

Prakash Singh Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Aug-06-2015

Appellant : Prakash Singh

Respondent : State of Jharkhand

Judgement :

Criminal Appeal (DB) No. 1506 of 2005 With Criminal Appeal (DB) No. 724 of 2005 With Criminal Appeal (DB) No. 778 of 2005 With Criminal Appeal (DB) No. 796 of 2005 With Criminal Appeal (DB) No. 884 of 2005 With Criminal Appeal (DB) No. 887 of 2005 With Criminal Appeal (DB) No. 891 of 2005 With Criminal Appeal (DB) No. 1549 of 2005 Against the judgment of conviction and order of sentence dated 26/05/2005 and 27/05/2005 respectively, passed by Sri Indradeo Mishra, 2nd Additional Sessions Judge, Jamtara, in Sessions Case Nos. 100 of 2003/ 06 of 2004 . Prakash Singh, S/o Late Ambika Singh, R/o Nawadih, PS Narayanpur, Distt. JamtaraAppellant (In Cr. Appl. No. 1506/05) Deg Narayan Singh, S/o Late Jailal Singh, R/o Village Mojpur (Bhojpur) PS Narayanpur, Distt. Jamtara..... Appellant (In Cr. Appl. No. 724/05) Mihir Kumar Singh, S/o Sri Dubraj Singh, R/O Village Mojpur (Bhojpur) PS Narayanpur, Distt. JamtaraAppellant (In Cr. Appl. No.778/05) Ghanshyam Singh, S/o Rameshwar Singh, R/O Village Mojpur (Bhojpur) PS Narayanpur, Distt. JamtaraAppellant (In Cr. Appl. No. 796/05) Prasadi Singh, S/o Late Maharaj Singh, R/o Village Mojpur (Bhojpur) PS Narayanpur, Distt. Jamtara..... Appellant (In Cr. Appl. No. 884/05) 1. Nunumani Singh, S/o Late Jogeshwar Singh 2. Lalmuni Singh, S/o Ambika Singh,

both R/o Nawadih, PS Narayanpur, Distt. Jamtara..... Appellants (In Cr. Appl. No. 887/05) Kauri Singh @ Kodi Singh, S/o Late Toplal Singh, R/o Village Mojpur (Bhojpur) PS Narayanpur, Distt. Jamtara.....Appellant (In Cr. Appl. No. 891/05) Tirath Singh, S/o Late Rakhal Singh, R/o Village Mojpur (Bhojpur) PS Narayanpur, Distt. Jamtara..... Appellant (In Cr. Appl. No. 1549/05) Versus The State of Jharkhand Respondent (In all the appeals) For the Appellants : Mr. A.K.Kashyap, Sr. Advocate Mr. Anurag Kashyap, Advocate (Cr. Appl. Nos. 724, 778, 796, 884 & 891 of 2005) M/s R.S.mazumdar, Sr. Advocate (Cr. Appl. No. 887 of 2005) Mr. K. Sarkhel, Ravi Kumar, Advocates. (Cr. Appl. Nos. 1506 & 1549 of 2005 respectively) For the State : M/s. Binod Singh, S.K.Srivastava, APPs. P R E S E N T The Honble Mr. Justice R.R.Prasad The Honble Mr. Justice Pramath Patnaik J U D G M E N T By Court All the aforesaid eight appeals since arising out of the common judgment, were heard together and are being disposed of by the common judgment.

2. All these nine appellants were put on trial alongwith one Basant Singh on the accusation of committing murder of Bhisma Singh in furtherance of their common intention and also on the accusation that they, in furtherance of their common intention, did assault the informant Indrawati Devi and her son Manoj Singh, with a view to kill them. The Court having found them guilty, convicted them vide its judgment dated 26 th May 2005 under Sections 148, 341, 302/149 and 307/149 of the Indian Penal Code and sentenced them vide order dated 27th May 2005 to undergo imprisonment for life for the offence under Section 302/149 IPC and further to undergo R.I. for seven years for the offence under Section 307/149 IPC and also to undergo R.I. for two years for the offence under Section 148 IPC as well as S.I. For one month for the offence under Section 341/149 IPC3 The case of the prosecution is that the deceased Bhisma Singh the husband of the informant Indrawati Devi (PW7) had developed illicit relation with one Basanti Devi (PW4) the wife of one Chatradhari Singh, who happened to be the agnate of the deceased. On account of that a Panchayati was convened under the Chairmanship of Basant Singh, in which it was decided that the deceased would be transferring two Bighas of land in the name of Basanti Devi and will also get a house constructed for her. The deceased did not obey the decision taken in the Panchayati and, therefore, he was living elsewhere. During this period, Basant

Singh visited the house of the deceased at 45 times and held out threats to the informant to call her husband otherwise she will have to face dire consequences. Further case is that on 15/04/2003, at about 07:00 P.M when Bhisma Singh came home, his wife Indrawati Devi told him that he is being searched by Basant Singh. Upon it, Bhisma Singh (deceased) disclosed to his wife that appellant Prakash Singh had seen him coming home. Thereafter, they, after taking meal, retired to bed. In the midnight at about 12:30, appellant Prakash Singh came and made them awake and then took Bhisma Singh alongwith him. Immediately thereafter, the informant heard utterances of several persons coming from outside of the house and then she made her son Manoj Singh (PW6) awake and came out of the house with Manoj Singh having Torch with them. When they came out, they saw the appellants and some other persons, who were variously armed, taking Bhisma Singh near a Jackfruit Tree. As soon as they reached near the jackfruit tree, Lalmuni Singh gave a Lathi blow on the head of Manoj Singh as a result of which he sustained injury and fell down. However, he fled from there towards Murli Pahari village due to fear. Thereafter, the appellants, who were variously armed, started assaulting Bhisma Singh. In that course, the appellant Prakash Singh gave two blows over the head of Bhisma Singh by 'Daav' and then other persons also started assaulting him with Lathi. Meanwhile, Basant Singh came there alongwith the appellant Mihir Singh, who told the other persons to kill Bhisma Singh as it would be full of risk if he is let off. Thereupon, Lalmuni Singh did thrust Lathi over his eyes. Meanwhile, appellant Deg Narayan Singh also exhorted others to kill the informant and then appellant Prakash Singh gave a Daav blow over the head of the informant with a view to kill her and the appellant Kauri Singh inflicted 'Chhura' injury on her chest as a result of which she fell down and then other persons started assaulting her with Lathi. Thereupon, the appellants by taking her dead, took away her husband by dragging him. The informant any how reached home by which time her son Manoj Singh (PW6) also reached home alongwith Amar Singh (PW1), Shri Singh (PW2) and Rohan Singh (PW 3). Who took the informant Indrawati Devi to Narayanpur Hospital where they did find the dead body of Bhisma Singh. On the next day, i.e. 16/04/2003, when the Officer incharge of Narayanpur Police Station Madan Mohan Prasad Sinha, came to know through rumour that a man has been killed, he came to hospital and recorded the

fardbeyan (Ext. 4) of Indrawati Devi at about 04:45 AM, wherein the informant Indrawati Devi (PW7) narrated about the incident as has been stated above, upon which a first information report (Ext.5) was drawn.

4. One, Mukesh Chandra, ASI of Narayanpur police station took over the investigation, during which he held inquest on the dead body and prepared an inquest report and sent the dead body for Post Mortem examination, which was conducted by Dr. Ramprit Singh (PW9). On holding autopsy, the Doctor did find the following antemortem injuries on the persons of the deceased: (i) Both eyes were lacerated. (ii) Bruise on right eyes 2 x 1. . (iii) Lacerated wound 2 x 1/2x skin deep on occipital region. (iv) Lacerated wound 2 x 1/4 x cavity deep on right parietal region of head. (v) Cut wound 2 x 1/4 mussels deep on left arm. (vi) Bruise 2 x 1/4 on right scapular region. (vii) Multiple bruises and wound 1 x on left front chest (viii) Crushed left foot toe. (ix) Crushed right foot toe. Upon dissection blood and blood clots were found in scalp brain cavity. Occipital and right parietal skull bone were fractured. Left chest cavity was full of blood clots and multiple ribs fractured on left chest. Blood and blood clots were found at other bruise and injured sites.

5. The Doctor issued Post Mortem Examination report (Ext.3) with an opinion that the death was caused due to cardio respiratory failure caused by severe shock as a result of above injuries caused by cutting, penetrating and hard and blunt substance.

6. Meanwhile, the Investigating Officer recorded the statements of the witnesses and got the informant Indrawati Devi (PW7) and her son Manoj Singh (PW6) examined by Dr. Sanjay Jhunjhunwala (PW8), who on examining Manoj Singh, did find the following injuries on his person: (i) Lacerated wound on scalp parietal region on right side of 2 x 1/2 x 1/4. (ii) Abrasion on left index finger of 1 x 1. He issued injury report (Ext.2) with an opinion that the injuries were simple in nature and have been caused by hard and blunt substance.

7. The Doctor, on the same day, i.e. 16/04/2003, also examined the informant Indrawati Devi and found the following injuries on her person: (i) Lacerated wound on scalp parietal region on right side of 4 x 1/2 x 1/2. (ii) Incised wound on franto

parietal region on left side bone deep of 6 x 1/2 x 1/2 (iii) Stab wound on chest on left side by the side of sternum at IInd, IIIrd and IVth inter costal space of 3 x x 2 towards abdomen. (iv) Swelling of left upper arm of 5 x 3. Patient was advised for having Xray of Skull, which, according to the Doctor, was done but not placed before him before he issued its report (Ext. 2/1) and, therefore, opinion regarding nature of injury could not be given. However, as per his opinion given under injury report (Ext.2/1), injury nos. 2 and 3 were caused by 'Daav' and 'Knife', whereas other injuries were caused by hard and blunt substance such as 'Lathi'.

8. After completion of the investigation, charge sheet was submitted against all these appellants as well as Basant Singh, upon which cognizance of the offences was taken. In due course, when the case was committed to the Court of Sessions, they were put on trial, during which prosecution examined altogether 13 witnesses. Of them, PW7 is the informant, who did testify that on the day of occurrence at about 12 'O' Clock in the midnight her husband Bhisma Singh upon calling by the appellant Prakash Singh went out of the house and then she heard noises coming from outside of the house. Upon it, she alongwith her son Manoj Singh (PW7) came out of the house with Torch light and then found that the appellants took her husband under a jackfruit tree where they assaulted him. She did testify that Prakash Singh gave two blows through ' Daav' on his head, whereas appellant Deg Narayan Singh assaulted her husband with 'Farsa'. Appellant Kauri Singh inflicted dagger injury, whereas appellants Lalmuni Singh and Nunumani Singh assaulted her husband with 'Lathi'. She has also testified that all the appellants and other persons, 11 in numbers, did assault her husband. In that course, when her son Manoj Singh and she herself tried to rescue her husband, Prakash Singh assaulted on the head of his son with 'Daav' and then her son fled away towards Murli Pahari, whereas, appellant Kauri Singh gave dagger blow on her, the appellant Prakash Singh did assault her with 'Daav' and the appellant Lalmuni Singh gave Lathi blow to her. Thereafter, all the accused persons took her husband away. She any how came home where when his son Manoj Singh alongwith Amar Singh (PW1) Shri Singh (PW2) and Rohan Singh (PW3) came to home, they took her to hospital where her fardbeyan was recorded.

9. Manoj Kumar Singh (PW6), the son of the informant has also testified that while they were sleeping in the house, appellants Prakash Singh and Lalmuni Singh came and called his father and took him away with them and when he alongwith his mother came outside of the house having torch light with them, they saw the appellants assaulting his father near a jackfruit tree. He also saw Prakash Singh having 'Daav' with him, Lalmuni Singh and Nunumani Singh were having Lathi with them, whereas the appellants Kauri Singh and Deg Narayan Singh were having Dagger and Farsa respectively. Appellant Tirath Singh was having bows and arrow with him, whereas all others were having Lathi. He has further testified that when he tried to rescue his father, he was assaulted by Lalmuni Singh with Lathi on his head whereupon he fled from there and came to the village Murli Pahari and there he informed Shri Singh (PW2) and Rohan Singh (PW3) about the occurrence, who came alongwith him near the jackfruit tree but did not find his father there and when they came home they were told by his mother (PW7) that the appellants had assaulted his father and she had also been assaulted with 'Daav', Lathi and Chhura. Thereupon, he alongwith the help of those two persons brought her mother to hospital. 10. PW1 Amar Singh, PW2 Shri Singh and PW3 Rohan Singh, did testify that in the midnight while they were sleeping in their houses, Manoj Singh came there, who was having injury over his head and told them that his father has been assaulted by the accused persons. According to PW3, Manoj also did disclose to them the name of the appellants, who had assaulted his father. .

11. PW 4 Basanti Devi is the same lady about whom it has been stated in the fardbeyan that the deceased had developed illicit relation with her. She has been declared hostile but in the crossexamination she did testify that she was having illicit relation with Bhisma Singh and when she carried pregnancy, a Panchayati was convened by Basant Singh, wherein a decision was taken that Bhisma Singh would be transferring two Bighas of land and will be constructing a house for her but Bhisma Singh did not obey the decision taken in the Panchayat. PW5 Ram Prasad Singh is a hearsay witness, who derived knowledge of the occurrence from Manoj. PW11 Pappu Singh and PW12 Shibu Singh were tendered for crossexamination, whereas PW13 Brindawan Sharan Singh has been declared hostile. 12. Upon closure of the prosecution case, when the appellants were

questioned under Section 313 Cr.P.C over the incriminating evidences appearing against them, they did deny. Thereafter, the Court, having placed its implicit reliance on the testimonies of PW7 and PW6, finding corroboration from the other evidences including medical evidence, did record the order of conviction and sentence against the appellants, whereas the Court acquitted Basant Singh. The said order of conviction and sentence is under challenge in all these appeals. 13. Mr. Kashyap, learned senior counsel appearing for the appellants Deg Narayan Singh, Ghanshyam Singh, Mihir Kumar Singh and Kauri Singh @ Kodi Singh submits that it is the case of the prosecution that since the deceased had developed illicit relation with Basanti Devi (PW4), the wife of Chatradhari Singh an agnate of the deceased, a Panchayati was convened under the Chairmanship of Basant Singh, wherein a decision was taken that the deceased shall be transferring two Bighas of land and will be constructing a house for Basanti Devi, but when it was not obeyed, Basant Singh took it very seriously and, therefore, he did visit, as per the statement made in the fardbeyan, to the house of the deceased at several occasions and had also held out threats to the informant to call her husband otherwise she will have to face dire consequences and it has also been stated in the fardbeyan that at the time when the deceased was being assaulted, Basant Singh came there and exhorted other to kill him. Still he has been acquitted, whereas the other appellants have been convicted on the basis of the testimony of the eyewitness PW7, who never appears to be the wholly trustworthy as her evidence is never in consistent with the statement made in the fardbeyan. In this regard, it was highlighted that PW7, in her fardbeyan, has stated about the motive of the occurrence that the deceased had been imposed with penalty on account of having illicit relation with Basanti Devi, but in her evidence she is silent on this point and instead of that she has testified that as there was land dispute, the occurrence has taken place and that other point of difference is that the appellants have stated about the role of Basant Singh in commission of the offence, which indicates that it was Basant Singh, who was responsible for the entire incidence but PW7 did not say anything in this regard in her evidence, rather she has testified that Basant Singh had no role to play in the entire incidence. Under the circumstances, the Court should not have placed its reliance on PW7, when she is not wholly trustworthy. Further, it was submitted that the prosecution

does not seem to have come with a clean hand as two of the appellants namely Prakash Singh and Lalmuni Singh had suffered injuries in the said incident, which, not only has been admitted by the witnesses but the Court also did take notice of the injuries when they, after being arrested, were produced before the Magistrate, to whom it was told by them that they had received injuries in the said incident, which is evident from the order dated 17/04/2003 and, therefore, passed an order directing the Superintendent of Jail to arrange for their treatment, but the prosecution is silent over that aspect of the matter and, thereby, the prosecution can certainly be said to have not come with a correct picture and, thereby, the entire case of the prosecution is liable to be disbelieved. In view of the aforesaid fact of two of the appellants receiving injuries finding corroboration from the testimony of PW2 testifying that he came to know that Prakash Singh has also sustained injury in an altercation, submission was advanced that there appears to be a free fight in between the parties in which the deceased was assaulted as a result of which he was killed and that when there is a case of free fight every person would be responsible though for causing the nature of injury and, thereby, there cannot be said to have been sharing common object and, thereby, there would not be application of Section 149 of the Indian Penal Code, but the trial court did not take into account this aspect of the matter. Further it was submitted that admittedly the incident took place in the midnight that to near a jackfruit tree where there was no source of light except the torch light, which the witnesses PWs. 6 & 7 claimed to have been holding but the torch light was not produced before the Investigating Officer and, thereby, on account of that the case of the prosecution be disbelieved that identification was made under the torch light. Further it was submitted that PW7 has testified that appellant Prakash Singh gave blows on the head of the deceased by 'Daav' but surprisingly the Doctor has found the injury over the head of the deceased in the nature of laceration, which in testimonial of the fact that PW7 had no occasion to see the occurrence and, under the circumstances where there has been discrepancy in between the ocular evidence and the medical evidence, trustworthiness of the witnesses becomes quite doubtful and under the circumstances, the judgment of conviction and order of sentence be set aside and the appellants be acquitted. 14. Mr. Mazumdar, learned senior counsel appearing for the appellants Lalmuni Singh, Nunumani

Singh and Prakash Singh, submits that though PW 7 has testified that all the appellants did assault the deceased but that piece of evidence is general in nature. However, she has also testified, wherein specific role has been assigned to some of the appellant. In this regard, it was pointed out that Nunumani Singh and Lalmuni Singh though had been taken by the trial court to have assaulted the deceased but from reading of the evidence of PW7, it would appear that they had made assault upon PW7 and not to the deceased and, thereby, the testimony of PW7 is not worth acceptable that all the appellants in furtherance of common object did assault the deceased causing injury resulting into his death. In this regard, learned senior counsel has referred to a decision rendered in a case of Manoj Alias Bhau and Others versus State of Maharashtra [(1999) 4 SCC 268]. 15. Further, it was submitted that the facts and circumstances appearing in this case would go to show that all the appellants would not have common object to kill the deceased as the appellants had no motive to kill the deceased and under the circumstances, appellants Lalmuni Singh and Nunumani Singh be acquitted. 16. As against this, Mr. Binod Singh and Mr. Sanjay Kr. Srivastava, learned counsel appearing for the State submit that PW7, in her evidence, has quite categorically stated that all the appellants did assault the deceased and they did so in furtherance of the common object and even if no overt act is there against some of the appellants, they cannot escape from the liabilities of killing the deceased and, thereby, the trial court was absolutely justified in recording the order of conviction and sentence. Further, it was submitted that the plea has been taken on behalf of the appellants that the prosecution has not come up with clean hand as it has failed to explain the injuries, which were found on the persons of the Prakash Singh and Lalmuni Singh, but the defence has never come forward with a case that they did ever receive grievous injury. It is quite possible that in the said incident in which the deceased was killed, these two appellants might have suffered minor injury. In absence of any evidence being put forth on behalf of the defence of sustaining any grievous injury the prosecution case never suffers from any lacuna and the witness, who had occasion to see the incident, cannot be disbelieved. In support of their submissions, learned counsel has referred to a decision rendered in a case of Waman and Others versus State of Maharashtra [(2011) 7 SCC 295].

17. Further, it was submitted that it can never be said to be a case of free fight as at one side there was only the deceased and on the other side there were 11 persons including the appellants and in that event the submission advanced on behalf of the appellants that the deceased was killed during free fight, be rejected. Therefore, under these circumstances, the trial court can certainly be said to have rightly convicted and sentenced the appellants and, thereby, the judgment of conviction and order of sentence never warrants to be interfered with.

18. Having heard learned counsel appearing for the parties and on perusal of the records, we do find that it is the case of the prosecution that the deceased had developed illicit relation with one Basanti Devi (PW4), who happened to be the wife of Chatradhari Singh, an agnate of the deceased and on account of that a Panchayati was convened in which decision was taken that the deceased should transfer two Bighas of land in favour of Basanti Devi and also to construct a house for her. That decision was not obeyed by the deceased and, therefore, on the day of occurrence in the midnight Prakash Singh came to the house of the deceased and took the deceased alongwith him near a jack fruit tree where PW7 and also her son Manoj Singh (PW6) came having torch light with them. They did find all the appellants assaulting the deceased with the weapons, which they were holding. As per the testimony of PW7, Prakash Singh was having 'Daav' with him, whereas Kauri Singh and Deg Narayan Singh were armed with 'Dagger' and 'Farsa' respectively. Tirath Singh was having 'Bows and Arrow', whereas all other appellants were having 'Lathi' with them. PW7 has further testified that when the deceased was being assaulted Manoj Singh her son intervened and then he was also assaulted by Prakash Singh with Lathi and then her son fled away from there due to fear. Meanwhile, Prakash Singh gave two blows by 'Daav' on the head of the deceased whereas Deg Narayan Singh gave 'Farsa' blow upon the deceased and then Lalmuni Singh and Nunumani Singh gave 'Lathi' blows upon the deceased. A controversy has been raised on behalf of the defence that Lalmuni and Nunumani, as per the evidence of PW7, had never assaulted the deceased, rather they had assaulted to the informant PW7, but from careful reading of the evidence of PW7, it does appear that PW7 has testified that Lalmuni Singh and Nunumani Singh had also assaulted the deceased, which fact finds support from the fact that the injuries were found on the person of the deceased being caused

by 'Lathi'. While the deceased was being assaulted, PW7 intervened in the matter and then she was also assaulted by Prakash Singh through 'Daav', which he was holding and Kauri Singh inflicted 'Dagger' injury to her, whereas Lalmuni Singh had also assaulted her with 'Lathi'. Further, we do find that the testimony of PW7 gets corroboration to some extent from the evidence of PW6 Manoj Singh, who has testified that when the deceased was taken from the house near the jackfruit tree, he alongwith his mother went there having torch light with them and saw the appellants assaulting the deceased. Whe he tried to save his father, he was also assaulted on his head and then he fled away from there. 19. Now, the question, in the context of the submissions advanced on behalf of the appellants, does arise as to whether PW7 is trustworthy or not? 20. Admittedly, PW7 happen to be an injured witness. She, as per her evidence, came to the place of occurrence alongwith her son Manoj Singh (PW 6) when the deceased had been taken by the appellant Prakash Singh near the jackfruit tree. Since, it was dark, it was the natural on the part of the witnesses to come there with some source of light and, accordingly, she came there with torch light by which she claimed to have identified the appellants. Admittedly, the said torch light has not been seized by the police and, thereby, it cannot be produced before the Court, but notproduction of the torch light does not mean that PWs 7 & 6 would not have gone with torch light. It appears to be quite natural on the part of the witnesses PW7 & 6 to come out of the house in the darkness with the torch light. If, on account of the fault on the part of the Investigating Officer, the torch light was not seized, it will no adverse impact on the testimony of the eyewitness. Further submission, which has been made on behalf of the appellants is that since the case is based on the testimony of the sole eyewitness, it would not be safe for the Court to convict the accused if the sole eyewitness is not found to be wholly trustworthy. Since, PW7 did not support that part of the prosecution case relating to the motive in her evidence which is there in the fardbeyan of PW7, submission has been advanced that she cannot be taken to be wholly trustworthy and not only that the genesis of the occurrence cannot be said to have been proved and, thereby, the entire prosecution case be disbelieved.

21. Taking the second point first, it be stated that it is true that motive, which had been assigned in the fardbeyan by the informant PW7, is not there in her

evidence, rather PW7 has testified that the occurrence took place as there was land dispute in between the parties. Even if PW7 has not come forward to testify on the point of motive, which had been assigned in the fardbeyan, we do not find that the prosecution has failed to establish the motive. Reason being that it was Basanti Devi (PW4) with whom the deceased is said to have developed illicit relation, has come forward to support that fact in her crossexamination though she had been declared hostile but according to the evidence of PW 4 as has been elicited on behalf of the defence in her cross examination, it is evident that she is quite categorical on the point that Bhisma Singh the deceased had developed illicit relation with her and she was even carrying pregnancy and on account of that a Panchayati had been convened, whereby a decision was taken directing the deceased to transfer two Bighas of land in her name and also to construct a house for her, which the deceased disobeyed. This fact further finds corroboration from the evidence of PW1 Amar Singh, where in he, in his crossexamination, has testified that a Panchayati was convened in which he had participated and, thereby, a decision was taken that the deceased would be transferring two Bighas of land in favour of PW4 Basanti Devi, but he did disobey. Both the witnesses appear to be the competent witnesses to prove that fact and, therefore, we do find that the prosecution has able to establish the motive, which had been assigned in the fardbeyan.

22. Coming to the other aspect of the matter, it be reiterated that PW7, in her evidence, has not come forward with the same motive, which was there in the fardbeyan, but on account of that PW7 cannot be said to be not wholly trustworthy as she seems to be quite consistent on the material point of the occurrence, wherein she is quite categorical as has been mentioned above that one of the appellants Prakash Singh came and took the deceased alongwith him near a jackfruit tree where other appellants were there, who did assault the deceased. In the same incident, when she as well as her son Manoj Singh (PW

6) tried to save the deceased, both of them were assaulted, which fact gets substantiated from the medical evidence whereby the Doctor did find injuries on both the persons PW6 as well as PW7. Under the circumstances, presence of PW6 and also PW7, at the place of occurrence, cannot be denied.

23. Going further in the matter, it be stated that PW7 is quite silent as to how the appellant Prakash Singh and Lalmuni Singh did receive injuries, but those injuries have never been shown to be grievous one and in that event, even if PW7 has not come forward to explain as to how both the appellants did receive injuries, it will have no adverse effect over the trustworthiness of PW7. At the same time, it can never be said to be a case of free fight in which persons of both the sides did receive injuries as evidently at one side it was the deceased only and on the other side as many as 11 accused persons were there including the appellants.

24. Going further in the matter participation by the appellants in the said occurrence get corroboration from the testimonies of the hear say witnesses particularly PWs 2 & 3, who were told by PW6 about the name of the appellants, who had participated in the occurrence and PW6, in his evidence, has also testified that he told them about the name of the appellants. In that event, the testimonies of PWs2 and 3 become admissible. Thus, there appears to be no hesitation in finding PW7 and also PW 6 to be trustworthy.

25. Going further in the matter, we may reiterate that as per the testimony of PW7, it was appellant Prakash Singh, who had assaulted on the head of the deceased with 'Daav', whereas appellant Deg Narayan Singh inflicted 'Farsa' blow upon the deceased and the appellants Nunumani Singh and Lalmuni Singh assaulted the deceased with 'Lathi', which fact gets corroboration from the medical evidence as the Doctor did find two lacerated wounds over the occipital and parietal region, whereas cut wound was found on the left arm and the other multiple bruises were found over the front chest, which could be attributed, as per the evidence of PW7, to the appellants Prakash Singh, Deg Narayan Singh, Lalmuni Singh as well as Nunumani Singh. Since, lacerated wound was there over the head, submission had been advanced to the effect that this injury over the head, cannot be caused by 'Daav' as the injuries were laceration in nature. However, according to opinion of the Doctor, those injuries have been caused by cutting, penetrating and hard and blunt substance. It has never been taken from the medical expert that the injuries, which were found over the scalp, cannot be caused by 'Daav'. It is the common experience that if the edge of the 'Daav' would not be sharp, rather it happens to be blunt, injury in the nature of laceration can be caused and under the

circumstances, we do not find any discrepancy in between the ocular evidence and the medical evidence.

26. Now the question does arise as to whether other appellants than the appellants Prakash Singh, Deg Narayan Singh, Lalmuni Singh and Nunumani Singh were sharing the common object? It be stated that other appellants have never been alleged specifically to have caused injury on the person of the deceased, rather, as per the testimonies of PW7 and also PW6, allegation of assault against other appellants, are general in nature. Further nothing appears to be there on the records to establish that they had had any kind of grudge against the deceased.

27. Under the circumstances, it would be unsafe to convict the appellants other than the appellants Prakash Singh, Deg Narayan Singh, Lalmuni Singh and Nunumani Singh with the aid of Section 149 IPC. Accordingly, the appellants Mihir Kumar Singh, Ghanshyam Singh, Prasadi Singh, Kauri Singh @ Kodi Singh and Tirath Singh are acquitted of the charges under Section 302/149 and also under Section 148 of the Indian Penal Code.

28. Going further in the matter, we do find that as per the evidence of PW 7, she was assaulted by the appellant Prakash Singh on her head by 'Daav', whereas appellants Lalmuni Singh and Nunumani Singh assaulted her with 'Lathi' and the appellant Kauri Singh inflicted 'Dagger' injury to her. Corresponding injuries, as per the evidence of the Doctor (PW8) are there, but the nature of injury on account of non production of the Xray plate, could not be ascertained by the Doctor and in that event, it would not be proper on our part to take those injuries to be grievous and, thereby, those appellants and also the other appellants have wrongly been convicted by the trial court under Section 307/149 of the Indian Penal Code. In stead of that the appellants Prakash Singh, Lalmuni Singh, Nunumani Singh and Kauri Singh are hereby convicted for the offence punishable under Section 324/34 and 341/34 of the Indian Penal Code and are acquitted of the charge under Section 148 of the Indian Penal Code. Rest of the appellants namely, Deg Narayan Singh, Mihir Kumar Singh, Ghanshyam Singh, Prasadi Singh and Tirath Singh are acquitted of the charge under Section 307/149 and 341/149 of the Indian Penal

Code. Under the circumstances, appellants Prakash Singh, Deg Narayan Singh, Lalmuni Singh and Nunumani Singh, are convicted for the offence punishable under Section 302/34 of the Indian Penal Code, in stead of Section 302/149 of the Indian Penal Code and also for the offence under Section 341/34 of the Indian Penal Code, but the sentence imposed upon them by the trial court, shall remain intact. Rest of the appellants are acquitted of the charges under Section 302/149 of the Indian Penal Code. 29. Simultaneously, appellants Prakash Singh, Lalmuni Singh, Nunumani Singh and Kauri Singh @ Kodi Singh are convicted for the offence punishable under Section 324/34 IPC in stead of Section 307/149 IPC and they are sentenced to the period already undergone by them.

30. Again the appellants Prakash Singh, Deg Narayan Singh, Lalmuni Singh, Nunumani Singh and Kauri Singh @ Kodi Singh are convicted for the offence under Section 341/34 IPC in stead of Section 341/149 of the Indian Penal Code. However, the sentenced passed against them is, hereby, modified to the period already undergone by them.

31. Consequently, the bail bonds of the appellants Deg Narayan Singh (Cr. Appl. No. 724/2005), Lalmuni Singh and Nunumani Singh (Cr. Appl. No. 887/2005), are hereby cancelled and they are directed to be taken into custody to serve out the sentence. So far the appellants Mihir Kumar Singh (Cr. Appl. No. 778/2005), Ghanshyam Singh (Cr. Appl. No. 796/2005), Prasadi Singh (Cr. Appl. No. 884/2005), Kauri Singh @ Kodi Singh (Cr. Appl. No. 891/2005) and Tirath Singh (Cr. Appl. No. 1549/200), are concerned, who are on bail, are discharged from the liabilities of their bail bonds. 32. In the result, Cr. Appeal (DB) Nos. 1506 of 2005, 724 of 2005 and 887 of 2005, are hereby dismissed with modification in the order of conviction and sentence as indicated above, whereas Cr. Appeal (DB) Nos. 778 of 2005, 796 of 2005, 884 of 2005 and 1549 of 2005, are hereby allowed and Cr. Appeal (DB) No. 891 of 2005, is partly allowed. (R.R.Prasad, J) (Pramath Patnaik, J) Jharkhand High Court, Ranchi Dated the 06th August, 2015 NAFR/Mukund/cp 3