Rai | | 302 r/w 149, 436 r/w 149, | 147 |
| 17. D Batahu Rai, S/o Bhukhit Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 18. D Pragash Rai, S/o Mahanth Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 19. D Prem Rai, son of Bhawle Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 20. Kapildeo Rai, son of Prem Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 21. Ramadhar Rai, son of Subudh Lal Rai. (Juvenile) | | 302 r/w 149, 436 r/w 149, | 148 |
| 23. D Lakshmi Rai, S/o. Ram Swaroop Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 38. Rama Nand Rai, S/o Mahendra Rai. (Juvenile) 893 | | 302 r/w 149, 436 r/w 149, | 147 |
| 46. Kanhai Rai, S/o Janak Rai. | | 302 r/w 149, 436 r/w 149, | 148 |
| 11. Ram Ekbal Rai S/o. Jogi Rai. | 148,436 r/w 149,302 r/w 149, 302,324 r/w 34 | 302 r/w 149, 436 r/w 149, | 148 |
| 15. Ramashish Rai, S/o Dhanukhi Rai | | 302 r/w 149, 436 r/w 149, | 148 |
| 22. D Ishwar Rai S/o Ghetharu Rai. | 148,302 r/w 149,324 r/w 34 | 302 r/w 149, 436 r/w 149, | 147 |
| 24. Siya Saran Rai S/o Khakhan Rai | 148,436,302 r/w 149,324 r/w 34 | 302 r/w 149, 436 r/w 149, | 148 |
| 25. D Prem Rai, S/o | 148,436 r/w | 302 r/w 149, | 147 |



| | | | |
|---|-------------------------------------|------------------------------|----------|
| Bhogi Rai | 149,302 r/w 149, | 436 r/w 149, | |
| 26. Kapildeo Rai, S/o Sukan Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 44. D Sukhdeo Rai, S/o. Ramshray Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 27. D Nagendra Rai, S/o Batahu Rai. | 147, 436 r/w 149, 302 r/w | 302 r/w 149, 436 r/w 149 | 147 |
| 28. D Jogi Rai, S/o Hari Nandan Rai. | 149, 325 r/w 34 | 302 r/w 149, 436 r/w 149, | 147 |
| 29. D Upendra Rai, S/o Hari Nandan Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 30. D Chandradeo Rai, S/o. Chalitar Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 31. Sukh Nandan Rai, S/o. Chalitar Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 32. Bujhawan Rai S/o. Hira Lal Rai | | 302 r/w 149, 436 r/w 149, | 147 |
| 33. Ram Singar Rai S/o. Hira Lal Rai | | 302 r/w 149, 436 r/w 149, | 147 |
| 34. Vidya Nand Rai S/o. Bhujawan Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| (Juvenile) 893 | | | |
| 35. D Saukhi Rai, S/o Basu Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 37. Khakhanu Rai, S/o Methur Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 40. Ramhit Rai, son of Khakhan Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 41. Nand Kishore Rai, S/o Prem Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 42. Garbhu Rai, son of Charittar Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 43. Shiva Chandra Rai, S/o. Sukhdeo Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 48. Nirsu Rai @ Nuja Rai, S/o. Rudal Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 36. Fekan Rai, son of Asharfi Rai | 147,436 r/w 149, 302 r/w 149,325 | 302 r/w 149, 436 r/w 149, | 147, 323 |
| 39. Subudh Lal Rai, S/o Bishuni Rai. | 147,436 r/w 149,302 r/w 149 | 302 r/w 149, 436 r/w 149, | 147 |
| 45. Jugut Lal Rai @ Nirmal Rai, son of Lakshmi Rai. | | 302 r/w 149, 436 r/w 149, | 147 |
| 47. Sita Ram Rai, S/o Fakira Rai. | 436,302 r/w 149,302 | 302 r/w 149, 436 r/w 149, | 147 |

21. So far as appellant in Cr. Appeal (DB) No. 279 of 1989



(Jagannath Ravidas) is concerned, he was held guilty and convicted under Sections 302 r/w 109, 436/109, 379/109, 324/109 and 323/109 of the Indian Penal Code and thereafter, on the same date, after hearing the parties, the learned Trial Judge sentenced aforesaid appellants (Cr.Appeal No. 267/89) for rigorous imprisonment for life in respect of offence under Section 302 r/w 149 IPC, rigorous imprisonment for 10 years for offence under Section 436 IPC, rigorous imprisonment for 10 years for offence under Section 436 r/w 149 IPC, rigorous imprisonment for 3 years for offence under Section 148 IPC, rigorous imprisonment for 2 years for offence under Section 147 IPC, rigorous imprisonment for 2 years for offence under Section 379 IPC, rigorous imprisonment for 1 year for offence under Section 323 IPC and rigorous imprisonment for 2 years under Section 324 IPC. All the sentences were directed to run concurrently. So far as appellant (Jagannath Ravidas in Cr.Appeal No. 279/89) is concerned, he was sentenced for imprisonment for life u/s 302 r/w 109 IPC, rigorous imprisonment for 10 years under Section 436/109 IPC, rigorous imprisonment for 2 years under Section 379/109 IPC, rigorous imprisonment for 2 years under Section 324/109 IPC and rigorous imprisonment for 1 year under Section 323/109 IPC.



22. However, during the trial, since the prosecution had failed to prove the case beyond doubt in respect of nine accused persons, those accused persons were acquitted. The learned Trial Judge passed the judgment of acquittal in favour of accused 1. Ram Julum Rai, 2. Sahdeo Rai, 3. Dashrath Rai, 4. Awadhesh Rai, 5. Gajendra Rai @ Rajendra Rai, 6. Ram Binay Rai, 7. Nageshwar Rai, 8. Rijhan Rai, and 9. Ganesh Rai S/o Dhanukhi Rai.

23. It is pertinent to mention here that of course, State has preferred an appeal i.e. Govt. Appeal No. 56 of 1989 in respect of convicting 11 of the appellants in Cr. Appeal (DB) No. 267 of 1989 for offence under Section 302 of the Indian Penal Code, but there is nothing on record to suggest as to whether any appeal was preferred against acquittal of aforesaid nine accused persons. However, the State preferred appeal i.e. Govt. Appeal No. 56 of 1989 for convicting 11 respondents, who are amongst the appellants of Cr. Appeal (DB) No. 267 of 1989, for offence under Section 302 of the Indian Penal Code.

24. All the convicts have preferred appeal against judgment of their conviction and sentence, which is under-consideration.

25. Sri Suraj Narain Yadav, learned counsel assisted by Sri Saroj Kumar, learned counsel for appellants in Cr. Appeal (DB)



No. 267 of 1989 has argued that though, the prosecution has produced number of witnesses claiming to be eye-witness, there is no material to suggest that either of the appellants were aware as to whether in the occurrence, anyone was to be killed. He submits that the entire occurrence had taken place on the rumour of killing one Umesh Rai. He submits that Umesh Rai of village Jamalpur Kodai was inflicted knife blow by the prosecution side of the present case. Since the news regarding death by causing injury from the prosecution side had spread in entire locality, number of villagers had gone to the house of Chandra Shekhar Choudhary (P.W.40) and the said mob was named as Haseri. According to Sri Yadav, learned counsel for appellants, in absence of any evidence to show participation of either of the appellants in the occurrence, there was no question for applying Section 149 of the I.P.C. He submits that for holding one guilty for any offence r/w Section 149 of the I.P.C., it is necessary to establish that the appellants with full knowledge to assault the prosecution side had assembled and secondly, the appellants were not knowing that the said mob will kill the prosecution side. According to learned counsel for the appellants, in a spur of moment since from inside the house of Chandra Shekhar Choudhary (PW-40) firing was made, in retaliation, the mob (Haseri) ignited fire and set the house of



Chandra Shekhar Choudhary on fire and assaulted family members of Chandra Shekhar Choudhary and in the occurrence, five persons were killed. He submits that in the entire evidence, there is no direct material to show that any of the appellants had committed any offence attracting the penal provision of Section 302 r/w Section 149 of the Indian Penal Code. Learned counsel for appellants has further argued that the very genesis of the prosecution case has not been established. According to learned counsel for appellants, the prosecution had made out a case that on the same date at about 10:00 AM, the informant side had gone to take back their pumping set, but during evidence, no material was brought on record to suggest that the owner of the said pumping set was of the prosecution side, rather the said pumping set was being used by number of villagers. He submits that defence witness has categorically stated that the said pumping set was sold to defence side and to prove the title and possession over the pumping set from the defence side, the document relating to sale of the pumping set with number was also got exhibited. It has also been argued that none of the witnesses has made specific statement regarding assault given by any of the appellants. He further submits that there is some contradiction in the evidence of the witnesses. In sum and substance, it has been



argued that case under Section 149 of the Indian Penal Code was not established. To strengthen his submission regarding application of Section 149 of the Indian Penal Code, learned counsel for appellants has placed reliance on (i) **AIR 1975 SUPREME COURT 654 (Santosh v. The State of M.P.)**, (ii) **AIR 2008 SUPREME COURT 2692 (State of Karnataka v. Chikkahottappa @ Varade Gowda and Ors.)** and (iii) **1970 (3) Supreme Court Cases 236 (State of Assam vs. Barga Dewani and others)**. Alternatively, he has argued that keeping in view the fact that occurrence had taken place long back in the year 1983 and number of accused have already died during the pendency of the appeal and almost all the appellants are old one, the Court may take lenient view. Moreover, according to him, the entire occurrence had not taken place with any intention, rather the occurrence had taken place on the rumour of murder of Umesh Rai. Besides this, there was dispute in between the prosecution side as well as the appellants' side.

26. Sri Ajay Mishra, learned Addl. Public Prosecutor has argued that in the present case, brutally five persons of one family were killed and about 17 family members of the same family were brutally assaulted by a mob of Haseri. He submits that in the present case, number of injured witnesses, who were ocular



witnesses, have categorically stated that how in brutal manner, the accused persons/appellants had killed five family members of Chandra Shekhar Choudhary (P.W.-40) and injured other inmates. According to Sri Mishra, the *post-mortem* examination report of five deceased and injury reports, which were prepared by doctors at Primary Health Centre, Gaighat, S.K.M.Hospital, Muzaffarpur and doctor of P.M.C.H., substantiate the case of prosecution and there is no lacuna in the present case. According to him, the prosecution has proved the case beyond all reasonable doubt and learned Trial Judge, discussing each and every evidence, has held the appellants guilty and convicted and sentenced them accordingly, which requires no interference.

27. Besides hearing learned counsel for the parties, we have examined the evidence in detail. Before proceeding, it would be necessary to reiterate what eye-witnesses had disclosed during the trial. At this juncture, it would be necessary to firstly place the evidence of P.W.-40 (Chandra Shekhar Choudhary), who was head of the family and he anyhow, though brutally assaulted, could save his life and disclosed the entire fact.

28. **P.W.-40** Sri Chandra Shekhar Choudhary in his examination-in-chief has stated that in the year 1982, his elder son Braj Bhushan Choudhary (deceased) and his nephew Krit



Narain Choudhary @ Krishnadeo Choudhary (PW-22) had got employment and on the eve of their employment, on 28-03-1983, he had organized Shri Satyanarayan Puja and on that occasion, in his house, his son-in-law (Mahanth Indradeo Jyoti, deceased), Usha Mishra (P.W.-4), Punam Kumari (P.W.30), his daughter Saraswati Devi (P.W.-5), his grand son (nati) Anil Kumar Jha (deceased) and Abhay Kumr (P.W.31) and others had come to his house and puja was concluded on 28-03-1983. On 29-03-1983 at about 11 AM, Yadavas of his village had surrounded his house from the western side armed with *lathi, bhala, farsa, kudal* (spade) etc. He further stated that on western side from his house, there was house of Dhanurdhar Choudhary and near his door, there was heap of straw, which was set on fire by Mita Ram Rai (appellant no. 8). Thereafter, they entered into the house of Dhanurdhar Choudhary and started assaulting. Thereafter, his son-in-law, Mahanth Indradeo Jyoti (deceased) fired from his gun in air from inside his courtyard. The fire was in the sky, which was with a view to terrorise the mob. The Sub-Inspector of Police and Block Development Officer (for short "BDO") alongwith force thereafter arrived on the western side of his house and tried to control the member of the mob. The P.W.-40 further stated that member of Haseri (mob) were tried to be disbursed for about one



and half hour and thereafter, C.O. Sahab (Jagannath Ravidas appellant in Cr. Appeal DB No. 279/1989), at about 1:00 PM arrived with his armed force on a jeep. He stated that Mahendra Rai, Mukhiya (Appellant no. 2) also got down from the said jeep and he stayed on the road itself. C.O. Sahab (Jagannath Ravidas) with his force entered into *aangan* (courtyard) of P.W.-40 and enquired as to who had fired. P.W.-40 replied that his son-in-law had fired, which was reiterated by his son-in-law also. Thereafter, C.O. Sahab (Jagannath Ravidas) asked his son-in-law to hand over the gun, on which, his son-in-law said that he will not give the gun, since there was danger on their life and he refused to hand over the gun, on which, C.O. Sahab (Jagannath Ravidas) terrorized and snatched the gun from his hand. He also snatched revolver from possession of his son-in-law. After taking gun and revolver, C.O. Sahab (Jagannath Ravidas) came out from the courtyard, however; he was followed by P.W.-40 and his other family member up-to the outer door. Sri Chandra Shekhar Choudhary (P.W.-40), in paragraph – 3 of his examination-in-chief, stated that C.O. Sahab (Jagannath Ravidas) after showing the gun to the mob, said that “the thing of which they were afraid has already been taken by me”. After his arrival on the road, C.O. Sahab (Jagannath Ravidas) had some discussion with Mahendra Rai (appellant no.



2). Thereafter, Mahendra Rai exhorted the member of Haseri (mob) and shouted "*maro pito ghar jala do*", on which, the member of the mob started to set his house ablaze. Pritlal Rai (Appellant no. 12) and Surendra Rai were seen by P.W.-40, to the effect that firstly they set fire on the eastern side of his house, thereafter on northern & southern portion of his house. When Surendra Rai and Prit Lal Rai (Appellant no. 12) were igniting the fire, C.O. Sahab (Jagannath Ravidas) left on his jeep. This witness identifying Jagannath Ravidas in dock has said that he was the C.O. Sahab. In paragraph - 4 of his examination-in-chief, P.W.-40 has further stated that his house was completely set on fire and thereafter, with a view to save their life, he and his entire family members rushed towards northern side of his house, whereupon, the member of Haseri (mob) started to throw stones and as such, they returned back and tried to flee away to the southern field. In the field, which was on southern side, member of Haseri (mob) surrounded P.W.-40 and his family members and started to assault them. His son-in-law Indradeo Jyoti (deceased) was assaulted by Mahendra Rai (Appellant no. 2) and Siya Ram Rai (Appellant no. 7) by means of *bhala*. Krishnandan Rai (Appellant no. 5) and Prit Lal Rai (Appellant no. 12) assaulted his grand son-in-law Dr. Indranand Mishra (deceased) by means of *farsa*. His



grand son-in-law Dr. Indranand Mishra was assaulted by Methur Rai (Appellant no. 3) and Surendra Rai (died during trial) by means of *farsa*, Mita Ram Rai (Appellant no. 8) by means of *garasa*, Jagrit Rai (Appellant no. 4) & Ramashish Rai (Appellant no. 15) by means of *bhala* assaulted his son Braj Bhushan Choudhary (deceased) and Ravi Bhushan Choudhary (deceased) was assaulted by Krishnandan Rai (Appellant no. 5). Siya Ram Rai (Appellant no. 7) and Methur Rai (Appellant no. 3) by means of *farsa*, whereas, Ram Ekbal Rai (Appellant no. 11), Siya Ram Rai (Appellant no. 7) and Ganesh Rai (Appellant no. 9) assaulted by means of *bhala* and Shiv Shankar Rai (Appellant no. 1) assaulted by *lathi*. P.W.-40 further stated that his grand son (nati) Anil Kumar Jha (deceased) was assaulted by Ram Lal Rai (Appellant no. 10) by means of *farsa*, Ram Udhar Rai (Appellant no. 6) by *garasa*, Panchan Rai @ Ram Prabhanjan Rai (Appellant no. 14) by *kudal* (spade), Ramadhar Rai (Appellant no. 21) by means of *gupti*, which he explained that *gupti* is also known as *bhala*. In paragraph - 5 of his examination-in-chief, P.W.-40 has further stated that in the said occurrence, due to said assault, (1) Mahanth Ji, (2) Dr. Indranand Mishra, (3) Braj Bhushan Choudhary and (4) Ravi Bhushan Choudhary died at the place of occurrence itself, whereas, Anil Kumar Jha died in Patna Hospital. He further stated



that besides aforesaid five persons, his wife Maheshwari Devi (P.W.-38), daughter Saraswati Devi (P.W.-5), daughter-in-law Uma Devi (P.W.-35), Rita Choudhary (P.W.37) and grand daughter (natini) Usha Mishra (P.W.-4) had also received grievous injury. He stated that besides them, other family members had also received injuries. He categorically stated that he had seen the occurrence. He had seen in the "*maarpit*" besides afore-referred accused persons, Shiva Chandra Rai (Appellant no. 43), Jogi Rai (Appellant no. 28, died), Upendra Rai (Appellant no. 29, died), Sahdeo Rai (acquitted), Chandradeo Rai (Appellant no. 30, died), Bujhawan Rai (Appellant no. 32), Rijhan Rai (acquitted), Parichhan Rai (Appellant no. 16, died), Phekan Rai (Appellant no. 36), Sukh Nandan Rai (Appellant no. 31), Ramanand Rai (Appellant no. 38), Batahu Rai (Appellant no. 17, died), Nagendra Rai (Appellant no. 27, died), Pragash Rai (Appellant no. 18, died), Ishwari Rai (Appellant no. 22, died), Lakshmi Rai (Appellant no. 23, died), Jugut Lal Rai @ Nirmal Rai (Appellant no. 45), Kapildeo Rai (Appellant no. 20), Ram Binay Rai (Appellant no. 13), Garbhu Rai (Appellant no. 42), Subudh Lal Rai (Appellant no. 39), Ramhit Rai (Appellant no. 40), Siya Saran Rai (Appellant no. 24), Kanhai Rai (Appellant no. 46), Pragash Rai (Appellant no. 18, died), and Saukhi Rai (Appellant no. 35, died). P.W.-40 has further stated



that he was assaulted by Awadhesh Rai (acquitted), Fekan Rai (Appellant no. 36) and Parichhan Rai (Appellant no. 16, died) and in the occurrence, due to assault, his both hands had fractured and he also received grievous injuries on his head. He disclosed that near his village, there is one another village namely Kalyani and he fled towards Kalyani village and when he reached Kalyani village, villagers of the said village namely Moti Lal Singh and Binda Singh threatened the accused persons, who were chasing him and thereafter, the accused persons returned back. He remained in Kalyani village and after one hour, he heard that in school, police force had arrived and thereafter, he also reached to the school, where he saw dead-body of four persons and other injured members. He stated that police carried him and other injured person to Gayghat Hospital for primary medical aid and thereafter, they were carried to Muzaffarpur Hospital. In paragraph – 8 of his examination-in-chief, he has explained about the reason for occurrence. He stated that on 29-03-1983, before the occurrence at about 9:00 AM, his son and nephew had gone to boring place for the pumping set, which they were carrying. P.W.-40 also went to the boring and on way, near the orchard of Jayweer Jha (PW-10), he met his son and nephew. His pattidar and son-in-law also arrived there. He stated that Surendra Rai,



Prit Lal Rai (Appellant no. 12, died), Methur Rai (Appellant no. 3, died), Ramashish Rai (Appellant no. 15), and Umesh Rai surrounded him and asked him to withdraw the criminal case, which was in relation to loot of *khesari* crop, which was refused by P.W.-40, whereupon, Surendra Rai by using filthy language said that P.W.-40 may not agree in this manner and thereafter, he gave a *lathi* blow on the head of P.W.-40 (Chandra Shekhar Choudhary). Prit Lal Rai (Appellant no. 12, died) tried to stab his son-in-law by a knife, however; his son-in-law moved and the knife hit Umesh Rai. Thereafter, P.W.-40 returned to his house alongwith pumping set. He stated that in Muzaffarpur Hospital, he came to know that his pumping set was already stolen. He confirmed that his statement was recorded by the learned Magistrate. He further explained that two witnesses namely Kaleshwar Rai and Uday Chandra Jha had entered into an agreement with the accused persons and one witness Satrugan Jha had lost his mental balance. Regarding witness Hardeo Choudhary, he stated that he was on death bed and one witness Krishnachandra Jha was living in Keral. In his cross-examination, in paragraph – 9, P.W.40 has stated that prior to the occurrence, from his side, two criminal cases were going on against the accused persons and clarified that on the date of occurrence the



accused persons had asked him to withdraw the criminal case relating to loot of *khesari*. He further stated that the case relating to loot of *khesari* was instituted by him in the month of January, 1982 and 4-5 months prior to the date of occurrence in the present case, the accused persons had threatened him and asked him to withdraw the criminal case relating to loot of *khesari*. In paragraph – 3 of his cross-examination, he has stated that his son-in-law was present near Prit Lal Rai (Appellant no. 12), on whom, Prit Lal Rai had charged with knife, which hit Umesh Rai and thereafter, the injured Umesh Rai had gone on foot with other Yadavas. He categorically stated that he had never said before the police that Umesh Rai was carried by way of lifting. He further denied in paragraph – 14 of his cross-examination that on the date of occurrence, no dispute arose in between the prosecution side and accused persons regarding the pumping set. He had denied the suggestion given by the Defence side that said pump set was running on partnership. In paragraph – 25 of his cross-examination, he has stated that after hearing sound of firing by a gun from the side of Basic School, some Haseri (mob), who were on northern side, stepped away towards southern side and some fled away towards eastern side. He stated that he was chased by 3-4 accused persons and also again reiterated the name of other



accused persons. This witness was cross-examined at length and on perusal of his cross-examination also, it is evident that this witness had categorically stated regarding participation of all the accused persons. In paragraph – 28 of his cross-examination, he has further clarified about the name of accused persons, who participated in the occurrence and also the fact regarding death of five persons and injury received by other family members. On perusal of the evidence of P.W.40 and also his cross-examination, which continued on several dates, it appears that defence has virtually failed to extract anything from him to create any doubt on his evidence, rather on perusal of the cross-examination, it appears that lacuna, which was left in his examination-in-chief, was got filled-up by way of cross-examination from the defence side.

29. **P.W.-2** namely Tej Narain Choudhary is also one of the eye-witness to the occurrence and he is the person, on whose field main occurrence had taken place, in which, five persons were done to death. The field of Tej Narayan Choudhary was just near to the house of the Chandra Shekhar Choudhary (P.W.40). The informant (Tej Narain Choudhary) was examined as P.W.-2 and he stated in his examination-in-chief that 29-03-1983 was the date of festival Holi and on that day, at about 10 AM, he had gone to



attend natural call. His cousin brother Braj Bhushan Choudhary (deceased), Lalan Choudhary @ Ravi Bhushan Choudhary (deceased), Krishnadeo Choudhary (PW-22) were carrying the pump set from the boring. While he had moved for some distance with the pumping set, Ramashish Rai (Appellant no. 15), Umesh Rai, Methur Rai (Appellant no. 3, died), Jagrit Rai (Appellant no. 4, died) and Ram Prit Rai stopped. His uncle Chandra Shekhar Choudhary also arrived there and he also reached there. He stated that Mahanth Ji had also come. Methur Rai and Ram Prit Rai were asking Chandra Shekhar Choudhary to enter into compromise in a case. The case was in relation to loot of *khesari* from the field of Chandra Shekhar Choudhary. Chandra Shekhar Choudhary refused for compromise, thereafter, altercation took place. In the meanwhile, someone assaulted Chandra Shekhar Choudhary by *lathi*. In the meanwhile, Ramprit Rai tried to stab Mahanth Ji, but Mahanth Ji slipped away, however, the said knife hit Umesh Rai. Chandra Shekhar Choudhary (PW-40) and other took away their pumping set, thereafter, P.W.-2 returned to his house. After about an hour, Haseri (mob) started assembling. Villagers of Kodai, Piraudha, Misrauli, Kalyani armed with *lathi, bhala, garasa, farsa* etc. started assembling. Sub-Inspector of Police of Kodai police station and Block Development Officer with armed forces arrived



there. The member of Haseri (mob) had surrounded the house of Chandra Shekhar Choudhary. Police Officer and BDO tried to convince the Yadava people. After some time, the Circle Officer with police force arrived. This witness, after seeing Jagannath Ravidar in dock, said that he was the Anchaladhikari. Immediately thereafter, Harendra Rai @ Mahendra Rai (Appellant no. 2) also arrived. The accused persons put fire on heap of straw, which was lying near the door of Dhanurdhar Choudhary. In the meanwhile, Mahanth Ji (son-in-law of Chandra Shekhar Choudhary) fired in air. Thereafter, Anchaladhikari (Jagannath Ravidas) snatched the gun from the hand of Mahanth Ji and showing said gun to the member of Haseri, Circle officer left the place by a jeep alongwith his force. Immediately after Anchaladhikari (Jagannath Ravidas) left the place, Mahendra Rai @ Harendra Narain Singh exhorted for igniting fire. Thereafter, Methur Rai (Appellant no. 3), Ramprit Rai @ Pritlal Rai (Appellant no. 12), Jagrit Rai (Appellant no. 4), Mita Ram Rai (Appellant no. 8), Siyaram Rai (Appellant no. 7), Siya Saran Rai (Appellant no. 24), and Krishnandan Rai (Appellant no. 5) set the house of Chandra Shekhar Choudhary (PW-40) on fire. They burnt *kharhi* (tall grass) and threw fire inside the house of Chandra Shekhar Choudhary. After the house of Chandra Shekhar Choudhary was set on fire, the family members of the house came



out and tried to flee towards northern side, from which side, accused started throwing stones. Thereafter, all the members fled towards southern side. When they reached southern area, member of Haseri (mob) started assaulting them. In the said assault, five persons received serious and grievous injury and out of five, four died. Braj Bhushan Choudhary, Lalan Choudhary @ Ravi Bhushan Choudhary, Mahanth Ji and son-in-law of Mahanth Ji (Dr. Indranand Jha) died instantaneously. Injured Anil Jha died subsequently in Patna Hospital. Anil Jha was son of Mahanth Ji. He also stated that to celebrate appointment of his nephew, as Lecturer, a puja was organized in the house of Chandra Shekhar Choudhary, in which, all the aforesaid relatives had assembled. In paragraph 5 of his examination-in-chief, P.W.-2 has stated that member of Gohar (mob) at the time of occurrence had also looted articles of the house of Chandra Shekhar Choudhary and also snatched ornaments, which female members of family were wearing. He stated that due to fire, the house of Chandra Shekhar Choudhary had been reduced to ashes. He stated that occurrence was seen by Ramkant Jha, Umakant Choudhary, Raj Kumar Jha (P.W.20), Shobha Kant Jha (P.W.3), Nagendra Jha (P.W.36), Devendra Jha (P.W.25), Jayweer Jha (P.W.10) and others. He stated that Ramakant Jha and Umakant Jha had already died. He



further stated that in the Haseri (Mob), he had seen Mahendra Rai @ Harendra Narain Singh (Appellant no. 2), Batahu Rai (Appellant no. 17, died), Nagendra Rai (Appellant no. 27, died), Surendra Rai, Methur Rai (Appellant no. 3, died), Jagrit Rai, S/o Mahatab Rai (Appellant no. 4, died), Shiv Shankar Rai (Appellant no. 1, died), Pritlal Rai (Appellant no. 12, died), Jogi Rai (Appellant no. 28, died), Upendra Rai (Appellant no. 29, died), Sukhdeo Rai (Appellant no. 44, died), Chandradeo Rai (Appellant no. 30, died), Bujhwan Rai (Appellant no. 32), Krishnandan Rai (Appellant no. 5), Ram Singar Rai (Appellant no. 33), Parichhan Rai (Appellant no. 16, died), Prem Rai S/o Bhawne Rai (Appellant no. 19, died), Ram Udhar Rai (Appellant no. 6), Ram Binay Rai (Appellant no. 13), Nand Kishore Rai (Appellant no. 41), Kapildeo Rai S/o Prem Rai (Appellant no. 20), Lakshmi Rai (Appellant no. 23, died), Jugut Lal Rai @ Nirmal Rai (Appellant no. 45), Ishwar Rai (Appellant no. 22, died), Ram Ekbal Rai (Appellant no. 11), Prem Rai (Appellant no. 19, died), Ram Lal Rai (Appellant no. 10), Panchan Rai (Appellant no. 14), Ramashish Rai (Appellant no. 15), Dhanukhi Rai (name expunged on 19-09-86 during trial), Siya Ram Rai (Appellant no. 7, died), Siya Saran Rai (Appellant no. 24), Sukhnandan Rai (Appellant no. 31), Shiv Chandra Rai (Appellant no. 43), Garbhu Rai (Appellant no. 42), Ganesh Rai S/o Charittar Rai (Appellant



no. 9), Subudh Lal Rai (Appellant no. 39), Ramadhar Rai (Appellant no. 21), Mita Ram Rai (Appellant no. 8), Kapildeo Rai S/o Sukhan Rai (Appellant no. 26) and some others, whom he recognizes by face, but he was not remembering their name. He also identified all the accused persons, who were present in court and claimed to identify the accused persons, who were on representation. The defence waived their identification. P.W.-2 further stated that after the occurrence, injured persons were brought to the Gaighat Hospital at about 5:00 PM, Police Inspector arrived and he recorded his fardbeyan and he proved the fardbeyan, which was got marked as Ext. - 2. In paragraph - 9, P.W.-2 has further reiterated that Umesh Rai had received knife injury, which was given by Ramprit Rai @ Pritlal Rai (Appellant no. 12). He further reiterated in the same paragraph that within an hour, Umesh Rai had received knife injury, about 5-6 thousand Yadavas had assembled and member of Gohar (mob) had surrounded the house of Chandra Shekhar Choudhary (PW-40). In paragraph 10, P.W.-2 has further stated that member of Haseri (mob) were exhorting "*pakro maro*". He has clarified in paragraph - 11 that in assembling of member of Haseri (mob), putting fire, loot and assault, about 2-3 hours were consumed. This witness in paragraph - 15 has stated that he was conversant with the



Anchaladhikari (C.O.Sahab) even since before the occurrence. He stated that when Anchaladhikari Sahab had left, the accused persons had ignited the fire. On examination of his evidence and cross-examination, it is evident that nothing could be extracted to create any doubt on the evidence of P.W.-2.

30. **P.W.-3** Shobha Kant Jha is the resident of the same village i.e. Jamalpur Kodai. He in his examination-in-chief has stated that his house was on the northern side of the house of Chandra Shekhar Choudhary (P.W.-40). In between their houses, there was vacant land. On the date of occurrence at about 10-11 AM, he heard *hullah* and thereafter, he came out from his house and saw that about thousands of people had surrounded the house of Chandra Shekhar Choudhary. They were carrying *lathi, bhala, garasa, farsa, kudal* (spade) etc. In the straw of Dhanurdhar Choudhary, they put fire. After the fire was ignited in the heap of straw of Dhanurdhar Choudhary, Mahanth Ji fired from his gun in air. B.D.O. and Sub-Inspector of Police thereafter arrived and subsequently, the Circle Officer came with armed forces. P.W.-3 further stated that Anchaladhikari/C.O.Sahab (Jagannath Ravidas) took the gun from Mahanthji and showing the gun to the mob, he left the place. After the Circle Officer (Jagannath Ravidas) left, Mahendra Rai (Appellant no. 2) exhorted that "*Aag laga do maro*



pito loot lo". On his order, Methur Rai (Appellant no. 3), Rampriti Rai (Appellant no.12), Sukh Nandan Rai (Appellant no. 31), Krishnandan Rai (Appellant no.5), Sitaram Rai (Appellant no. 47), Mita Ram Rai (Appellant no.8) pushed the bundle of *kharhi* (tall grass) and ignited the *kharhi*, due to which, the house of Chandra Shekhar Choudhary (P.W.-40) was set on fire. After flame of fire started, Chandra Shekhar Choudhary and his family members came out from their house to northern place. The members of Gohar (mob) of northern area started throwing stones. Thereafter, they fled towards southern area and subsequently, family members of Chandra Shekhar Choudhary were assaulted in the southern area by means of *lathi, bhala garasa, farsa* etc. In the occurrence, Mahanth Ji, son-in-law of Mahanth Ji i.e. Doctor sahab, two sons of Chandra Shekhar Choudhary died at the place of occurrence itself. Son of Mahanth Ji died in Patna Hospital. He further stated that daughter of Chandra Shekhar Choudhary, daughter-in-law, grand daughters (natini), nephew, grand sons (nati) etc. were also assaulted and given grievous injury by the member of Gohar (mob). P.W.-3 further stated that member of Gohar (mob) also looted articles from the house of Chandra Shekhar Choudhary. They snatched ornaments from the person of their family. He categorically stated that in Gohar (mob), he



identified Mahendra Rai (Appellant no. 2), Surendra Rai (since died), Ramanand Rai (Appellant no. 38), Methur Rai (Appellant no. 3, died), Jagrit Rai (Appellant no. 4, died), Shiv Shankar Rai (Appellant no. 1, died), Pritlal Rai (Appellant no. 12, died), Jogi Rai (Appellant no. 28, died), Krishnandan Rai (Appellant no. 5), Sukhnandan Rai (Appellant no. 31), Mita Ram Rai (Appellant no. 8), Ram Lal Rai (Appellant no. 10), Siya Ram Rai (Appellant no. 7, died), Siya Saran Rai (Appellant no. 24), Panchan Rai (Appellant no. 14), Subudh Lal Rai (Appellant no. 39), Ganesh Rai S/o Charitar Rai (Appellant no. 9) and Ram Udar Rai (Appellant no. 6), son of Yogi Rai, whose name at that time P.W.-3 could not recollect, Saukhi Rai (Appellant no. 35) and others. He further stated that he had also identified some more persons, but at the time of deposition, he was not recollecting their name. He had not seen one another Ganesh Rai S/o Bindi Rai. He claimed that he identified Awadhesh Rai (acquitted) and also Ram Ekbal Rai (Appellant no. 11) and Ishwar Rai (Appellant no. 22, died). He identified those persons in the dock also. In paragraph - 3 he stated that entire house of Chandra Shekhar Choudhary (PW-40) due to fire had been turned to ashes. He is also witness to the seizure list in respect of ashes of straw seized from outside the house of Dhanurdhar Choudhary and in his presence, one Raj



Kumar has also put his signature. He identified his signature, which was marked as Ext. 3 and signature of Raj Kumar Jha on the said seizure list, which was marked as Ext. 3/1. He also claims that he had identified Anchaladhikari (Jagannath Ravidas), however; since after lapse of three years, he was not in a position to identify him in dock. In his cross-examination, in paragraph 5, he reiterated that Anchaladhikar Mahodaya (Jagannath Ravidas) had taken gun from the hand of Mahanth Ji and he had shown the gun to the members of Gohar and thereafter he came to his jeep and left. He claimed that he had identified 34 persons as members of Gohar (mob).

31. **P.W.-4** Usha Mishra is the wife of deceased Dr. Indranand Mishra. She stated that on 28-03-1983, she had come to the village of her husband with him. She in paragraph – 2 made specific statement that Anchaladhikari Sahab (Jagannath Ravidas) had asked her father to hand over gun whereupon her father refused to hand over gun with an explanation that there was danger on his life, but Jagannath Ravidas forcibly took the gun from his hand and thereafter, asked him as to whether besides gun, he was having any other fire-arm. Thereafter, her father said that he was also having one revolver. Jagannath Ravidas also took revolver from her father Mahanth Ji (Indradeo Jyoti) and



thereafter, carrying gun and revolver, he went from the house showing arms to the members of Gohar and Circle Officer further stated that "*Jiska darr tumlogo ko tha ushe maine le liya*". P.W.-4 has further stated that at that very time, the Block Development Officer had told the Circle Officer not to take the gun since, they were in danger, but Anchaladhikari did not listen. This witness has also identified Jagannath Ravidas in dock. In paragraph - 3 she has stated that after the Anchaladhikari (Jagannath Ravidas) left, the accused persons set the house of her grand father i.e. nana (Chandra Shekhar Choudhary) on fire. After the flame of fire spread, to save themselves, she alongwith family members came out from the house towards northern area. Thereafter, member of Gohar (mob) started pelting stones, on which they again returned back to the *Aangan* (courtyard) and from southern area, they came out from the courtyard. Thereafter, in the southern area, all the accused persons started assaulting. She stated that in the said occurrence, her father Mahanth Indradeo Jyoti, her husband Dr. Indranand Mishra, her two maternal uncle (mama) Braj Bhushan Choudhary and Ravi Bhushan Choudhary died on the spot. Due to such assault, her younger brother Anil Kumar Jha had received serious grievous injury. Subsequently, he died in Patna Medical College & Hospital. She further stated that besides her, other



family members were also assaulted by member of Gohar (mob). She stated that from her possession, one of the accused had forcibly took her *attaichi*, in which, she had kept ornaments of about Rupees one & half lacs. She has stated that her statement was got recorded by the learned Magistrate. In cross-examination, she reiterated that after some time, Sub-Inspector of Police, Block Development Officer and the Circle Officer had come with armed forces. The Circle Officer stayed for about 5-7 minutes and he went alongwith his armed forces. P.W.-4 in paragraph - 4 of her cross-examination has further stated that some time after Anchaladhikari Sahab (Jagannath Ravidas) had left, she had seen the flame of fire. She had answered the question put by the court that she had seen the flame of fire within four & five minutes after the Anchaladhikari had left. She further replied to the question of counsel for the defence that till the time she could tolerate the heat, they remained in courtyard. In her further cross-examination, she had further clarified and given specific picture of the occurrence and stated that in the evening on the date of occurrence, the Circle Officer (Jagannath Ravidas) was seen near the house of her grand father (Chandra Shekhar Choudhary) and at that very time, there were number of armed forces and inspector had also arrived. This witness i.e. P.W.-4 (Usha Mishra)



had also received injuries, which was examined by the doctor.

32. **P.W.-5** Saraswati Devi is the widow of Mahanth Indradeo Jyoti, who was killed in the occurrence. She in paragraph 2, in her examination-in-chief, has reiterated that on the date of occurrence i.e. on 29-03-1983 at about 11 :00 AM, about 3-4 thousand people had surrounded the house of her father (Chandra Shekhar Choudhary). She stated that the accused persons had ignited the heap of straw of her uncle Dhanurdhar Choudhary, which was ignited by Prit Lal Rai (Appellant no. 12). Thereafter, her husband fired in air. Soon thereafter, she saw B.D.O. Sahab and Daroga Ji. She stated that members of Gohar (mob) were carrying *bhala*, *garasa*, *farsa*, *lathi* and *kudal* (spade). She stated that after hearing sound of firing, the member of Gohar (mob) had retreated and thereafter, Anchaladhikari Sahab (Jagannath Ravidas) alongwith armed forces arrived and asked as to who has fired from gun. Her husband replied that he had fired. Thereafter, Jagannath Ravidas (C.O.Sahab) asked for the gun, which was refused and it was explained that the gun was for his safety. However, gun was forcibly taken by the Anchaladhikari Sahab (Jagannath Ravidas) and Jagannath Ravidas further asked her husband as to whether he was having any other arm and after knowing that her husband was having one revolver, the Circle



Officer also snatched revolver and asked them to remain inside the house. This witness stated that at that very time, Circle Officer had said that he had come for their safety and after taking gun and revolver, he, while showing those arms, left and told the members of Gohar (mob) that “*Jis chij ka darr tum logo ko tha ushe hum le liye hain*” and he came out from the courtyard. By way of identifying Jagannath Ravidas (appellant in Cr. App. DB No. 279/89), she said that he was the Anchaladhikari in dock itself. After the Anchaladhikari left, the member of Gohar (mob) ignited the house of her father and thereafter, to save their life, they came out from the house and moved towards northern side, on which, Yadava people started pelting stones. This witness has stated that after stone pelting started, they returned back to *Aangan* (courtyard) and left towards southern side of the field, where member of Gohar (mob) started assaulting. She stated that in the Gohar (mob), she saw Methur Rai (Appellant no. 3, died), Prit Lal Rai (Appellant no. 12, died), Mahendra Rai (Appellant no. 2), Ramashish Rai (Appellant no. 15), Ram Ekbal Rai (Appellant no. 11), Bujhawan Rai (Appellant no. 32), Ram Singar Rai (Appellant no. 33), Prem Rai (Appellant no. 25, died), Siya Ram Rai (Appellant no. 7, died) by their name and face. She further claims that she can identify others by face, but at the time of deposition,



she was not knowing their name. She further claims that she identified Methur Rai (Appellant No. 3, died) and Ram Prit Rai (Appellant no. 12, died) in assaulting her husband. She claimed that both had assaulted her husband by means of *farsa*. She stated that her husband was also assaulted by means of *bhala, lathi, kudal* etc., but she was not in a position to specifically name those persons. She stated that her husband and her son-in-law Dr. Indranand Mishra, brother Braj Bhushan Choudhary & Ravi Bhushan Choudhary died at the place of occurrence itself. She said that her son Anil Kumar Jha had received serious grievous injuries, however; he died in Patna Hospital. She further stated that she and her other family members were also assaulted by the member of Gohar (mob) in the said occurrence, her hand was fractured and she had also received injuries on her head. Even showing her hand to the learned Trial Judge she explained regarding injury. She stated that to save her husband, she had fallen on the body of her husband and at that very time, she had received injuries. She categorically stated that Saukhi Rai (Appellant no. 35, died) had given *lathi* blow, due to which, her hand was broken and she remained in hospital for one and half months. She reiterated that from the hand of her daughter Usha Mishra (P.W.4), accused Methur Rai (Appellant No. 3, died) had



snatched the *Attaichi*. In cross-examination, in paragraph – 5, she had stated that she was in the visiting term to the house of the accused persons, whose names she had disclosed as participants. In paragraph – 5 of her cross-examination, she stated that gun and revolver were of her husband and he had obtained licence for the same. She stated that said licence was kept in a motorcycle, which had been reduced to ashes due to fire. This witness was also cross-examined at length, but nothing could be extracted to create any doubt on her evidence.

33. **P.W.-6** (Langat Singh) was Dafadar and he is witness to the 1st occurrence as well as 2nd occurrence. 1st occurrence is in relation to assault, while the prosecution side were carrying pump set from the boring. In his examination-in-chief, he has stated that three years back, on the eve of Holi, duty was assigned to him as well as Dafadar Ram Vachan and Sitaram Paswan to remain in village Kodai. He reached at about 10:00 AM near the pump set, where quarrel was going on. He stated that Krishnadeo Choudhary, Braj Bhushan Choudhary were carryng pump set, whereas, Prit Lal Rai (Appellant no.12), Methur Rai (Appellant no. 3), Ganesh Rai (Appellant no. 9), Umesh Rai and Ramashish Rai (Appellant no. 15), were stopping them. In the meanwhile, Chandra Shekhar Choudhary (PW 40) also arrived while this



witness was having discussion with Methur Rai (Appellant no. 3, died), Pritlal Rai (Appellant no.12) tried to stab Mahanth Ji, but Mahanth Ji moved and the knife hit Umesh Rai and he fell down. Thereafter, Choudhary people left the place with the pumping set and Yadava people carried Umesh Rai. After an hour, Yadava people assembled near the house of Dhanurdhar Choudhary, which was adjacent to the house of Chandra Shekhar Choudhary. About one thousand Yadava people had assembled and thereafter, they put fire on the heap of straw of Dhanurdhar Choudhary. Thereafter, the wife of Dhanurdhar Choudhary was assaulted by Yadava people. They also assaulted her Samadhi and others. Thereafter, Mahanth Ji fired in air. After hearing firing sound, the Yadava people retreated. Subsequently, Daroga (Sub-Inspection of Police) and B.D.O. with armed forces arrived there and started keeping vigilance near the house of Chandra Shekhar Choudhary (PW-40). In the meanwhile, number of Yadava people arrived and the mob reached to the extent of five thousand to six thousand. The mob had assembled to some distance away from the house of Chandra Shekhar Choudhary. He stated that Daroga Ji and B.D.O. Sahab were trying to disperse the mob. In the meanwhile, Anchaladhikari Sahab (Jagannath Ravidas) with armed forces arrived on a jeep and thereafter, he entered into the



courtyard of Chandra Shekhar Choudhary and forcibly snatched gun from Mahanth Ji though, Mahanth Ji was refusing to hand over the gun and he was saying that he had kept the gun for his safety. However, Anchaladhikari Sahab (Jagannath Ravidas) told that they had come for their safety and after taking gun from Mahanth Ji, he left the place. Thereafter, Mahendra Mukhiya (Appellant no. 2) and member of Gohar (mob) proceeded forward. This witness (Dafadar) in paragraph - 3 of his statement in examination in chief has further stated that Anchaladhikari Sahab (Jagannath Ravidas) said something slowly to Mahendra Mukhiya (Appellant no. 2) and thereafter, he had shown the gun to the member of Gohar (mob) and left the place. This witness also identified the Circle Officer (Jagannath Ravidas) in dock. He further stated that Anchaladhikari Sahab (Jagannath Ravidas) had also said that "*Jiska dar tha usko hum liye ja rahe hain*". After the Anchaladhikari Sahab (Jagannath Ravidas) left, Mahendra Rai (Appellant no. 2) exhorted the member of Gohar and told "*chalo aag fuko aur maro*". He claims to have identified the accused persons igniting fire, who were Pritlal Rai (Appellant no. 12, died), Ramashish Rai (Appellant no. 15) and Surendra Rai. After the house of Chandra Shekhar Choudhary was set ablaze, family members of Chandra Shekhar Choudhary started fleeing away towards the northern



side, whereupon member of Gohar (mob) started pelting stones and family members of Chandra Shekhar Choudhary again returned to their *Aangan* (courtyard) and from southern area, they again left the house. After they went to the southern field, the member of Gohar started assaulting. He further stated that Sub-Inspector of Police and Block Development Officer went towards the school. In paragraph - 5, he stated that Mita Ram Rai (Appellant no. 8), Siyaram Rai (Appellant no. 7, died), Siya Saran Rai (Appellant no. 24) assaulted Chandra Shekhar Choudhary by means of *lathi* and member of Gohar assaulted family members of Chandra Shekhar Choudahry (PW 40) and others. After the member of Gohar left the place, he saw the dead body of Mahanthji, son-in-law of Mahanthji, Braj Bhushan Choudhary and Lalan Choudhary (both sons of PW 40). He stated that grand son of Chandra Shekhar Choudhary (nati) Anil Jha had received severe grievous injury, who subsequently died. He stated that female member and children of Chandra Shekhar Choudhary had also received serious injuries. He claimed to identify Mahendra Rai (Appellant no. 2), Surendra Rai, Methur Rai (Appellant no. 3, died), Jagrit Rai (Appellant no. 4, died), Shiv Shankar Rai (Appellant no. 1, died), Pritlal Rai (Appellant no. 12, died), Yogi Rai (Appellant no. 28, died), Sukhnandan Rai (Appellant no. 31),



Krishnandan Rai (Appellant no. 5), Siyaram Rai (Appellant no. 7 , died), Siya Saran Rai (Appellant no. 24), Ganesh Rai (Appellant no. 9), Subodh Lal Rai (Appellant no. 39), Ramudar Rai (Appellant no. 6), son of Yogi Rai, Saukhi Rai (Appellant no. 35 , died), Ramashish Rai (Appellant no. 15), Chandradeo Rai (Appellant no. 30 , died), Kapildeo Rai (Appellant no. 20) and one another Kapildeo Rai (Appellant no. 26), Ram Binay Rai (Appellant no. 13) S/o Prem Rai and Others to be member of Gohar. He also claimed that he had seen them in participating in "*maarpit*". He claimed that at the time of occurrence, Mahendra Rai, Ganesh Rai, Jagrit Rai were carrying *bhala*, Pritlal Rai and Methur Rai were carrying *farsa* in their hands. In paragraph - 6 of his cross-examination, he has stated that in village Kodai often occurrence had taken place on the Holi festival and this was the reason that he alongwith two Choukidars were deputed on the eve on Holi in village Kodai. He stated that on earlier Holi in the village Kodai also, some occurrence had taken place, in which, Yadava people had misbehaved with daughter of one Ram Karan Jha and this was the reason that there was tension in the village. In paragraph 9 of his cross-examination, he had clarified that since Mahanth Ji was in possession of a gun, Yadava people were not daring to come near the house of Chandra Shekhar Choudhary. In paragraph 10 of his



cross-examination, he has stated that on north-eastern area at about 150-200 laghi, there was a school from where 5-7 firing was made, as per the order of B.D.O. He has stated that B.D.O. had also received injuries in the occurrence. He also stated that while Chandra Shekhar Choudhary was fleeing away, he was chased by member of Gohar, who were present on the eastern side and they chased Chandra Shekhar Choudhary upto the village Kalyani. After firing was made, as per the order of the B.D.O. from the school side, the mob dispersed completely and again at about 6-7 PM Anchaladhikari Sahab (Jagannath Ravidas) alongwith Superintendent of Police had come near the dead body.

34. **P.W.-8** Ram Bahadur Paswan was the Chowkidar, who was on duty in village Kodai alongwith Dafadar Langat Singh (P.W.-6) and one another Choukidar Sitaram Paswan (**P.W.-9**), who was tendered. He has also stated almost in similar manner as has been deposed by P.W.-6 (Langat Singh) and as such, there is no need to further reiterate his evidence. He has further stated that at the time of occurrence Mahendra Rai (Appellant No. 2) was carrying *bhala*, Pritlal Rai (Appellant No.12) and Methur Rai (Appellant no.3) were having *farsa* in their hands, Siyaram Rai (Appellant no. 7, died), was having *bhala* and Krishnandan Rai (Appellant no. 5) was having *farsa* in his and other members of



Gohar (mob) were also carrying some weapons. This witness has also reiterated that when Anchaladhikari (Jagannath Ravidas) came out after taking gun from house of Mahanth Ji, Jagannath Ravidas had some discussion with Mahendra Mukhiya (Appellant no. 2). This witness was also cross-examined at length, but in his cross-examination, instead of creating any doubt, some more facts were disclosed showing implication of accused persons.

35. **P.W.-10** Jayweer Jha is also one of the eye-witness and resident of village Kodai. In his examination-in-chief, he has stated that on 29-03-1983 at about 11:00 AM, he was in his house. He stated that his door is near south-western side of house of Chandra Shekhar Choudhary and stated that at that very time, Yadava peoples were assembling carrying *lathi, bhala, farsa, kudal, garasa* etc. At about 11:00 AM, there was mob of about 100 Yadavas, who had set ablaze the heap of straw lying near the door of Dhanurdhar Choudhary. Thereafter, the widow of Dhanurdhar Choudhary asked them as to why they were doing so, on which, the accused persons assaulted her and son of her Samadhi. He stated that at that very time about 150-200 Yadavas had already assembled and at that very time, he heard firing from gun from the courtyard of Chandra Shekhar Choudhary. After hearing sound of gun firing, the mob had dispersed, but after retreating



back, again the number in mob started increasing and thousands of persons assembled there. At about 1:00 PM, Anchaladhikari Sahab (Jagannath Ravidas) arrived with armed forces. Anchaladhikari entered into the house of Chandra Shekhar Choudhary and came out from his house carrying a gun. The Anchaladhikari had shown the gun to the member of Gohar (mob). When Anchaladhikari (Jagannath Ravidas) came out with gun from the house of Chandra Shekhar Choudhary, there was some conversation in between Anchaladhikari (Jagannath Ravidas) and Mukhiya Mahendra Rai (Appellant no. 2). Thereafter, Anchaladhikari left the place with his armed forces. After the Anchaladhikari (Jagannath Ravidas) left, the member of Gohar (mob) started to raise "Jayakara" and put the house of Chandra Shekhar Choudhary on fire. This witness further stated that how inmates of Chandra Shekhar Choudhary were intercepted in the southern area and he has further stated that he had seen Mahendra Rai (Appellant no. 2), Pritlal Rai (Appellant no.12 , died), Methur Rai (Appellant no.3, died), Jagrit Rai (Appellant no.4, died), Krishnandan Rai (Appellant no.5), Batahu Rai (Appellant no. 17, died), Saukhi Rai (Appellant no. 35, died), Garbhu Rai (Appellant no. 42), Sukhdeo Rai (Appellant no. 44, died), participating in assault and he further described about



entire occurrence like other witnesses. He reiterated that after hearing sound of gun from the house of Chandra Shekhar Choudhary, number of member of Haseri (mob) increased.

36. **P.W.-12** Parmanand Thakur is a formal witness and he has proved the protest petition, which was marked as Ext. '4'.

37. **P.W.-13** Shyam Sundar Choudhary had also stated like other eye-witnesses and he was also eye-witness to the occurrence.

38. **P.W.-14** is Tripit Jha, resident of village Kodai, and he is independent eye-witness. He has also stated like other eye-witnesses.

39. **P.W.-15** Ram Dayal Singh is the witness from adjacent village of Kodai namely Kalyani. In his examination-in-chief, he has stated that about three years back on the date of Holi festival about 1 or 2 PM, he was near his door. He heard "*hullah*" from southern side of his house and had also seen that number of people were moving and thereafter he also went there. He stated that he went to the northern baandh from the house of Chandra Shekhar Choudhary and village Kodai and saw that house of Chandra Shekhar Choudhary was surrounded by member of Haseri (mob). He had also seen the flame of fire, which was coming from the western side. He had also seen C.O. Sahab



(Jagannath Ravidas) alongwith 4-5 armed personnel and he had come out from the house of Chandra Shekhar Choudhary, carrying gun. He had also seen gun in the hand C.O. Sahab (Jagannath Ravidas). He noticed that family members of Chandra Shekhar Choudhary had come out from the house and went towards northern side and thereafter, the accused persons started stone pelting, then family members of Chandra Shekhar Choudhary moved to southern side from the northern area, where member of Haseri (mob) started assaulting. He stated that some of his villagers had gone to the school side, where Block Development Officer and Sub-Inspector of Police were present. He stated that his villagers requested the B.D.O. and Police officer to open fire and save life, thereafter, on the order of B.D.O., firing was made and member of Haseri dispersed. He stated that at the place of occurrence, four persons died and number of persons had received injuries. He claimed that he had identified in Haseri (mob), Kanhai Yadav of village Harthaul, Mahendra Mukhiya (Appellant no. 2), Pritlal Rai (Appellant no. 12, died) and Methur Rai (Appellant no. 3, died). He stated that Kanhai Rai (Appellant no. 46) was having *bhala* in his hand. He also identified the accused persons in the dock. He categorically stated that he was knowing the C.O. Sahab (Jagannath Ravidas) since prior to the



occurrence. He stated that he had seen the occurrence from the baandh side, which was on northern side of the house of Chandra Shekhar Choudhary.

40. **P.W.-16** Awadhesh Singh of village Kalyani is also one of the eye-witness. He has stated that on the date of occurrence at about 10-11 AM, he was in his house and he heard "hullah". He stated that village Kodai was near 50 *laghi* of his village and *hullah* was coming from village Kodai. Thereafter, he went up-to the door of Chandra Shekhar Choudhary, where he saw that Mahanth Ji was standing with his gun and accused persons were also present carrying weapons. He tried to convince the Yadava, but all his efforts went in vain. He identified Pritlal Rai (Appellant no. 12) igniting straw, which was lying near the house of Dhanurdhar Choudhary. Member of Gohar (mob) also entered into the house of Dhanurdhar Choudhary and assaulted inmates. In the meanwhile, he heard the sound of gun firing. After hearing sound of firing, the Yadava retreated to some extent and assembled on the road side. In the meanwhile, the Block Development Officer and Sub-Inspector of Police with armed forces arrived and tried to disperse the Gohar (mob). In paragraph - 2, he has stated that after about two hours of arrival of Block Development Officer and Sub-Inspector, Anchaladhikari



Sahab (Jagannath Ravidas) alongwith five armed forces arrived and entered into the courtyard of Chandra Shekhar Choudhary. After some time, the Anchaladhikari Sahab, carrying gun in his hand, came out from the court-yard of Chandra Shekhar Choudhary and he talked with Mahendra Rai (Appellant no. 2). After identifying Jagannath Ravidas in dock he said that he was the Anchaladhikari Sahab. When Anchaladhikari (Jagannath Ravidas) went with the gun, Mahendra Rai (Appellant no. 2) exhorted and directed to kill and set the house ablaze. He stated that on the northern and eastern side of the house of Chandra Shekhar Choudhary, there were bundles of *kharhi* (tall grass) and the members of Gohar (mob), after putting those *kharhi* near the house of Chandra Shekhar Choudhary, ignited the same. Thereafter, from all the side, the house of Chandra Shekhar Choudhary started flaming and thereafter, family member of Chandra Shekhar Choudhary came out from the house and moved towards northern side, on which, member of Gohar started stone pelting. The family members thereafter returned and tried to flee away to the southern area. In the southern area Mahendra Rai (Appellant no. 2), Batahu Rai (Appellant no. 17, died), and other member of Gohar started assaulting the member of family of Chandra Shekhar Choudhary. He stated that Mahendra Rai



(Appellant no. 2) and Batahu Rai (Appellant no. 17) were carrying *bhala*. This witness was also cross-examined at length, but nothing could be extracted to draw any doubt on his evidence.

41. **P.W. 17** – Upendra Praswan is also an eye-witness to the occurrence and resident of village Kalyani. He has stated in his examination-in-chief that on the date of occurrence after hearing “*hullah*”, he went near the house of Dhanurdhar Choudhary in village Kodai. He had witnessed that straw was set ablaze near the house of Dhanurdhar Choudhary and Yadava in thousands, carrying *lathi, bhala, garasa* etc. had assembled there. The Block Development Officer was trying to convince them. When he arrived there, after about 10-20 minutes, Anchaladhikari Sahab (Jagannath Ravidas) came alongwith armed force and he entered into the house of Chandra Shekhar Choudhary. After some time, he came out from the house of Chandra Shekhar Choudhary carrying a gun in his hand and he lifted his hand with gun to show the gun to the member of Gohar. He stated that in between house of Chandra Shekhar Choudhary and road, the Anchaladhikari had discussed something with Mahendra Rai for about one and two minutes, thereafter, he alongwith armed forces left. This witness has also stated that he requested the Anchaladhikari (Jagannath Ravidas) that since you have seized the gun, it is your duty to save



the life of Chandra Shekhar Choudhary and his family members. Accordingly, either save them or take them alongwith him, whereupon, the Circle Officer got furious. This witness identifying Jagannath Ravidas in dock, said that he was the Anchaladhikari Sahab. He further stated that while occurrence was going on from the eastern side of the school, he heard the gun firing sound and after the sound of firing, the member of Gohar completely dispersed. Besides this, he has also stated in similar manner like P.W. 15 & 16.

42. **P.W.-18** – Kedar Singh is also an eye-witness and resident of village Kalyani. He has stated that on the date of occurrence at about 11:30 AM or 12:00 noon, he heard the sound of “Jayakara”. Thereafter, he rushed towards the village Kodai near the house of Dhanurdhar Choudhary. He saw that heap of straw was flaming and thousands of members of Haseri (mob) armed with *lathi, bhala, farsa* etc. had assembled there. Daroga Ji and B.D.O. Sahab were trying to convince the mob. In about one hour, C.O. Sahab (Jagannath Ravidas), with armed forces, arrived and entered into the house of Dr. Chandra Shekhar Choudhary (P.W.40). When he returned back from the house, he was holding a gun in his hand. This witness has said in paragraph – 1 that the Circle Officer had said something to the mob while showing the



gun to the members of mob. He further stated that he had seen Mukhiya Mahendra Rai @ Harendra Narain Singh (Appellant no. 2) near the C.O. Sahab (Jagannath Ravidas). Immediately after C.O. Sahab left, member of Haseri (mob) put the house of Chandra Shekhar Choudhary on fire through *kharhi* (tall grass). After the flame of fire was raised, the family members of Chandra Shekhar Choudhary came out from their house and moved towards northern area, whereafter, member of Haseri (mob) started stone pelting and thereafter, they again returned back and tried to flee away towards the southern area. In the southern area, accused persons started assaulting with *farsa, lathi, garasa, bhala* etc., in which, four persons died on spot and one due to injury was on the verge of death. He had identified the assaulter as Prit lal Rai (Appellant no. 12, died), Methur Rai (Appellant no. 3, died), Ram Ekbal Rai (Appellant no. 11), Siyaram Rai (Appellant no. 7, died), Mitaram Rai (Appellant no. 8), Sitaram Rai (Appellant no. 47), Jagdish Rai, and Saukhi Rai (Appellant no. 35, died) with their name and face. He also identified appellant Jagannath Ravidas in dock and said that he was the C.O. Sahab. He further claimed that the accused persons, who were present in court, all were member of the Gohar (mob). He said that he can identify all the said persons, but he may not identify all of them with name. The



ordersheet suggests that on the date of examination of P.W.-18 i.e. 22nd March, 1986, out of 79 accused persons, 15 namely Ram Ekbal Rai (Appellant no. 11), Shiv Shankar Rai (Appellant no. 1, died), Krishnandan Rai (Appellant no. 5), Ram Binay Rai (Appellant no. 13), Harendra Singh @ Mahendra Rai (Appellant no. 2), Methur Rai (Appellant no. 3, died), Mitram Rai (Appellant no. 8), Ganesh Rai (Appellant no. 9), Ramudhar Rai (Appellant no. 6), Panchan Rai (Appellant no. 14), Ramlal Rai (Appellant no. 10), Siyasaran Rai (Appellant no. 24), Jagrit Rai (Appellant no. 4, died), Pritlal Rai (Appellant no. 12, died) and Dayali Rai (who was subsequently acquitted under Section 232 of the Cr.P.C.) were present in court on production from the custody. Remaining accused persons were absent, for which their representations were filed through their lawyers. In his cross-examination, in paragraph - 3, he has stated that when C.O. Sahab (Jagannath Ravidas) had come out from inside house with gun, he went near Mahendra Rai. This witness has stated that he was knowing C.O. Sahab from before.

43. **P.W.-19** Ram Sringar Singh resident of village Kalyani, is also one of the eye-witness and he has also stated almost in similar manner like P.W.-16, 17 and 18.

44. **P.W.-20** – Raj Kumar Jha, resident of village Jamalpur



Kodai, is also one of the eye-witness and was not related with the family of Chandrda Shekhar Choudhary (P.W.40). He is the witness, who had seen first occurrence, which had occurred while informant side were bringing pump set from boring and is also witness to the second occurrence i.e. occurrence relating to setting ablaze the house of Chandra Shekhar Choudhary and assaulting & killing family members of Chandra Shekhar Choudhary (P.W.40). He has disclosed that on 29-03-1983, at about 11 or 12 hours while he was in his house and he heard the sound of firing from gun from village Kodai and also heard "hullah". Thereafter, he went to the village Kodai and he placed himself near eastern road of the house of Dr. Chandra Shekhar Choudhary. He stated that he had seen member of Haseri (mob) carrying *lathi, bhala, farsa, kudal*. He had seen fire just opposite the house of Dhanurdhar Choudhary in the heap of straw. The member of Haseri (mob) were present just about 20-25 laghi away on northern, southern and eastern area of the house of Sri Chandra Shekhar Choudhary. Block Development Officer and Sub-Inspector of Police were trying to disperse the member of Haseri (Mob). However, after some time, Anchaladhikari (Jagannath Ravidas) arrived with armed forces. Anchaladhikari Sahab went inside the house of Chandra Shekhar Choudhary and thereafter,



he came out with a gun. While he reached on the road, he showed the gun after raising his hand, to the members of Haseri and he said something, which he could not hear. Thereafter, the member of Haseri raised "*Jaykara*" and after keeping *kharhi* (tall grass) on the northern, southern and eastern area of the house of Chandra Shekhar Choudhary, they set the *kharhi* ablaze. Thereafter, the Anchaladhikari Sahab started his jeep and left the place. After the flame of fire had risen, family members of Chandra Shekhar Choudhary came out from the house towards northern side. Thereafter, member of Haseri started stone pelting on which the family members proceeded towards southern area. Thereafter, member of Haseri started assaulting them. He further stated that Chandra Shekhar Choudhary requested the member of Haseri not to kill him, since he had not committed any mistake. Even thereafter, the member of Haseri started assaulting. While "*maarpit*" was going on, he heard sound of firing from the school side and only thereafter, member of Haseri started dispersing. In the meanwhile, Sri Chandra Shekhar Choudhary (PW40) and his other family members started fleeing away towards northern side. They were also chased by the member of Haseri. This P.W.-20 has further stated that at the place of occurrence itself, four persons died and he disclosed the name of the persons, who died.



He further stated that he had identified in the Haseri (mob) following accused persons namely- Mukhiya Mahendra Rai @ Harendra Narain Singh (appellant no. 2), Batahu Rai (Appellant no. 17, died), Nagendra Rai (Appellant no. 27, died), Methur Rai (appellant no.3, died), Jagrit Rai (Appellant no. 4, died), Shiv Shankar Rai (appellant no. 1, died), Sukhdeo Rai (appellant no. 44, died), Bujhawan Rai (Appellant no. 32), Pritlal Rai (appellant no.12, died), Yogi Rai (appellant no.28, died), Chandradeo Rai (appellant no. 30, died), Ramashish Rai (Appellant no. 15), Siya Ram Rai (Appellant no. 7, died), Siya Saran Rai (Appellant no. 24), Kapildeo Rai (Appellant no. 20), Krishnandan Rai (appellant no.5), Sheo Chandra Rai (Appellant no. 43), Subudhlal Rai (appellant no.39), Ramlal Rai (appellant no.10), Meeta Ram Rai (Appellant no. 8), Panchan Rai (appellant no.14), Pheku Rai @ Phekan Rai (appellant no.36) Vidya Nand Rai (Appellant no. 34) Rijhan Rai, Sahadeo Rai, Pradeep Rai, Ishwar Rai (Appellant no. 22, died), Garbhu Rai (Appellant no. 42), Jagdish Rai, Chandradeep Rai and Ramanand Rai (appellant no.38). He also identified Jagrit Rai (appellant no. 4), and Shiv Shankar Rai (appellant no. 1), in dock. He further identified the accused persons, who were present in court and also claimed to identify accused persons, who were on representation, however; their identification was waived. On



seeing Jagannath Ravidas in dock, he claimed that he was the Anchaladhikari Sahab. This witness was also cross-examined at length, but in cross-examination, he further reiterated about the manner of occurrence and role played by the accused persons.

45. **P.W.-21** Urmila Devi W/o Krishnadeo Choudhary was also injured in the occurrence, but was only tendered.

46. **P.W.-22** Krishna Dev Choudhary, nephew of P.W.40 (Chandra Shekhar Choudhary) is also one of the eye-witness and he had seen both the occurrence i.e. occurrence, which had earlier taken place on the date of occurrence at about 9:30 AM while the prosecution side were coming alongwith the pumping set as well as other. The court-yard of this witness is the same court-yard i.e. of Chandra Shekhar Choudhary (PW40). He has categorically supported the prosecution case like other eye-witnesses and named the accused persons, who were assaulting i.e. Mahendra Rai @ Harendra Narain Singh (appellant no. 2), Jagrit Rai (Appellant no. 4, died), Ganesh Rai (Appellant no. 9), Ramashish Rai (Appellant no. 15), Ram Ekbal Rai (Appellant no. 11), Methur Rai (Appellant no. 3, died), Pritlal Rai (Appellant no. 12, died), Siyaram Rai (Appellant no. 7, died), Ramlal Rai (Appellant no. 10), Panchan Rai (Appellant no. 14), Shiv Shankar Rai (Appellant no. 1, died), Shiv Chandra Rai (Appellant no. 43), Awadhesh Rai,



Phekan Rai (Appellant no. 36). These persons were participants in the assault. He also identified Saukhi Rai, Ishwar Rai, Parichhan Rai, Prem Rai S/o Mitaram Rai, Prem Rai S/o Pheku Rai, Subudh Rai, Ramadhar Rai, Sita Ram Rai, Siya Saran Rai, Ramesh Rai, Garbu Rai, Kapildeo Rai, Sukhdeo Rai, Ram Sringar Rai, Krishnandan Rai, Ramnandan Rai, Surendra Rai, Bhagat Rai, Nagendra Rai, Jogi Rai, Hulash Rai, Nageshwar Rai, Laxmi Rai, Jugut Lal Rai, Vidyanand Rai, Prayag Rai, Upendra Rai and also Batahu Rai as member of Gohar (mob). This witness further disclosed that Mahendra Rai Mukhiya was carrying *bhala*, Jagrit Rai *bhala*, Ganesh Rai *bhala*, Ram Ekbal Rai *bhala*, Ramudhar Rai, Pritlal Rai, Methur Rai, Siyaram Rai and Ramlal Rai were carrying *garasa*, Panchan Rai was carrying *kudal* and some were carrying *lathi*. In paragraph – 6 of his evidence, he has further stated that while they were carrying pump set from the boring of Chandra Shekhar Choudhary with others, the accused persons had stopped and there was some altercation, in the meanwhile, Pritlal Rai (Appellant no. 12, died), tried to stab Mahanth Indradeo Jyoti, but that knife hit Umesh Rai, who was standing just near Mahanth Ji. This witness was also cross-examined at length but nothing could be extracted to create doubt on his evidence. Even in cross-examination, he has stated some more fact, which he had not



disclosed in his examination-in-chief and substantiated the entire episode.

47. **P.W.-23** Dukh Haran Sahni, who was the domestic servant of Chandra Shekhar Choudhary (P.W.40), had seen the occurrence and he was the eye-witness to the occurrence. He has also stated regarding manner of occurrence and participation in the occurrence by accused persons while giving their details and names. In his cross-examination in paragraph - 5, he has reiterated that C.O. Sahab (Jagannath Ravidas) after entering into the *aangan* (courtyard) had taken gun from the hand of Mahanth Ji. He further disclosed that he with the family of his master were requesting C.O. Sahab (Jagannath Ravidas) to arrest them and save their life. He further stated in paragraph - 6 of his cross-examination that following the C.O. Sahab, he went up to the door of his master's house. He has categorically described about participation of the accused persons as well as regarding entire occurrence.

48. **P.W.-24** - Ambika Singh of village Kalyani is also an eye-witness and he had named number of accused persons participating in the occurrence as well as stated about the role played by Jagannath Ravidas (C.O.) in the occurrence. He has specifically named the persons, who were assaulting i.e.



Mahendra Rai (appellant no. 2), Methur Rai (appellant no. 3, died), Pritlal Rai (appellant no. 12, died), Siyaram Rai (appellant no.7, died), Mita Ram Rai (appellant no.8), Saukhi Rai (appellant no.35, died), Ram Ekbal Rai (appellant no.11), Khakhnu Rai (appellant no.37), and Surendra Rai and he has also identified them in dock and claimed to have identified the accused persons, who were on representation. He further stated that after the assault started, he went to the school and requested Prakhnd Vikas Padadhikari (BDO) for firing and saving the life of Choudhary people. Along with him, number of persons had also reached at School and thereafter, on the order of Prakhnd Vikash Padadhikari, firing was made and member of Gohar (mob) thereafter dispersed. In his cross-examination, he reiterated that he and others had asked C.O. Sahab (Jagannath Ravidas) that since he had taken the gun, arrest them and save their life, but the C.O. Sahab did not listen and left the place.

49. **P.W.-25** Devendra Jha, **P.W.-26** Triloki Jha, both residents of village Kodai are also eye-witnesses and stated like other witnesses. They have claimed to identify in the mob – Mahendra Rai (appellant no.2), Methur Rai (appellant no.3, died), Siya Saran Rai (appellant no.24), Batahu Rai (Appellant no. 17, died), Jogi Rai (appellant no.28, died), Sukhdeo Rai (appellant



no.44, died), Kapildeo Rai (appellant no. 20), Ramhit Rai (appellant no.40, died), Ramnandan Rai (appellant no.38), Nagendra Rai (appellant no.27, died), Jagrit Rai (appellant no.4, died), Pritlal Rai (appellant no.12, died), Sukhnandan Rai (appellant no.31), Saukhi Rai (appellant no.35, died), Sita Ram Rai (appellant no.46), Siya Ram Rai (appellant no.7, died), Kanchan Rai, Khakhanu Rai (appellant no.37), Chandradeo Rai (appellant no.30, died), Bujhawan Rai (appellant no.32), Ram Singar Rai (appellant no.33, died), Krishnandan Rai (appellant no.5), Ram Ekbal Rai (appellant no.11), Ramlal Rai (appellant no.10), Panchan Rai (appellant no.14), Mita Ram Rai (appellant no.8), Siyaram Rai (appellant no.47), Prem Rai (appellant no.19, died). They claimed that Mahendra Rai (appellant no. 2) was carrying *bhala* in his hand. Pritlal Rai (appellant no. 12) was carrying *farsa*. Jagrit Rai, and Ram Ekbal Rai were carrying *bhala*. Krishnandan Rai & Ram Lal Rai were carrying *farsa* and others were having *lathi* etc. He claimed that he had identified Krishnandan Rai, Pritlal Rai and Methur Rai as accused persons, who had put the house of Chandra Shekhar Choudhary on fire.

50. **P.W.-27** Jagarnath Singh of village Kalyani is also one of the eye-witness and has stated almost like other eye-witnesses. P.W.-27 had named the accused persons, who were involved in



assault like Pritlal Rai (appellant no.12, died), Batahu Rai (appellant no.17, died), Ram Nand Rai(appellant no.38), Nagendra Rai(appellant no.27, died), Mahendra Rai(appellant no.2), Nandkishore Rai (appellant no. 41), Kapildeo Rai(appellant no.20), Ram Binay Rai S/o Prem Rai (appellant no.13), Prem Rai (appellant no.19, died), Ishwar Rai (appellant no.22, died), Kanahai Rai (appellant no.46), Ram Ekbal Rai (appellant no.11), and Methur Rai (appellant no.3, died). He categorically stated that Kanhai Ram (appellant no. 46) was resident of village Harkhauli and rest of the accused, whose name has been disclosed, were resident of village Kodai and also identified accused persons , who were in dock during the trial and also claimed to identify the accused persons, who were on representation.

51. **P.W.-28** Sundar Kant Jha is the witness to the seizure list relating to seizure of blood stained soil from the field of Tej Narayan Choudhary, which was in the southern area of the house of Chandra Shekhar Choudhary and proved his signature as well as signature of other seizure list witness namely Sushil Kumar Jha, which has been discussed in this judgment earlier.

52. **P.W.-29** Susheel Kumar Jha, also one of the witness to the seizure list, was only tendered for cross-examination.

53. **P.W.-30** Poonam Kumari D/o Mahanth Indradeo



Jyoti (deceased) was injured, but she was only tendered for cross-examination.

54. Again, **P.W.-31** Abhay Kumar S/o Mahanth Indradeo Jyoti (deceased) was tendered for cross-examination.

55. **P.W.-32** Shyam Nandan Jha was formal witness and he identified writing and signature of Sub-Inspector of Police in respect of seizure list, which was marked as Ext. 'X'.

56. **P.W.-33** Mithila Devi D/o late Dhanurdhar Choudhary is also one of the witness relating to the occurrence, which had taken place near her house and inside her house. She stated that the bundle of straw, which was lying at the verandah of her house, was set on fire by the member of accused persons.

57. **P.W.-34** Murti Devi W/o Dhanurdhar Choudhary had received serious injury in the occurrence and she supported the prosecution case and she identified Pritlal Rai, Methur Rai, Siyaram Rai, Siya Saran Rai, Meeta Ram Rai, Subudhlal Rai, Ramadhar Rai, Garbhu Rai, Hulash Rai and others, who had entered inside her house and assaulted her. She also categorically stated about the role played by Mukhiya Mahendra Rai (appellant no. 2) and said that brother of her son-in-law was assaulted by Pritlal Rai, Methur Rai, Siyaram Rai, Siya Saran Rai, Mita Ram Rai and while she tried to save him, she was also assaulted by the



accused persons and she became completely unconscious. She claimed that she was knowing Mahendra Muhiya (appellant no. 2) since last about 15 years.

58. **P.W.-35** Uma Devi W/o deceased Braj Bhushan Choudhary was an eye-witness and she had also received injuries in the occurrence. She has also reiterated that at 11:00 AM, while she was in her house, the heap of straw of Dhanurdhar Choudhary was set on fire. Thereafter, to disperse the mob, Mahanth Indradeo Jyoti fired in air from his gun. After some time, C.O. Sahab (Jagannath Ravidas) entered into the court-yard and forcibly took the gun as well as revolver of Mahanth Ji and then he showed the gun to the mob. After C.O. Sahab had left, the member of Haseri (mob) set her house on fire and due to flame of fire, the family members came out from the house and proceeded towards northern side, whereupon, member of mob started pelting stones. They returned to courtyard and stopped towards southern field where members of Haseri started assaulting by means of *lathi*, *bhala*, *garasa* and *farsa*. In the said occurrence, her husband Braj Bhushan Choudhary, Ravi Bhushan Choudhary, Mahanth Indradeo Jyoti and Dr. Indranand Mishra died. Anil was badly injured and he died in Patna Hospital. She had also received injury by spade on her head. She stated that she was assaulted by son of Harilal by



means of spade and he had snatched her son (Manish Kumar) from her lap and threw him on fire. In the occurrence, her son received burn injury on leg and hand, however; anyhow she could save her four year old child. In dock, she had identified Krishnandan Rai (Appellant no. 5), as accused, who had thrown her minor son in fire. She was also cross-examined at length, but nothing could be extracted to create doubt on her evidence.

59. **P.W.-36** Nagendra Rai, resident of village Kodai, is also one of the eye-witness and he has stated in similar manner like other witnesses. He categorically stated that in the occurrence, Mahanth Ji was assaulted by Mahendra Rai (Appellant no. 2), Siyaram Rai (Appellant no. 7, died), Krishnandan Rai (Appellant no. 5) and Pritlal Rai (Appellant no. 12, died), by means of *bhala* and *farsa* and due to said injury, Mahanth Ji died at the place of occurrence itself. He further stated that son-in-law of Chandra Shekhar Choudhary namely Dr. Indranand Mishra was assaulted by Ramashish Rai (Appellant no. 15) and Jagrit Rai (Appellant no. 4, died) by means of *bhala*, Surendra Rai and Methur Rai (Appellant no. 3, died) by *farsa* and Mita Ram Rai (Appellant no. 8) with *garasa*. He (Dr. Indranand Mishra) also died at the place of occurrence itself. Braj Bhushan Choudhary and Ravi Bhushan Choudhary were assaulted by Ramashish Rai



(Appellant no. 15), Ram Ekbal Rai (Appellant no. 11), Siya Ram Rai (Appellant no. 7, died), Krishnandan Rai (Appellant no. 5), Ganesh Rai (Appellant no. 9), and Shiv Shankar Rai (Appellant no. 1, died) by means of *bhala*, *farsa* and *lathi* and both of them also died at the place of occurrence itself. However, Anil was assaulted by Ramlal Rai (appellant no. 10) by means of *farsa*, Ramadhar Rai (Appellant no. 21) by means of *garasa* and Panchan Rai (Appellant no. 14) by spade. Anil died in Patna Hospital. This witness further stated that besides afore-referred accused persons, he identified as member of Haseri namely Shivchandra Rai, Upendra Rai, Chandradeo Rai, Bhagat Rai, Batahu Rai, Nagendra Rai, Ramanand Rai, Khakhnu Rai and others whose name he was not recollecting at the time of his deposition. He also identified accused persons, who were in dock. In paragraph – 5, he further stated that while “*maarpit*” was going on, he heard the sound of firing from the school side and thereafter, member of Haseri (mob) dispersed immediately. Thereafter, Sri Chandra Shekhar Choudhary (P.W.40) and his family members tried to move towards northern side, however; member of Haseri (mob) assaulted them after chase. He stated that the house of Chandra Shekhar Choudhary was reduced to ashes due to fire, which was set by the accused persons. He also identified C.O. Sahab (Jagannath Ravidas). He



also claimed to identify C.O. Sahab since long. He has explained about the role played by Jagannath Ravidas also. This witness was again cross-examined at length, but instead of extracting anything to create doubt in cross-examination, this witness has further elaborated the role played by all the accused persons as well as manner of occurrence.

60. **P.W.-37** Rita Choudhary W/o deceased Ravi Bhushan Choudhary is one of the injured as well as eye-witness to the occurrence. She has stated in detail about the manner of occurrence as well as role played by C.O. Sahab (Jagannath Ravidas) in the occurrence. This witness was also cross-examined at length, but nothing could be extracted to create doubt in her evidence.

61. **P.W.-38** Maheshwari Devi is W/o Chandra Shekhar Choudhary (P.W.40). This witness is the eye-witness and also injured. She also stated categorically about the role played by the C.O. Sahab and as to how he instigated and abated other accused persons to commit the crime. She further stated that in the field, her son-in-law (Mahanth Ji) was assaulted by Mahendra Rai, Siyaram Rai by means of *bhala* and Krishnandan Rai & Pritlal Rai by *farsa*. Her grand son-in-law (natin damad) Dr. Indranand Mishra was assaulted by Jagrit Rai & Ramashish Rai by means of



bhala, Methur Rai & Surendra Rai by *bhala* and Meetram with *garasa*. Her two sons namely Braj Bhushan Choudhary and Ravi Bhushan Choudhary were assaulted by Siyaram Rai, Ramashish Rai and Jagrit Rai by means of *bhala*, Krishnandan Rai & Pritlal Rai by means of *farsa*, Phekan Rai, Shiv Shankar Rai, Ram Binay Rai by *lathi* and Methur Rai also used *farsa* and both of her sons died. She clarified that Ram Binay Rai (Appellant No. 13) S/o Prem Rai had assaulted them. She further stated that her grand son (nati) Anil was assaulted by Ramlal Rai by *farsa*, Ramudar Rai by *garasa* and Panchan Rai by spade. Some accused persons had assaulted her nati Anil by means of *lathi*. Methur Rai had assaulted by the side of *lathi* of *farsa* on her right leg and right hand. She stated that a golden chain from her neck was snatched by Methur Rai. She further stated that from the hand of Usha Mishra, Methur Rai had snatched the "*Ataichi*", in which, ornaments were kept. In paragraph - 4, she stated that besides the accused persons, who had assaulted, she identified other accused namely Ramnandan Rai, Ram Ekbal Rai, Shiv Shankar Rai, Khakhanu Rai, Ramadhar Rai, Subudhlal Rai, Siyaram Rai, Siyasan Rai, Ramhit Rai, Ram Sringar Rai, Phekan Rai, Garbhu Rai, Chandradeo Rai, Shivchandra Rai, Vidyanand Rai, Nagendra Rai, Nageshwar Rai and Batahu Rai in the said Haseri (mob). She identified all the accused persons,



whom she has named and who were present in the dock, as well as claimed to identify the accused persons, who were on representation. She reiterated that Mahanth Ji, Dr. Indranand Mishra, Braj Bhushan Choudhary and Ravi Bhushan Choudhary died at the place of occurrence itself and Anil died in Patna Hospital. Besides she, other injured persons were admitted in hospital. Firstly, they were examined at Gaighat Hospital (Gaighat Primary Health Centre), thereafter, they were sent to Sadar Hospital, Muzaffarpur, where they were treated. She in her cross-examination has also indicated that after the firing was made from the school side, member of Haseri (mob) fled away and her house and all goods had turned to ashes. She was again cross-examined at length and on perusal of her statement in cross-examination, it is evident that some facts, which she had left to state in her examination-in-chief, were also brought on record in cross-examination showing complicity of accused persons.

62. **P.W.-40** Vijay Mandal was the Investigating officer. This witness has stated that Circle Officer had handed over DBLG (double barrel gun), which was produced and marked as material Ext. 1. He also identified the *fardbeyan*, which was already proved by P.W.2 and got exhibited as Ext. 2. This witness further proved inquest report in respect of dead-body of Lalan Choudhary as Ext.



6, Braj Bhushan Choudhar (Ext. 6/1), Indranand Mishra as Ext. 6/2 and Indradeo Jyoti @ Mahanth Ji as Ext. 6/3. He further proved formal F.I.R., as Ext. 7. In paragraph – 5 of his examination-in-chief, he has stated that on 29-03-1983 at about 9:00 PM, he prepared injury requisition of 17 injured. He categorically stated that at that very time, none of the injured persons were in a position to give their statement. He proved 17 injury reports, which were marked at Ext. 8 to 8/16. Thereafter, on 30-03-1983, he visited the place of occurrence and prepared seizure list relating to blood stained soil, recovered from the place of occurrence i.e. field of Tej Narain Choudhary (P.W.-2). This seizure list was got marked as Ext. – 9. He also found blood stain in the court-yard of the house of Dhanurdhar Choudhary and he prepared seizure list in respect of blood stained soil, seized from the court-yard of Dhanurdhar Choudhary, which was marked for identification as Ext.-X/1. He also seized ashes of straw found from the house of Dhanurdhar Choudhary, which was already got proved, as Ext.-9 by P.W.-41. He categorically stated that the house of Chandra Shekhar Choudhary had turned to ashes, entire house and articles of the house had come to ashes and he also prepared a seizure list of ashes, which was marked as Ext. X/2. He also collected ashes and stone (*rora*) and a seizure list was



prepared, which was marked as Ext. 9/1. Thereafter, with the help of Amin, he got sketch map relating to place of occurrence prepared, which was already got proved as Ext. – 5.

63. We have also examined Ext. 5, which depicts about the place of occurrence and the manner of occurrence, which has been brought on record by oral evidences. In paragraph – 17 of his examination-in-chief, the investigating officer has stated that he received inquest report in respect of dead-body of Anil Kumar Jha from Patna and the said inquest report was marked as Ext. – Y. It was in carbon copy. This witness in paragraph – 18 has stated that Chandra Shekhar Choudhary (P.W.40) had produced a receipt to show payment of installment of pump set, which was under-dispute. In paragraph – 19, the investigating officer further stated that on verification, he found that gun and revolver was in the name of Mahanth Indradeo Jyoti (deceased). Surprisingly, after this fact was disclosed by the investigating officer on 11-09-1986 during trial, despite the fact that there was sufficient time, the defence, with oblique motive, requested for deferring his further cross-examination knowing well that thereafter, the court was going to be closed. After re-opening, this witness was further cross-examined on 19-09-1986, however; to some extent, this witness tried to deviate from his earlier statement. However, fact



remains that the investigating officer in categorical word has stated that licence of gun and revolver was in the name of deceased Mahanth Indradeo Jyoti. In cross-examination, this witness has stated that he was not knowing as to whether at the time of occurrence, C.O. Sahab (Jagannath Ravidas) was on official duty or not. This witness was examined at length and his attention was drawn to the statement of witnesses recorded under Section 161 of the Cr.P.C. However, to the reasons best known to the defence, they had not at all bothered to draw attention of any of the injured witnesses, whose statement under Section 164 of the Cr.P.C. was recorded by the learned Judicial Magistrate. At this juncture, it is necessary to reiterate that investigating officer has categorically stated that on the date of occurrence, in the night he had visited the Sadar Hospital, Muzaffarpur where all 17 injured persons were admitted and this witness (investigating officer) had stated that none of the witnesses were in a position to make any statement and this was the reason that subsequently, statement of injured witnesses were got recorded under Section 164 of the Cr.P.C. by the learned Magistrate, but during cross-examination of either of the such witness or even investigating officer from the defence side, nothing has been asked regarding statement made by the witnesses under Section 164 of the Cr.P.C.,



whereas, their statement recorded under Section 164 of the Cr.P.C. were got exhibited as Ext. 10 to 10/11.

64. **P.W.-1** Dr. Binod Kumr Mahto, who was posted as Tutor in the department of Forensic Medicine, S. K. Medical College, Muzaffarpur, on 30th March, 1983 at about 12:10 PM, had conducted *post-mortem* examination on the dead-body of Mahanth Indradeo Jyoti S/o Shobha Kant Jha and he had found following injuries:-

1. **Incised injury with clear cut margin 2" x ½"x bone deep on the front of the right side of the head. On dissection, there was fracture of frontal bone and blood clots -- found on the méninges and surface of the brain.**
2. **Incised injury 1" x ½" x bone deed on the front of nose. On dissection in chest cavity lungs looked a pale, heart right chambers empty, left chambers partially filled with blood in abdomen. Viscera looked livid, stomach contains some fluid, bladder empty, genital normal.**

The doctor has opined that the deceased died due to



shock and haemorrhage as a result of above mentioned antemortem injuries caused by some sharp cutting weapon; such as *Garasa*. Time since death within 24 hours. In the opinion of the doctor, the death was as a result of a cumulative effect of all the injuries and injury no.1 was itself sufficient to cause death.

65. On the same day i.e.30th March,1983 at 1.00 P.M. Dr. Binod Kumar held postmortem examination on the dead body of **Braj Bhushan Chaudhary** son of Chandrashekhar Chaudhary of village- Jamalpur Kodai, P.S. Gayghat, District Muzaffarpur and found the following injuries:

1. Incised injury with clear cut margin

1 ½" x ½" x bone deep on the left side of head.

On dissection, the left parietal and temporal bone were found to be fractured. Blood clots were found on the meninges and surface of brain.

2. Bruise 1" x 1" on the left side of cheek.

3. Bruise 2 ½" x 1" on left side of back in the lower portion. On dissection in the chest cavity, lungs looked livid, heart right chamber,



**partially filled with blood left chamber empty.
In abdomen viscera looked pale, stomach
contained some fluid, Bladder empty, genital
normal.**

In the opinion of the doctor, the deceased died due to shock and haemorrhage as a result of above antemortem injuries. Injury no.1 was caused by some sharp cutting weapon such as *Farsa*, *Garasa* and Spade and the rest injuries were caused by some hard blunt substance such as *Lathi*, Danda and brick-bats. Time since death within 24 hours. Injury no.1 was itself sufficient to cause death.

66. On the same day i.e.30th March,1983 at 12.30 P.M. Dr. Binod Kumar held postmortem examination on the dead body of **Indranand Mishra** son of Harishchandra Mishra of village- Araria, P.S. Ful Paras, District Madhubani and found the following injuries:

1. Incised wound with clear cut margin 1 ½" x ½" x muscle deep on the back of neck.

2. Incised injury with clear cut margin 3" x 1" x bone deep on front of right shoulder fractured.

On dissection, there were



injuries to muscle, vessels. On further dissection, humorous was found to be fractured.

3. Incised injury with clear cut margin 2" x ½" x bone deep on lower portion of right forearm with injury to muscle and fracture of right radius bone.

4. Bruise 3" x 1" of right side of the back in the middle portion. On dissection in the chest cavity lungs looked livid, heart all chambers were empty. In the abdomen viscera looked livid, stomach contained some pasty material, bladder empty, genital normal.

In the opinion of the doctor, the deceased died due to shock and haemorrhage as a result of above mentioned ante-mortem injuries, which were sufficient to cause death in ordinary course of nature. Injury nos.1 to 3 had been caused by some sharp cutting weapon such as *Farsa*, *Garasa* and Spade and the rest of the injuries had been caused by some hard blunt substance such as *Lathi*, Danda and brick-bats. Time since death within 24 hours.

67. On the same day i.e. 30th March,1983 at 12.45 P.M. Dr. Binod Kumar held *post-mortem* examination on the dead body of **Lalan Chaudhary** son of Chandra Shekhar Chaudhary of village- Jamalpur Kodai, P.S. Gayghat, District Muzaffarpur and



found the following injuries:

1. Incised injury with clear cut margin 1 ½" x ½" x bone deep on the left side of head. On dissection, the left parietal bone was found to be fractured.

2. Incised injury 2" x ½" x bone deep on back of head. On dissection, occipital bone was found to be fractured and injury to the brain also.

3. Incised injury 1" x ½" x muscles deep on the right side of face below right eye.

4. Lacerated injury 1 ½" x ½" x muscle deep on right shoulder.

5. Lacerated injury 2" x 1" x muscle deep on left shoulder.

6. Bruise 2" x 1" on the middle portion of right side of chest.

7. Bruise with swelling 2" x 1" on dorsum of left hand.

On dissection in the chest cavity, lungs looked pale, heart all chambers empty. In abdomen viscerae looked pale, stomach contained some fluid, Bladder empty, genital normal.

In the opinion of the doctor, the deceased died due to shock and haemorrhage as a result of above mentioned antemortem injuries. The injuries were sufficient to cause death



in ordinary course of nature. Injury nos. 1 to 3 had been caused by some sharp cutting weapon such as *Farsa*, *Garasa* and spade. The rest injuries had been caused by some hard blunt substance such as *Lathi*, danta and brick-bats. Time since death within 24 hours. The doctor has stated that all the four postmortem examination reports were in his pen and his signature. Postmortem Reports have been marked as Exts. 1 to 1/3. He stated that if a *Bhala* hurts any part of the body, it may also cause incised wound. In the cross examination, the doctor has stated that if the blade portion of *Bhala* grazes any part of body, it may cause incised wound only. Punctured wound is caused normally by pointed portion of a *bhala*. He further stated that if a piece of brick having sharp edge strikes body portion of the head, an incised injury may be caused but not like incised injuries found on the dead bodies. Force applied to the bone causes fractures of different kinds. He stated that multiple fractures may be caused by force applied to bone and sharp weapon used with force may cut bone. He stated that bruise may be caused by fall also. In the cross-examination, the doctor stated that if a *lathi* hits bony portion of the body, injury caused by it cannot be like incised wound.

68. **P.W.-46** Dr. Ram Krishna Prasad Singh, in the year



1983, was posted as Associate Professor in the department of Forensic Medicine, Patna Medical College & Hospital, Patna and on the said date i.e. 01-04-1983, he conducted *post-mortem* examination on the dead body of **Anil Kumar Jha** S/o Indradeo Jyoti and he found following antemortem injuries on his person:-

1. Stitched wounds three in number were found on the left side of scalp of sizes (a) 2 ½"x bone deep at the left temporal region (b) 1 ½" x bone deep at the back of parietal region (c) 3" x bone deep of left parietal region.

2. Blood clots were found under near Injury no.1. There was no fracture of the skull.

3. Subdural haematoma was found all over the brain surface and the brain was congested .

4. Multiple abrasions were found in the skull all over.

5. Multiple bruises were found on the forehead.

6. Both the eyes were contused.

7. Abrasions of sizes varying from 1 ½" to 1" x ¼" to 1/6" were found on both cheeks and chian.

8. Three stitched wounds of depth ¼" were found situated at the left side of the neck and the left --- was cit superficially at one place. The length of the stitched wounds were 3" x 2 ½



“and 2”.

9. Bruise of size of 3” x ½” was found on the lateral aspect of right deltoid..

10. Bruise of size of 2 ½” x 1” was found on the lateral aspect of left upper heart.

11. Stitched wound of size of ½” x 1/2” was found on the back of right forearm 3” above the wrist joint.

12. Two bruises of sizes of 5” x 1” and 6” x 1” were found at the back of left side of the chest extend up to the back of abdomen.

13. Abrasions were present on both the knees.

The doctor has opined that the death occurred within 36 hrs of the P.M. Examination. The death was due to internal haemorrhage. In his opinion, the injuries found on the dead body were sufficient to cause death in ordinary course of nature. Abrasions and bruises found on the dead body had been caused by hard blunt substance such as *Lathi* and brick-bats. Opinion regarding the weapons and for inflicting stitched wounds found on the dead body could not be given due to surgical intervention. Stitched wounds found on the dead body were likely to be caused by sharp-cutting weapon. The doctor has accepted that the postmortem report was in his pen and he has proved his own



signature. The postmortem report was marked as **Ext.1/4**. In the cross-examination, the doctor has stated that the death was due to blood clots in the brain cavity. Bone of skull had been cut. In the opinion of the doctor, stitched wounds might have been caused by knife of surgeon.

69. Dr. Upendra Nath (**P.W.43**), who was posted in Primary Health Centre, Gayghat as Medical Officer and on the requisition of Sub-Inspector of Gayghat Police Station, examined **Sri Chandra Shekhar, son of Sri Nathuni Chaudhary** of village Kodai, P.S. Gayghat on 29.03.1983 and found the following injuries on his person:

1. Diffuse swelling with marked tenderness over left hand on back. Fracture of bones of hand was suspected.

2. Marked tenderness and bruise over left heap joint 2" x 1".

3. Sharp cut wound on right side of scalp 1 ½" x ½" x scalp deep.

4. Swelling and marked tenderness of right forearm above wrist clinically fracture suspected.

The age of the injuries was within 12 hours. All injuries were simple in nature except injury nos.1 and 4, which were clinically suspected grievous and on x-ray two injuries were



found grievous. Injury no.3 had been caused by sharp cutting weapon such as Garasa. The rest injuries had been caused by hard substance such as Lathi and brick-bat. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11**.

70. On the same day i.e. 29.03.1983 Dr. Upendra Nath (P.W.43) had examined **Mani Kumari daughter of Braj Bhushan Chaudhary**, of the same village and found the following injuries on her person:

1. **Lacerated wound on forehead ¼" x ¼"**.

The injury was simple in nature and had been caused by hard blunt substance such as Lathi or brick bat. The age of injury was within 12 hours. The age of injured was within nine months. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/1**.

71. On the same day i.e. 29.03.1983 Dr. Upendra Nath (P.W.43) had examined **Smt. Uma Devi, wife of Braj Bhushan Chaudhary** of the same village and found the following injuries on her person:

1. **curved cut wound on scalp anteriorly**



4" x ¼"x skin deep

2. **sharp cut wound on forehead above right eye 1 ½" x ½" x skin deep.**

Both injuries had been caused by sharp cutting instrument and injuries were found simple in nature. Age of Injuries was within 12. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/2.**

72. On the same day i.e. 29.03.1983 Dr. Upendra Nath (P.W.43) had examined **Smt. Maheshwar Devi wife of Shri Chandra Shekhar Chaudhary** of the same village and found the following injuries on her person:

1. **Lacerated wound on front of right let 1 ½"x ½"**
2. **Diffuse swelling with marked tenderness of right forearm upper part. Fracture of the bone was found clinically. Lacerated wound over the swelling ½" x ¼" was found.**
3. **Diffuse swelling of left forearm with marked tenderness clinically fracture of forearm bond was found.**

All those injuries had been caused by hard blunt substance such as Lathi. Injury no.1 was simple. The rest two



were grievous in nature. The injured had been referred to Sadar Hospital, Muzaffarpur for X ray. The age of the injuries was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/3**.

73. On the same day i.e. 29.03.1983 Dr. Upendra Nath (P.W.43) had examined **Satyendra Jha, son of Pandit Nand Lal Jha** of the same village Maheshwata P.S. Gayghat, District-Muzaffarpur and found the following injuries on his person:

1. Lacerated wound on occipital region of head

1" x ¼"

2. Marked tenderness over the right loin with swelling 2" x 1" with bruise.

3. Swelling Diffuse over both right and left leg.

The injuries had been caused by hard blunt substance such as Lathi. All the injuries were simple in nature. The injured was referred to Sadar Hospital, Muzaffarpur. The age of the injuries was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/4**.

74. On 29.3.83, the Doctor (P.W.43) he had examined



Smt. Sarswati Devi wife of Mahanth Indradeo Chaudhary of

village-Kodai, P.S. Gayghat, District-Muzaffarpur and found the following injuries on her person:

- 1. Swelling and tenderness of right forearm 2" x 1" clinically fracture of forearm bones found.**
- 2. Swelling of right hand forsum 2 ½ x 2"**
- 3. Lacerated wound on right ring finger ½" x 1/2" vertical aspect.**
- 4. cut wound curved in scalp above forehead 3" x ½" x skin deep**
- 5. cut wound scalp at vault 1" x ¼" x skin deep**
- 6. cut wound on left parietal area of scalp 1" x ¼" x bone deep**
- 7. Bruising and swelling around right eye.**

Nature of the wound- Injury no.1 was grievous and the rest were simple. Injury nos. 1, 2, 3 and 7 had been caused by hard blunt substance such as lathi and the rest had been caused by sharp cutting such as Farsa and Garasa. The age of the injuries was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/5.**

75. Dr. Upendra Nath (**P.W.43**) had also examined Anil Kumar Jha son of Indra Nand Jha of village-Kodai, P.S. Gayghat,



District-Muzaffarpur and observed as follows:

1. **Diffuse swelling and oozing of blood from face and scalp. The patient was in extremely precarious condition and so he was referred to Sadar Hospital, Muzaffarpur and, as such, detail might be obtained from Sadar Hospital, Muzaffarpur (This injury report was marked as Ext.12).**

76. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined Smt. Urmila Devi W/o Krit Narain Choudhary of village Kodai, PS Gayghat, Dist. Muzaffarpur and found the following injury on her person:-

1. **Cut wound over left parietal region of scalp 1" X ½".**

The injury was simple in nature and had been caused by sharp cutting weapon such as; farsa and garasa. The age of the injury was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/6.**

77. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined Smt. Murti Devi W/o Dhanush Dhari



Choudhary of the same village and found the following injuries on her person:-

1. **Marked tenderness lumbo sacral region. The nature and the weapon used for inflicting injury since could be decided after X-ray and as such, the injured was referred to Sadar Hospital, Muzaffarpur. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as Ext.11/7.**

78. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined **Sri Ram Chandra Mahto S/o Sri Kuldip Mahto** of the same village and found the following injuries on his person:-

1. **Cut wound on forehead above right eye-brow
1 ½" X ¼" X skin deep.**

The injury was simple in nature and had been caused by sharp cutting weapon such as; farsa and garasa. The age of the injuries was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/8.**

79. On the same date i.e. 29-03-1983, Dr. Upendra Nath



(PW 43) examined **Sri Abinash Choudhary S/o Sri Krit Narain Choudhary** of the same village and found the following injuries on his person:-

1. **Superficial burn on dorsum of right big toe ½" X ¼".**

The injury was simple in nature and had been caused by dry heat such as; flame of fire. The age of the injury was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/9**.

80. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined **Dauli aged about six years D/o Sri Krit Narain Choudhary** of village Kodai, PS - Gayghat, Distt. Muzaffarpur and found following injuries on her person:-

1. **Cut wound on left side of scalp 1½" X ¼".**
2. **Swelling over left arm with bruise 1" X ½".**

The injuries were simple in nature and injury no. 1 had been caused by sharp cutting weapon such as; farsa and garasa and injury no. 2 had been caused by hard blunt substance such as; lathi. The age of the injuries was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury



report was marked as **Ext.11/10**.

81. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined **Sri Arvind Kumar S/o Sri Krit Narain Choudhary** of the same village and found the following injuries on his person:-

1. **Linear bruise on back right side 1 ½" X ½ "**.
2. **Vague tenderness in various parts of the body.**

The injuries were simple in nature and had been caused by hard & blunt substance such as; lathi. The age of the injuries was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/11**.

82. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined **Smt. Usha Mishra W/o Dr. Indranand Mishra** of the same village and found the following injuries on her person:-

1. **Cut wound over forehead above right eye-brow 1 ½" X ¼"**.
2. **Diffuse swelling with marked tenderness of right forearm below elbow. Fracture of**



right forearm bones was clinically suspected.

The injury no. 1 was simple and injury no. 2 was grievous in nature and injury no. 1 had been caused by sharp cutting weapon such as; farsa & garasa and injury no. 2 was caused by hard blunt substance such as; lathi. The age of the injuries was within 12 hours. The injured was pregnant and she was referred to Sadar Hospital, Muzaffarpur. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/12**.

83. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined **Rita Devi D/o Baleshwar Thakur** of same village and found the following injuries on her person:-

1. **Diffuse swelling with bruise on left forearm 1½" X ¾ "**.
2. **Superficial burn over right knee joint.**

The injuries were simple in nature and injury no. 1 was caused by hard & blunt substance such as; lathi & brick-bat and injury no. 2 had been caused by fire or dry heat. The age of the injuries was within 12 hours. The injured was referred to Sadar Hospital, Muzaffarpur. The doctor (P.W.43) has accepted in the



examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/13.**

84. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined **Poonam Kumari aged about 12 years D/o Sri Indradeo Jha** of same village and found the following injuries on her person:-

1. **Lacerated wound over back of left index and ring finger $\frac{1}{4}$ " X $\frac{1}{4}$ " each.**
2. **Swelling and tenderness on the back of upper part of the neck $1 \frac{1}{2}$ " X 1".**

The injuries had been caused by hard & blunt substance such as; lathi and were simple in nature. The age of the injuries was within 12 hours. The injured was referred to Sadar Hospital, Muzaffarpur. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as Ext.11/14.

85. On the same date i.e. 29-03-1983, Dr. Upendra Nath (PW 43) examined **Doyal Mona aged about 4 years D/o Sri Indranand Mishra** of the same village and found the following injuries on her person:-



1. **Cut wound on forehead over left eye-brow
1¼ " X ¼ ".**

The injuries had been caused by sharp cutting weapon such as; farsa and were simple in nature. The age of the injuries was within 12 hours. The doctor (P.W.43) has accepted in the examination-in-chief that the injury report was in his pen and he has proved his signature. The injury report was marked as **Ext.11/15.**

86. In the cross-examination, the doctor (PW 43) stated that all the injured were sent to Sadar Hospital, Muzaffarpur, but he did not remember as to whether the Civil Surgeon, Muzaffarpur had reached Gayghat or not. The doctor was of the opinion that cut injury can be caused by any sharp cutting instrument including khurpi of sharp and cutting margin. Bruise and swelling might be caused by fall. Bhala is a penetrating weapon, which causes penetrating wound. According to the doctor (PW 43), injury reports, issued on 10-03-1986, were prepared on plain paper on which injuries had been noted.

87. **P.W.-44** Dr. Snehansu Gupta at the relevant time was posted at Sri Krishna Medical College and Hospital, Muzaffarpur as Associate Professor and was acting as surgeon on duty in Sadar Hospital, Muzaffarpur also. On the requisition of police, he



examined **Ajay Kumar Chaudhary** aged about seven years son of **Brij Bhushan Chaudhary** of village Jamalpur Kodai, P.S. Gayghat on 2.4.83 at 6.45 p.m. and found the following injuries on his person:

- 1. Lacerated injury over left side of occipital with pus discharge ½" x ½" x skin deep. The injury was simple in nature caused by hard blunt substance such as *Lathi* or brick bats. The age of the injury was within 5 days.**

The doctor has accepted that this injury report was in his pen and he has accepted his own signature on the injury report. The injury report was marked as **Ext.11/16**. He stated that he had examined the injured in Sadar Hospital.

88. On the same day i.e. 02.04.1983 at 06.30 P.M. Dr. Dr. Snehansu Gupta had examined **Munish Kumar**, aged about 8 months daughter of Braj Bhushan Chaudhary in Sadar Hospital on the requisition of the police and found the following injuries on her person.

- 1. Lacerated injury on the scalp left side over frontal aspect with pus discharge ½" x ¼" x skin deep. The age of the injury was within 5 days The injury was simple in nature and had been caused by hard blunt substance**



such as *Lathi* or brick bats.

The doctor has accepted that this injury report was in his pen and he has accepted his own signature on the injury report. The injury report was marked as **Ext.11/17**. In cross-examination, the doctor has opined that the injuries found on both the aforesaid injured were possible by fall, if the injured fell on hard blunt substance.

89. **P.W.-45** Dr. Birendra Prasad at the relevant time was posted as Associate Professor at Sri Krishna Medical College and Hospital, Muzaffarpur and he was also posted on the said post on 29-03-1983 and 30-03-1983 also in Sadar Hospital, Muzaffarpur attached to S.K.Medical College. On 30-03-1983 at 1:15 AM, he examined Dauli D/o Sri Krishnadeo Choudhary of village Kodai and found following injuries on her person:-

1. Stitched wound on scalp 4" above the left ear. X-ray of Scalp ---- no bone injury. The stitching had been done by the M.O., State Dispensary, Gayghat.

The doctor has accepted that the injury report was in his pen and has proved his signature. The injury report was marked as **Ext.11/18**.

90. Besides the above named injured, the doctor had examined Dauli, Punam Kumari, Rita Chaudhary, Smt. Usha



Mishra, Ram Chandra, Murati Devi, Urmila Devi, Sarswati Devi, Satyendra Kumar, Uma Devi, Mona and Chandrashekhar Chaudhary also. Some of the injured were examined on 29.03.1983 and some were examined on 30.03.1983. All injured were examined in between 10.00 P.M. on 29.03.1983 up to 1.40 A.M. on 30.03.83 and were admitted in Sadar Hospital as indoor patient. The doctor has accepted that the injury reports were in his pen and has proved his signature. All injury reports were marked as **Ext.11/19 to 11/29**. In the cross-examination, the doctor has opined that the injury of Dauli was stitched so he cannot say as to how such injury can be caused.

91. **P.W.-42** is Sri Amrendra Kumar Singh, who at the relevant time, was posted as Special Judicial Magistrate, Muzaffarpur and as per order of Chief Judicial Magistrate, he visited Sadar Hospital, Muzaffarpur in Paying ward and recorded statement of 10 injured witnesses under Section 164 of the Cr.P.C. on 08-04-1983 and again he recorded statement of two injured witnesses on 10-04-1983. He recorded the statement under Section 164 of the Cr.P.C. of injured persons i.e. Sri Chandra Shekhar Choudhary (P.W.40), Maheshwari Devi (P.W.38), Usha Mishra (P.W.4), Urmila Devi (P.W.-21), Uma Devi (P.W.35), Punam Kumari (P.W.30), Sri Abhay Kumar Jha (not examined), Murti Devi



(P.W.34), Sri Satendra Kumar Jha (not examined) and Sri Ramchandra Mahto (not examined). Their statement was recorded on 08-04-1983, whereas, on 12-04-1983, he recorded statement under Section 164 of the Cr.P.C. of injured Saraswati Devi (P.W.5) and Rita Choudhary (P.W.37). He proved the statement recorded under Section 164 of the Cr.P.C. of aforesaid injured witnesses, which were marked as **Ext. 10 to 10/11**.

92. After closure of the evidence, the learned Trial Judge examined the record and found that there were no material to hold guilty in respect of accused persons namely; 1. Rajdeo Singh, 2. Amar Yadav, 3. Subodh Lal, 4. Hira Yadav, 5. Ram Sevak Yadav, 6. Ram Ratan Raut, 7. Chalitra Raut, 8. Mahendra Rai, 9. Dayali Yadav, 10. Surendra Singh Yadav, 11. Sushil Yadav, 12. Sheo Chandra Yadav, 13. Dhaneshwar Rai, 14. Maheshwar Rai, 15. Uchit Rai, 16. Khakhan Rai, 17. Sone Lal Rai and 18. Uchit Rai and as such, they were acquitted and discharged under Section 232 of the Cr.P.C. by order dated 20-01-1989. Thereafter, statement of accused under Section 313 of the Cr.P.C. was got recorded.

93. We have examined the statement of accused recorded under Section 313 of the Cr.P.C. and noticed that the learned Trial Judge in very elaborate manner had explained to all the accused persons regarding evidence collected against them



showing their involvement and we feel that the learned Trial Judge has really done appreciable job and as such, there is no question to draw any adverse inference in favour of the accused persons in respect of their statement recorded under Section 313 of the Cr.P.C. After the statement recorded under Section 313 of the Cr.P.C., from the defence side, altogether 13 witnesses were got examined, who are:-

1. D.W.-1 Raj Kishore Rai,
2. D.W.-2 Habib Ahmad
3. D.W.-3 Raj Kishore Rai
4. D.W.-4 Vidya Sagar Choudhary
5. D.W.-5 Jogendra Thakur
6. D.W.-6 Ashok Kumar Mahaseth
7. D.W.-7 Khobhari Rai
8. D.W.-8 Ramesh Kumar
9. D.W.-9 Jeevnath Rai
10. D.W.-10 Jeevan Rai
11. D.W.-11 Dr. Manoranjan Kumar Srivastawa
12. D.W.-12 Vishwanath Prasad, and
13. D.W.-13 Rajendra Prasad

94. D.W.-1 Raj Kishore Rai was Tayeed in a court and he has proved sale-deeds, which were marked as Ext. B & B/1, both the documents were marked with objection raised by the



prosecution side. Moreover, on examining materials on record, the Court is of the opinion that his evidence has got no relevance for adjudication of the present case.

95. Similarly, D.W.-2 Habib Ahmad is also a Tayeed, who had proved a certificate issued by Sarpanch to show alibi of Nagendra Rai, which was got marked as Ext. C, but with objection. On going through the evidence of Habib Ahmad, the Court is of the opinion that there was no occasion for him to prove such document. Moreover, on examination of said certificate i.e. Ext.-C, it appears that same has got no relevance for adjudication of the present appeal, in which, number of witnesses had seen the occurrence and exact participation by accused persons.

96. D.W.-3 Raj Kishore Rai was a formal witness and he has stated about one Ram Prabhanjan Rai (Appellant no. 14), whose father was Prem Rai. He tried to state that this Ram Prabhanjan Rai was not having any name as Panchan Rai. The Court is of the opinion that once the witnesses had identified an accused specifically and even in dock, there is no question to draw any adverse inference on the basis of evidence of this defence witness.

97. D.W.-4 Vidya Sagar Choudhary had tried to develop a story that the said pump set was not pump set of the



prosecution side, but actual owner of the pump set was different. While deposing, this witness had categorically stated even the number, having 8 digits, of the pump set, however; on cross-examination, he was not in a position to state in respect of his plot number and as such, his evidence to the extent of title of the pump set in question, appears to be doubtful. Moreover, for adjudicating the present case, the Court is not required to adjudicate in respect of ownership or title of the pump set, but the case is to be decided on the basis of evidence brought on record showing participation or involvement of accused persons in an occurrence, in which, brutally five persons of one family were killed and altogether 17 family members were brutally assaulted and received serious grievous injuries. However, in cross-examination, this witness in paragraph – 6 has stated that he had seen that C.O. Sahab (Jagannath Ravidas) coming out from the house of Chandra Shekhar Choudhary with gun and revolver. He had also stated that he had seen Jagannath Ravidas with Mahendra Rai (appellant no. 2). He also stated that he had identified 8-10 accused persons in the Haseri (mob) and they were indulging in “*maarpit*”. He stated that member of Haseri were raising “*jayakara*”. On question of court, this defence witness has stated that he had identified Ram Sringar Rai



(Appellant no. 33), Bujhawan Rai (Appellant no. 32), Krishnandan Rai (Appellant no. 5) and some other accused persons. He has also supported the case of prosecution in paragraph – 6 of his cross-examination that accused persons were threatening Chandra Shekhar Choudhary for withdrawing the case. They were threatened prior to the present occurrence.

98. D.W.-5 Jogendra Thakur has also come with a plea that the said pump set was sold by him to Ramashish Rai (Appellant no. 15) and he has even stated that he had sold the pump set on 01-01-1983 and to substantiate the same, as proof, he produced a receipt, which was in his writing and signature. The said receipt was marked as Ext. 'D' with objection. Learned Addl. Public Prosecutor Sri Ajay Mishra has rightly submitted that such receipt was required to be produced by the purchaser, but in the present case, seller had come out with a receipt to show that he had sold the pump set to Ramashish Rai. Moreover, the Court is of the opinion that in case, in which number of witnesses had categorically stated regarding the manner of occurrence as well as participation of all the accused persons, the dispute regarding claim of pump set has got no relevance.

99. Similarly, D.W.-6 Ashok Kumar Mahaseth, who is of different village i.e. village Pirauti, had again stated regarding



ownership of the pump set.

100. D.W.-7 Khobhari Rai, who has claimed to be Mukhiya of Ratanpur village had tried to establish the plea of alibi of Ramashish Rai. He stated that on the date of occurrence i.e. on 29-03-1983, Ramashish Rai was filling soil on the road, since the work was allotted by the Panchayat to him. Sri Ajay Mishra, learned Addl. Public Prosecutor has argued that the plea of alibi is completely unbelievable. He submits that date of occurrence i.e. 29-03-1983 was the day of Holi festival and on the eve of Holi festival, it is not expected that one, instead of enjoying festival, will discharge his duty of construction of road. Moreover, in a case, in which, accused was identified by number of witnesses, such plea of alibi has got no relevance.

101. D.W.-8 Ramesh Kumar is yet another defence witness to support the plea of alibi of Ramashish Rai.

102. D.W.-9 is Jeevnath Rai, who had proved the certificate issued by a school in respect of appellant no. 34 (Vidyanand Rai) to show that at the time occurrence, he was juvenile.

103. D.W.-10 Jeevan Rai has also deposed regarding the character certificate issued in favour of Vidyanand Rai to establish claim of juvenility.



104. Dr. Manoranjan Kumar Srivastava has been examined as D.W.-11, who on 21-11-1983 had examined appellant no. 38 Rama Nand Rai to ascertain his age and he opined that his age was in between 14 and 15 years i.e. below 16 years. He proved his report, which was marked as Ext. – J.

105. D.W.-12 Vishwanath Prasad is a formal witness, who in the month of March, 1983 was posted in the office of Sub-Divisional Officer, Muzaffarpur (East) and he proved an order of confidential wing, which was in the writing of one Umesh Chandra Choudhary, Sub-Divisional Officer, East Muzaffarpur. The said document was marked as Ext. AA.

106. D.W.-13 Rajendra Prasad is also a formal witness, who has proved the writing and signature of accused Jagannath Ravidas.

107. Sri Ajay Mishra, learned Addl. Public Prosecutor and Sri Amish Kumar, learned Amicus Curiae have argued that the prosecution case is crystal clear and there is no reason to raise any doubt regarding either manner of occurrence or participation of the accused persons, who were held guilty, convicted and sentenced by the trial court. Sri Amish Kumar has drawn our attention to the evidence of defence witness itself i.e. D.W.-4 Vidya Sagar Choudhary and submits that so far as Jagannath



Ravidas is concerned, even the defence witness has categorically stated that prior to assault, this appellant had entered into the house of Chandra Shekhar Choudhary and took gun and revolver and thereafter, this appellant had some discussion with appellant no. 2 (Mahendra Rai) and immediately thereafter i.e. after gun and revolver from possession of Mahanth Ji was taken back, the accused persons were emboldened and firstly started to set the house of Chandra Shekhar Choudhary on fire and they were waiting that after increase of flame, the inmates may come out and while they came out from their house, firstly, from the northern side, they were assaulted by way of stone pelting, on which the entire family member of Chandra Shekhar Choudhary returned back and tried to flee away towards southern field, where they were intercepted by the accused persons and brutally assaulted. In the said occurrence, four persons of one family were brutally assaulted till death at the place of occurrence itself and one of the inmates Anil Jha, who had received serious grievous injury on brutal assault, was carried to Patna Medical College & Hospital where he died. According to both the counsel, in the said occurrence, besides killing five persons, other 17 persons of the same family were brutally assaulted, who had received serious and grievous injury. It has been argued that only one day prior to the



occurrence, there was a puja of *Satyanarayan Swami* in the house of Chandra Shekhar Choudhary, which was organized to celebrate employment of nephew of Chandra Shekhar Choudhary, as Lecturer and one son. Due to said occasion, almost all family members of Chandra Shekhar Choudhary had come from outside and participated in the puja and on the next morning, even other family members were not knowing anything, but accused persons surrounded the house of Chandra Shekhar Choudhary. Firstly, heap of straw, which was lying near the door of Dhanurdhar Choudhary who was also cousin of Chandra Shekhar Choudhary, was put on fire. The family members of Dhanurdhar Choudhary were assaulted, only thereafter, to terrorise the accused persons, Mahanth Ji from inside the house opened fire in air from double barrel gun and it is fact that after hearing sound of firing, the accused persons started retreating, but in the meanwhile, the Circle Officer i.e. Jagannath Ravidas, who was not having any authority or was not on official duty, arrived on a police jeep with armed forces, entered into the court-yard of Chandra Shekhar Choudhary, forcibly took gun and revolver from the hand of Mahanth Ji and thereafter, he showed the gun to members of Haseri (mob) with a view to abate them to kill the entire family members and immediately thereafter, all the accused persons set



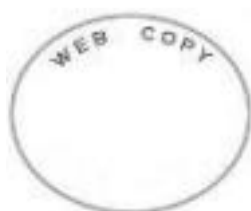
the house of Chandra Shekhar Choudhary on fire. Thereafter, entire episode had taken place. It has been argued that witnesses from the village - Kodai and even other boundry village - Kalyani had seen the occurrence and truthfully they had deposed during the trial, which has already been noticed by this Court. It has been argued that entire occurrence had taken place with common object and with object to eliminate the family of Chandra Shekhar Choudhary. According to learned Addl. Public Prosecutor as well as Sri Amish Kumar, learned Amicus Curiae, in a case, in which, a mob with common object had assembled and even some member had actively participated in that case, all the member of the mob shall be fastened with the provision of Section 149 of the Cr.P.C. It has also been argued that there is specific case as to who had snatched the "*ataichi*" from one of the witness, in which, according to prosecution, huge quantity of ornaments were kept. Even one of the witnesses had said that accused had snatched golden chain from her neck. There is consistent evidence as to who were carrying which weapon and how they had participated and as such, according to Sri Amish Kumar as well as Sri Ajay Mishra, there is no ground for interference with the judgment impugned. It has also been argued that learned Trial Judge has discussed each and every evidence and by a detailed judgment, he



has convicted all the appellants, which requires no interference.

108. We have already discussed entire evidence. It is a fact that during investigation or during trial, number of accused persons died and now only about 30 accused persons of the appeal i.e. Cr.Appeal (DB) No. 267/89 are alive and as such, besides discussing entire evidence, it is necessary to incorporate the facts showing participation of the surviving accused persons/surviving Appellants and their identification by witnesses, which can be summarized in following manner:-

| Name of surviving accused persons. (No. has been assigned as per their position in the cause title of Criminal Appeal (DB) No. 267 of 1989) | Witnesses who have specifically named the accused setting straw/ house on fire | Witnesses who have identified the accused persons present in the mob | Witnesses who have identified the accused persons who had engaged in assault, beating & lynching. |
|--|---|---|--|
| 2. Mahendra Rai @ Harendra Narain Singh, S/o. Bhagat Rai | PW20 | PW2, PW5, PW6, PW8, PW18, PW19, | PW3, PW10, PW13, PW15, PW16, PW17, PW22, PW24, PW25, PW26, PW27, PW23, PW36 |
| 5. Krishnandan Rai S/o. Hira Lal Rai | PW2, PW3, PW14, PW20, PW26, PW38, | PW2, PW6, PW8, PW18, PW19, | PW3, PW10, PW13, PW14, PW22, PW25, PW26, PW23 |
| 6. Ram Udar Rai, S/o. Prem Rai | | PW2, PW6, PW18, | PW3 |
| 8. Mita Ram Rai, S/o. Sukan Rai | PW2, PW3, PW20, | PW2, PW6, PW8, PW18, PW19, | PW3, PW18, PW24, PW25, PW23 |
| 9. Ganesh Rai, S/o. Charittar Rai | | PW2, PW6, PW18, | PW3, PW22 |
| 10. Ram Lal Rai, S/o. Bhogi Rai. | PW20, | PW2, PW8, PW18, PW19, | PW3, PW13, PW22, PW25, PW26 |
| 11. Ram Ekbal Rai S/o. Jogi Rai. | | PW2, PW5, PW8, PW19, PW38, | PW24, PW13, PW18, PW22, PW25, PW26, PW27 |
| 13. Ram Binay Rai, S/o. Prem Rai. | | PW2, PW6, PW18, PW19, PW40, | PW16, PW27 |
| 14. Panchan Rai @ Ram Prabhanjan Rai, S/o. Prem Rai. | PW20, | PW2, PW18, PW19, | PW3, PW13, PW23, PW22 |
| 15. Ramashish Rai, S/o. Dhanukhi Rai. | PW6, PW8, PW20, PW36, | PW2, PW5, PW6, | PW22 |
| 20. Kapildeo Rai, S/o Prem Rai. | PW20, | PW2, PW6, PW40, | PW22, PW25, PW26 |



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|---|-----------------|-----------------------------|-----------------------------|
| 21.Ramadhar Rai, S/o. Subudh Lal Rai (Juvenile) | | PW2, PW38, | PW17, PW22 |
| 24. Siya Saran Rai S/o. Khakhan Rai | PW2, PW3, PW20, | PW2, PW6, PW18, PW38, PW40, | PW3, PW17, PW22, PW25, PW23 |
| 26. Kapildeo Rai, S/o. Sukan Rai. | | PW2, PW6, | |
| 31.Sukh Nandan Rai, S/o. Chalitar Rai. | | PW2, PW40, | PW3, PW26 |
| 32. Bujhawan Rai S/o. Hira Lal Rai | PW20, | PW2, PW5, PW8, | |
| 33. Ram Singar Rai S/o. Hira Lal Rai | | PW2, PW5, PW19, | |
| 34.Vidya Nand Rai S/o. Bhujawan Rai. (Juvenile) | PW20, | PW38, | PW22 |
| 36. Phekan Rai, S/o Asharfi Rai | PW20, | PW19, PW38, PW40, | PW22 |
| 37. Khakhanu Rai, S/o. Methur Rai | | PW38, PW40, | PW24, PW26, PW36 |
| 38.Rama Nand Rai, S/o. Mahendra Rai (Juvenile) | PW20, | PW38, PW40, | PW3, PW22, PW26, PW27, PW36 |
| 39.Subudh Lal Rai, S/o. Bishuni Rai. | PW20, | PW2, PW6, PW19, PW38, PW40, | PW3, PW17, PW22 |
| 40.Ramhit Rai, S/o. Khakhan Rai. | | PW38, PW40, | PW23, PW25 |
| 41.Nand Kishore Rai, S/o. Prem Rai. | | PW2, | PW27 |
| 42.Garbhu Rai, S/o. Charittar Rai. | PW20, | PW2, PW38, PW40, | PW22, PW23 |
| 43.Shiva Chandra Rai S/o. Sukhdeo Rai | PW20, | PW2, PW38, PW40, | PW22, PW36 |
| 45.Jugut Lal Rai @ Nirmal Rai, son of Lakshmi Rai | | PW2, PW40, | PW22 |
| 46.Kanhai Rai, S/o. Janak Rai | | PW40, | PW22, PW26, PW27 |
| 47. Sita Ram Rai, S/o. Fakira Rai | | | PW18 |
| 48. Nirsu Rai @ Nuja Rai, S/o. Rudal Rai. | | | PW17 |

109. It would also be apt to incorporate in short how the witnesses have stated about specific role played by the accused persons in the following manner:-

| Witness | Name of the Witnesses | Specific role assigned by the Witnesses to the accused persons regarding the mode of overt-act/assault on the victims/injured persons. |
|---------|-----------------------|--|
| PW5 | Saraswati Devi | Methur Rai A3D and Prit Lal Rai A12D had inflicted <i>farsa</i> blow on Mahanth Indradeo Choudhary. |



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| | | Saukhi Rai A35D had inflicted <i>lathi</i> blow on PW5 resulting in breaking of her hand. |
| PW6 | Langat Singh | Mita Ram A8 , Siya Ram A7D and Siya Saran A24 had inflicted <i>lathi</i> blow on Chandra Shekhar Choudhary PW40 . These accused persons along with with others had also beaten other family members. |
| PW16 | Awadhesh Singh | Mahendra A2 , Batahu Rai A17D , Ram Binay A13 and others had beaten the family members of Chandra Shekhar Choudhary PW40 . |
| PW22 | Krishna Dev Choudhary | The child of Braj Bhushan Choudhary was snatched by the mob & thrown in fire, however, the child was saved. |
| PW25 | Devendra Jha | The mob started throwing Rora, Pathar and Dhela. Chandra Shekhar Choudhary PW40 was beaten by Siya Ram Rai A7D , Mita Ram Rai A8 , Lakshmi Rai A23D and Ishwar Rai A21D . |
| PW33 | Mithila Devi | Prit Lal Rai A12D , Methur Rai A3D , Siya Ram Rai A7D and Siya Saran Rai A24 had set the straw of PW33 on fire. PW33's mother Murti Devi and brother-in- law (Dewar) were beaten by Prit Lal Rai A12D , Methur Rai A3D , Siya Ram Rai A7D and Siya Saran Rai A24 . The mob had engaged in setting the house of Chandra Shekhar Choudhary PW40 on fire and had also engaged in assault. |
| PW34 | Murti Devi | The straw of PW34 was put on fire by Prit Lal Rai A12D . Methur Rai A3D and Siya Ram Rai A7D were seen near the straw, whereafter Prit Lal Rai A12D , Methur Rai A3D , Siya Ram Rai A7D , Siya Saran Rai A24 , Mita Ram Rai A8 , Subudh Lal Rai A39 , Ramadhar Rai A21 , Garbhu Rai A42 , Hulash Rai and others entered inside the courtyard. Then Mahendra Rai A2 exhorted to the people, whereafter Prit Lal Rai A12D , Methur Rai A3D , Siya Ram Rai A7D , Siya Saran Rai A24 , Mita Ram Rai A8 started beating brother of son-in-law of PW34 . The accused persons had also beaten PW34 . PW34 was also beaten by Prit Lal Rai A12D , Siya Ram Rai A7D , Siya Saran Rai A24 , Mita Ram Rai A8 , Subudh Rai, Ramadhar Rai A21 , Garbhu Rai A42 . |
| PW35 | Uma Devi | PW35's family members were beaten by mob by <i>lathi</i> , <i>bhala</i> , <i>garasa</i> & <i>farsa</i> resulting in death of her husband Braj Bhushan Choudhary, Ravi Bhushan Choudhary, Mahanth Indradeo Jyoti & Dr. Indranand Mishra & subsequently Anil Kumar Jha also died. PW35 was beaten by <i>Kudal</i> by Krishnandan Rai A5 & he snatched her son from her hand & threw him in the fire. |
| PW36 | Nagendra Jha | Mahanth Indradeo Jyoti was beaten by accused Mahendra Rai A2 and Siya Ram Rai A7D by <i>farsa</i> as well as by Krishanandan Rai A5 and Prit Lal Rai A12D by <i>farsa</i> resulting in his death. Ramashish Rai A15 and Jagrit Rai A4D had beaten Dr. |



| | | |
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| | | <p>Indranand Mishra by <i>bhala</i>.</p> <p>Surendra Rai and Methur Rai A3D had beaten Dr. Indranand Mishra by <i>farsa</i> and Mita Ram Rai A8 had beaten him by <i>bhala</i> resulting in his death there.</p> <p>Braj Bhushan Choudhary and Ravi Bhushan Choudhary were beaten by <i>bhala</i> by Jagrit Rai A4D, Ramashish Rai A15 and Ram Ekbal Rai A11, by <i>farsa</i> by Methur Rai A3D and Krishnandan Rai A5, by <i>bhala</i> by Siya Ram Rai A7D and Ganesh Rai A9 and by <i>lathi</i> by Shiv Shankar Rai A1D.</p> <p>PW36 was beaten by <i>farsa</i> by Ram Lal Rai A10, by <i>garasa</i> by Ram Udar Rai A6 and by <i>Kudal</i> by Panchan Rai A14.</p> |
| PW37 | Rita Choudhary | <p>The mob was throwing Rora, Pathar and had engaged in assault by <i>lathi</i>, <i>bhala</i>, <i>farsa</i> and <i>garasa</i>.</p> <p>PW37 stated about death of five persons at the place of occurrence and the family members being injured by the accused persons.</p> <p>PW37 was also injured and her knee and talwa got burnt by fire.</p> |
| PW38 | Maheshwari Devi | <p>Son-in-law of PW38 i.e Mahanth Indradeo Jyoti was beaten by <i>bhala</i> by Mahendra Rai A2 and Siya Ram Rai A7D, by <i>farsa</i> by Krishnandan Rai A5 and Prit Lal Rai A12D.</p> <p>Dr. Indranand Mishra was beaten by <i>bhala</i> by Jagrit Rai A4D and Ramashish Rai A15, by <i>farsa</i> by Methur Rai A3D & Surendra Rai and by <i>garasa</i> by Mita Ram Rai A8.</p> <p>PW38's son Braj Bhushan Choudhary and Ravi Bhushand Choudhary were beaten by <i>bhlala</i>, by Ramashish Rai A15, Siya Ram Rai A7D and Jagrit Rai A4D, by <i>farsa</i> by Krishnandan Rai A5 and Prit Lal Rai A12D and by <i>lathi</i> by Fekan Rai A36, Shiv Shankar A1D and RamBinay Rai A13.</p> <p>Methur Rai A3D had also beaten them by <i>farsa</i>.</p> <p>Ram Binay Rai A13 had also beaten them.</p> <p>Anil Kumar Jha was beaten by <i>farsa</i> by Ram Lal Rai A10, by <i>garasa</i> by Ram Udar Rai A6 and by <i>Kudal</i> by Panchan Rai A14 apart from being beaten by <i>lathi</i> by some persons.</p> <p>PW38 was beaten by Methur Rai A3D by <i>lathi</i> portion of the <i>farsa</i> and he had also snatched gold chain from her neck apart from snatching attaché containing jewelry from her Natini namely Usha Mishra PW 4.</p> |
| PW40 | Chandra Shekhar Choudhary | <p>Indradeo Jyoti was beaten by <i>bhala</i> by Mahendra Rai A2 and Siya Ram Rai A7D, by <i>farsa</i> by Krishnandan Rai A5 and Prit Lal Rai A12D.</p> <p>Dr. Indranand Mishra was beaten by <i>farsa</i> by Methur Rai A3D and Surendra Rai, by <i>garasa</i> by Mita Ram Rai A8 by <i>bhala</i> by Jagrit Rai A4D and Ramashish Rai A15.</p> <p>Braj Bhushan and Ravi Bhushan was beaten by <i>farsa</i> by Krishnandan Rai A5, Siya Ram Rai A7D and Methur Rai A3D, by <i>bhala</i> by Ram Ekbal Rai A11 and Ganesh Rai A9</p> |



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| | <p>and by <i>lathi</i> by Shiv Shankar Rai A1D.</p> <p>AnilKumar Jha was beaten by <i>farsa</i> by Ram Lal Rai A10, by <i>garasa</i> by Ram Udar Rai A6, by <i>Kudal</i> by Panchan Rai A14 and by <i>gupti</i> by Ramadhar Rai A21.</p> <p>PW40 has stated about death of 4 persons at the place of occurrence and one person at the hospital.</p> <p>PW40 stated that apart from him, his wife Maheshwari Devi PW38, daughter Sarswati Devi PW 5, Putohu Uma Devi PW35 and Rita Devi PW37, Natini Usha Devi PW4 received injuries.</p> <p>PW40 has stated that other family members were also beaten.</p> <p>PW40 is stated to have been beaten by Awadhesh Rai, Fekan Rai A36 and Parichan Rai A16D, resulting in breaking of his hands and head.</p> <p>PW40 has stated that earlier also accused persons had assaulted him for not compromising cases.</p> <p>Prit Lal Rai A12D tried to inflict knife blow on son in law of PW40 but it hit Umesh Rai whereafter, he went away with the Yadavs on foot.</p> <p>PW40 had seen the accused persons assaulting all the victims.</p> |
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110. The witnesses, who had identified surviving accused carrying weapons, can be examined in the following manner:-

| Name of the accused persons (No. has been assigned as per their position in the cause title of Criminal Appeal (DB) No. 267 of 1989) | <i>Bhala</i> | <i>Pharsa</i> | <i>Lathi</i> | <i>Kudal</i> | <i>Garasa</i> |
|--|---|------------------|--------------|--------------|---------------|
| 2. Mahendra Rai @ Harendra Narain Singh, S/o. Bhagat Rai | PW6, PW8, PW13, PW16, PW17, PW22, PW26, | | | | |
| 5. Krishnandan Rai S/o.Hira Lal Rai | | PW8, PW14, PW26, | | | |
| 8. Mita Ram Rai, S/o. Sukan Rai | | | PW6 | | |
| 9. Ganesh Rai, S/o Charittar Rai | PW6, PW22, | | | | |
| 10. Ram Lal Rai, S/o. Bhogi Rai. | | PW26, | | | PW22, |
| 11. Ram Ekbal Rai S/o. Jogi Rai. | PW22, PW26, | | | | PW13, |
| 13. Ram Binay Rai, S/o Prem Rai. | | PW16, | | | |
| 14.Panchan Rai @ Ram Prabhanjan | | | | PW13, | |



| | | | | | |
|------------------------------------|-------|--|-----|-------|--|
| Rai, S/o Prem Rai. | | | | PW22, | |
| 24. Siya Saran Rai S/o Khakhan Rai | | | PW6 | | |
| 40. Ramhit Rai, S/o Khakhan Rai. | PW14, | | | | |
| 46. Kanhai Rai, S/o Janak Rai. | PW15, | | | | |

PW23 has stated that rest of the accused were carrying *Lathi, Bhala & Garasa*.

PW26 has stated that rest of the accused were carrying *Lathi & Kudal*.

111. Since, Sri Suraj Narain Yadav, learned counsel for appellants in Cr.Appeal (DB) No. 267/1989 has emphasized that the appellants were hardly member of the mob and as such, they may not be fastened conviction with the aid of Section 149 of the I.P.C. is concerned, it is necessary to discuss the case laws, on which, Sri Yadav has placed heavy reliance. Sri Yadav has firstly placed reliance on **AIR 1975 SUPREME COURT 654 (SANTOSH VS. THE STATE OF M.P.)** and he has specifically referred to paragraph 8 & 9 of the judgment, which are as follows:-

“8. A reference made to Chikkarange Gowda v. State of Mysore, AIR 1956 SC 731 would show that each member of a mob need not be necessarily be held liable for the actions of every other member of that mob. It may be easier, in some respects, to prove a common object as a basis for a vicarious liability under Section 149, IPC, than to establish a common intention within the meaning of Section 34, IPC. Nevertheless, as was pointed out by this Court in Chikkarange Gowda's case (supra), the principle has been well recognised, since the decision in 1873 in Queen v. Sabed Ali, (1873) 20 Suth WR (Cr.) 5 A, that



every offence which may be committed by a member of an unlawful assembly will not be necessarily ascribed to or vicariously fastened upon every other member of that assembly by using Section 149, IPC. The likelihood of causing of death by the nature of the actions of the members of the assembly must be shown to be within the knowledge of a member who is to be made vicariously liable for a death. Such knowledge may be inferred from the nature of the actions committed by others in an unlawful assembly which the member, held vicariously liable continues to associate himself with despite these actions seen by him or known to him.

9. In a case such as the one before us, in which there were two factions in a village, one of the oppressors and the other of the oppressed, smarting under the pain of injuries inflicted by their oppressors, the intention of a member of an assembly could be initially quite lawful. His object may not go beyond joining a procession for purposes of protest. We are convinced, on the evidence on record that the participation of the appellant before us went beyond exhibiting a mere intention to protest. It not only embraced knowledge of likelihood of hurt of some kind to members of the party attacked, but it included an attack by the appellant on Baliram, PW 1. The nature of that attack was, however, relatively mild. At most, from the concerted action of so many men a member of the unlawful assembly, on the facts and circumstances of the case before us, could be reasonably-held to be aware that grievous hurt would result."



112. He has further placed reliance on **AIR 2008 SUPREME COURT 2692 (State of Karnataka v. Chikkahottappa @ Varade Gowda and Ors)** and has referred to paragraph 6 & 8 of the Judgment, which are incorporated hereinbelow:-

“6. The pivotal question is applicability of Section 149 IPC. Said provision has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of such an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word `object' means the purpose or design and, in order to make it `common', it must be shared by all. In other words, the



object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly.

8. Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish



the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at the time of or before or after the occurrence. The word 'knew' used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful



assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part but offences committed in prosecution of the common object would also be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. (See Chikkarange Gowda and Ors. v. State of Mysore AIR 1956 SC 731). These aspects were also recently highlighted in Chandra and Ors. v. State of U.P. and Anr. (2004 (5) SCC 141).”

113. Similarly, he has placed reliance on **1970 (3) Supreme Court Cases 236 (State of Assam Vs. Barga Dewani and others)** and referred to paragraph 8 of the judgment, which is incorporated hereinbelow:-

“8. Section 149, I.P.C., which prescribe vicarious or constructive criminal liability for the members of an unlawful assembly reads:



“If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, is a member of the same assembly, is guilty of that offence.”

The first part of this section speaks of the commission of an offence in prosecution of the common object of the assembly, whereas the second part takes within its fold knowledge of likelihood of the commission of that offence in prosecution of the common object. The knowledge contemplated by the second part does not mean knowledge of mere possibility of the commission of the offence. The commission of the offence must be reasonably likely. Such knowledge may be collected from the nature of the assembly, its common object, the kind of arms its members bear and their behaviour at or before the actual conflict. In the case before us the charge does not refer to any knowledge or likelihood of the offence of murder. It would no doubt have been better if in the charge knowledge of likelihood of the offence of murder in prosecution of the common object had been specifically mentioned. Such a course would have given proper notice and opportunity to the accused persons to meet the specific charge. But failure to do so does not, in our view, by itself necessarily and automatically render illegal the conviction based on the conclusion that the members of the unlawful assembly must have known that the offence of murder



was likely to be committed in prosecution of the common object. Mention of Section 149 in the charge might generally be considered to be wide enough to include the charge based on the second part of this section. The matter would, however, have to be considered on the facts and circumstances of each case for determining as to whether the general nature of the charge has prejudiced the accused and, therefore, occasioned failure of justice; Sections 535 and 537, Cr.P.C. This aspect was not canvassed and, therefore, not considered by the High Court. Incidentally it may be observed that even in the examination of the respondent under Section 342, Cr.P.C., they were not questioned about their knowledge on the likelihood of murder being committed in prosecution of the common object of the unlawful assembly of which they were alleged to be members. But this omission would also be one of the circumstances relevant in considering the question of prejudice to the accused. The appellant's counsel also faintly urged that the respondents were in any event guilty of grievous hurt but on this count again there was no charge and this point was not canvassed in either of the two courts below. We need, therefore, say nothing on this point."

114. Even on perusal of the aforesaid judgments, it is evident that if there is cogent evidence on record to suggest that one, who is a member of mob and is aware about the consequences of the action and there was likelihood of



commission of offences, certainly one can be held guilty for the offence committed with the aid of Section 149 of the IPC. So far as present case is concerned, as we have noticed the evidences of the witnesses, there is no reason to record any other opinion than to hold that all the appellants had participated in the occurrence and they were not spectators. Once the member of the Haseri (mob) had committed offences, there is no reason to absolve the appellants from application of Section 149 of the Indian Penal Code. Moreover number of witnesses have categorically stated as to which of the appellants had participated in the occurrence in what manner and used which weapon.

115. On going through the evidence in detail, there is no reason to observe that the appellants can be absolved from application of Section 149 of the Indian Penal Code. The learned Trial Judge has rightly held them guilty and passed the sentence order.

116. So far as sole appellant in Cr.Appeal (DB) No. 279/1989 (Jagannath Ravidas) is concerned, there is specific evidence that in the occurrence, he had played a vital role of abator. Had he not snatched gun from the hand of Mahanth Ji (deceased) and shown gun to the member of Haseri (mob), there was possibility to save the life of family members of Chandra



Shekhar Choudhary. Number of witnesses have said that after taking gun from the hand of Mahanth Ji, this appellant had shown gun to the member of Haseri (mob) and some of the witnesses have said that this appellant had arrived at the place of occurrence with appellant no. 2 (Mahendra Rai of Cr.Appeal DB No. 267/89), even besides family member of Chandra Shekhar Choudhary had categorically said that how this appellant had entered into the house and forcibly took the gun as well as revolver from the possession of Mahanth Ji (deceased). On the basis of evidence of investigating officer also, it is evident that licence of gun and revolver was in the name of Sri Chandradeo Jyoti (Mahanth Ji). Even some of the witnesses from Kalyani village had asked this appellant (Jagannath Ravidas) that once he was taking away the gun, it was his duty to protect their life, however; this appellant had not taken note of such request and immediately after he came out from the house of Chandra Shekhar Choudhary, the member of Haseri (mob) started setting the house of Chandra Shekhar Choudhary on fire and thereafter, family member of Chandra Shekhar, when came out from the house, were assaulted and five member of one family were brutally killed, besides other about 17 family members received grievous injuries. Sri Amish Kumar has rightly pointed out that



the document, which has been got exhibited from the defence side to show that this appellant was on official duty in the village Kodai, also establishes that at the time of occurrence, that too particularly when this appellant had entered into the house of Chandra Shekhar Choudhary and forcibly took gun and revolver, he was not at all on official visit. The document i.e. exhibit A-A, which was got proved by D.W.-12 suggests that order of deputation of this appellant (C.O.) was signed about 4:30 PM on 29-03-1983, while main occurrence had taken place in between 11:00 AM and 2:30 PM on 29-03-1983. Accordingly, the learned Trial Judge has rightly held him guilty for offence under Sections 109 r/w 302, 379 r/w 109, 324 r/w 109 and 323 r/w 109 of the Indian Penal Code. The evidence, which has been discussed herein above establishes that learned Trial Judge has committed no error in convicting and sentencing the appellant Jagannath Ravidas.

117. In Criminal Appeal (DB) No. 267/89, during pendency of this appeal, an interlocutory application, vide I.A. No. 1182 of 2013, was filed claiming juvenility at the time of occurrence on behalf of appellant no. 21 (Ramadhar Rai), appellant no. 34 (Vidyanand Rai) and appellant no. 38 (Ramanand Rai). By order dated 26-08-2013, the Juvenile Justice Board, Muzaffarpur was directed to conduct an enquiry and submit a



report. Pursuant to order dated 26-08-2013, a detailed enquiry was conducted by the Juvenile Justice Board, which was perused by a Division Bench of this Court on 10-02-2014. Thereafter, by order dated 16-05-2014, a Division Bench of this Court observed that the case of appellant nos. 21, 34 & 38 of Cr. Appeal (DB) No. 267 of 1989 declaring aforesaid appellants as juvenile on the date of occurrence shall be considered in accordance with Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 at the time of hearing.

118. Accordingly, Sri Yadav, learned counsel for appellants has argued that since Juvenile Justice Board (for short J.J.Board), in detailed enquiry, had held that aforesaid three appellants were juvenile at the time of occurrence, certainly, their judgment of sentence is liable to be set aside. On this very point, we have heard both the parties and considering the fact that duly constituted J.J.Board since on the basis of material on record and certificates issued by the competent authority has arrived at the conclusion that the appellant no. 21, 34 and 38 were juvenile at the time of occurrence, certainly they can be granted the benefit of juvenility. Accordingly, their sentence can be modified. So far as conviction part is concerned, there is consistent evidence against all the appellants and as such, there is no need to interfere with



the conviction of appellant no. 21, 34 and 38. Only to the extent of modification of sentence, order can be passed. For considering the matter, it would be appropriate to quote paragraph 31 to 34, 57 & 60 of judgment of the Apex Court, reported in **(2013) 11 Supreme Court Cases 193 (Jitendra Singh alias Babboo Singh Vs. State of Uttar Pradesh)**, which are as follows:-

31. In the present case, the offence was committed by the Appellant when the Juvenile Justice Act, 1986 was in force. Therefore, only the “punishments” not greater than those postulated by the Juvenile Justice Act, 1986 ought to be awarded to him. This is the requirement of Article 20(1) of the Constitution. The “punishments” provided under the Juvenile Justice Act, 1986 are given in Section 21 thereof and they read as follows:

“21. Orders that may be passed regarding delinquent juveniles.--(1) Where a Juvenile Court is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit--

(a) allow the juvenile to go home after advice or admonition;

(b) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as that Court may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(c) direct the juvenile to be released on probation of good conduct and placed under the care



of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(d) make an order directing the juvenile to be sent to a special home--

(i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;

(ii) in the case of any other juvenile, for the period until he ceases to be a juvenile:

Provided that ...

Provided further that ...

(e) order the juvenile to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under Clause (b), Clause (c) or Clause (e) of Sub-section (1) is made, the Juvenile Court may, if it is of opinion that in the interests of the juvenile and of the public it is expedient so to do, in addition make an order that the delinquent juvenile shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent juvenile:

Provided that ...

(3) - (4) * *

*

32. A perusal of the "punishments" provided for under the Juvenile Justice Act, 1986 indicate that given the nature of the offence committed by the Appellant, advising or admonishing him [clause (a)] is hardly a "punishment" that can be awarded since it is not at all commensurate with the gravity of the crime. Similarly, considering his age of about 40 years, it is completely illusory to expect the Appellant to be



released on probation of good conduct, to be placed under the care of any parent, guardian or fit person [clause (b)]. For the same reason, the Appellant cannot be released on probation of good conduct under the care of a fit institution [clause (c)] nor can he be sent to a special home Under Section 10 of the Juvenile Justice Act, 1986 which is intended to be for the rehabilitation and reformation of delinquent juveniles [clause (d)]. The only realistic punishment that can possibly be awarded to the Appellant on the facts of this case is to require him to pay a fine under Clause (e) of Section 21(1) of the Juvenile Justice Act, 1986.

33. While dealing with the case of the Appellant under IPC, the fine imposed upon him is only Rs. 100/-. This is ex facie inadequate punishment considering the fact that Asha Devi suffered a dowry death.

34. Recently, one of us (T.S. Thakur, J.) had occasion to deal with the issue of compensation to the victim of a crime. An illuminating and detailed discussion in this regard is to be found in *Ankush Shivaji Gaikwad v. State of Maharashtra*. Following the view taken therein read with the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 the appropriate course of action in the present case would be to remand the matter to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the Appellant and the



compensation that should be awarded to the family of Asha Devi.

57. The Appellant was a juvenile on the date of the occurrence of the incident. His case has been examined on merits and his conviction is upheld. The only possible and realistic sentence that can be awarded to him is the imposition of a fine. The existing fine of Rs. 100/- is grossly inadequate. To this extent, the punishment awarded to the Appellant is set aside. The issue of the quantum of fine to be imposed on the Appellant is remitted to the jurisdictional Juvenile Justice Board. The jurisdictional Juvenile Justice Board is also enjoined to examine the compensation to be awarded, if any, to the family of Asha Devi in terms of the decision of this Court in *Ankush Shivaji Gaikwad*.

60. Accordingly, the matter is remanded to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the Appellant and the compensation that should be awarded to the family of Asha Devi. Of course, in arriving at its conclusions, the said Board will take into consideration the facts of the case as also the fact that the Appellant has undergone some period of incarceration.

119. In view of point set at rest by the Apex Court, the Court proposes to remit back the case of appellant no. 21, 34 and



38 to the Juvenile Justice Board for imposing appropriate fine, which is required to be paid to the family of the victim. Accordingly, the judgment of sentence in respect of appellant no. 21, 34 and 38 is hereby set aside and their cases are remitted back to the J.J.Board for imposing appropriate fine to be paid to the family of the victim.

120. Accordingly, both appeals i.e. Cr. Appeal (DB) No. 267 of 1989 and Cr. Appeal (DB) No. 279 of 1989 are hereby dismissed.

121. So far as Govt. Appeal (DB) No. 56 of 1989 is concerned, though learned Addl. Public Prosecutor Sri Ajay Mishra tried to persuade the Court that at least 11 respondents of the said appeal, who are also appellants in Cr. Appeal (DB) No. 267/89, were liable to be convicted separately under Section 302 of the Indian Penal Code. However, on examination of entire evidence, it is evident that there was no specific material to show that which of the deceased died by injury caused by which of the appellant and in that view of the matter, the learned Trial Judge has rightly taking aid of Section 149 of the IPC had convicted them under Section 302 also besides other sections. In absence of any specific evidence, so far as application of Section 302 IPC is concerned in respect of respondent no. 1 to 11 in Govt. Appeal



(DB) No. 56/1989, we are unable to pass any favourable order. Moreover, respondent no. 1 to 11 have already been sentenced to undergo imprisonment for life under Section 302 r/w 149 of the IPC. Accordingly, the Govt. Appeal i.e. Govt. Appeal (DB) No. 56 of 1989 also fails and stands dismissed.

122. Since the appellants were already enlarged on bail at the time of admission of the appeal, after dismissal of the appeal, their bail-bonds stand cancelled and they are directed to surrender before the trial court.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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