IN THE HIGH COURT OF ORISSA, CUTTACK

CRA No.02 of 1998

An appeal from the judgment and order dated 19.12.1997 passed by the Addl. Sessions Judge, Khurda in S.T. No.45/475 of 1996.

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1. Dinabandhu Dehury
2. Sridhar Behera
3. Tikina Pradhan @ Tikam Pradhan
4. Gouranga Pradhan
5. Gagan Pradhan
6. Madhab Behera ..... Appellants

-Versus-

State of Odisha ..... Respondent

For Appellant: - Mr. Devashis Panda
Advocate

For Respondent: - Mr. Jateswar Nayak
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing: 05.08.2025 Date of Judgment: 21.08.2025

S.K. Sahoo, J. A trivial incident of passing lewd comments to a girl during video show in the village followed by protest by the family members of the girl escalated into an uncalled for tragic scenario of murder of girl's father. Glaring examples are there in scripture when the game of dice and subsequent humiliation of Draupadi stood out as a pivotal incident that irrevocably set the stage for Kurukshetra War. It is crucial to discern which minor disagreements have the potential to escalate so that it can be addressed early which would prevent them from snowballing into more significant conflicts or resentment, impacting relationships or broader social systems.

The appellants Dinabandhu Dehury (A-1), Sridhar Behera (A-2), Tikina Pradhan @ Tikam Pradhan (A-3), Gouranga Pradhan (A-4), Gagan Pradhan (A-5) and Madhab Behera (A-6) along with Raja @ Rajkishore Dehuri preferred this appeal, however during pendency of the appeal, Raja @ Rajkishore Dehuri expired and as such, as per order dated 18.12.2000, the Criminal Appeal has been directed to be abated in respect of the said appellant. Thus, this Criminal Appeal survives only in respect of six appellants, namely, Dinabandhu Dehury (A-1), Sridhar Behera (A-2), Tikina Pradhan @ Tikam Pradhan (A-3), Gouranga Pradhan (A-4), Gagan Pradhan (A-5) and Madhab Behera (A-6).

The appellants along with others, all total sixty four accused persons faced trial in the Court of learned Addl. Sessions Judge, Khurda in S.T. No.45/475 of 1996 for commission of offences under sections 147, 148, 337/149 and 302/149 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that on 24.08.1994 at about 8.00 a.m. at village Tandalo under Begunia police station, they were the members of unlawful assembly and committed the offence of rioting being armed with deadly weapons and in prosecution of the common object, they pelted brickbats so rashly and negligently as to endanger human life and thereby caused hurt to Ramesh Naik (P.W.6), Madhu Behera (P.W.15) and one Akhaya Kumar Panda and also committed murder of Jadumani Behera (hereafter 'the deceased') by intentionally causing his death.

Further, A-1 Dinabandhu Dehury, A-2 Sridhar Behera, A-3 Tikina Pradhan @ Tikam Pradhan, A-4 Gouranga Pradhan, A-5 Gagan Pradhan and A-6 Madhab Behera along with accused Tiki Naik and Raja Kishore Dehury (since dead) were charged for the offence under section 302 of I.P.C. for assaulting and committing murder of the deceased by intentionally causing his death and were further charged for commission of the offence punishable under section 337 of I.P.C. for causing hurt to Ramesh Naik (P.W.6), Madhu Behera (P.W.15) and one Akhaya

Kumar Panda by pelting brickbats so rashly and negligently so as to endanger human life and personal safety of others.

The learned trial Court vide impugned judgment and order dated 19.12.1997, while acquitting the other accused persons of all the charges as aforesaid, found A-1 Dinabandhu Dehury, A-2 Sridhar Behera, A-3 Tikina Pradhan @ Tikam Pradhan, A-4 Gouranga Pradhan, A-5 Gagan Pradhan and A-6 Madhab Behera and Raja Kishore Dehury (since dead) guilty under sections 147, 148, 302/149 of the I.P.C. and sentenced each of them to undergo rigorous imprisonment for life for the offence under section 302/149 of the I.P.C., but no separate sentence has been awarded for the offences under sections 147 and 148 of the I.P.C.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'the F.I.R.') (Ext.1) lodged by Madhu Behera (P.W.15), in short, is that on 22.08.1994 at about 8.00 p.m., some children of the village Tandal Bada Sahi were arranging a video show near a mandap and Basanti Behera (P.W.10), who is the daughter of the deceased and also niece of P.W.15 along with other children was witnessing the same. During such video show, A-1 passed some lewd comments to P.W.10 for which

P.W.10 left the place of video show and came to report the matter to P.W.13 Mathura Behera, the younger brother of P.W.15, who in turn informed it to the father of A-1 and asked him to settle the matter. Accordingly, in the evening hours on 23.08.1994, a meeting was convened to settle the matter, but due to quarrel between A-1 and P.W.13, the matter could not be resolved, rather the people of Bada Sahi threw brick bats towards the basti of the informant (P.W.15). It is further stated in the F.I.R. that on that very night, the people of Adivasi Sahi, Tandal Sabarna Sahi, Nua Sahi and Kachera convened a meeting and on the next day morning i.e. on 24.08.1994 at about 8.00 a.m., the people of all those four basti (slum) including the accused persons being armed with deadly weapons like Farsa, Kanta, Katari etc. formed an unlawful assembly, came to the basti of P.W.15, demolished and ransacked the houses of P.W.15 and other persons of their basti and assaulted basti people with the weapons of offence with which they were armed with. Seeing the aggressive mood of the accused persons, the deceased out of fear fled away from his house and took shelter in the house of Pandari Naik (P.W.3) by bolting the door from inside. However accused Bidyadhar Sahu of village Kachera detected the presence of deceased inside the house of P.W.3 and informed it to the other accused persons. Some of the accused persons

forcibly entered into the house of P.W.3 being armed with weapons and took the deceased to the nearby paddy field and assaulted him with weapons and after committing murder, they threw his dead body in the paddy field. It is also stated that at the time of such assault, A-1 and A-2 were armed with Katari, A-3 with Tangia, A-4 with Farsa, A-5 with Kunta and A-6 with Farsa.

P.W.16 Girija Prasad Das who was working as C.I. of Police at Khurda received information through V.H.F. from Begunia police station that a rioting had taken place in village Tandal and one man of that village had died in the riot and accordingly, he proceeded to village Tandal with force and reached there at 11.30 a.m. and there on the oral report of Madhu Behera (P.W.15), he drew up a plain paper F.I.R. and it was read over and explained to P.W.15, who affixed his L.T.I. and the written report was sent to Begunia police station where one N.C. Sethy, Officer in-charge of Begunia police station registered Begunia P.S. Case No.95 dated 24.08.1994 under sections 147/148/149/336/337/380/427/307/302 of I.P.C. and P.W.16 himself took up investigation.

3. During the course of investigation, P.W.16 found the dead body of the deceased was kept on the street locally called

Jemabanta Dei. He held inquest over the dead body of the deceased in presence of the Addl. Tahasildar, Khurda and witnesses and prepared inquest report Ext.27. On 24.08.1994 he sent the dead body of the deceased for post-mortem examination through a constable as per the dead body challan (Ext.6) also prepared the spot map (Ext.28). On 24.08.1994 he also sent requisitions to Kantabad P.H.C. and Khurda Hospital for medical examination in respect of the injured persons as per Exts.16/2 to 23/2. On 24.08.1994 he also seized the blood-stained earth and sample earth from the paddy field of Padmalav Sahu in presence of the witnesses as per seizure list Ext.11/1. On 24.08.1994 he also made a house search of A-1 and seized a Katari as per seizure list Ext.12/1 in presence of the witnesses. On 24.08.1994 he also searched the house of accused Muralidhar Naik and recovered a 'gupti' and seized the same as per seizure list Ext.13/1. On 24.08.1994 he also seized two aluminium pots (Dekchi) and one leaf of a door from the village danda in front of the house of Manguli Naik as per seizure list Ext.25/1. On 24.08.1994 he also seized 20 nos. of small and big size brick bats and some split bamboos from the village danda of village Jemabanta Dei in presence of the witnesses as per seizure list Ext.4. On 25.08.1994 he sent injury requisition (Ext.29) in respect of the injured Ramesh Naik (P.W.6) to Kantabad P.H.C.

and also issued another requisition (Ext.30) in favour of P.W.15 to Begunia hospital. He also issued injury requisition (Ext.31) in respect of the injured Akhaya Kumar Panda, seized a blood-stained lungi, two red coloured towels, one yellow coloured saree on production by Budei Naik at Khurda medical campus as per seizure list Ext.24/1 and sent M.O.I and M.O.II to the Medical Officer (P.W.8), who conducted post mortem examination over the dead body of deceased seeking for opinion as to whether the death of deceased could be possible by such M.Os.

P.W.16 handed over the charge of investigation to P.W.17 Braja Kishore Patra, Circle Inspector of Police, Khurda on 10.11.1994, who arrested some of the accused persons and forwarded them to Court. He also examined some witnesses, arrested more accused persons on 23.01.1995, seized the command certificate from Havildar Balaram Mohanty, who had carried the dead body of the deceased to Government Hospital, Khurda for post mortem examination as per seizure list Ext.9 and on completion of investigation, submitted charge sheet against the appellants along with other accused persons under sections 147/148/302/307/455/380/323/324/427 read with section 149 of I.P.C.

Framing of Charges:

4. On receipt of the charge sheet, the case was committed to the Court of Session following due procedure, where the learned trial Court framed charges against the appellants as aforesaid. The appellants pleaded not guilty and claimed to be tried and accordingly, the sessions trial procedure was resorted to establish their guilt.

Prosecution Witnesses, Exhibits & Material Objects:

5. In order to prove its case, the prosecution examined as many as nineteen numbers of witnesses.

P.W.1 Jhuni Behera, who is the daughter of the informant (P.W.15), P.W.6 Ramesh Naik and the informant (P.W.15) himself are the eye witnesses to the occurrence and they supported the prosecution case.

P.W.2 Panu Parida stated to have seen the accused persons damaging his house. He further stated that the accused persons had enmity with the villagers of Tandal and his house along with the belongings was also ransacked by the accused persons. He is a witness to the seizure of blood stained earth and sample earth from the land of Padmalav Sahu as per seizure list marked as Ext.11, seizure of blood stained Katuri from the house of Dinabandhu Dehuri as per seizure list marked as Ext.12 and

blood stained Gupti from the house of accused Muli Naik as per seizure list marked as Ext.13.

P.W.3 Pandari Naik, who is a co-villager of the deceased has stated that at the time of occurrence, the appellants along with other accused persons being armed with different deadly weapons, chased the deceased and seeing the violent mood of the accused persons, he fled away through the backside of his house and he came back after three days to his house and found his house to have been razed to the ground by the accused persons.

P.W.4 Budhei Dei, wife of P.W.11 is a co-villager of the deceased and she has stated that she found the accused persons to have assembled at the house of the deceased being armed with different deadly weapons. She further stated that while some accused persons were breaking the house of the deceased, a group of accused persons came to her house, damaged her house and cut the green trees from her bari. She further stated that when she along with her husband Chaitanya (P.W.11) went out of the house, the accused persons rushed towards her husband and accused Kaibalya dealt a Katuri blow on the right side scapula of her husband causing bleeding injury. She further stated that when she went to rescue her husband,

accused Bhagaban Behera dealt a lathi blow (thenga) on her head, accused Bilua dealt a lathi blow to the right side wrist and backside of the palm of her hand for which she sustained bleeding injury on her head and fell down on the ground and lost her sense.

P.W.5 Surenda Dehuri, who is a co-villager of the deceased, has stated that he found the accused persons to have assembled at the house of the deceased being armed with deadly weapons. He stated that the accused persons chased the deceased and his family members pelting brick bats and the accused persons in a body went inside the house of Pandari Naik (P.W.3), pulled down his house and damaged the same, which he witnessed from the backside of his house. Thereafter, the accused Bidyadhar Sahu climbed up the roof of P.W.3, pulled out the straws from the roof to find out who had taken shelter there in the house of P.W.3 and all the accused persons went there and participated in the damage and destruction. He has also narrated the reasons of ill-feeling between the villagers of his village as well as the villagers of Bada Saar Sahi and Sabarna Sahi belonging to the accused persons. He further stated that the dispute was pacified on the intervention of Grama Rakhi.

P.W.7 Kulamani Behera, who is the father of the deceased, has stated that while the incident occurred, he had been to the house of Pandari Naik (P.W.3) and on hearing the hue and cry near his house, he came back to his house and found the accused persons to have assembled near his house being armed with lathi, bhali, kanta, pharsa and other deadly weapons. He further stated that while he was going to the rescue of the wife of his youngest son, Mathura, who had delivered a baby prior to the occurrence, accused Maharagia (since dead) pulled him out of his house and accused Jogi Behera dealt a lathi blow to his left forearm and thereafter accused Bhagaban poked two blows to his left scapula, for which he fell down on the ground. He further stated that all his family members along with children ran to the house of Pandari Naik (P.W.3) to take shelter. He further stated that the accused persons ransacked his grocery shop completely.

P.W.8 Dr. Bholeswar Panda was the Paediatric Specialist of G.B.S. Hospital, Khurda, who conducted post mortem examination over the dead body of the deceased and proved the P.M. report Ext.14.

P.W.9 Dr. Harihar Patnaik, who was the Medical Officer, Kantabad Additional P.H.C. treated the injured persons,

namely, Budhei Dei (P.W.4), Kulamani Behera (P.W.7), Chaitan Naik (P.W.11), Basanta Naik (P.W.18), Kumar Naik (P.W.19) and others on police requisition and proved the injury reports. He further stated that all the injuries embodied in the reports were simple in nature. He further stated that though the injured Dama Majhi was referred by the police for medical examination, but he refused to be medically examined. He proved the certificate to that effect vide Ext.23.

P.W.10 Basanti Dei, the daughter of the deceased, has stated regarding the misbehaviour shown to her by A-1 during the video show in the village and there was an altercation between his father and uncle with A-1 in the village meeting. She further stated that she had been to the agriculture field when the incident occurred and on hearing the news regarding the attack on her house by the accused persons, she returned back and found that her deceased father was being chased by the accused persons, being armed with deadly weapons like Katuri, Kanta, Axe and Bhujali.

P.W.11 Chaitan Naik, who is one of the injured, has stated that on the date and time of occurrence, the accused persons after destroying the houses in Sana Sara Sahi, came to his house and started destroying the green trees of his bari. Out

of fear, he along with his family members wanted to take shelter in the house of P.W.3, but they were confronted by the some accused persons being armed with deadly weapons. At that time, accused Kaibalya Dehury dealt one blow by means of a Kati on his right foot causing a bleeding injury, accused Tiki Naik dealt another blow by means of a Farsa on his right forearm causing bleeding injury and thereafter, A-3 dealt a tangia blow on his right hand shoulder joint causing serious bleeding injury. He further stated that when his wife Budhei Dei (P.W.4) came to his rescue, she was also assaulted for which she sustained bleeding injuries on her head and on her right palm on the dorsal aspect. He further stated that he saw the deceased running towards the field after coming out of the house of Pandari Naik (P.W.3) being chased by A-1, A-2, A-3, A-4, A-5, Raja Dehuri (dead), Tiki Naik and others being armed with deadly weapons.

P.W.12 Prafulla Majhi, who is a co-villager of the deceased, claimed to have seen the first part of the occurrence regarding demolition of the house of the deceased and chasing the deceased towards the field by the accused persons. He is a witness to the seizure of blood stained clothes produced by Budhei Dei (P.W.4) as per seizure list Ext.24.

P.W.13 Mathura Behera, who is a co-villager of the deceased, has stated regarding the misbehaviour shown to P.W.10 during the video show and he is a witness to the village meeting over the said issue. He further stated that on the date and time of occurrence, he had been to his paddy field and on hearing hue and cry in the village, he rushed to the spot and found that some persons of Bada Saara Sahi were damaging their houses and out of fear, he did not enter into the village, rather rushed to Begunia police station to report the matter and sought police assistance on the issue immediately.

P.W.14 Magi Dehuri is a witness to the seizure of split bamboos and brick bats as per seizure list Ext.4. He is also a witness to the seizure of aluminium pots as per seizure list Ext.25.

P.W.16 Girija Prasad Das, who was the C.I. of Police at Khurda, was the initial Investigating Officer of the case.

P.W.17 Braja Kishore Patra was the C.I. of Police, Khurda, who took over the charge of investigation from P.W.16 and submitted charge sheet against the accused persons.

P.W.18 Basanta Naik is an injured witness who stated that the accused persons came in a body, damaged the houses belonging to different persons of his village and during the

occurrence, he was assaulted by Naba Naik, Sarat Naik, Bilua Naik by means of lathi and accused Kailash Naik dealt a katuri blow to his right leg causing bleeding injury.

P.W.19 Kumar Naik is another injured witness to the occurrence who stated that on the date of occurrence, the accused persons came in a body and damaged the houses and other properties of his village and in course of such incident, accused Niranjan Naik assaulted him by means of a lathi to his left ear causing bleeding injury.

The prosecution proved thirty one numbers of documents as exhibits. Ext.1 is the Formal F.I.R, Ext.2 is the Chemical Examination Report, Ext.3 is the Serological Examination Report, Exts.4, 5, 9, 11/1, 12/1, 13/1, 24/1 and 25/1 are the seizure lists, Ext.6 is the dead body challan, Ext.7 is the spot visit report, Ext.8 is the forwarding report of S.D.J.M to State F.S.L., Ext.10 is the command certificate, Ext.14 is the post-mortem report, Ext 15 is the reply to the query by P.W 8, Ext.16 is the injury certificate of Chaitan Naik (P.W.11), Ext.17 is the injury certificate of Kartik Naik, Ext.18 is the injury certificate of Basant Naik (P.W.18), Ext.19 is the injury certificate of Budhei Dei (P.W.4), Ext.20 is the injury certificate of Kumar Naik (P.W.19), Ext.21 is the injury certificate of Kulamani Behera

(P.W.7), Ext.22 is the injury certificate of Lochan Behera, Ext.23 is the certificate of Dama Majhi, Ext.26 is the F.I.R., Ext.27 is the inquest report, Ext.28 is the spot map, Ext.29 is the injury requisition of Ramesh Naik (P.W.6), Ext.30 is the injury requisition of Madhu Behera (P.W.15) and Ext.31 is the injury requisition of Akshay Kumar Panda.

The prosecution also proved two numbers of material objects. M.O.I is the Gupti (knife) and M.O.II is the Katuri.

Defence Plea:

6. The defence plea of the appellants is one of complete denial to the prosecution case and they further pleaded to have been entangled falsely in the case due to previous rivalry.

Findings of the Trial Court:

7. The learned trial Court, after assessing the oral as well as documentary evidence on record, came to hold that the evidence of P.Ws.1, 6 and 15 to the effect that on the date of occurrence, the appellant Raj Kishore Dehury (since dead), A-1, A-2, A-3, A-4, A-5 and A-6 being armed with Lathi, Farsa, Kanta and Bhali etc. committed murder of the deceased over the land of Padmalav Sahu, is clear and convincing and it did not find any reason to discard their evidence on this score. While believing the evidence of P.W.3 Pandari Naik, learned trial Court has held

that merely because after escaping from the house, he did not go to the police station to report the matter, is not a ground to discard his evidence on this score. The learned trial Court relying on the evidence of P.W.10, has observed that the evidence of P.Ws.1, 6 and 15 find support from the evidence of P.W.10 so far as chasing to the deceased by the accused persons. It was held that simply because P.W.6 was examined four to five days after the occurrence cannot be a ground to discard his evidence particularly when nothing has been brought out in his cross-examination to impeach his testimony. It was further held that the evidence of P.W.6 and P.W.15 indicate that some of the accused persons were also armed with lathi and in such circumstances, the possibility that the injury no.(ix) might have been caused by lathi cannot be ruled out. Relying on the evidence of the eye witnesses, i.e. P.Ws.1, 6 and 15, which finds support from the evidence of other witnesses, the learned trial Court concluded that on the date of occurrence, accused Raj Kishore Dehury (since dead), A-1, A-2, A-3, A-4, A-5 and A-6 formed an unlawful assembly and being armed with deadly weapons, committed murder of the deceased in prosecution of their common object. The learned trial Court further observed that the names of the seven appellants find place in the F.I.R. lodged at the spot within one hour of the occurrence, which rules

out possibility of any false implication of these appellants at that stage and accordingly, found them guilty of the offences charged.

The learned trial Court relying on the evidence of P.Ws.7, 9, 18 and 19, came to hold that the evidence of these witnesses cannot be accepted to come to a definite conclusion that at the time of incident, any of the other accused persons except the seven {the present appellants along with Raja @ Rajakishore Dehury (since dead)} referred to above, shared common intention in prosecution of the common object of the unlawful assembly and accordingly, acquitted the other accused persons of all the charges. The learned trial Court held that there is no evidence that due to pelting of stones by the accused persons, any witness sustained injury and thus, the charge under section 337/149 of I.P.C. fails to the ground.

Contentions of the Parties:

8. Mr. Devashis Panda, learned counsel appearing on behalf of the appellants argued that the learned trial Court found the appellants guilty on the basis of evidence adduced by three eye witnesses i.e. P.Ws.1, 6 and 15, but there are other eye witnesses like P.Ws.2, 3, 4, 5, 7, 10, 11, 12, 13, 18 and 19 who have not impleaded the appellants in the assault of the

deceased. He further argued that the evidence of the doctor (P.W.8) who conducted post-mortem examination falsifies the assault made by so many appellants with different weapons. He argued that the places from where the eye witnesses claimed to have seen the assault on the deceased is a doubtful feature and none of the eye witnesses speaks about the presence of the other at the time of assault on the deceased on the land of Padmanav Sahu. He further argued that P.W.6 was examined at a belated stage by the I.O. and no cogent explanation is forthcoming in that respect. P.W.6 has stated to have seen the entire incident sitting near his house, but the spot map would falsify this aspect. He further argued that as per the evidence of P.W.1, P.W.15 had confined himself in the house of Manguli Nayak when the assault was going on, which creates doubt about the evidence of P.W.15 as an eye witness to the occurrence. He argued that according to the evidence of the eye witnesses, the appellants were armed with sharp cutting weapons, but injury no.(ix) is a lacerated wound on the left frontal region above the left eye brow which according to the doctor (P.W.8) was the fatal injury, could not have been caused by any such sharp cutting weapon rather it was possible by fall as stated by P.W.8. He argued that though the deceased had sustained as many as nine injuries, but injuries nos.(i) to (viii) were on the non-vital parts

of the body and none of the eye witnesses has stated as to who caused the fatal injury i.e. injury no.(ix) on the head and therefore, even if for the sake of argument, it is accepted that the appellants assaulted the deceased, it is not a case which would come within the purview of section 302/149 of I.P.C. rather it may at best come within culpable homicide not amounting to murder punishable under section 304 Part-II/149 of I.P.C.

In support of his contention, learned counsel placed reliance in the cases of **Ganesh Bhavan Patel and another -Vrs.- State of Maharashtra reported in (1978) 4 Supreme Court Cases 371, Muthu Naicker and others -Vrs.- State of Tamil Nadu reported in (1978) 4 Supreme Court Cases 385, Hallu and others -Vrs.- State of M.P. reported in (1974) 4 Supreme Court Cases 300, State of Orissa -Vrs.- Brahmananda Nanda reported in (1976) 4 Supreme Court Cases 288, Gunduchi Patnaik and others -Vrs.- State of Orissa reported in 1985 (I) Orissa Law Reviews 480, Lahu Kamlakar Patil and another -Vrs.- State of Maharashtra reported in (2013) 6 Supreme Court Cases 417** and **Nadodi Jayaraman and others -Vrs.- State of Tamil Nadu reported in 1992 Supp (3) Supreme Court Cases 161**.

9. Mr. Jateswar Nayak, learned Additional Government Advocate appearing for the State, on the other hand, supported the impugned judgment and urged that the evidence of the three eye witnesses i.e. P.Ws.1, 6 and 15 have not been shattered in the cross-examination rather it is getting corroboration from the medical evidence. As per the evidence of the doctor (P.W.8), the post mortem report shows multiple fatal injuries consistent with assault by sharp-cutting and blunt weapons like Tangia, Katuri, Kanta, Farsa and Lathis as described by the eye witnesses. Learned counsel further submitted that the appellants were armed with deadly weapons and their concerted action in chasing and assaulting the deceased proves their active participation in furtherance of their common object. He further submitted that the individual overt acts of the appellants are not required to be proved separately as long as their membership and participation in the unlawful assembly is established. He further submitted that there is no inconsistency between the ocular and medical version. He argued that the evidence of P.Ws.3, 10, 11 and 12 corroborate the version of the three eye witnesses and they have also impleaded the appellants. The other eye witnesses who had not seen the assault on the deceased on the land of Padmanav Sahu, have deposed about the pelting of brickbats by the accused persons, their own assault or assault on the other

injured or the first part of the occurrence when the houses of the villagers were damaged and properties were ransacked, which gives a complete picture about the entire occurrence right from the beginning till end. He argued that nothing has been brought out by way of cross-examination of the three eye witnesses that the places from where they stated to have seen the assault on the deceased are doubtful feature. The three eye witnesses were at three different places when the assault on the deceased was going on and therefore, each of them while focusing on the assault might not have noticed the presence of the others at the time of occurrence. He argued that nothing has been brought on record as to when P.W.6 was examined and no question has also been put to the I.O. for delayed examination of P.W.6 and therefore, the defence cannot take advantage of the same. He further argued that the vague statement of P.W.1 that P.W.15 had confined himself in the house of Manguli Nayak when the assault was going on, cannot be a ground to disbelieve the position of P.W.15 at the time of occurrence or his evidence as an eye witness to the assault on the deceased on the land of Padmanav Sahu. He argued that the cause of death of the deceased was not only the head injury which caused laceration of the brain matter but associated with multiple injuries on different parts of body as per the evidence of the P.M. doctor

(P.W.8) and therefore, the learned trial Court has rightly held that the case falls within section 302/149 of I.P.C. The appellants were the members of unlawful assembly and committed rioting being armed with deadly weapons and thus the learned trial Court has rightly held the appellants guilty under sections 147/148/302/149 of the I.P.C.

In support of such submissions, learned counsel for the State has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of **Masalti -Vrs.- State of U.P. reported in A.I.R. 1965 Supreme Court 202**.

Whether the deceased died of a homicidal death?:

10. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine whether the prosecution has successfully established that the deceased met with a homicidal death or not.

Apart from the inquest report (Ext.27), it appears that P.W.8 conducted the post-mortem examination over the dead body of the deceased on 25.08.1994 and noticed the following injuries:

> "(i) Cut injury at the middle of right upper arm cutting the skin and underlying muscle. There was fracture of humerus bone at the middle, size of the injury was ½" x 3" x ½";

(ii) Cut injury at the middle of left upper arm cutting the skin and underline muscle. The size of the injury is 3" x ½";

(iii) Cut injury 2" below lower angle of right scapula cutting skin and muscle. The size of the injury is 3" x ½";

(iv) Cut injury on the anterior aspect of right leg 4" below the right knee joint cutting skin and muscle. The size of the injury is 2" x ½";

(v) Cut injury on the anterior aspect of right leg 3" above right knee joint cutting the skin. The size of the injury is 1" x ½";

(vi) Cut injuries at three places on right foot of size varying from 1" to 3" long and ½" wide. There is fracture of right second and third metacarpal bones;

(vii) Cut injury on the middle of the left leg cutting skin. The size of the injury is 2" x ½";

(viii) Cut injury on the inner aspect of left foot skin deep. The size of the injury is 2" x ½" x skin deep;

(ix) Lacerated injury on the left frontal region 1" above the left eye brow causing fracture to the underling frontal bone. The size of the injury is 2" x ½".

The doctor further stated that on dissection, he found that the left frontal lobe of the brain matter and its three layers

of dura, pia and archnoid matter were lacerated. He opined that the injuries noted in the report were ante mortem in nature and the cause of death was due to laceration of the brain matter and associated by multiple injuries on different parts of the body and the time of death was within 16 to 24 hours of the post-mortem examination. The doctor proved the post-mortem report marked as Ext.14. He also examined the weapons of offence (one Katuri and one Gupti) which were sent to him by the I.O. for a query regarding possibility of the injuries sustained by the deceased with such weapons and he answered vide Ext.15 that the external injury nos.(i), (vi) and (ix) could be caused by Katuri and the rest of the external injuries could be caused by Gupti. He further stated that the injuries were sufficient in ordinary course of nature to cause death.

In view of the inquest report (Ext.27) and findings in the post-mortem report (Ext.14) coupled with the evidence of the doctor (P.W.8) who conducted post-mortem examination, which has remained unchallenged in the cross-examination and other evidence on record, we are of the humble view that the learned trial Court is quite justified in holding that the prosecution has successfully proved that the deceased met with homicidal death.

Whether the evidence of eye witnesses P.Ws.1, 6 & 15 can be acted upon?:

P.W.1 Jhuni Behera:

11. P.W.1 Jhuni Behera is the daughter of the informant (P.W.15). The deceased was her elder father. She stated that on the date of occurrence, when the accused persons were being armed with deadly weapons like Bhali, Kanta and Pharsa started damaging their house from 8 a.m. onwards, she herself, her father (P.W.15), her elder father (deceased) and others fled away to the house of P.W.3 out of fear to save their lives. They took shelter in the house of P.W.3. Accused Bidyadhar climbed over the thatch of P.W.3 and made a hole taking out the straw and also shouted that the family of the deceased had taken shelter in the house of P.W.3. The other accused persons were standing in front of the house of P.W.3 and they started breaking the door of the house of P.W.3. The deceased tried to escape through the back door of the house of P.W.3 and he was chased by the appellants and other accused persons. She specifically stated that A-1 was holding Katari, A-2 was holding Katari, A-3 was holding Tangia, A-4 was holding Pharsa, A-5 was holding Kanta and A-6 was holding Pharsa and the other accused persons were holding lathi and other deadly weapons. She

further stated that the deceased was overpowered on the land of Padmanav Sahu. Raj Dehury (Dead) attacked on the right shoulder of deceased by Pharsa, A-1 assaulted the deceased by katari on the right hand, A-3 dealt blows on the right leg of the deceased by Tangia and other appellants assaulted the deceased with the weapons with which they were armed and the appellants had also surrounded the deceased. She stated that coming out of the house of P.W.3, she came close to a mango tree which was about 40 yards from the spot, stood there and watched the assault by different accused persons on the deceased. She further stated that after half an hour of the assault, she came from underneath the mango tree and went to the land of Padmanav Sahu and found the deceased was lying dead with bleeding injuries all over his body which were on the right scapula, right leg, right hand, left hand, left leg and right frontal bone.

In the cross-examination, she has stated to have been examined by the police on the date of the occurrence itself. She further stated that her father (P.W.15) had confined himself inside the house of Manguli Naik, when the deceased was assaulted on the land of Padmanav. She further stated that no other villagers was standing near her and witnessing the incident

of assault on the deceased. She further stated that by the time the police came to the spot, they had shifted the deceased from the land of Padmanav to a place which was in the front of the house of Pandari Naik (P.W.3) and kept the body under a coconut tree.

It has been confronted to her and proved through the I.O. (P.W.16) that he had not stated before police that her father and elder father had taken lease of govt. land and that she came out of the house of P.W.3 and stood under a mango tree to witness the assault on the deceased and that she saw a cut injury above the right eye brow of the deceased.

Apart from such minor contradictions, nothing has been brought out in the cross-examination of P.W.1 to affect her credibility. She was underneath a mango tree which was about 40 yards from the spot and watching the assault on the deceased which might not have been noticed by the other two eye witnesses. Her evidence appears to be very natural and her position at the time of the assault on the deceased was such that it could not be said that she was at such a distance that it would not have been possible on her part to mark the assault. The evidence of P.W.1 is also getting ample corroboration from the

medical evidence. Thus, we are of the view that the learned trial Court has rightly placed reliance on her evidence.

P.W.6 Ramesh Naik:

12. He stated that on the occurrence day, he was at a distance of 25 ft. from the house of the deceased and the house of P.W.3 was at a distance of 50 ft. from his house. While returning from his cultivable land, he found the accused persons were armed with deadly weapons and assembled at the house of the deceased and completely demolished his house. He further stated that then the accused persons came to his house and started demolishing the same and when he protested, he was assaulted by two accused persons, namely, Brundaban Dehury and Niranjan. He further stated that when accused Bidyadhar Sahu climbed up the roof of P.W.3, made a hole on the thatched roof, located the deceased and his family members inside the house of P.W.3 and then shouted and drew the attention of the co-accused persons about the presence of the deceased inside. He further stated that the accused persons started demolishing the house of P.W.3 for which the deceased fled away through the backdoor and all the appellants along with appellant Raja Dehury (dead) chased the deceased being armed with Katuri, Farsa, Kanta, Tangia and lathi. The deceased ran towards the land of

Padmanav Sahu where he was overpowered. The appellants brutally assaulted the deceased with the arms, which they were holding.

In the cross-examination, P.W.6 has stated that he was examined by the I.O. between four to six days. He stated that he was sent to the hospital by the police for medical examination on the following day of the incident. He further stated that he could not say which of the accused assaulted on which part of the body of the deceased. He further stated to have witnessed the entire incident sitting near his house.

It has been confronted to him and proved through the I.O. (P.W.16) that he had not stated before police that the accused persons demolished the house of the deceased and he had also not stated that accused Bidyadhar told the other accused persons to come to the house of P.W.3 stating that the deceased had concealed his presence there and that he had also not stated that the other accused persons apart from the appellants chased the deceased.

Learned counsel for the appellants contended that since P.W.6 was examined by the I.O. at a belated stage and no cogent explanation is coming forth in that respect, his evidence should be viewed with suspicion.

On the other hand, the learned counsel for the State argued that there is no evidence on record as to when P.W.6 was examined by the I.O. and no question has been put to the I.O. for delayed examination of P.W.6 and thus, the defence cannot take any advantage of the delayed examination, if any.

It appears that not a single question has been put by the defence to the I.O. (P.W.16) as to when he examined P.W.6 and why there was delay in recording his statement.

Learned counsel for the appellants for canvassing his point on delayed disclosure emphatically placed reliance in the case of **Ganesh Bhavan Patel** (supra), wherein the Hon'ble Supreme Court has held as follows:-

> "15……Delay of a few hours, simpliciter, in recording the statements of eye witnesses may not, be itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye witnesses to be introduced."

In the case of **Brahmananda Nanda** (supra), the Hon'ble Supreme Court held as follows:-

"2……..Though according to this witness, she saw the murderous assault on Hrudananda by the respondent and she also saw the respondent coming out of the adjoining house of Nityananda where the rest of the murders were committed, she did not mention the name of the respondent as the assailant for a day and a half. The murders were committed in the night of June 13, 1969 and yet she did not come out with the name of the respondent until the morning of June 15, 1969. It is not possible to accept the explanation sought to be given on behalf of the prosecution that she did not disclose the name of the respondent as the assailant earlier than June 15, 1969 on account of fear of the respondent. There could be no question of any fear from the respondent because in the first place, the respondent was not known to be a gangster or a confirmed criminal about whom people would be afraid, secondly, the police had already arrived at the scene and they were stationed in the clubhouse which was just opposite to the house of the witness and thirdly, A.S.I. Madan Das was her nephew and he had come to the village in connection with the case and had also visited her house on June 14, 1969. It is indeed difficult to believe that this witness should not have disclosed the name of the respondent to the police or even to ASI Madan Das and should have waited till the

morning of June 15, 1969 for giving out the name of the respondent. This is a very serious infirmity which destroys the credibility of the evidence of this witness."

In the case of **Gunduchi Patnaik** (supra), a Division Bench of this Court has held as follows:-

"14. We would next come to the evidence of P.W.7. Neither P.W.7 had spoken about the presence of P.Ws.2 and 6 on the spot nor P.Ws.2 and 6 had spoken about the presence of P.W.7 at the time of occurrence. It would be seen from the evidence of the Investigating Officer that this witness was examined in the course of investigation as late as on August 25, 1979. There was no evidence that he had disclosed the occurrence to any one until his belated examination in the course of investigation. If the police officer had come to the scene of occurrence on August 12, 1979 and P.W.7 had witnessed the occurrence, he could have volunteered a statement to the Investigating Officer. No explanation whatsoever had been given by P.W.7 as to why he did not disclose the occurrence to anyone. He could not have had a sense of loss after the Investigating police officer had come to the scene. There was no evidence that any of the accused persons had threatened him at the time of assault on the person of the deceased not to disclose the

occurrence to anyone. The learned Sessions Judge has observed that the general tendency of the people of the present day is to remain away from police interrogation and dusty law courts' one of which was being presided over by him at the trial. No reasonable explanation had been offered by P.W.7 as to why he made a late disclosure about the occurrence at the stage of investigation. In such circumstances, it would be unsafe and hazardous to accept the evidence of P.W.7 with regard to the occurrence."

In the case of **Lahu Kamlakar Patil** (supra), the Hon'ble Supreme Court held as follows:-

"22. From the aforesaid grounds, the primary attack of the learned Counsel for the Appellants is that there has been delay in the examination of the said witness and he has contributed for such delay and, hence, his testimony should be discredited.

23. In **Mohd. Khalid -Vs.- State of W.B. : (2002) 7 Supreme Court Cases 334**, a contention was raised that three witnesses, namely, P.Ws.40, 67 and 68, could not be termed to be reliable. Such a contention was advanced as regards P.W.68 that there had been delay in his examination. The Court observed that mere delay in examination of the witnesses for a few days cannot in all cases be termed fatal so far as prosecution is concerned.

There may be several reasons and when the delay is explained, whatever the length of delay, the Court can act on the testimony of the witnesses, if it is found to be cogent and credible.

xxx xxx xxx

26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a Court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an F.I.R. or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing of variations, then his testimony becomes questionable and is likely to be discarded."

In the case of **Madan Kanhar @ Mitu -Vrs.- State of Orissa reported in (2025) 98 Orissa Criminal Reports 781**, this Bench has observed as follows:

> "13. In the instant case, the testimony of P.W.5, the supposed eyewitness, fails to meet the standard of a 'sterling witness', as laid down by the Hon'ble Supreme Court. The Court has held that, an eyewitness must be of the highest quality and credibility, and their version should be so unimpeachable that it can be accepted at its face value without hesitation. A sterling witness must provide a natural and consistent account that withstands rigorous cross-examination and aligns with the overall case of the prosecution. A major flaw in P.W.5's statement is her delayed disclosure. She claims to have witnessed the Appellant assaulting the deceased with an axe and even heard the victim cry out, "MITU HANI DELA." Despite allegedly seeing such a brutal act, she failed to inform anyone about it until six days after the incident. This delay in disclosure raises serious doubts about the credibility of her testimony. If she had genuinely witnessed a murder, her silence is highly unnatural and unexplained. The reason given that she was threatened by the Appellant appears weak, as she was in the company of two others, who were also not examined as witnesses. Their absence in the trial further

weakens her statement, as the prosecution failed to bring forward independent witnesses to substantiate her claims. There is no evidence on record that the Appellant was having criminal background. The police was coming to the village from the date of occurrence in connection with the investigation of the case. Therefore, it is difficult to accept that, on account of threats given by the Appellant, there was delayed disclosure. If, in spite of presence of the police in the village, she was in a state of fear as the Appellant had not been arrested, then how her fear dispersed when she gave her statement to police six days after the occurrence, as by that time the Appellant was in large, which creates doubt about the truthfulness of her version."

After going through the decisions cited by the learned counsel for the appellants to discard the evidence of P.W.6 on the ground of his delayed examination, we are of the view that the testimony of a witness cannot become unreliable merely because there is a delay in the examination of such witness by police during investigation. Question of delay in examining a witness during investigation is material only when there are concomitant circumstances to indicate and suggest that some unfair practice has been adopted by the investigating agency for the purpose of introducing a witness to falsely support the prosecution case or the investigator was deliberately

marking time with a view to decide about the shape to be given to the case. Delay in examination of witnesses is a variable factor which would depend upon a number of circumstances like non-availability of witnesses, the investigating officer being pre-occupied in some serious matters, the investigating officer spending his time in arresting the accused, who were absconding, being occupied in other spheres of investigation of the same case, which may require his attention urgently and importantly etc. However, in a case where commission of crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence over the evidence of other witnesses. (Ref: **(2005) 9 Supreme Court Cases 283: Sunil Kumar -Vrs.- State of Rajasthan**;**(2012) 7 Supreme Court Cases 646: Shyamal Ghosh -Vrs.- State of West Bengal**; **(2015) 9 Supreme Court Cases 588: V.K. Mishra -Vrs.- State of Uttarakhand**)

The prosecution is under obligation to offer explanation for the delay in recording the statement of an important witness and if the explanation is reasonable and plausible, testimony of the witness cannot be considered unacceptable because of his delayed interrogation. Apart from this, the defence must put specific questions to the investigating

officer for the delay in recording the statement and must seek explanation from him. The Hon'ble Supreme Court in the case of **Banti @ Guddu -Vrs.- State of M.P. reported in (2004) 1 Supreme Court Cases 414** and **State of U.P. -Vrs.- Satish reported in (2005) 3 Supreme Court Cases 114** has held that unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses, the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the Court accepts the same as plausible, there is no reason not to accept the version and rely on it if it is trustworthy.

Therefore, in the case in hand, when P.W.6 has stated that he was examined by the I.O. between four to six days and no questions have been put to the I.O. (P.W.16) regarding delayed examination of P.W.6 and there is no evidence on record as to actually when P.W.6 was examined by the I.O., we are not able to accept the challenge made by the learned counsel for the appellant regarding the acceptability of the

evidence of P.W.6 on the ground of his delayed examination. P.W.6 is an independent witness and he was having no hostility with the appellants or any of the accused persons to depose falsely against them. His evidence has not been shaken in spite thorough and rigorous cross-examination.

There are no such major contradictions in the evidence of P.W.6.

The learned counsel for the appellants argued that P.W.6 claimed to have witnessed the entire incident sitting near his house as he was dealt a lathi blow by accused Niranjan on his right scapula, but the spot map (Ext.28) would indicate that there are houses in front of his house on the other side of the road and spot as shown in Ext.28 was at such a place that it could not have been possible on the part of P.W.6 to notice the assault on the deceased sitting near his house.

The entire argument on this score falls to the ground as nothing has been brought out by way of cross-examination that sitting near his house, P.W.6 could not have witnessed the assault rather P.W.6 has stated that his house situates at a distance of 50 to 60 feet away from the land of Padmanav Sahu.

It is argued by the learned counsel for the appellants that though P.W.6 has stated that accused Niranjan dealt a lathi blow to his right scapula for which he sat down due to pain, but there is no medical evidence to that effect.

We found from the evidence of the I.O. (P.W.16) that he issued requisition (Ext.29) for medical examination of P.W.6 to Kantabad P.H.C. On perusal of the other side of Ext.29, it is mentioned by the doctor in the report that no external injury noticed. However, the doctor has not been examined.

Thus, we are of the view that even though no injury report is there to corroborate the evidence of P.W.6 that accused Niranjan dealt a lathi blow to his right scapula, but the same cannot be a ground to disbelieve his entire evidence. The learned trial Court has rightly relied upon the evidence of P.W.6.

P.W.15 Madhu Behera:

13. P.W.15 is the informant in the case and he is the brother of the deceased. He stated that on the date of occurrence, he was sitting on the varandah of his house where the deceased was also residing. Apart from deposing that the accused persons being armed with deadly weapons, damaged his house and ransacked the properties, he stated that the seeing the violent mood of the accused persons, he along with his

family members so also the deceased and his family members left the house out of fear and took shelter in the house of P.W.3. He further stated that accused Bidyadhar Sahu came over the thatch of the house of P.W.3 and pulled out the thatch and announced to the other accused persons that the deceased had taken shelter there. Out of fear, they opened the back door and tried to escape, but the deceased was chased by the accused persons. He named all the appellants to be armed with weapons like Thenga, Bhali, Kunta, Pharsa and Katuri while chasing the deceased. The deceased ran towards the paddy field of Padmanav Sahu where he fell down and there he was assaulted brutally by the appellants.

He further stated that he was assaulted by accused Brundaban Dehuri and Gouranga Dehuri by brickbats and sustained bleeding injury in his both the legs for which he could not come out to the rescue of his deceased brother. He stated to have struck up in the bari of Manguli Naik because of assault on him. He specifically stated that the land of Padmanav Sahu (spot of assault) was clearly visible to him from the bari of Manguli Naik which was at a distance of 200 cubits from the bari of Manguli Naik.

He further stated that when the accused persons dispersed, his family members came to the land of Padmanav

Sahu and brought the deceased and placed him near a coconut tree close to the house of P.W.3, but by then the deceased was dead. He stated that the proximate cause of the incident was the video show where A-1 passed some ugly comments to P.W.10 for which a meeting was convened in the village, but nothing could be settled. He stated to have lodged the oral report before police when they came to the spot which was reduced to writing.

In the cross-examination, he has stated that neither he was present in the video show nor attended the meeting. He stated that when he got struck up in the bari of Manguli Naik, the family members of Manguli Naik shifted him to the front side of their house. He stated that paddy was sown on the land of Padmalochan Sahu and it was muddy then and paddy sapling had come up. He stated that the deceased was not assaulted by any of the accused persons before he fell down on the land of Padmanav. He has denied the suggestion given by the defence that the deceased died as because he fell down on the land of Padmanav and that no one had assaulted him after he fell down there.

The evidence of this witness was challenged by the learned counsel for the appellants on the ground that his daughter (P.W.1) has stated that her father (P.W.15) had confined himself inside the house of Manguli Naik when the

deceased was assaulted on the land of Padmanav and therefore, his evidence as an eye-witness to the occurrence is a doubtful feature. This submission is not acceptable as P.W.15 himself states that he was struck off in the bari of Manguli Naik and the land of Padmanav Sahu was clearly visible to him from the bari of Manguli Naik which was at a distance of 200 cubits. P.W.1 might not be in a position from the place where she was standing underneath a mango tree to mark where her father was at the time of assault on the deceased and she might be thinking that her father had confined himself inside the house of Manguli Naik at the time of assault on the deceased. We are of the view that on the basis of the statement of P.W.1, the evidence of P.W.15 as an eye witness to the occurrence cannot be disbelieved.

The next ground of attack on the evidence of P.W.15 by the learned counsel for the appellants is that though he stated to have been assaulted by two of the accused persons by means of brickbatting, i.e., Brundaban Dehuri and Gouranga Pradhan (A-4) and sustained bleeding injuries on both his legs and further stated that he had also told the police that he had been assaulted and got injured due to brickbatting, but there is no medical evidence to corroborate that he was an injured witness rather it has been proved through the I.O. (P.W.16) that he had not stated to have received injuries due to brickbatting.

Such submission is very difficult to be accepted as the I.O. (P.W.16) has stated that he issued requisition (Ext.30) in favour of P.W.15 to Begunia Hospital. On the other side of Ext.30, the injuries sustained by P.W.15 are mentioned, however the concerned doctor from Begunia Hospital could not be examined to prove it.

The evidence of P.W.15 as an eye witness to the assault on the deceased cannot be doubted merely because he failed to state before the I.O. that he himself sustained injury due to brickbatting or that his injury report could not be proved. The evidence given by this witness relating to the assault on the deceased is getting corroboration from the medical evidence. No doubt the doctor (P.W.8) has stated that external injury no.(ix) could be caused by fall but the contention of the learned counsel for the appellants that all the injuries were possible by fall is not acceptable, as those were cut injuries on different parts of the body like left upper arm, right scapula, right leg, right knee, right foot, right leg and left foot of different sizes.

Thus, we are of the view that the learned trial court has rightly placed reliance on the evidence of P.W.15.

Corroborating evidence to the evidence of three eye witnesses:

14. The learned counsel for the appellants contended that apart from P.Ws.1, 6 and 15, the other eye witnesses like P.Ws.2, 3, 4, 5, 7, 10, 11, 12, 13, 18 and 19 have not impleaded the appellants in the assault of the deceased, whereas the learned counsel for the State argued that the other eye witnesses who had not seen the assault on the deceased on the land of Padmanav Sahu have stated about the other aspects of the prosecution case and moreover, the evidence of P.Ws.3, 10, 11 and 12 corroborate the version of the three eye witnesses regarding the participation of the appellants in the occurrence.

As is revealed from the sequence of events that transpired, on the date of occurrence in the morning at about 8 a.m., the accused persons assembled near the house of the deceased being armed with different weapons, damaged the house of the deceased and ransacked the properties. They also caused similar activities in respect of the houses of some other villagers. When the deceased and his family members leaving their house, entered inside the house of P.W.3 Pandari Naik out of fear to take shelter, one of the accused namely, Bidyadhar Sahu came over the thatch of P.W.3, pulled out the thatch to make a hole on the thatched roof, located the deceased inside

the house of P.W.3, announced the presence of the deceased for which some accused persons started breaking and demolishing the house of P.W.3. The deceased tried to escape through the back door of the house of P.W.3, but the appellants chased him being armed with different weapons, overpowered him on the land of Padmanav Sahu and then assaulted him to death.

Apart from the eye witnesses P.Ws.1, 6 and 15 whose evidence we have already discussed, the following witnesses also state about the various roles played by the appellants on the date of occurrence.

P.W.3 Pandari Naik has stated that he was in his house at the time of occurrence which took place at 8 a.m. The accused persons broke and damaged the house of the deceased and P.W.15, chased them and their family members to his house. The family members of the deceased got panicked and rushed to his house to take shelter and shut themselves inside a room and closed the front door. He further stated that A-1 was armed with a Katuri, A-2 was armed with a Pharsa, A-3 was armed with a Tangia, A-4 was armed with a Katuri, A-5 was armed with a Kanta, A-6 was armed with a Pharsa and appellant Raja Dehuri (dead) was armed with a Pharsa. The other accused persons were armed with thenga, lathi and different kinds of lethal weapons. He further stated that seeing the violent mood of

the accused persons, he fled away through the back side of the house.

P.W.10 Basanti Dei, the daughter of the deceased has stated that her house was razed to the ground, her father was chased by A-1, A-2, A-3, A-4, A-5, A-6 and appellant Raja Dehuri (dead) towards the land of Padmanav Sahu being armed with deadly weapons like Katuri, Kanta, Axe and Bhujali, but she could not go to the rescue of her father.

P.W.11 Chaitan Naik has stated that on the date of occurrence, after he and his wife were assaulted, he saw the deceased was running towards Gahira after coming out of the house of P.W.3 being chased by A-1, A-2, A-3, A-4, A-5, appellant Raja Dehuri (dead) armed with deadly weapons.

P.W.12 Prafulla Majhi has stated that accused Bidyadhar climbed on the thatch roof of P.W.3, made a peep hole and announced that the deceased had taken shelter there, as a result of which some of the accused persons started breaking the house of P.W.3. He further stated that the deceased escaped towards Gahira and he was chased by appellant Raja Dehuri (dead), A-1, A-2, A-3, A-4, A-5, A-6 being armed with weapons.

While assessing the evidence of the eye witnesses P.Ws.1, 6 and 15 regarding the participation of the appellants in the assault of the deceased and other corroborating evidence of

P.Ws.3, 10, 11 and 12, we have kept in view the ratio laid down by the Hon'ble Supreme Court in the case of **Muthu Naicker** (supra), wherein it is held as follows:-

> "6. Where there is a melee and a large number of assailants and number of witnesses claim to have witnessed the occurrence from different places and at different stages of the occurrence and where the evidence as in this case is undoubtedly partisan evidence, the distinct possibility of innocent being falsely included with guilty cannot be easily ruled out. In a faction-ridden society where an occurrence takes place involving rival factions, it is but inevitable that the evidence would be of a partisan nature. In such a situation to reject the entire evidence on the sole ground that it is partisan is to shut one's eyes to the realities of the rural life in our country. Large number of accused would go unpunished if such an easy course is charted. Simultaneously, it is to be borne in mind that in a situation as it unfolds in the case before us, the easy tendency to involve as many persons of the opposite faction as possible by merely naming them as having been seen in the melee is a tendency which is more often discernible and is to be eschewed and, therefore, the evidence has to be examined with utmost care and caution. It is in such a situation that this Court in **Masalti -Vrs.- State of U.P. : A.I.R.**

1965 S.C. 202 adopted the course of adopting a workable test for being assured about the role attributed to every accused."

The Hon'ble Supreme Court in the case of **Masalti** (supra) has held as follows:-

"15…..Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of person armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault."

In the case of **State of Maharashtra -Vrs.- Ramlal Devappa Rathod and others reported in (2015) 15 Supreme Court Cases 77**, it is held as follows:-

"24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of

which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons."

Thus the learned counsel for the State is right in his submission that the evidence of P.Ws.3, 10, 11 and 12 corroborate the version of the three eye witnesses P.Ws.1, 6 and 15 regarding the participation of the appellants in the occurrence. In the face of such clear, consistent and cogent evidence on record, we are of the view that on the date of

occurrence, the appellants being armed with deadly weapons formed an unlawful assembly, forcibly damaged the house of P.W.3, chased the deceased who tried to escape through the back door of the house of P.W.3 and overpowered him on the land of Padmanav Sahu and assaulted him with weapons as a result of which the deceased succumbed to the injuries. Scrutinising the evidence cautiously, we found that it is not a case of mere presence of the appellants in the unlawful assembly as members of the unlawful assembly or as curious spectators but it indicates their participation in the commission of the offence by overt act or knowing that the offence which was committed was likely to be committed by any member of the unlawful assembly in prosecution of the common object of the unlawful assembly and that they becoming or continuing to remain members of the unlawful assembly and their participation by the overt act is satisfactorily established.

The learned counsel for the appellants argued that the weapons held by the appellants were sharp cutting weapons and therefore, the injury no.(ix) as per the post mortem report which is a lacerated injury could not have been possible by any of such weapons. He placed reliance in the case of **Hallu** (supra), the Hon'ble Supreme Court held as follows:-

"11. The post-mortem report prepared by Dr. N. Jain shows that on the body of Jagdeo were found three bruises and a haematoma. On the body of Padum were found four lacerated wounds and two bruises. According to the eye witnesses, the two men were attacked with lathis, spears and axes but that clearly stands falsified by the medical evidence. Not one of the injuries found on the person of Jagdeo and Padum could be caused by a spear or an axe. The High Court however refused to attach any importance to this aspect of the matter by saying that the witnesses had not stated that "the miscreants dealt axe blows from the sharp-side or used the spear as a piercing weapon." According to the High Court, axes and spears may have been used from the blunt side and therefore, the evidence of the eyewitnesses could safely be accepted. We should have thought that normally, when the witness says that an axe or a spear is used, there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication, it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as a blunt weapon."

In the case in hand, the doctor (P.W.8) has noticed eight cut injuries on different parts of the deceased which were possible by sharp cutting weapons. The doctor has specifically stated that injury no.(ix) could be caused by Katuri and he has stated that M.O.II was the Katuri produced before him for his opinion. Therefore, the oral evidence and post mortem report findings in the case of **Hallu** (supra) and the case in hand is completely different.

Whether the act of the appellants fall within 302/149 I.P.C. or 304 Part-II/149 I.P.C.:

15. The post-mortem report (Ext.14) proved by P.W.8 indicates that out of the nine injuries, eight injuries were on the non-vital parts of the body like left upper arm, right scapula, right leg, right foot, left leg, left foot and only one injury was on the left frontal region. Of course, the doctor has stated that there was fracture of humerus bone at its middle and fracture of right second and third metacarpal bones. However, none of the injuries has been opined to be individually or collectively sufficient in the ordinary course of nature to cause death. The weapons which were in the hands of the appellants were deadly weapons and they could have easily caused injuries on the vital parts of the body of the deceased and more in numbers had they got intention to commit murder of the deceased. There is no

evidence as to who caused the fatal injury on the head. Though the cause of death was opined due to laceration of the brain matter and associated by multiple injuries on different parts of the body, but the doctor admits in the cross-examination that he had not mentioned in Ext.14 that the death of the deceased was due to shock and cumulative effect of all the injuries. In Ext.14, it is mentioned that the death was due to injury to head causing laceration of brain matter.

In the case of **Nadodi Jayaraman** (supra), the Hon'ble Supreme Court held as follows:

> "19.....A critical analysis of the injuries received by the deceased, which have been extracted elsewhere in the judgment, goes to show that the deceased had suffered 15 lacerations, 12 bruises and five contusions. Injuries 1 to 11 had been caused on his legs, knees, ankle etc., while injuries 26 to 29 were on the thigh and lower part of the abdomen. Injuries 12 to 17 and 32 had been caused on the forearm, elbow and the possibility of those injuries having been received by the deceased while trying to ward off the blows on the vital parts of his body cannot be ruled out. The remaining injuries were two bruises on the front and on the right side of the chest and two lacerations of 2 x 1 cms. near the right side of the nose and the inner end of the right eyebrow. There were two lacerations on

the right temporal region and one on the right occipital region. It was only injury No.22 viz. "laceration on the back of the left side of the frontal region, 5 x 2 cms. bone deep, fissured fracture 10 cms. vertical of frontal bone, extending to base with commentated fracture of the left orbital place", which was found to be sufficient to cause death in the ordinary course of nature. According to the medical witness, all the injuries, except injury No.22, were simple in nature and could not have by themselves caused death but those injuries could have precipitated the death. Since, the evidence of the prosecution unmistakably asserts that injuries had been caused to the deceased by all the six accused and some injuries had been caused exclusively by A-2 and A-3 alternatively, during the third part of the occurrence, it cannot be said with certainty that the intention of the accused was to cause death of Pratap Chandran deceased. This is more so because according to the medical evidence, the deceased had died "due to shock and haemorrhage on account of multiple injuries", and according to the prosecution version all the seven accused had caused the injuries and not only A-2 and A-3. The accused party was armed according to the prosecution evidence, with iron rods and pipes and not with any other lethal weapon. If the accused had the intention to cause death of the

deceased, they would have probably come armed with more formidable weapons. Again, looking to the nature of injuries, which except for injury No. 22, were only simple and no other grievous injury was even caused, it appears to us that the accused possibly wanted to chastise the deceased for his trade union activities. The seat of the injuries as also their nature fortifies our view. According to the prosecution case itself, after Pratap Chandran had fallen down in the third part of the incident, none of the accused took advantage and caused any other injury to him. Most of the injuries, as already noticed, were on non-vital parts of the body. From the evidence and circumstances of the case, the appellants do not appear to have had the intention causing the death of the deceased or even causing such bodily injury as was likely to cause death. They can at the best be attributed with the knowledge that their act was likely to cause death or to cause such bodily injury as was likely to cause death, since a number of injuries had been caused and injury No.22 was sufficient in the ordinary course of nature to cause death. It is not as if A-2 and A-3 alone were armed with iron rods and pipes, with which the injuries were caused and their acquitted co-accused were unarmed. The acquitted co-accused, according to the prosecution evidence, were also armed with iron

rods and pipes and as such it would be hazardous to guess as to which blow was caused by which accused. If common intention to cause death had been established in the case, the prosecution would not have been required to prove which of the injuries was caused by which accused to sustain the conviction of the accused with the aid of Section 34 I.P.C., but in a case like this, where five of the co-accused stand acquitted and the common intention to cause death is not established beyond a reasonable doubt, the prosecution must establish the exact nature of the injuries caused to the deceased by the accused with a view to sustain the conviction of that accused for inflicting that particular injury. The evidence on the record does not lead to the conclusion that A-2 and A-3 alone caused all the injuries to the deceased with the intention to cause his death. The broad circumstances of the case impel us to hold that the common intention of A-2 and A-3 was not to cause the death of the victim and therefore, neither of them can be held guilty of the offence under Section 302/34 IPC. Since, the deceased did succumb to the injuries, caused collectively, the appellants can only be held guilty of committing culpable homicide not amounting to murder. The act can be said to have been committed by the accused with the knowledge that it was likely to cause death or to cause such bodily injury as

was likely to cause death of Pratap Chandran. Learned Counsel for the appellants have not been able to persuade us to subscribe to the view that A-2 and A-3 can only be clothed with the intention of causing grievous hurt, punishable under Section 325/34 IPC. The offence of the appellants would, in our opinion, squarely fall under Section 304 Part II IPC. Thus, setting aside the conviction of the appellants for an offence under Section 302/34 IPC, we alter their conviction and hold them both guilty of the offence under Section 304 Part II IPC."

In the case of **Molu and others -Vrs.- State of Harayana reported in A.I.R 1976 Supreme Court 2499 : (1978) 4 Supreme Court Cases 362**, it has been held that in a situation where the multiple injuries were caused on the deceased by lathis and were of minor character and there was no material to show that the accused did not intend to cause deliberate murder, the accused is said to have committed an offence under Section 304, Part-II, I.P.C and not under Section 302, I.P.C.

In the case **Chuttan and others -Vrs.- State of Madhya Pradesh**, **reported in 1994 Criminal Law Journal 2097 (SC) : 1994 Supreme Court Cases (Cri) 1801**, it has been held that where the accused person inflicted injuries on

the deceased by stick portion of the spear on any vitals part of the body, the accused had no intention to cause the death or to cause such injuries, which were sufficient in ordinary course of nature to cause death, but had knowledge of causing such injuries they are likely to cause death of the deceased, the accused can be convicted under section 304, Part-II, I.P.C.

In the case of **Dilip Kumar Pradhan & Another -Vrs- State of Orissa reported in (2000) 18 Orissa Criminal Reports 185,** this Court has observed as follows:

> "10. xxx xxx xxx
>
> From the evidence on record, it appears that there were no previous enmity between the parties and the assault was started after there was same altercation with regard to return of the radio-cum-tape recorder to the deceased by the accused persons which, he delivered to them, for purchase. According to the eye-witnesses, the injuries were inflicted by a lathi and a web belt by both the accused-appellants. In the circumstances, the accused persons cannot be imputed with the intention of causing death of the deceased, but however, knowledge could be imputed to the accused that their act was likely to cause death. Law is well settled that where the multiple injuries received by the deceased were caused by blunt weapons like

lathi and the injuries were not on any vital part of the body and there in nothing to show that the accused intended to cause the deliberate murder of the deceased, the offence attributable to the accused persons will be under Section 304, Part-II and not under Section 302, I.P.C.....

11. In the case at hand, it has not been proved that anyone of the injuries inflicted on the deceased by the accused-appellants were sufficient in the ordinary course of nature to cause death, but the cumulative effect of the injuries inflicted was the cause of death. The ocular evidence coupled with the medical evidence shows that the blows with lathi and web belt were given on different parts of the body including in the palatine region and there was no premeditation and it all happened because of the allegation against the accused that the tape recorder-cum-radio sought to be sold its a stolen property and return of the same on demand by the deceased, the accused person fall under Section 304, Part-II, I.P.C. From the nature of the injuries and the weapons used like lathi and web belt and the place of the injuries on the body of the deceased, it cannot be said that the accused-appellants intended to cause death. The knowledge that their act was likely to cause death of the deceased however can be attributed and as such, we are of the considered

opinion that in the facts and circumstances of the case, the accused-appellants have committed an offence under Section 304, part-II/34, I.P.C. and their conviction under Section 302/34, I.P.C. cannot be sustained. In view of what has been discussed in the proceeding paragraphs and the evidence on record, the conviction recorded by the learned Sessions Courts has to be confirmed."

In the case of **Kalinder Bharik -Vrs.- State of Himachal Pradesh reported in 2000 Supreme Court Cases (Cri) 96**, the Hon'ble Supreme Court has held as follows:

"7. None of the injuries can be said to be individually or collectively sufficient in the ordinary course of nature to cause death. This is a case where death became the consequence because of excessive bleeding. Therefore, it is not a case which can be brought under any one of the four clauses under section 300 I.P.C. It would remain only within the range of culpable homicide not amounting to murder.

7. We therefore, alter the conviction to section 304 Part II IPC."

In the case of **Sudina Prasad and others -Vrs.- State of Bihar reported in 2003 Supreme Court Cases (Cri) 1692**, the Hon'ble Supreme Court has held as follows:

"5. Learned counsel for the appellants felt that it is more prudent to focus his arguments on the aspect of altering conviction from section 302, IPC. For supporting his contention, learned counsel brought to our notice two important features in the evidence; one is that A-1 Sudina Prasad was armed with a gun which was a live gun and accused Vashisht Gope was armed with a pistol. In spite of such possession of lethal weapons, neither of them used it. Learned counsel contended that if the intention was murder the deceased, at least A-1 would have fired the gun.

6. The second feature is that 11 out of 12 injuries did not cause any damage to the internal organs. It is the horizontal bruise on the left side of the back, which possible would have caused the fracture of the ribs.

7. We feel that the aforesaid arguments based on the abovementioned two broad features is a strong circumstance for us to think that the common intention of the assailants was only to thrash the deceased and to inflict him with injuries. The grievous injury caused need not necessarily have been intended by them. Nonetheless they should have been credited with the knowledge that such injuries could possibly result in his death.

> 8. For the aforesaid reasons, we are inclined to accept the arguments of the learned counsel for the appellant. We, therefore, alter the conviction from Section 302 IPC to Section 304 Part-II, IPC. Hence, we therefore, convict the appellant for the said offence read with Section 149 IPC instead of 302 IPC."

From the evidence and circumstances of the case and the ratio laid down in the aforesaid citations, we are of the view that the appellants do not appear to have had the intention causing the death of the deceased or even causing such bodily injury as was likely to cause death. They can at the best be attributed with the knowledge that their act was likely to cause death or to cause such bodily injury as was likely to cause death. We, therefore, alter the conviction of the appellants from section 302/149 of I.P.C. to section 304 Part-II I.P.C./149 of I.P.C. There are enough materials on record that the appellants were not only the members of unlawful assembly as defined under section 142 of I.P.C., but they have used force or violence in prosecution of the common object of such assembly and thus committed offence of rioting as defined under section 146 of I.P.C. punishable under section 147 of I.P.C. and they were armed with deadly weapons and thus there is no error in the

impugned judgment of the learned trial Court in convicting the appellants under sections 147 and 148 of I.P.C.

The appellants were taken into judicial custody in connection with the case on August 1994 and were released from judicial custody on bail 19.05.1997 and after pronouncement of judgment by the learned trial Court on 19.12.1997, they were again taken into judicial custody and were enlarged on bail by this Court vide order dated 06.03.2000 in this CRLA and as such they have remained in custody for a period of five years. A-1, A-2 and A-4 are now aged more than 60 years and A-3, A-5 and A-6 are now aged more than 55 years. No adverse report has been produced against any of the appellants though they are on bail for more than 25 years. The occurrence in question took place in the year 1994 and in the meantime, more than 30 years have passed. Therefore, we are of the view that no useful purpose would be served in sending the appellants to custody again. Keeping in view all the facts and circumstances of the case, while altering the conviction of the appellants from Section 302/149 of I.P.C. to Section 304 Part-II I.P.C./149 of I.P.C., the sentence of imprisonment is directed to be reduced to the period already undergone.

Conclusion:

16. In the result, the Criminal Appeal is allowed in part. The conviction of the appellants under section 302/149 of the I.P.C. is altered to one under section 304 Part-II/149 of the I.P.C. and the sentence of imprisonment is reduced to the period already undergone. No separate sentence is awarded for the conviction of the appellants under sections 147 and 148 of I.P.C.

17. Before parting with the case, we would like to put on record our appreciation to Mr. Devashis Panda, learned counsel for his preparation and presentation of the case before the Court and rendering valuable help in arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance rendered by Mr. Jateswar Nayak, learned Additional Government Advocate for the State.

.....
S.K. Sahoo, J.

.....
Chittaranjan Dash, J.

Orissa High Court, Cuttack
The 21st August 2025/PKSahoo