

State of Bihar Vs. Ishwar Chand Rai and Awadh Bihari Rai

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Court : Patna

Decided On : Mar-28-2008

Judge : Shiva Kirti Singh and Dharnidhar Jha, JJ.

Acts : Indian Penal Code (IPC) - Sections 148 and 302; Code of Criminal Procedure (CrPC) - Sections 313, 357 and 366

Appeal No. : Death Reference No. 4 of 2005 Criminal Appeal Nos. 430 and 446 of 2005 (D.B.)

Appellant : State of Bihar Ishwar Chand Rai, Awadh Bihari Rai, Nirmala Devi and Sangita Devi

Respondent : Ishwar Chand Rai and Awadh Bihari Rai The State of Bihar

Advocate for Pet/Ap. : Rana Pratap Singh, Sr. Adv., Shishir Kumar and Aruni Singh, Adv. Ashwani Kumar Sinha, Adv.

Prior history : Dharnidhar Jha, J. 1. The Death Reference and the two criminal appeals arise out of the judgment and order of conviction dated 2nd June, 2005 and 4th June, 2005, respectively passed by the learned 1st Additional Sessions Judge, Buxar, in Sessions Trial No. 32 of 2002, by which appellants Ishwar Chand Rai and Awadh Bihari Rai were inflicted the sentence of death under Section 302 of the Indian Penal Code besides being directed to suffer rigorous imprisonment for three years under Section 148 of

Judgement :

Dharnidhar Jha, J.

1. The Death Reference and the two criminal appeals arise out of the judgment and order of conviction dated 2nd June, 2005 and 4th June, 2005, respectively passed by the learned 1st Additional Sessions Judge, Buxar, in Sessions Trial No. 32 of 2002, by which appellants Ishwar Chand Rai and Awadh Bihari Rai were inflicted the sentence of death under Section 302 of the Indian Penal Code besides being directed to suffer rigorous imprisonment for three years under Section 148 of the Indian Penal Code after having been found guilty and being convicted for committing the offences under the above noted Sections of the Penal Code. The two lady appellants, namely, Nirmala Devi and Sangita Devi were also found guilty of committing the offences under Sections 148 and 302 of the Penal Code and were directed to suffer rigorous imprisonment for three years and life respectively for their respective convictions under the above noted Sections of the Penal Code.

2. As is required by Section 366 of the Code of Criminal Procedure, the learned Additional Sessions Judge, after inflicting the sentence submitted the record of the case to this Court for confirmation of the sentence of death passed against appellants Ishwar Chand Rai and Awadh Bihari Rai.

3. The prosecution case is based on the fardbeyan (Ext.3) of P.W. 3, Lilawati Devi, who happened to be the wife of one of the deceased, namely, Bachchaji Rai. The informant stated that her husband Bachchaji Rai had five brothers and they were living in different sections of the same house without there being any clear partition of the properties till the date of the occurrence. The deceased, i.e., Bachchaji Rai, and his remaining five brothers were divided in two groups over the issues of partition of the property and the marriages of their respective daughters. One group consisted of (1) Bachchaji Rai, i.e., the husband of the informant, (2) Sheojee Rai and (3) Ramashankar Rai (all the three deceased) and the other group was comprised of (1) appellants Awadh Bihari Rai (2) Ishwar Chand Rai and (3) Shyam Narayan Rai (since absconding).

4. The informant stated further that the dispute over the keys of the tractor owned by the family jointly, ensued in the evening prior to the date of the occurrence. At about 6 O' Clock in the morning on 11.7.2001 her husband, deceased Bachchaji Rai, his brothers who are the two deceased, namely, Ramashankar Rai and Sheoji Rai, were getting ready to go to the Police Station for lodging an information about the occurrence which had taken place in the evening prior to the date of occurrence when the appellants Awadh Bihari Rai, accused Shyam Narayan Rai, appellant Ishwar Chand Rai, Rajesh Rai son of appellant Awadh Bihari Rai and the wives of three other brothers, namely, accused Girija Devi wife of Shyam Narayan Rai, Chandrawati Devi wife of appellant Awadh Bihari Rai, Nirmala Devi wife of appellant Ishwar Chand Rai along with accused Sangita Devi wife of accused Rajesh Rai alias Munna Rai surrounded the three deceased persons at the Darwaja. The accused persons as per the allegations were armed with Baishakhi, Farsa, Bhala, Kudal, Rami, and country made pistol. It is alleged that accused Rajesh Rai ran to the main gate of Darwaja and closed the same. All the accused persons, thereafter, surrounded and caught deceased Ramashankar Rai, whereafter, accused Rajesh Rai alias Munna Rai (since absconding) fired a shot into his ribcage from point blank range. Ramashankar Rai fell down on the ground whereafter accused Shyam Narayan Rai and appellant Ishwar Chand Rai caught hold of both of his hands. Appellant Awadh Bihari Rai dealt a blow with Kudal on the neck of Ramashankar Rai as a result of which his throat was cut on its left side. In the meanwhile, appellant Girija Devi who had a garasa in her hand, accused Chandrawati Devi who was armed with Rami, appellant Nirmala Devi who was armed with Baishakhi and appellant Sangita Devi who was having a knife in her hand started giving blows incessantly on the throat of Ramashankar Rai as a result of which he died instantaneously.

5. The informant further alleged that her husband Bachchaji Rai rushed to the rescue of Ramashankar Rai, whereupon, he was caught by appellant Ishwar Chand Rai and accused Shyam Narayan Rai. Accused Rajesh Rai fired a shot into the right ribcage of deceased Bachchaji Rai from point blank range as a result of which Bachachaji Rai fell down on the ground whereupon appellant Ishwar Chand Rai taking the spade from the hand of appellant Awadh Bihari Rai gave a blow with spade on the neck of deceased Bachachaji Rai cutting most of the parts of his

neck. Appellant Awadh Bihari Rai also gave a blow with farsa on the face of Bachchaji Rai, the husband of the informant causing cut injury to him. The lady accused persons including the two appellants, namely, Nirmala Devi and Sangita Devi started assaulting Bachchaji Rai incessantly as a result of which he succumbed to his injuries.

6. The informant alleged that accused Shyam Narayan Rai ran after the deceased Sheoji Rai, who was fleeing into the house to protect himself. Sheoji Rai was caught by accused Shyam Narayan Rai and appellants Awadh Bihari and Ishwar Chand Rai also caught deceased Sheoji Rai by both his hands and made him to stand by a Khambha (pole) whereafter accused Rajesh Rai came running to sheoji Rai. The informant stated that she and other ladies pleaded with the accused persons for mercy and to spare Sheoji Rai by holding the hands and feet of accused Rajesh Rai, but the lady accused persons assaulted the informant by dashing her down on the ground as also by pulling her hairs. Taking advantage of the above situation, accused Rajesh Rai fired a shot into the chest of deceased Sheoji Rai. The informant stated that having sensed the seriousness of the situation, she and others took shelter into the house by bolting its door from inside. The accused persons attempted to break the door open to kill the informant and other lady inmates of the house but they failed in their attempts. The accused persons fled on hearing hulla of arrival of the police and the informant and others came out of the house but found the dead bodies of her husband, Bachchaji Rai, Ramashankar Rai and Sheoji Rai lying there at the Darwaja in a pool of blood. The informant stated that the faces, chests, hands, legs and other parts of the deceased were mutilated due to the assault by sharp edged weapons.

7. P.W. 5, Manoranjan Bharti recorded the Fardbeyan, Ext. 3, at the joint house of the deceased and the accused persons and on that basis, Ext. 4, the F.I.R. of the case was drawn up. P.W. 5 himself took up the investigation. He recorded the statements of the witnesses and seized some of the material exhibits. Like empty cartridges, a blood stained knife, a blood stained spade and a blood stained Rami from the place of occurrence and prepared Ext. 1, the seizure memo, in that behalf. Similarly, he also seized a blood stained Baishakhi along with two empty cartridges as also the blood stained earth along with some broken pieces of glass

bangles from the same place of occurrence but from a different part for which Ext. 1/1 was prepared by him. Two clothes, i.e., a blood stained pink coloured maxy and a blood stained white coloured sari, were also produced by Soni Kumari, the daughter of one of the deceased and the informant, P.W. 3 and for that production-cum-seizure memo Ext. 1/2 was prepared by P.W. 5. P.W. 5 sent the three dead bodies for post mortem examination after holding inquest and preparing the reports in that behalf which have been marked Exts. 5 to 5/B and Dr. M. Suleman, P. W. 4 held post mortem examinations on the three dead bodies and prepared Exts. 2 to 2/2, the post mortem examination reports. After completing the investigation, P.W. 5 submitted chargesheet in the case sending up the accused persons for trial. As appears from the record, accused Shyam Narayan Rai, Rajesh Rai alias Munna Rai, Girija Devi and Chandrawati Devi did not appear during the entire trial and the same proceeded against the four appellants which ultimately resulted into the judgment as indicated at the very outset of the present judgment.

8. The defence of the appellants was that of a complete denial as appears from their statements under Section 313 of the Code of Criminal Procedure. It further appears from the cross-examination of P.Ws. 2, 3 and other witnesses that they pleaded exercising right of private defence as the two appellants, namely, Awadh Bihari Rai and Ishwar Chand Rai claimed being injured during the same transaction on account of being attempted to be killed by the three deceased and others as appears from suggestion given to P.W. 2 Chandrawati Devi in Paragraph 39 of her evidence. They did not claim exercising right of their private defence directly but during the course of hearing of the present appeals and the death reference it was seriously contended that either the appellants could be held acting in exercise of their right of private defence or the Court could take a view that it was a case of free fight during which occurrence the three deceased persons received injuries.

9. In support of the charges, the prosecution examined five witnesses. P.W. 1, Nitu Kumari is the daughter of deceased Bachchaji Rai and has claimed to have witnessed the occurrence from the roof top of the house. P.W. 2 Chandrawati Devi is the wife of another deceased Sheoji Rai and she has also given an eye witness

account of the occurrence. P.W. 3 Lilawati Devi is the informant herself. P.W. 4, as indicated above is the Doctor who held post mortem examination on the three dead bodies and prepared the three reports, Exts. 2 to 2/2. P.W. 5 Sub-inspector of Police Manoranjan Bharti is the Investigating Officer of the case.

10. Besides the above oral evidence, the prosecution tendered some of the documents in evidence in support of the charges. Exts. 1 to 1/5 are the seizure memos for seizing different articles from the place of occurrence. Ext. 3, as indicated above, is the fardbeyan on the basis of which the F.I.R. of the case, Ext. 4, was drawn up. Exts. 5 to 5/B are the inquest reports in respect of the inquest held by P.W. 5 on the three dead bodies. The exhibit numbers and the series put by the learned Presiding Judge on Exts. 5 series was incorrect as it could be Ext. 5 to 5/2. We treat them as such. The three post mortem reports, as indicated above, have been marked as Exts. 2 to 2/A, again putting a wrong series and we read it as Exts. 2 to 2/2. There is no wrong if we correct the series of the two Exts, i.e., the inquest reports and the post mortem examination reports because they have been validly admitted in evidence. What we have done is to have correctly marked the documents as per the Rules of the Court.

11. The defence has examined four witnesses for bringing on record the fact that the two appellants Ishwar Chand Rai and Awadh Bihari Rai had injuries on their persons and that they were referred by D.W. 1 Dr. Ramanand Prasad for treatment to Patna Medical College Hospital. D.W. 2 is the clerk of the Patna Medical College Hospital who produced the Photostat copy of the Register known as S.O.D. Book (Surgeon on Duty Book) which has been attested by Dr. Vijay Kumar Sinha and Dr. Anita Sinha. This register has been marked as Ext. F. Dr. Om Prakash Kumar, D.W. 3, a student of P. G. under Dr. Snehanshu Gupta has spoken of admitting the appellant Awadh Bihari Rai on being referred to P.M.C.H. and also of having found one injury on his forearm and the other on his forehead. This witness D.W. 3 has spoken on readmission of appellant Awadh Bihari Rai on 29.10.2001 and the skin grafting done on him on 8.11.2001. This witness, D.W. 4, Dr. Shailesh Kumar Rai had examined appellant Sangita Devi, an undertrial prisoner lodged in the Central Jail, Buxar on being called upon by the learned Sessions Judge, Buxar, to submit a report on the health of appellant Sangita Devi

and the report submitted by D.W. 4 has been marked Ext. I.

12. The learned Additional Sessions Judge after considering the evidence on record and the arguments of the parties passed the judgment and order of conviction, presently under challenge. While doing so, the learned Judge found the prosecution evidence reliable and further found that the prosecution was not obliged to explain injuries which were on appellants Ishshwar Chand Rai and Awadh Bihari Rai. The learned Judge also rejected the contention of the defence that the evidence on manner of participation of the four lady accused persons including the two appellants Nirmala Devi and Sangita Devi was not acceptable in the light of the evidence of the Doctor holding Post-mortem examination on the three dead bodies and held that the two lady appellants along with two lady absconding accused persons had very much participated in the occurrence. As regards the defence contention of no independent person of the village coming forward to support the occurrence and three female closely related to the two deceased persons supporting the prosecution version, the learned Judge held that it was a double storied house and the premises being enclosed by a wall of 10 feet height it was not possible for any one from outside to witness the occurrence and to depose accordingly.

13. While criticizing the findings recorded by the learned Additional Sessions Judge, Shri Rana Pratap Singh, Senior Counsel appearing for the appellants contended that the witnesses appeared giving up one important aspect of the prosecution story in their evidence as regards absconding accused Rajesh Rai firing a shot at deceased Bachchaji Rai and killing him. It was contended that both P.Ws. 2 and 3 have stated that the shot fired by Rajesh Rai did not hit deceased Bachchaji Rai which is contrary to the basic prosecution version. It was next contended that the informant, P.W. 3 Lilawati Devi in the last line of her examination in chief sated that she could not say as to what was the reason for the occurrence and thus contended that there was no evidence coming as to what was the genesis or origin of the occurrence and the prosecution appears guilty of suppressing the real genesis or origin which led to three killings and the two male appellants being injured. Shri Singh by placing reliance on some of the decisions of the Supreme Court, such as : 1968 CriLJ1479 : Mohar Rai v. State of Bihar :

1976 CriLJ1736 : Lakshmi Singh v. State of Bihar and : AIR 2001 SC2902 : Kashi Ram v. State of Madhya Pradesh contended that the appellants Ishwar Chand Rai and Awadh Bihari Rai had injuries on their persons; appellant Awadh Bihari Rai's injuries being grievous in nature; there was no explanation offered by the prosecution witnesses as to how they had had those injuries on their persons. It was further contended in the above context that the injuries on two appellants appear admitted by P.W. 3, the informant, in paragraph 20 of her evidence in which she stated that she had seen injuries on the persons of the two appellants and further that they were hospitalized for getting their treatment but in spite of that the failure of the prosecution was there in not explaining the injuries. It was contended that the prosecution witnesses appeared totally amiss on the most material point of the case and that created a doubt in the very veracity of the prosecution story. It was contended in the above context that might be that the appellants and the other accused persons acted in exercise of the right of their private defence while being attacked by three deceased as was suggested by the defence to P.W. 2 in paragraph 39 and as such the judgment of conviction appears erroneously passed. It was contended lastly that if the Court was not inclined to accept any of the above contentions raised by Shri Singh, then it ought to consider seriously that it could be a case of free fight and in that view the conviction of appellants under Section 302 of the Indian Penal Code appears not sustainable and the sentence also appears excessive. As regards the complicity of the two lady appellants, namely, Nirmala Devi and Sangita Devi, it was submitted that the weapons which were used for inflicting the injuries specially the sharp cut ones on deceased Bachchaji Rai appears a single weapon with some variance in length of the injuries inflicted by it and that negates the allegation that the four lady accused persons including the two appellants had assaulted the deceased Bachchaji Rai with various weapons like, Garansa, Rami, Baishakhi and knife and as regards the prosecution story about the above noted four lady accused persons dealing blows on the throat/neck of deceased Ramashankar Rai, in fact, there was no injury found by the Doctor and as such the vital conflict in the two evidence entitled the two lady accused persons to acquittal.

14. Shri Ashwani Kumar Sinha, learned Additional Public Prosecutor contended that the witnesses were the natural persons who had seen the occurrence and the

reasons assigned by the Learned trial Judge for acting upon their evidence appears good. It was contended that the prosecution did not owe any explanation for not explaining the injuries on the accused persons inasmuch as there was complete lack of material suggesting that the injuries had been received by the two male appellants during the course of the same transaction. It was contended in the above context that there was no cross-examination on the manner of receiving the injuries nor any suggestion had been given to the witnesses that the appellants had received injuries at the hands of either the deceased or any of the witnesses. It was again contended that no attempt was made by any of the appellants in their statement under Section 313 of the Code of Criminal Procedure to say as to how or in what manner they had received injuries so as to making it obligatory for the prosecution to furnish the explanation. Shri Sinha, for making the above submission, has placed reliance on judgment of Supreme Court in case of Shriram v. State of M.P. 2000 (4) S.C.C. (Cri) 1453. Shri Sinha further contended that it was not a case of free fight and the principle of law on free fight could not be applied to the present set of facts and no benefit thereunder could accrue to the appellants. However, Shri Sinha did concede that as regards the lady appellants there appears some variance in the medical and oral evidence.

15. The competence of the witnesses and non-examination of the independent persons is an issue which could be examined. As regards the non-examination of independent persons there is no dispute that the house was in joint occupation of the three deceased and the accused persons. The three deceased and the three male accused persons, namely, Ishwar Chand Rai, Awadh Bihar Rai and Shyam Narayan Rai were full brothers and they were residing in different rooms of the house on the day of occurrence and had separated in their mess only two months prior to the occurrence. This is available in the evidence of P.W. 3 in paragraphs 22 and 24. It is also evident from the evidence of P.W. 5, S.I. Manoranjan Bharti, who had investigated the case and had an opportunity of visiting the place of occurrence and noting down its description, that the premises of the house was walled all around and the height of the wall was 10 feet. There does not appear much dispute in the fact that before the assault was opened by the accused persons, accused Rajesh Rai had closed the main gate fixed in the boundary wall of the premises. The outsiders, as such, could not see as to what was happening

inside the boundary wall. The description of the place of occurrence indicates as if the premises was a big one which was also being utilized for agricultural purposes. The further description about the surrounding of the place of occurrence which appears at paragraph 1 at page 4 of the recorded deposition of P.W. 5 indicates as if the other houses were at such distances as not making it possible to see the occurrence from outside. Thus, the contention that no one from outside the family of the deceased persons deposed in the case appears an argument which could not have any effect.

16. As regards the competence of the witness P.W.1 Neetu Kumari, she is the daughter of deceased Bachchaji Rai and Lilawati Devi (P.W. 3). P.W. 2 Chandrawati Devi is the wife of another deceased Sheojee Rai. The witnesses appeared very much inside the house at the time of occurrence as appears from their respective evidence. The relationship of the three witnesses with the two deceased Bachchaji Rai and Sheojee Rai makes it extremely possible and acceptable that they must have rushed, by any means, to the actual scene of assault in an attempt to prevent the deceased persons being assaulted and killed. The statements of the three witnesses when considered carefully appear containing the truth which was witnessed by the three witnesses.

17. It appears of no consequence as to how the witnesses arrived at the place of occurrence. The cross-examination of P. Ws. 3 and 2 indicates as if the defence was challenging the very possibility of the persons and the witnesses at the scene of occurrence but one must not lose sight of the fact that P.W. 5, the Investigation Officer of the case found some broken pieces of bangles at the scene of the occurrence and those were seized. Not only that, P.W. 3 produced before P.W. 5 a blood stained sari and a blood stained maxy. How could the sari or maxy be blood stained if the witnesses did not intervene to save their killing or did not stick up with persons who were killed. It is amply signified by the broken bangles that the intervention by the ladies was duly resisted by the accused persons which had broken their bangles which were found lying at the place of occurrence.

18. Besides, the evidence of P.Ws. 2 and 3 has consistency and a ring of truth around it. The only aberration which appears in the evidence of P.Ws. 2 and 3 is

that both of them stated that when the deceased Bachachaji Rai intervened to save Ramashankar Rai he was first picked up for being assaulted and accused Rajesh Rai fired a shot but that missed hitting deceased Bachachaji Rai. The basic prosecution story in the Fardbeyan is that accused Rajesh Rai's shot hit deceased Bachachaji Rai in his right ribcage and that very shot was fired from a very close range. One could never appreciate the oral testimony of a witness in such a manner as to expect the precise mathematical exactitude from him or her. When evidence is coming from a human being the same has to be appreciated keeping in mind that the capacity of grasping a fact, retaining it and then reproducing it always varies from person to person. No one could always be consistent on a single fact. If full exactitude and consistency is expected of a witness by a court of law then the approach of appreciation of evidence could never be reasonable. Human beings are prone to making errors and those errors could be in picking up facts earlier and narrating them at a later stage. It is very often that the person who narrates a fact at one particular time appears faltering at a subsequent stage by the passage of time or by any other human frailty.

19. In addition to the above what one must keep in one's mind is that out of the three witnesses two were the wives of two deceased Bachachaji Rai and Sheojee Rai and one was the daughter of deceased Bachachaji Rai. The number of injuries which were found on the dead body of Bachachaji Rai as also on the remaining two dead bodies indicate as to how the three deceased were annihilated. It must have been a mayhem. Things must have moved very fast specially when three male persons were attacking their three full brothers and were bent upon killing them. The mental shock, physical exhaustion and the horror which had been perpetrated upon the three witnesses must have made the witnesses to falter in either picking up initially a fact as finer as of one single shot by fire arm by one accused on one of the three deceased. If P. W. 3 was making a fault at the time of recording of her fardbeyan Ext.3 it does not appear such a frailty as to reject the entire prosecution story on this score. Besides, the ladies who had lost their husbands, the child who had lost her father were in the witness box and were being confronted with questions from men in robes whom they may not have confronted ever in their lives. They must have found themselves in a completely alien environment. Court-room atmosphere is often intimidatory. These are some

of the factors which very much influence the composure of the witnesses in court room and a single fact which could be a normal aberration at the initial or a later stage could not be as important as to rejecting the prosecution charges.

20. After going through the evidence of P.Ws. 3 and 2 I find that the two witnesses corroborate each other. Both of them have stated as to how the occurrence started and how Ramashankar Rai was hit by the shot fired by accused Rajesh Rai and how his two hands were caught by his full brothers accused Shyam Narayn Rai and Inshwar Chand Rai and how appellant Awadh Bihari Rai dealt a blow with spade on his neck to cut it. The witnesses have also stated that four lady accused persons also dealt blows with their respective weapons. Thereafter, the two witnesses have spoken about the assault on deceased Bachachaji Rai and when he had been killed they narrated the manner in which Sheojee Rai was shot and killed by Rajesh Rai with the help of Ishwar Chand Rai and Awadh Bihari Rai. The central part of the prosecution story has been narrated by the two witnesses and there is no variance in any part of their evidence as regards the prosecution story. They were, of course, the wives of deceased persons but they were, nevertheless, the own family members of the appellants also. The differences and disputes between the two sets of six brothers were of course there, but the degree was not such as to falsely implicate really innocent persons by suppressing the names of the real assailants.

21. As regards the evidence of P.W. 1 she appears telling the prosecution story with some aberrations which do not go hand in hand with the evidence of P.Ws. 2 and 3. Those aberrations appear creeping in the evidence of P.W. 1 on account of her immaturity. P.W. 1 Neetu Kumari was aged 10 years on the day she was examined in court. She could have been just above 8 years on the day of occurrence. She could not be of such maturity as to retaining them exactly and reproducing the same facts in court in an atmosphere to which she had never been acquainted with exactitude. She appears telling about the fatal assault on the three deceased persons by the accused persons with more or less acceptable degree of consistency as compared to as regards the evidence of P.Ws. 2 and 3. Thus, on an appraisal of the evidence of the three witnesses what comes out is that the witnesses could not be said to be making false statement with any

particular motive and their evidence is acceptable and as such the learned Judge rightly placed reliance upon the evidence of P.Ws. 1, 2 and 3 to pass his judgment.

22. As regards the contention of the learned Counsel for the appellants that the genesis of the occurrence appears suppressed by the prosecution, it may be noted that in Ext.3, the Fardbeyan, P.W. 3 had stated that six brothers had separated amongst themselves and were residing in different rooms of the house and that there was no partition of the properties and that the six brothers had formed two contending groups on account of the partition of the properties and also on the issues of the marriage of their respective daughters. The three deceased were in one group while the male accused persons were in the other group. There had been some incident in respect of keys of the tractor in the evening previous to the occurrence and there had been some quarrel also but in the morning of the occurrence things appeared normal. However, the three deceased persons were preparing themselves to go to the Police Station for lodging the report on the occurrence which took place in the previous evening. If one peruses the evidence of P.W. 3 Lilawati Devi, it could be found that she had stated about the quarrel between the brothers for the keys of the tractor and that the three deceased were preparing to leave for the Police Station when the accused persons came and committed the offence. As per the manner as stated in the F.I.R. and in her evidence, an argument appears formulated on the last line of examination-in-chief of P.W. 3 in which she stated that she could not say as to why the occurrence had taken place. This single line in examination-in-chief of P. W. 3 could not be read to make the above argument ignoring the previous statements in the same paragraph as regards the background of the incidence, I have just noted them down. The evidence of P.Ws. 1 and 3 does indicate as to why the occurrence got initiated. P. W. 2 Chandrawati Devi also stated in her evidence at page 88 of the Paper Book that the occurrence took place over property dispute. It very clearly indicates that the reason for the occurrence was that the three deceased persons were preparing to set out for the Police Station for lodging the report about the incident of quarrel which had taken place in the previous evening of the occurrence between the brothers. It is true that what was the seriousness of the quarrel or what exactly had happened during that quarrel in

the previous evening has not been stated and as such the same is not before us, but the very fact that the three brothers had decided to report the matter to the Police Station and the ultimate occurrence do indicate as if it were something very serious which had taken place in the evening previous to the occurrence. The suppression of that particular incident of the previous evening might be important, but is never a relevant fact for the present purposes as the incident occurred only because the three deceased brothers were about to set out for the Police Station for reporting the matter against the three or other accused persons. If this could not be the genesis of the occurrence then what could be? P.W. 3 has satisfactorily stated as to how the occurrence got initiated and what ultimately turned out to be. That single line in the examination-in-chief of the witness (P.W. 3) appears a statement made in despair by a lady who had lost her husband and whose family had lost two other family members and the incidence had embroiled the entire family into the most difficult times one could ever face. That statement could not be such as to permit making of the submission and rejection of the prosecution story. On account of the above the prosecution could not be held guilty of suppressing the most material part of its story.

23. This brings me to consider whether it could be a case of free fight as was contended to be the case by Shri Singh. If one visualizes a free fight, one could simply find as to what could it be. A free fight can be a fight between two warring groups of variously armed persons who are out to prove their point right or others' wrong by sheer exhibition of criminal force. Men are armed with dangerous weapons and they have no fixed persons to be targeted, it is all among the adversary who have to be attacked and defeated. Here in such a situation there is never any sharing of common object or acting in furtherance of common intention by persons who slug it out against each other. Sharing of the common object always envisages the pre determination of committing the very offence. Likewise, acting in furtherance of common intention pre-supposes pre-meeting of minds and determining the ultimate aim which a person wants to achieve. In a free fight, there is no common object, there is no pre-concerted sharing of minds and the acts following accordingly. Here an issue which is to be settled could be something different from a common object or common intention which the parties have to prove or disprove or to establish or repel. In most of such cases, it could be

sharing of a particular goal by a particular group of persons and acting accordingly to achieve the goal by repelling the adversary's attack and for establishing their supremacy over their adversaries and thus achieving the goal so fixed. In all such cases there could be a group leader who plans every thing and who has the say in all matters, even in fixing the goal, which in most cases is to impart defeat to the adversary group. In such a fight there is attack and counter attack as is in an on-going battle.

24. The Supreme Court in two of their decisions have defined 'free fight'. In : AIR 1954 SC695 Gajanand v. State of Uttar Pradesh, a similar contention was raised that the two groups of Anjani Nandan and the appellant Gajanand had come on to a particular street and not at the place of occurrence as claimed by the prosecution. Blood marks were found in the street which indicated that the parties had indulged in free fight. The definition of 'free fight' given by the Lahore High Court in Ahmad Sher v. The Emperor: A.I.R. 1931 Lah. 513 was approved by the Supreme Court. The Lahore High Court had defined 'free fight' as the situation:

when both sides meant to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders.

(underlining mine)

In yet another case of Dharman v. State of Punjab : 1957 CriLJ420 , the question being examined by the Apex Court was as to whether the accused acted in exercise of their right of self defence or was it an intentional act of murder.

The Supreme Court held in paragraph-7 at page 326 of the Report that it appeared from the evidence that 'the deceased party was also armed with dangerous weapons and when two such contending parties, each armed with sharp edged weapons clashed and in course of free fight some injuries were inflicted on one party or the other, it could not be said that either of them acted in cruel or in unusual manner. It will be otherwise if the deceased and his party were unarmed or armed with weapons which were not lethal or dangerous and the accused's party used sharp cutting weapons. In that case accused must be deemed to have

acted in cruel or unusual manner.' (underlining mine) Thus the elements of free fight are that there should be two warring groups and that both groups should be armed with dangerous weapons. The groups should make attack and counter attack without any premeditation, or without having acted in prosecution of the common object which they were to achieve. If the fact situation of any particular case presents this scenario then it could be a case of free fight.

25. Here in the present case, the appellants were, as appears from the evidence of P. W. 3, armed with dangerous and lethal weapons like firearms, spade, Garansa, Farsa, etc. The injuries which were found by the Doctor on the dead bodies specially on the dead body of Bachchaji Rai as may appear from the evidence of P.W. 4, were sufficient to cause death or dangerous to life variously and individually as well. It is true that there was no gun shot injury on Bachachaji Rai but the two remaining deceased Ramashankar Rai and Sheojee Rai had died on account of gun shot injuries; deceased Ramashankar had also a sharp cutting wound on his neck, which was inflicted upon him, as per the prosecution story and evidence, by appellant Awadh Bihar Rai by giving a forceful blow with spade. As against the above, there is nothing brought on record, even by way of suggestion, as to what were the weapons which the deceased or any one on their side were having in their hands, least to talk of utilizing them for inflicting the injuries. The prosecution story as it has been presented by the evidence of the witnesses, the Investigating Officer and the Doctor presents a view as if the entire affair was one sided, pre planned, executed with pre determination and in complete prosecution of the common object of the accused persons. No element of free fight appears in the present case except that the two appellants Ishwar Chand Rai and Awadh Bihari Rai had some injuries on their respective persons.

26. Now, what were the injuries the appellants Ishwar Chand Rai and Awadh Bihar Rai were having on their persons and which as per the submissions of Sri Singh, Senior counsel for the appellants, the prosecution had to explain. D.W. 1 Dr. Rama Nand Prasad had examined the two appellants on 11.7.2001 while the witness was posted as Medical Officer at Buxar. D.W. 1 found the following injuries on appellant Ishwar Chand Rai:

1. Penetrating wound approximately 1 1/2' X 1/2' X 1' having surface studded with fresh blood over mid part of right side of chest.
2. Penetrating wound approximately 1' X 1/2' X 1' having surface studded with fresh blood over upper side upper part of right side of back.
3. penetrating wound approximately 1' X 1/2' X 1/2' over right side of neck.
4. Cellulites approximately 1 1/2' X 1' having normal colour of skin over right shoulder.

All the injuries were found to be simple by the Doctor which were caused by sharp pointed object except injury No. 4 which was caused by hard and blunt substance.

As regards appellant Awadh Bihari Rai, D.W. 1 had examined him on the same day (11.7.2001) and found the following injuries:

- (i) Lacerated wound 1 1/2' X 1/2' X 1/4' having surface studded with fresh blood over back portion of skull.
- (ii) Excoriation of both nasal membrane leading to fresh bleeding from both nostrils.
- (iii) Penetrating wound 1' X 1' X 1 1/2' having profused bleeding due to cutting of the underlying blood vessels and radiologically and clinically the right ulna was found fractured.
- (iv) Complain of pain over upper row of teeth due to above injury.

D.W. 1 opined that injuries No. 1, 2 and 4 were simple in nature and injury No. 3 was grievous caused by sharp and pointed object.

27. D.W.2, Sukhdeo Prasad had produced the attested Photo copies of S.O.D. Book (Surgeon On Duty Book)) before the court and D.W. 3 had given evidence that appellant Awadh Bihari Rai was referred to P.M.C.H. and was admitted in the hospital on 12.7.2001 and was treated for the injury which was the fracture of the forearm of his right ulna and subsequently on 8.11.2001 skin grafting was done

over the palmer and dorsal aspect of distal right forearm.

28. In the light of the above injuries, specially that on appellant Awadh Bihari Rai, a submission was made that there was no explanation from the prosecution though the witnesses had admitted the presence of the injuries on the persons of the appellants. The evidence of P. W. 3 Lilawati Devi in paragraph 20 that she had seen the injury on the accused was referred to by Sri Singh, learned Senior counsel appearing for the appellants. By referring to her evidence a contention was raised that those injuries to the appellants had been caused in the same incidence. Reference was also made to the evidence of the Investigating Officer in paragraph 6 in which he had stated that he knew that appellants Awadh Bihari Rai and Ishwar Chand Rai had been arrested in Sadar Hospital, Buxar and that there were injuries on their persons. It was contended that this knowledge of P.W. 5 (I.O.) indicated that the injuries were caused during the course of the same transaction. It was further contended by referring to the evidence of P.W. 2 in paragraph 39 in which a suggestion was given to the witness, that the three deceased persons were attempting to kill appellants Ishwar Chand Rai and Awadh Bihari Rai and it was, as such, submitted that it was mandatory for the prosecution to explain the injuries which explanation is not forthcoming and, as such, the court must draw an inference that the witnesses were speaking lies on the most material aspect of the case and further that the accused persons might have acted in exercise of their right of private defence on account of being faced with imminent danger to their lives.

29. The principle was enunciated in : 1968 CriLJ1479 : Mohar Rai v. State of Bihar : 1976 CriLJ1736 : Lakshmi Singh v. State of Bihar as also in : AIR 2001 SC2902 Kashi Ram v. State of Madhya Pradesh. In Mohar Rai v. State of Bihar the evidence of the Investigating Officer (P. W. 15) indicated that the injuries were noticed by him at the time of Mohar Rai being produced before him immediately after the occurrence. The evidence of the Doctor, (P.W.18) in that case indicated that the injuries could not have been self inflicted and further that it was unlikely that the injuries could have been caused at the instance of the appellants of that case themselves. Under the above circumstances an inference was drawn that the injuries might have been caused during the course of the same occurrence at the

hands of the prosecution witnesses and, as such, it was necessary that the prosecution explained the injuries, else, the inference could be otherwise that the evidence of the prosecution witnesses could not be true or at any rate not fully true and further that the plea taken by the defence might be probabalized. In Mohar Rai (Supra) a plea had been taken that the appellants were captured, assaulted by the informant and others of the case and after being planted with illegal arms, were produced before the police with a false F.I.R.

30. In Lakshmi Singh (Supra) the defence case was that the two deceased persons had trespassed into the plantain orchard of accused Dashrath Singh and Ram Sagar Singh and were cutting plant and leaves which was protested by the two appellants upon which they assaulted Dasai Singh and others which turned into a brutal fight and the two deceased were assaulted in exercise of right of private defence by the accused and others who had assembled nearby. Besides, the Doctor who had issued the injury report had also held post mortem examination on the two dead bodies and had examined the accused Mohar Rai just after the incidence. After considering the facts and circumstances, the Supreme Court held that depending upon the facts of each case, on account of the non-examination of the injuries on the accused by the prosecution any of the three results may follow:

(A) That the prosecution has suppressed the genesis or the origin of the occurrence and thus not presented the true version;

(B) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable and

(c) That in case there is a defence version which explains the injuries on the accused it is rendered probable so as to throw doubt on the prosecution case.

It was further observed that 'omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or the defence gives a version which competes in probability with that of the prosecution...there may be

case where non-explanation of the injuries by the prosecution may affect the prosecution case. This principle would obviously not apply to cases where injuries sustained by the accused are minor and superficial or where evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that much far out ways the effect of the omission on the part of the prosecution to explain the injuries.' As may appear from (2002) 1 S.C.C. 71, the judgment of the Supreme Court was applied for buttressing the above contention on the injuries on the accused as also the submission that the Investigating Officer had a duty to find out in case of injuries sustained by an accused, the cause therefor if it is in the course of same incident in which some of the members of the prosecution party sustained injuries.

31. As may appear from the decision in Mohar Rai (Supra) and Lakshmi Singh (Supra) as also from Kashi Ram (Supra) the injuries are required to be explained by the prosecution if there are ample probability indicating the same being caused in the course of same transaction or in the same occurrence. If the injuries are not established as caused during the same occurrence and in the same transaction of assault or counter assault and if there is no material indicating that the injuries were caused either by the deceased/P.Ws., then the prosecution does not owe any explanation for the presence of the same on the accused persons. The crux of the matter is receiving of the injuries by the accused persons during the same incident either at the hands of the deceased or the witnesses. For indicating the existence of this probability the defence must introduce facts through cross-examination or show the same by the admission of the witnesses. If there is no cross-examination of any of the witnesses on the infliction of the injuries to the accused persons then it could be very difficult for the Court to raise an inference of the injuries being caused in the course of the same transaction. The other manner in which the defence could indicate the probability could be by making a statement under Section 313 of the Code of Criminal Procedure, which statement has to be read as evidence in the trial, that the injuries were caused to them at the hands either of the deceased or their witnesses. Thus, mere presence of the injuries even if they were grievous, in my considered view, could not be required to be explained, if they are not appearing caused to the accused during the course of the same transaction. In absence of the materials indicating the above probability,

the prosecution, in my considered view is not obliged to explain the injuries on the accused persons and, as such, the cases of Mohar Rai (Supra) and Lakshmi Singh (Supra) could not be applied to all fact situations.

32. In the present case P.W. 3 was cross-examined as appears from Paragraph 20 of her evidence to have seen the injuries on the two appellants. She was not cross-examined as to when and how the injuries were caused to the two appellants. The appellants were not examined by P.W. 4, Dr. Md. Suleman or any Doctor just after the incident. Similarly, the evidence of P. W. 5, the Investigating Officer in paragraph 6 indicates that the two appellants were arrested in Sadar Hospital, Buxar, by S.I. S.K. Sinha. So it was not P.W. 5, S.I. Manoranjan Bharti who had arrested the two appellants. Thus, there is a complete lack of material on the record indicating that the appellants could have received the injuries during the course of the occurrence at the hands either of the deceased or the witnesses and, as such, the non-explanation of their injuries were not fatal to the prosecution case.

33. There are many reasons appearing from the materials on record which probabilise as if the two appellants might have received the injuries after the occurrence. As pointed out earlier, there is no material from the cross-examination of the witnesses to indicate that the two appellants were assaulted and injured in course of the same incident. The probability appears that the appellants might have been injured after the occurrence. This I could say with some amount of certainty. The time of occurrence is 6 A.M. on 11.7.2001. On perusal of exhibits A and A/1, the injury reports in respect of the two appellants, one could find that appellant Awadh Bihari Rai was examined at 8.40 A.M. on that very day in Sadar Hospital, Buxar, and appellant Ishwar Chand Rai was examined at 8.50 A.M. on the same day by D.W. 1 in the same Hospital. The examination of the two appellants by D.W. 1 was after about 3 hours of the incident. The injuries were simple on the two appellants except injury No. 3 on appellant Awadh Bihari Rai and if they had been caused much before the examination of the two injured the blood would have clotted. However, the evidence of D.W. 1 and the two documents Exts. A and A/1 indicate that the injuries were with fresh blood indicating thereby that the injuries were still bleeding. So there exists a probability

that the injuries might have been caused much after the occurrence. If I take a view as I have presently taken, which appears a probable view from the evidence on record, then the question that the appellants could have received the injuries during the course of same transaction at 6 A.M. on 11.7.2001 completely vanishes. P.W. 5, S.I. Manoranjan Bharti, has stated in his evidence that when he learnt about the incident he rushed for the place of occurrence for verifying the truth and when he reached there he found the dead bodies lying there in the premises. P.W. 5 has not stated that the main gate was closed. The description of the place of occurrence given by him indicates satisfactorily that when he reached there the gate was no longer locked from inside. This inference is possible from the fact that on reaching at the place of occurrence he was informed that the accused persons had ran away from there after committing the triple murder. If the accused had run away from the place of occurrence, it could have been possible for them to do so only after they had opened the main gate. There had been three murders of three full brothers by another set of three full brothers and thus the matter was never a secret. It could have leaked to outsiders, as ordinarily possible. Three persons were killed must have left marks of violence, like blood stains on the clothes of the appellants giving sufficient inkling to the outsiders as to what had happened inside. The lady inmates of the house like the three witnesses must have raised hue and cry. Possibility could be that as soon as the accused had come out of their premises they might have been chased by the outsiders and injured. As such, the injuries, the surface of which were studded with fresh blood. This, to me, appears a case of the accused persons being assaulted by some outsiders or might be in the mayhem received the injuries either by themselves or by any one whom they did not want to name as the perpetrators of those injuries. Under the above circumstances, I find that there was no obligation upon the prosecution to offer any explanation for the injuries present on the persons of the two appellants.

34. It is true that in appropriate case if the injuries could not be explained by the prosecution it could be assumed that the accused might have acted in exercise of their right of private defence as was held by us in *Asharfi Singh v. State of Bihar*: 2008(1) P.L.J.R. 305 but in the light of the discussions made above, as also in the light of the three decisions and the number of injuries on the deceased, the

contention is noticed to be dismissed.

35. On behalf of the lady appellants, the learned Senior Counsel raised one contention that the two lady appellants, namely, Nirmala Devi and Singata Devi in the light of the medical evidence and the allegations as appearing against them, not having participated in the offence. The two lady appellants Nirmala Devi and Sangita Devi are alleged to have inflicted Baishakhi and chhura blows on the neck of Rama Shankar Rai and also on the person of Bachchaji Rai. The Doctor P. W. 4 holding post-mortem examination on the dead body of Rama Shankar Rai had found the following ante mortem injuries:

(i) Sharp cut wound on neck right side and in front of neck cutting all muscles of the right side and front of the neck including trachea, oesophagus and Cervical bone of the neck. Neck attached with only left side of the trunk,

(ii) fracture of right mandible bone;

(iii) Sharp cut wound over left shoulder joint cutting the head of humerus bone measuring 2'X1 'X2'.

(iv) Lacerated wound on left armpit on mid part size 1 1/2 C. M. X 1/2 C.M. with charring of the skin around the wound. Fracture of the 7th and 8th ribs. Margin inverted black. It was the wound of entry.

(v) Lacerated wound on right side of chest mid part of size 2 1/2 C.M. X 2 C.M., communicating right side of the chest, fracture of 3rd and 4th ribs. It was the wound of exit.

The Doctor found the left lung ruptured and collapsed and the death was caused due to firearm as also on account of sharp cutting weapon.

36. Coming to the evidence of the witnesses as also the basic prosecution case injury Nos. 3 and 4 are assigned to a shot fired by Rajesh Rai alias Munna Rai whereas appellant Awadh Bihari Rai has been alleged to have dealt a massive spade blow on the neck of the deceased Rama Shankar Rai which blow was given after appellant Ishwar Chand Rai and absconding accused Shyam Narayan Rai

had caught the two hands of Ram Shankar Rai when he had fallen down on the ground after receiving the gun shot injuries. Thereafter, the evidence indicates that the two appellants, namely, Nirmala Devi and Sangita Devi dealt blows with their Baishakhi and Chhura while absconding two lady accused Girija Devi and Chandrawati Devi also dealt blows with Farsa and Rami respectively incessantly on the neck of deceased Rama Shankar Rai. However, the description of the injuries as extracted above indicates that there is no corresponding injury to the assault allegedly given by any of the lady accused persons including the two appellants Nirmala Devi and Sangita Devi. Thus, the contention of the learned Counsel for the appellants that it could be doubtful that the two lady appellants Nirmala Devi and Sangita Devi had participated in the occurrence appears meritorious.

37. As regards the story of assault on deceased Bachchaji Rai and the evidence on it, it is stated that the appellants Ishwar Chand Rai and Shyam Narayan Rai caught hold of Bachachaji Rai when he rushed to save Rama Shankar Rai and that absconding accused Rajesh Rai alias Munna Rai fired shot into his ribcage as a result of which deceased Bachachaji Rai fell down on the ground upon which appellant Ishwar Chand Rai took the spade from the hand of appellant Awadh Bihari Rai and dealt a blow on the neck of the deceased Bachchaji Rai. The evidence of P.W. 4, the Doctor, who held post-mortem examination indicates that the injury which was a sharp cut wound on the right side of neck including whole part of the right side of neck and front of neck on right side, cutting trachea, oesophagus and Cervical bone of the neck disfiguring the right side and front of neck could be the corresponding injury to the story of assault given by appellant Ishwar Chand Rai. Appellant Awadh Bihari Rai is alleged to have given a farsa blow on the deceased Bachachaji Rai on his face on its left side. Injury of deceased Bachachaji Rai which was a sharp cut wound on left side of face cutting the upper jaw and measuring 12 C.M. X. 2'X3' appears to me the corresponding injury. The remaining four injuries which were found by P.W. 4 on deceased Bachchaji Rai were the following:

(A) Sharp cut wound on right side of face cutting the mandible bone also measuring 10 C.M.X3 C.M. X 3 C.M.;

(B) Sharp cut wound on left side of neck 4'X1 'X2';

(C) Sharp cut wound on left shoulder 6C.M. X2C.M. X 2 C.M.;

(D) Sharp cut wound on right forearm 10 C.M.X2C.M.X2C.M.

It may be found that the length of three of the injuries described at (A), (B) and (D)) is equal, i.e., 10 C.M. (4' = 4 X 2.5 C.M. = 10 C.M.) Thus, the weapons which could have caused the injuries at (A), (B) and (D) could be the same. Likewise, the injury which was found on the right side of the neck of the deceased Bachchaji Rai and which was corresponding to the assault assigned to appellant Ishar Chand Rai could also be caused almost by the same weapon because the length of that particular injury is 12 C.M. which could be approximately the length of a weapon which caused injury Nos. (A), (B) and (D). As regards injury No. (C), indicated above, the weapon which could have caused it might be a different one. The appellants Nirmala Devi and Sangita Devi are alleged to have dealt blows with their Baishakhi and Chhura. Baishakhi is a weapon which could be not of that much length. Chhura also is a piercing weapon which may not cause an injury of the length of 10 C.M. or 6 C.M. The unfortunate part of the case is that the weapons which were produced by the witnesses or were found at the scene of the occurrence and seized by P. W. 5, specially the Baishakhi and Chhura, were neither produced in court nor were shown to the Doctor who held the postmortem examination on the dead bodies to elicit an opinion whether the injuries at (A), (B), (C) and (D) were possible by those weapons or by any one of them.

38. Under the circumstance obtained presently, I could hold that there was no injury which could correspond to the assault assigned to appellants Nirmala Devi and Sangita Devi. As such there appears a void on the corroboration side of the prosecution case when it challenges the credibility of the oral testimony against the lady accused. Besides, the evidence of D.W. 4 and exhibit 'I' indicate that the appellant Sangita Devi was carrying pregnancy of 28 weeks on 28.8.2001 and was anaemic. The medical examination of the appellant Sangita Devi was conducted on the direction of the Sessions Judge, Buxar, when this fact was brought into the notice of that court. It is generally seen in a case of serious nature like the present one in which there are three deaths that innocent family members of the accused

are also roped in so as to see that the accused persons are harassed and made to suffer. To me, it appears a case of reasonable doubt as regards the participation of accused Sangita Devi and Nirmala Devi.

39. As regards the participation of appellant Awadh Bihari Rai and Ishwar Chand Rai, there is no manner of doubt about their participation in the offence. In the result, I shall acquit appellant Sangita Devi and Nirmala Devi, appellants in Criminal Appeal No. 446 of 2005 by allowing that particular appeal.

40. This leaves me to decide the question as to whether the sentence of death passed against appellant Awadh Bihari Rai and Ishwar Chand Rai was appropriate or excessive. It is true that three brothers were killed by their own three brothers and another, a nephew. The manner of occurrence also appears savage and brutal. The scenario presented by the case appears quite disturbing. The description of the injured and the state of the dead bodies, specially that of Bachchaji Rai, indicates as if the sentence were appropriate. But, it has also to be taken into account that the perpetrator of the offence of murder of Rama Shankar Rai and Sheojee Rai, i.e., accused Rajesh Rai alias Munna Rai is still absconding. It was he who had fired shots and injured the two deceased, while the medical report did not indicate any firearm injury on deceased Bachchaji Rai. The situation in the family appears disturbed on account of the family properties not being partitioned nor the daughters of the brothers being given in marriage. What really could have been so serious and so compelling that the accused persons had to commit the three murders, I must note, remains still a secret. Under these circumstances, I am of the opinion, that the sentence of rigorous imprisonment for life upon the two appellants Awadh Bihari Rai and Ishwar Chand Rai along with the sentence of fine of Rs. 50,000/- (fifty thousand) to be paid by each of the appellants shall meet the ends of justice. In case of not paying the fine, appellants Ishwar Chand Rai and Awadh Bihari Rai shall each have to suffer rigorous imprisonment for a further period of three years each. I, accordingly, modify their conviction and sentence. On realization of fine the same shall be paid equally to the next of kins of the three deceased as compensation under Section 357 of the Criminal Procedure Code.

41. With the above modification in sentence, the appeal filed by appellants Ishwar Chand Rai and Awadh Bihari Rai, bearing Criminal Appeal No. 430 of 2005 is hereby dismissed. At the same time, the Death Reference made by the learned Additional Sessions Judge is also answered in the negative.

Criminal Appeal No. 446 of 2005 is allowed and the two lady appellants, Nirmala Devi and Sangita Devi, are acquitted of the charges under Sections 148 and 302 of the Indian Penal Code. They are on bail and are, as such, discharged from the liability of their respective bail bonds.

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