

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No. 281 of 1999(R)

[Against the Judgment of conviction and Order of sentence dated 20.04.1999 passed by learned 1st Additional Sessions Judge, Chaibasa, in Sessions Case No.257 of 1997]

1. Manjhi Sumbrui
2. Bijoy Sumbrui
3. Turi Sumbrui

All are sons of Late Mangta Sumbrui @ Sidiu Sambrui and residents of village Karkata, P.S. Muffasil Chaibasa, District Singhbhum (West). **Appellants**

Versus

The State of Bihar (now Jharkhand) **Respondent**

With

Criminal Appeal (D.B.) No. 102 of 1999(R)

Dildar Sundi, son of Lawkan Suri, resident of village Bara Goira, P.S. Mufassil, District Singhbhum West.

... .. **Appellant**

Versus

The State of Bihar (now Jharkhand) **Respondent**

With

Criminal Appeal (D.B.) No. 136 of 1999(R)

Ramesh Sundi, S/o Surendra Sundi, R/o Village Baraguira, P.S. Chaibasa Muffasil, District Singhbhum (West).

... .. **Appellant**

Versus

The State of Bihar (now Jharkhand) **Respondent**

With

Criminal Appeal (D.B.) No. 158 of 1999(R)

1. Nauru Sundi, S/o late Bijay Sundi (No.1)
2. Chhota @ Vijay Sundi, S/o Sri Pradhan Sundi (No.4)

3. Bhagwan Sundi (No.11)
4. Chamak Lal Sundi (No.15)
5. Bishkishan Sundi (No.16)

All sons of Sri Singrai Sundi

6. Pradhan Sundi, S/o Late Tijun Sundi (No.17)
7. Chogo Sundi, S/o Late Tikun Sundi (No.24)
8. Ganga Sundi, S/o Son of Sri Durga Sundi (No.7)
9. Bagun Sundi @ Mutu Sundi, S/o Late Gano Sundi (No.3)
10. Babu Lal Sundi, S/o Chhote Kaira Sundi (No.28)
11. Damu Sundi, S/o late Tikun Sundi (No.13)

All are residents of village-Bara Guira, P.S. Muffassil, Chaibasa, District-Singhbhum (West).

... ... **Appellants**

Versus

The State of Bihar (now Jharkhand) **Respondent**

With

Criminal Appeal (D.B.) No. 159 of 1999(R)

Anand Sundi, Son of Sri Jugal Sundi, Resident of village Bara Guira, P.O. Bara Guira, P.S. Mufassil, Singhbhum (West).

... ... **Appellant**

Versus

The State of Bihar (now Jharkhand) **Respondent**

With

Criminal Appeal (D.B.) No. 269 of 1999(R)

1. Ram Singh Sundi, s/o Late Mangta Sundi (No.25)
2. Dubraj Purty, s/o Late Turi Purty (No.30)
3. Barju Sundi, s/o Sri Durga Sundi (no.33).
4. Nara Purty, s/o Late Patar Purty (No.27)

All are residents of village-Bara Guira, P.S. Muffasil, Chaibasa, District-Singhbhum West.

... ... **Appellants**

Versus

The State of Bihar (now Jharkhand) **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE RAJESH KUMAR

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[Cr. A.281/99 & 102/99]

Amicus Curiae : Mr. Manjeet Kr. Chaudhary, Advocate
For the State : Mr. Vineet Kr. Vashistha, Spl.P.P.
: Mr. Satish Kr. Keshri, A.P.P.

[Cr. A.136/99 & 158/99]

Amicus Curiae : Mr. Imran Beig, Advocate
For the State : Mr. Vineet Kr. Vashistha, Spl.P.P.
: Mr. Satish Kr. Keshri, A.P.P.

[Cr. A.159/99 & 269/99]

Amicus Curiae : Mr. Parambir Singh Bajaj, Advocate
For the State : Mr. Vineet Kr. Vashistha, Spl.P.P.
: Mr. Satish Kr. Keshri, A.P.P.

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C.A.V. on 12.03.2026

Pronounced on 08/04/2026

Per Sujit Narayan Prasad, J.

1. These appeals are directed against the Judgment of conviction and order of sentence dated 20.04.1999 passed by learned 1st Additional Sessions Judge, Chaibasa, in Sessions Case No.257 of 1997 whereby and whereunder the appellants have been held guilty and convicted for the offence punishable under Sections 364/149 and 302/149 I.P.C. and sentenced to undergo rigorous imprisonment for life. All the appellants have also been convicted for the offence punishable under Section 201 of the I.P.C. and sentenced to undergo R.I. for 7 years. The appellants, namely Bijoy Sumbrui and Turi Sumbrui have been convicted for the offence punishable under Section 148 of the I.P.C. and sentenced to undergo R.I. for two years each and the remaining 19 surviving appellants have been convicted for the offence punishable under Section 147 of the I.P.C. and sentenced to undergo R.I. for one year each. Besides the substantive punishment convict Damu Sundi has been ordered to pay fine of Rs.7000/- and in default of making payment of fine further imprisonment for three years have been imposed upon him whereas remaining convicts have been directed to make payment of fine of Rs.2000/- each and in default of payment of fine further imprisonment

for two years. All the sentences were directed to run concurrently.

2. It needs to refer herein that the appeals had been filed by learned counsels, namely, Praveen Kumar, Madhav Prasad, Niraj Kumar and Sudhir Kumar Sinha on the basis of due Vakalatnama which are available on record.

3. The case was taken up on 27.03.2025 but on that date none of the counsel had appeared to represent the appellants. Thereafter, when the case was taken up on 20.06.2025, the Court was informed about the death of Mr. Praveen Kumar, one of the counsel on record, during the COVID period. On that date the other counsel, namely, namely, Madhav Prasad, Niraj Kumar and Sudhir Kumar Sinha, had not represented the appellants.

4. This Court has also verified from the record that on the date, i.e., on 20.06.2025, when the Amicus Curiae were appointed, the name of the counsel namely, namely, Madhav Prasad, Niraj Kumar and Sudhir Kumar Sinha were being reflected in the daily cause list but even then they have chosen not to appear.

5. This Court, therefore, has appointed the Amicus Curiae, as would be evident from the order dated 20.06.2025 with a direction upon the Registry to provide the paper books to them. It is evident from the office note dated 03.07.2025, the

paper books have been supplied to the learned Amicus Curiae.

6. Thereafter, the matter was argued by the learned Amicus Curiae representing the case of each appellant and they have been heard at length.

7. After conclusion of argument, the judgment was reserved.

8. Before proceeding further, it is pertinent to mention that appellant Turam Gope in Cr. Appeal (DB) No.102 of 1999(R), appellants Narsingh Sundi and Daso Sundi in Cr. Appeal (DB) No.158 of 1999 (R) and appellant Roro Puti in Cr. Appeal (DB) No.269 of 1999 (R) have died during the pendency of the instant appeals and, as such, the appeals qua the aforesaid appellants have been abated.

9. Further, on perusal of the counter affidavit dated 21.12.2023, filed by the state it has been stated that appellant Hajura Sumbrui in Cr. Appeal (DB) No.281 of 1999(R) and appellant Bagun Sundi, S/o Late Kaira Sundi in Cr. Appeal (DB) No.158 of 1999(R) have died. Further, in counter affidavit dated 19.12.2023, filed by the State it has been stated that appellant Behra Purty in Cr. Appeal (DB) No.159 of 1999(R) and appellant Lal Singh Sundi in Cr. Appeal (DB) No.269 of 1999(R) have died. Hence, the appeals qua the aforesaid appellants stands abated.

10. Here it is pertinent to note that one of the convict Chera Hessa had also filed criminal appeal being Cr. Appeal (DB) No.180 of 1999(R). Appellant Chera Hessa was granted remission in sentence by the State Sentence Remission Board vide notification dated 08.07.2011, after completion of twenty years in custody. Hence, Coordinate Bench of this Court by order dated 26.04.2018, had disposed the appeal of the appellant Chera Hessa, as it had become infructuous.

11. It is also pertinent to mention that these appeals were heard and dismissed vide judgment dated 16.06.2011 by the Coordinate Bench of this Court. The said judgment was challenged before the Hon'ble Apex Court by the appellants in Criminal Appeal Nos. 1169 - 1170 of 2013 (arising out of SLP (Crl) No.1145 - 1146 of 2013).

12. The Hon'ble Apex Court, vide order dated 12.08.2013 had set aside the judgment dated 16.06.2011 and remanded the matter back to the High Court for a fresh hearing and disposal of the criminal appeals on own merits and in accordance with law.

13. Therefore, these appeals have been heard and are being disposed of by this common judgment.

Factual Matrix

14. The prosecution case as stated in the fardbeyan (Ext.- 2) of Shanti Kui (P.W.-1), the informant of this case recorded on 24.02.1997 at 16.00 hours at Village Baraguira by S.I.

Ratanlal Sinha of Muffasil, Police Station, in brief, is that in the night of preceding Saturday (22.02.1997) the informant Shanti Kui along with her family members were sleeping in the house of her father situated at Village Baraguira. At about 9.00 P.M. one man in drunken state entered into the house and caught hold of Gangi Kui (P.W.-9). She raised alarm upon which her uncle, *dada* and *mousa* woke up and apprehended him and assaulted him. He disclosed his name as Hajura Sumbrui of village Karkata and after assault he was let off, then, they slept. That boy (Hajura Sumbrui) spent the night hour at the house of his maternal uncle at Village Bara Guira.

15. Further case of the prosecution is that on the following Sunday on 23.02.1997 at about 3.00 P.M. accused persons, namely, (1) Damu Sundi Son of Tikun Sundi who is a Village Munda, (2) Daso Sundi Son of Sidiu Sundi, (3) Bagun Sundi Matu, son of Gono Sundi, (4) Lal Singh Sundi, son of Jogar Sundi, (5) Choko Sundi son of Tikun Sundi, (6) Chhota @ Bijay Sundi, (7) Nara Purty Son of Patar Purty, (8) Roro Purty Son of Turi Purty, (9) Dubraj Purty Son of Majhi Purty, (10) Pradhan Sundi Son of Tikun Sundi, (11) Behra Purty son of Basu Purty, (12) Dildar Sundi, son of Lokan Sundi, (13) Bhagwan Sundi, son of Roja Sundi, (14) Bagun Sundi, son of Kaira Sundi, (15) Babulal Sundi, son of Chhota Kaira Sundi, (16) Anand Sundi, son of Jungl Sundi, (17) Bishkashan Sundi, son of Roja Sundi, (18) Chamak Lal Sundi, son of

Singrai Sundi, (19) Ram Singh Sundi, son of Mangta Sundi, (20) Ramesh Sundi, son of Surendra Sundi, (21) Turam Gope Son of Nando Gope, (22) Ganga Sundi, son of Durga Sundi, (23) Narsingh Sundi, son of Kanu Sundi, (24) Barjo Sundi, son of Duga Sundi, (25) Nauru Sundi, son of Bijay Sundi, all residents of Village Baraguira and (26) Lakho Soy, son of Not known. (27) Laxman Sumbrui, son of Budhram Sumbrui. (28) Turi Sumbrui, son of Mangta Sumbrui: (29) Majhi Sumbrui, son of Mangta Sumbrui, (30) Sidiu Sumbrui, son of Not known, (31) Bijay Sumbrai, son of Not known, (32) Chatar Hessa, son of Markando Hessa, (33) Hajura Sumbrui, son of not known all residents of Village Karketta and (34) Bablu who was residing at the house of Mangta Sundi at Village Baraguira, along with some unknown persons variously armed with lathi, spear, bows and arrows under the leadership of Damu Sundi, the Village Munda (village headman) came to the house of the informant at village Baraguira and they all caught hold of Har Singh Banra of Village Gopalpur, P.S. Keraikella, District West Singhbhum, Ram Rai Banra of Village Amita, P.S. Chaibasa Muffasil, District West Singhbhüm and Sonda Sundi of Village Baraguira, P.S. Muffasil Chaibasa, District West Singhbhum and while badly assaulting them they took them away at the house of Damu Sundi, the Village Munda where also they assaulted the aforesaid three persons. The members of the mob threatened the informant and other family members

that if they would inform the aforesaid incident to anybody going out of the village, they will be murdered. The members of the mob were also saying that why they had assaulted the the boy who had misbehaved with the girl.

16. Further case of the prosecution is that the informant sent the children of their house at the house of the Village Munda (Damu Sundi) and the children on coming back informed that members of the mob were assaulting the three persons. The informant and other family members, out of fear, left their house and they spent the night hour of Sunday in Village Pataguira at the house of Kunwar Sundi. In the following morning (i.e. on 24.02.1997), the informant and the remaining family members went to Muffasil Police Station and by that time the informant was not aware of the condition of the three persons of her family who had been taken away by the members of the mob by Village Munda and others.

17. The informant and the remaining family members of her family came back to village along with police and on coming back to Village she along with the police went to the house of Village Munda who disclosed that aforesaid three male persons of her family had fled away in the night hour when he had gone out to his house for taking rice beer.

18. It has further been alleged that the members of the mob under the leadership of Damu Sundi had taken away

the aforesaid three male persons from their house and assaulting them as they had assaulted the boy who had misbehaved with the girl of her house. The informant believed that the members of the mob had committed the murder of the aforesaid three persons and they got disappeared their dead bodies.

19. The further case of the prosecution is that the informant side was on litigating term relating to land with Village Munda from before and the informant side had won the litigation and due to that the village Munda on getting the opportunity committed the occurrence aforesaid with the help of co-accused persons.

20. On the basis of the fardbeyan of the informant Muffasil P.S. case no. 22/1997 dated 24.02.1997 was registered under Sections 147/148/149/341/342/323/452/354/364 I.P.C. against the 34 named accused persons and subsequently Sections 302 and 201 of the I.P.C. were added.

21. On the disclosure made by the accused Damu Sundi, in his confessional statement, dead bodies of Sonda Sundi, Ram Rai Banra and Har Singh Banra, were recovered from Roro River in presence of the informant, her mother and sister from Runku Ekir Ghat of river Roro in Village Chhota Khunta, by the divers Tulsi Karwa and Paltu Karwa, who took out the dead bodies from river waters.

22. On completing the investigation, the investigating Officer submitted chargesheet against the 34 accused persons under Sections 147/148/149/341/342/323/452/354/364/302/201 of the I.P.C and accordingly, cognizance was taken. Co-accused Bablu was found juvenile and as such his case was separated and the case of accused persons was committed to the Court of Sessions for trial.

23. Charges were framed under against the 33 accused persons under sections 148,452/149,364/149,302/149 and 201 of IPC. Separate charge was framed against the accused Hajura Sumbrui (since dead) under section 354 of IPC. Accused persons pleaded not guilty and claimed to be tried.

24. The prosecution has altogether examined 10 witnesses out of whom P.W.-1 Shanti Kui, is the informant of the case and she is daughter of deceased Sonda Sundi and wife of deceased Har Singh Banra; P.W.-5 Mecho Banra, is daughter of deceased Sonda Sundi and wife of deceased Ram Rai Banra; P.W.-6 Nandi Banra, is daughter of deceased Ram Rai Banra; P.W.-7 Nandi Kui, is wife of deceased Sonda Sundi; P.W.-8 Mangal Singh Banra, is son of deceased Har Singh Banra and P.W.-9 is Gangi Kui.

25. P.W.-4 Dr. Bijay Kumar Singh, is the doctor who had conducted post mortem examination on the dead body of the deceased Sonda Sundi, Har Singh Banra and Ram Rai Banra. P.W.-10 Anirudh Prasad Sharma, is the investigating

office of the case and P.W.-2 Paltu Karwa and P.W.-3 Tulsi Karwa, are the divers.

26. The trial Court, after recording the evidence of witnesses, examination-in-chief and cross-examination, recorded the statement of the accused person, found the charges levelled against the appellants proved beyond all reasonable doubts.

27. Accordingly, the appellants have been inter alia found guilty and convicted for the offence punishable under Sections 364/149, 302/149 and 201 of I.P.C.

28. The aforesaid order of conviction and sentence is subject matter of instant appeals.

Submission of the learned *amicus curiae* for the appellants:

29. Learned *amicus curiae* for the appellants has submitted that the impugned Judgment of conviction and order of sentence passed by the learned trial court cannot be sustained in the eyes of law.

30. The following grounds have been taken by the learned *amicus curiae* for the appellants in assailing the impugned judgment of conviction: -

- (i) The appellants have been falsely implicated in this case and the prosecution case suffers from several infirmities and improbabilities.

- (ii) The ground has been taken that the F.I.R. has been created subsequently since the F.I.R. has been sent to court after two days, that is, on 26.02.1997 which is evident from the statement of P.W.-10 who has clearly stated that Ratan Lal Sinha on 24.02.1997 had recorded the fardbeyan with him at the police station and he instituted the case at 17.00 Hrs on the same day.
- (iii) It has also been submitted that the investigating officer has noted in para-3 of the case-diary that Nandi Kui is the informant of this case and he visited the place of occurrence which was situated at Bara Lagia whereas the fact is that place of occurrence is Bara Guira and not Bara Lagia which means that the entire prosecution case has is a concocted story.
- (iv) It has also been submitted that the learned trial court failed to appreciate that the Station Diary Entry No.510 dated 24.02.1997, which was noted on the basis of statement of informant and others has not been brought on record and as such adverse inference may be drawn.
- (v) It has also been submitted that there is no evidence that accused/appellants shared common object of unlawful assembly, as such, criminal liability against the appellants

under section 149 of the Indian Penal Code cannot be made out.

- (vi) There is no specific allegation against the appellants, rather, the allegations are general and omnibus, as such, the prosecution has also miserably failed to establish the charges said to have been proved beyond all reasonable doubts.
- (vii) It has also been submitted that there is no specific allegation against the appellants, rather, the allegations are general and omnibus, as such, the prosecution has also miserably failed to establish the charges said to have been proved beyond all reasonable doubts.
- (viii) The learned trial court also failed to appreciate that the investigating officer did not send the blood stained earth for chemical examination in order to ascertain as to whether the seized blood stained earth was human blood or not.
- (ix) Learned trial court also failed to appreciate that the statements of the witnesses are contradictory and there are material contradictions in the testimonies of the witnesses.
- (x) It has also been submitted that the learned trial did not take into account that all the witnesses are the relatives of the deceased persons and no

villager/independent witness was examined to corroborate the prosecution story.

- (xi) It has been submitted that the learned trial court has explained all circumstances and situations unfavorable to the prosecution by giving own logic and unfounded reasons.

31. The learned *amicus curiae* for the appellants, based upon the aforesaid grounds, has submitted that, it is a case where the benefit of doubt should be given to the accused persons/appellants and thus, the impugned judgment of conviction which has been passed against the appellants is fit to be interfered with.

Submission of the learned counsel for the State:

32. Per contra, Mr. Vineet Kr. Vashistha, learned Special Public Prosecutor, appearing for the State, has submitted by taking the following grounds in defending the impugned judgment:

- (i) It is a case where the prosecution has been able to prove the charge beyond all reasonable doubt.
- (ii) The prosecution witnesses have conclusively supported the prosecution version.
- (iii) Informant P.W.-1, P.W.-5, P.W.-6, P.W.-7 and P.W.-9, are the eye witnesses to the incident of abduction of the three deceased persons from the

house and they have stood in their cross-examination.

- (iv) The three dead bodies were recovered on the disclosure made by the accused Damu Sundi from the river Roro which were tied with stone boulder and the divers P.W.-2 and P.W.-3 had taken out the three bodies from river water in presence of accused persons.
- (v) It has been submitted that chain of circumstances is complete proving the guilt of the appellants under sections 364/149, 302/149 and 201 of IPC.

33. Learned counsel for the State, on the basis of the aforesaid grounds, has submitted that the impugned judgment suffers from no infirmity and needs no interference.

Analysis

34. We have heard learned counsel for the parties, perused the documents available on record as also the finding recorded by the trial court in the impugned judgment.

35. We have also gone through the testimonies of the witnesses as available in the trial court records as also the exhibits.

36. This Court before considering the argument advanced on behalf of the parties is now proceeding to consider the deposition of witnesses, as per the testimony as recorded by learned trial Court.

37. In this case the prosecution has examined altogether 10 witnesses. The extracts of their depositions are being referred herein below.

38. P.W.-1 Shanti Kui is the wife of Har Singh Banra (deceased). She has stated in her evidence that one year and three months before on the day of Saturday (i.e. 22.02.1997) at 9.00 P.M., in the night, she along with her husband, her children, mother and father were present in the house of her deceased father Sonda Sundi at Village Bara Guira. Gangi Kui (P.W.-9) was sleeping at the verandah of the house. They heard cry of Gangi Kui and then she and other family members of the house went to Gangi Kui. On going there, they found Hajura Sundi (since dead) catching hold of Gangi Kui. Then, Sonda Sundi, Har Singh Sundi and Ram Rai Sundi (deceased persons) had beaten Hajura Sumbrui and drove him out.

39. Informant further stated that one day after the aforesaid occurrence (i.e. on 23.02.1997) at about 3:00 P.M., 34 persons together variously armed with bow and arrow, lathi and spear came to the house of her deceased father and they caught hold of Sonda Sundi, Ram Rai Banra and Har Singh Banra and tied them with string. Members of the unlawful assembly had taken the three persons at the house of Damu Sundi, who was village Munda (the headman of the village), at that time. Informant had identified all the accused persons present in the dock and said all these accused persons had joined the

occurrence. Informant had named Damu Sundi, Daso Sundi, Bagun Sundi, Har Singh Sundi, Chogo Sundi, Bijay Sundi, Nara Purty, Roro Purty, Dubraj Purty, Pradhan Sunda, Bera Purty (Behra Purty), Dildar Sundi, Anand Sundi, Bishkishan Sundi, Chamak Lal Sundi, Bhagwan Sundi, Bagun Sundi, Babulal Sundi, Ram Singh Sundi, Ramesh Sundi, Turam Gope, Ganga Sundi, Narsingh Sundi, Barjo Sundi, Neru Sundi, Lakshman Sumbrui, Turi Sumbrui, Majhi Sundi, Sidiu Sundi, Bijay Sumbrui, Hajura Sundi, Lako Soy, Bablu Sumbrui (not on trial) and stated that all these accused persons had participated in the aforesaid occurrence.

40. Informant further stated that at the time of abduction of Sonda Sundi, Ram Rai Banra and Har Singh Banra from the house of the informant's father (deceased Sonda Sundi) aforesaid accused persons had threatened her and the other members present at the house that if the aforesaid occurrence would be informed to anybody, by going out of the house, by any of them, then he will be killed.

41. Informant further stated that at about 4.00 P.M., she sent her son Mangal Singh (P.W.-8) and daughter Nandi at the house of Damu Sundi (headman of the village) and at about 5.00 P.M., her son Mangal Singh and daughter Nandi came back and they informed that Sonda Sundi, Ram Rai Banra and Har Singh Banra (deceased persons) were tied in a Neem tree in front of the house of the Damu Sundi and they were being assaulted.

42. Informant further stated that then she, her mother and her children spent the night in Village Pataguira, at the house of Kunwar and on the following day, in the morning time she went to *Muffasil* Police Station and gave information of the aforesaid occurrence to the police. Then, police had recorded her statement at village of her father.

43. Informant further stated that after two days of the occurrence, the dead bodies of Har Singh Banra, Sonda Sundi and Ram Rai Banra were recovered from Runku Ekir Drain. There were injuries on the aforesaid three dead bodies. She has further stated that aforesaid accused persons had taken away Ram Rai Banra, Har Singh Banra and Sonda Sundi from the house and thereafter they committed their murder and threw the dead bodies in the drain and each dead bodies were tied with stone boulders.

44. Informant in her cross-examination stated that at the time of occurrence of outraging the modesty of Gangi Kui (P.W.-9), no villagers or residents of the locality had arrived at the house of her father. None of the family members had raised alarm. The occurrence of outraging the modesty of Gangi Kui was not reported at the police station in the following morning.

45. Informant further stated that at the time of occurrence of taking away the three deceased persons from the house of the deceased, Bijay Sumbrui and Lakshman Sumbrui were taking lathi in their hands. She has stated that she along with

her husband and children, had come to the house of her father, on the day of *Maghe* festival.

46. Informant had further stated in her cross-examination that she was married twenty years before and after her marriage she was living at the house of her husband (deceased Har Singh Banra) but occasionally she also used to visit the house of her father (deceased Sonda Sundi). Informant further stated that Bijay Sumbrui, is resident of village Karkataand and she did not know him before the occurrence, but, one of the accused persons who participated in the occurrence was shouting the name of Bijay Sumbrui.

47. Informant had further stated that it was night when they had reached the house of Kunwar Sundi at Village Pataguira and after two hours Kunwar Sundi had reached his house. They sat on the verendah of the house of Kunwar Sundi and she had introduction with Kunwar Sundi from before. They gave information about the occurrence to Kunwar Sundi.

48. In her cross-examination, informant further stated that she had come to the house of her father on the day of *Maghe* festival and on the second day of her arrival at the house of her father, the occurrence of outraging the modesty of Gangi Kui had taken place at 9.30 P.M. At the time of the occurrence of outraging the modesty of Gangi Kui, she was sleeping at the eastern verendah of the house along with her children and her sister (P.W.-5). Informant further stated that at that time her

father and her mother (P.W.-7) were sleeping in a room of the house. Informant corrected herself and stated that her father was sleeping in a hut situated in the eastern portion of courtyard of the house and the remaining two deceased namely Ram Rai Banra and Har Singh Banra were sleeping in a room situated in the northern portion. At the time of outraging the modesty of Gangi Kui, Hajura Sumbrui was assaulted by means of hands, i.e., by fists and slaps. The occurrence of assault on Hajura Sumbrui was complete within a few moments. On the next day of occurrence, she did not make enquiry as to whether Hajura Sumbrui had gone where.

49. Informant further stated that when all the 34 accused persons had come to the house of her father at that time accused Bijay Sumbrui was armed with bow and arrow and *danda* (stick) and he had rope in his hand and he had tied the hand of her father (deceased Sonda Sundi) with rope. Choko Sundi and Daso Sundi were armed with *danda* (stick). Turi Sumbrui and Behra Purty (since dead) were armed with bow and arrow. The rest accused persons were having *danda*.

50. P.W.-2 Paltu Karwa has stated in his evidence that one year before, he and Tulsi Karwa (P.W.-3) had gone to Village Guira and about 3 K.M. away from village Guira, police had taken them to the river side. He and Tulsi Karwa, on diving in the river took out three dead bodies from water of the river and all the three bodies were tied with copper ropes with boulders.

51. P.W.-3 Tulsi Karwa has stated in his evidence that on being asked by the police, he and Paltu Karwa (P.W.-2) had dived in river water and had taken out the three dead bodies which were tied with rope.

52. P.W.-4 Dr. Bijay Kumar Singh had conducted post-mortem examination on the dead body of the three deceased namely Ram Rai Banra, Sonda Sundi and Har Singh Banra. He had stated in his evidence that on 25.02.1997, he was posted as C.A.S., in Sadar Hospital Chaibasa.

53. Doctor P.W.-4 stated that on 25.02.1997 at 3.40 P.M., he performed the post-mortem examination on the dead body of Ram Rai Banra and found the following ante-mortem injuries on his person: -

- (i) Both scrotum were crushed and exposed.
- (ii) Both shoulders were found badly crushed.
- (iii) Chest was also crushed.
- (iv) Lacerated wound 4"x2"x3/4" over the right side of the face.

On dissection of the dead body, skull was found fractured. Blood was found in cranium. Brain was damaged. Chest was crushed. 4th, 5th, 6th and 7th ribs of both sides were fractured. Blood was found in thoracic cavity. Lungs were badly lacerated. Heart was collapsed. Chamber of heart was empty. Abdominal organs were pale and intact. Urinary bladder was empty. Semi-digested food was found in stomach.

Doctor opined that time elapsed since death within 72 hours of the post-mortem examination and death was caused due to hemorrhage and shock as a result of aforesaid injuries which were of grievous nature caused by hard and blunt substance.

The post-mortem report was written and signed by the Doctor which was marked as Ext.-1.

54. On the same day at 4.05 P.M., Doctor had performed post-mortem examination on the dead body of Sonda Sundi and found the following ante-mortem injuries on his body:-

- (i) Both scrotum were crushed and exposed.
- (ii) Both arms were fractured,
- (iii) Both thighs were found fractured,
- (iv) Lacerated wound 4"x1½"x1" on the front of left side of chest.

On dissection of the dead body brain was found intact. Covering of brain, that is, Dura was intact. Blood was found in chest cavity. 4th, 5th, 6th and 7th ribs of left side of chest were fractured. Lungs were lacerated. Heart was collapsed. Chamber was empty. Abdominal organs were pale. Stomach contained semi-digested food materials. Bladder and bowel were empty. Both humrus and femur were fractured with big haematoma.

Doctor opined that time elapsed since death was within 72 hours from the time of post-mortem examination and death was due to above injuries leading to hemorrhage and

shock. Injuries were of grievous nature caused by hard and blunt substance.

The post-mortem report was written and signed by the Doctor which was marked as Ext.-1/1.

55. On the same day, that is, on 25.02.1997 at 4.40 P.M., Doctor had performed post-mortem examination on the dead body of Har Singh Banra and found the following ante-mortem injuries on the dead body of the deceased:

- (i) Lacerated wound 2"x1"x 1½" over the left side of the face.
- (ii) Lacerated wound 2½"x1"x 1½" over right side of the chest.
- (iii) Both scrotums were found crushed and exposed.

On dissection skull was found fractured. Left temporal bone was also fractured. Blood was found in the cranium. Dura was ruptured. Brain was damaged. Mandible was fractured at two sites. Heart was collapsed. Lungs were pale. Abdominal organs were pale and intact. Stomach contained semi-digested food materials Bladders and bowel were empty.

Doctor opined that time elapsed since death was within 72 hours from the time of post-mortem examination. Death was due to aforesaid injuries leading to hemorrhage and shock. The injuries were grievous caused by hard and blunt substance.

The post-mortem report was written and signed by the Doctor which was marked as Ext.-1/2.

56. In cross-examination, Doctor stated that semi-digested food was found in the stomach, deceased persons are expected to have taken food approximately three hours before the death. Doctor stated that he mentioned the time of death on the basis of rigor mortis present on the dead bodies.

57. P.W.-5 Mecho Banra is wife of deceased Ram Rai Banra. She has stated in her evidence that one year three months before, she was at the house of her deceased father Sonda Sundi. It was the day of Saturday (i.e.22.02.1997) and at about 9.00 P.M., in the night, Hajura Sumbrui (since dead) entered into the house of her father and caught hold the legs of Gangi Kui (P.W.-9), who was sleeping at the verandah. Then, Gangi Kui raised halla to which Sonda Sundi, Har Singh Banra and Ram Rai Banra came there and assaulted Hajura Sumbrui and told Hajura Sumbrui to go away on which Hajura Sumb went away from there. She along with her mother (P.W.-7), her younger sister Shanti Kui (Informant P.W.-1) had also arrived at the place where Hajura Sumbrui had caught hold of Gangi Kui.

58. P.W-5 further stated that on the next day (i.e. 23.02.1997) on Sunday at about 3 P.M., many persons from village Karkatta and Bara Gorla, came to the house of her father and caught Ram Rai Banra, Sonda Sundi and Har Singh Banra and tied their hands to their back and took them away to the house of village Munda namely Damu Sundi. P.W.-5 further stated that the persons, who had come to the

house and took three persons, out of them, she had identified Damu Sundi, Lal Singh Sundi, Daso Sundi, Choko Sundi, Bagun Sundi, Behra Purty, Vijay Sundi, Nara Purty, Roro Purty, Nauru Sundi, Chachi Sundi fathers name Mangta Sumbrui, Pradahan Sundi, Nar Singh Sundi, Gango Sundi, Babu Lal Sundi and Dildar Sundi. P.W.-5 further stated that she had also identified Anan Sundi, Borjo Sindi, Turam Gope, Ramesh Sundi Bhagwan Sundi, Chamak Lal Sundi Bishkishan Sundi, Charai Shah, Manjhi Sumbrui, Turi Sumbrui, Vijay Sumbrui and Chamak Lal Sumbrui.

59. In her cross-examination, P.W.-5 has stated that she was residing at the house of her deceased father along with her husband (Ram Rai Banra) and her children from five years before the occurrence. She has further stated that her husband was cultivating the land of her deceased father. She stated that in the night of occurrence of outraging the modesty of Gangi Kui by Hajura Sumbrui, she along with her husband and children were sleeping in a room and her father (deceased Sonda Sundi) and her mother (P.W.-7) and deceased Har Singh Banra were sleeping at the verandah of the house. Gangi Kui (P.W.-9) was also sleeping on that Verandah before the occurrence of outraging her modesty. In the evening of the night of occurrence, she along with all family members had taken night meal and they also had gone to bed. The time when accused Hajura came at the house of her father, she was in slumber and she cannot say when accused Hajura had

come, but he had come at 9 P.M. and she was awoken to hearing halla and she also got awoken her husband. As soon as she heard alarm, she along with her husband went out of the room and came near Gangi Kui and she got awoken her father, mother and brother-in-law Har Singh Banra and then they had come near Gangi Kui and by that time Hajura Sumbrui was there. Hajura Sumbrui was beaten by her father Sonda Sundi, brother-in-law Har Singh Banra and her husband Ram Rai Banra. After the assault Hajura Sumbrui fled away.

60. P.W.-6 Nandi Banra, is daughter of deceased Ram Rai Banra. She has stated in her evidence that occurrence is of one year six months ago, it was day of Saturday (i.e.22.02.1997) at 9.00 P.M., and she was at the house of her maternal grand-father Sonda Sundi (deceased) at Bara Guira. She has further stated that at about 9.00 P.M. accused Hajura Sumbrui came at the house of her maternal grandfather and caught hold of Gangi Kui (P.W.-9). Har Singh Banara, Ram Rai Banra and Sonda Sundi (deceased persons) apprehended him and assaulted him by slaps and let him off.

61. P.W.-6 further stated that on the following day on Sunday (i.e.23.02.1997) at 3.00 P.M., 34 persons came at the house of her maternal grandfather (deceased Sonda Sundi) and they all apprehended Ram Rai Banra, Har Singh Banra and Sonda Sundi and they tied them and took them away towards the house of Village Munda Damu Sundi. She

identified Dubrai Purty, Nara Purty, Roro Purty, Bijay Sumbrui, Dildar Sundi among the persons who had taken away the three deceased persons from the house of deceased Sonda Sundi. She has identified the above persons whose names have been taken by her in Court.

62. P.W.-7 Nandi Kui, is the wife of deceased Sonda Sundi. She has stated in her evidence that one year six months before, on the day of Saturday (i.e.22.02.1997), at about 9:00 P.M., she was sleeping in her house. Accused Hajura Sumbrui came inside the house and he apprehended Gangi Kui at the verandah of the house and he began to outrage her modesty by removing the cloth on her body on which Gangi Kui cried. Then she along with other family members went near Gangi Kui and she found that Hajura Sumbrui had caught hold of Gangi Kui. She further stated that Har Singh Banra, Ram Rai Banra and Sonda Sundi apprehended Hajura Sumbrui and assaulted him by fist and slap and they let him off.

63. P.W.-7 further stated that on the following Sunday (i.e.23.02.1997) at 3.00 P.M., about 20 persons came at her house and they all caught hold Har Singh Banra, Ram Rai Banra and Sonda Sundi and they all tied them and took them away on plea of a false charge of commission of theft and the persons who took them away out of them, she identified Damu Sundi, Choko Sundi, Lal Singh Sundi, Bagun alias Mutu Sundi, Pradhan Sundi, Behra Purty, Nara Purty, Dubraj

Purty, Roro Purty and Bijay Singh Sumbrui. She also identified the aforesaid accused persons in dock.

64. In her cross-examination, P.W.-7 stated that she had told to the police that accused persons, she had not named, she can identify them by seeing the accused persons. She has further stated that at the time of arrival of the members of the mob she along with other family members were sitting in the house. Mob had taken the aforesaid three persons (deceased) towards the house of Munda. She stated that the members of the mob had come to her house and said that they would take them (the three deceased), since they have committed theft and as such, they would hold panchayati and they would not assault them.

65. P.W.-8 Mangal Singh Banra is the son of deceased Har Singh Banra. He has been tendered for cross-examination. He has stated nothing about the prosecution case.

66. P.W.-9 Gangi Kui has stated that in the night of Saturday (i.e.22.02.1997), at about 9.00 P.M., in the night, she was sleeping at the house of her maternal grand-father Sonda Suri(deceased) at Village Bara Guira. Then, accused Hajura Sumbrui entered into the house and he began to remove cloths of her body while she was sleeping, then, she cried.Then, Har Singh Banra, Ram Rai Banra and Sonda Sundi came there and they assaulted Hajura Sumbrui by fist and slap and then Hajura Sumbrui went away saying that he would come again since he was assaulted. She has further

stated that on the following day (i.e. 23.02.1997) first of all 15 persons came and thereafter, 30 persons had come to the house of her maternal grandfather and all were variously armed with bow and arrow and lathi. The aforesaid members of the mob apprehended Har Singh Banra, Ram Rai Banra and Sonda Sundi and tied their hands keeping on the back of the body and they all took them away. The Village Munda was asking the members of the mob to take all the three at his house for final decision in the matter. She was not knowing the name of those thirty persons but she had seen their face. Members of the mob had taken the three persons at the house of Munda and instead of convening panchayati, all the three persons were killed.

67. P.W.-9 further stated that Mangal Singh Banra (P.W.-8) and Nandi Banra (P.W.-6), were sent with water for the three persons, but they came back to the house at 4 P.M., and informed that all the three persons were murdered. She, further stated that permanently she was residing at her own house and she had come to the house of her maternal grandfather at Bara Goira on preceding Friday. On being asked by the defence lawyer, she stated that she had visited the house on the occasion of *Maghe* festival. She neither had seen accused Hazura Sumbrui nor knew his name before the occurrence. When he was being assaulted, he disclosed his name Hazura Sumbrui of village Karkata.

68. P.W.-10 Anirudh Prasad Sharma, is the investigating officer of the case. He has stated in his evidence that on 24.02.1997, he was posted at Muffasil P.S. Chaibasa as S.I. of police and at the relevant time Ratan Lal Sinha was the Officer in-charge of Muffasil Police Station. On 24.02.1997, at 11.00 A.M., when he along with Ratan Lal Sinha was at Muffasil, Police Station, Shanti Kui (P.W.-1), Mecho Kui (P.W.- 5) and Nandi Kui (P.W.-7) came at the Muffasil Police Station and informed that three member of their family were taken from their house by Village Munda Damu Sundi at his own house on the plea of doing *panchayati* but all those three persons had not come back at the house, till that time. Then, Officer-in-Charge Ratan Lal Sinha noted the aforesaid information in Station-Diary vide Entry No. 510 dated 24.02.1997 and asked him to proceed for village Bara Guira. P.W.-10 further stated that Officer-in-Charge Ratan Lal Sinha at 4.00 P.M., recorded the, fardbeyan (Ext.-2) of Shanti Kui at her house in his presence. After recording the fardbeyan of Shanti Kui, Ratan Lal Sinha asked him to investigate the case and then he recorded the further statement of the informant and he inspected the informant's house.

69. Investigating officer further stated that he proceeded for the house of Damu Sundi. He inspected his house which, was facing north. He found courtyard of Damu Sundi was smeared with cow dung and there was a Neem tree at a distance of about 10 yards from the house of Damu Sundi. He recorded

the statement of Mecho Kui (P.W.-5), Nandi Kui (P.W.-7) and Gangi Kui (P.W.-9). He learnt from Ratan Lal Sinha that he got arrested Anjura Sumbrui (Hajura Sumbrui) in an injured condition in Village Karkata and he had got him admitted at Sadar Hospital, Chaibasa. He raided the house of the accused persons but found them absconding.

70. Investigating officer further stated that on 25.02.1997, at 9.45 Hrs, he arrested Damu Sundi, Bhagwan Sundi, Chamak Lal Sundi, Bishkishan, Lal Singh Sundi, all residents of Village Bara Guira and also Chara Hessa, Majhi Sumbrui, both residents of Village Karketa from the field area which was situated in west of the inhabitant area of Village Bara Guira.

71. Investigating officer further stated that confessional statement (Ext.-3) of Damu Sundi was recorded by A.S.I. B.K.Choudhury at Muffasil Police Station. He has further stated that he recorded the statements of Daso Sundi, Bhagwan Sundi, Chamak Lal Sundi, who had disclosed before him that the aforesaid accused persons with co-accused after committing the murder of Har Singh Banra, Ram Rai Banra and Sonda Sundi got concealed their dead bodies at Runku Ekkir nala of river Roro. On 25.02.1997 at 11.45 A.M., he along with Officer-in-Charge Ratan Lal Sinha and the other police officials had taken Damu Sundi, Daso Sundi, Bhagwan Sundi, Chamak Lal Sundi, Lal Singh Sundi, Bishkishan Sundi, Chara Heassa and Majhi Sumbrui at Runku Ekkir Ghat at the bank of river Roro in Village Chhota Khunta. They had

also taken with them divers Paltu Karwa (P.W.-2) and Tulsi Karwa (P.W.-3) and the informant Shanti, informant's mother (P.W.-7) and sister (P.W.- 5) had also accompanied them. On being pointed out and being disclosed by the aforesaid accused persons, the divers took out the dead bodies of the aforesaid three deceased from Roro River at Runku Ekir Ghat. The waist of the dead body of Sonda Sundi and Har Singh Banra were tied with string and the left wrist of Ram Rai Banra was found tied with cord of Coconut threads. He inspected Runku Ekir Ghat and found blood spots on the ground at the place from where the aforesaid accused persons had thrown the dead bodies. He seized blood stained earth from the bank of Roro River in presence of Tulsi Karwa and Paltu Karwa and prepared the seizure list (Ext.-4). He had seized the aforesaid dead bodies in presence of Tulsi Karwa and Paltu Karwa and prepared the Seizure list Ext.-4/1, in their presence.

72. Investigating officer further stated that he inspected the three dead bodies in presence of witnesses Ganesh Kachhap and Paltu Karwa (P.W.-2) and prepared the inquest reports (Exts. 5 to 5/2) of three dead bodies in their presence. He sent the dead bodies for post-mortem to Chaibasa. Investigating officer further stated that Officer-in-Charge, Ratan Lal Sinha had drawn up formal F.I.R. (Ext.-6).

73. The statement of the accused persons/appellants was recorded under Section 313 Cr.P.C. wherein they had denied the allegation alleged against them.

74. After due appreciations of evidences, the learned Trial Court had found the charges proved beyond reasonable doubt against the appellants and accordingly the appellants were inter alia convicted under Sections 364/149, 302/149 and 201 of I.P.C. against which the instant appeal has been preferred.

75. This Court, on the basis of the aforesaid factual aspect vis-à-vis argument advanced on behalf of parties, is now proceeding to examine the legality and propriety of the impugned judgment of conviction and order of sentence by formulating following questions to be answered by this Court:

(I) *Whether on the basis of the testimony of the witnesses can it be said to be a case based on circumstantial evidence or if it based upon the circumstantial evidence the chain is being completed or not?*

(II) *Whether the material, as has come in course of trial, is sufficient to attract the ingredients of offence committed under Sections 364/149, 302/149 and 201 of the Indian Penal Code?*

76. Ongoing through the evidences of the prosecution witnesses, this court finds that in the present case three persons namely Har Singh Banra, Ram Rai Banra and Sonda Sundi were killed by the appellants/accused persons by forming unlawful assembly.

77. Further, out of the 10 witnesses examined by the prosecution, 6 witnesses are related to each other and also related to the three deceased persons. P.W.-1 Shanti Kui and P.W.-5 Mecho Banra are sisters and their husband namely Har Singh Banra and Ram Rai Banra, respectively were alleged to be killed by appellants/accused persons by forming unlawful assembly. In the alleged occurrence the appellant/accused persons had also killed Sonda Sundi, who was father of both these sisters Shanti Kui and Mecho Banra. P.W.-7 Nandi Kui, is the wife of the deceased Sonda Sundi. P.W.-6 Nandi Banra is daughter of deceased Ram Rai Banra, P.W.-8 Mangal Singh Banra is the son of the deceased Har Singh Banra and P.W.-9 Gangi Kui, is the grand daughter of the deceased Sonda Sundi.

78. This court finds that Sonda Sundi(deceased) was head of his family and he was resident of village Bara Guira. On the occasion of *Maghe* festival, Sonda's daughter Shanti Kui (P.W.-1) along with her husband Har Singh Banra (deceased) and children had come to her father's house at village Bara Guira. The other daughter of the Sonda Sundi(deceased), namely Mecho Banra (P.W.-5) was residing along with her husband Ram Rai Banra(deceased) and children at her father's house itself in the village Bara Guira, where her husband Ram Rai Banra(deceased) used to cultivate land of his father-in-law Sonda Sundi(deceased).

79. From the evidence of the prosecution witnesses, this court finds that on Saturday night on 22.02.1997, at about 9.00 P.M., accused Hajura Sumbrui (since dead) of village Karkata had entered the house of Sonda Sundi(deceased) and caught hold of Gangi Kui (P.W.-9), who was sleeping at verandah to which Gangi Kui raised alarm. Then, Har Singh Banra, Sonda Sundi and Ram Rai Banra apprehended accused Hajura Sumbrui and assaulted him with fist and slap and let him go.

80. It has further been alleged that thereafter, on the next day i.e. on Sunday (23.02.1997), mob including the aforesaid appellants came to the house of Sonda Sundi and abducted Har Singh Banra, Sonda Sundi and Ram Rai Banra and took them to the house of Village Munda (Village headman). Thereafter, on disclosure made in the confessional statement of Damu Sundi (Village headman), the dead bodies of Har Singh Banra, Sonda Sundi and Ram Rai Banra were recovered on 24.02.1997, from the Runku Ekir Nala of river Roro.

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81. Now, this court is proceeding to examine the first issue i.e. whether on the basis of the testimony of the witnesses can it be said to be a case based on circumstantial evidence or if it based upon the circumstantial evidence the chain is being completed or not?

82. This Court, after referring the impugned judgment and advertent to the testimony as recorded in course of the trial of the witnesses produced on behalf of the prosecution has found that none of the witnesses in their examination-in-chief or in cross-examination have deposed that they had seen alleged commission of crime particularly in terms of manner of assault resulting in the death of the three deceased namely Har Singh Banra, Ram Rai Banra and Sonda Sundi and the circumstances in which the dead body of all the three deceased persons were found from Runku Ekir Nala of river Roro, which were tied with stone boulder.

83. Further this Court finds from the impugned judgment that learned trial court, inter alia, had convicted the appellants observing that prosecution has established that the 30 accused persons had formed unlawful assembly and the members of the mob were armed with bow and arrow and *danda* and had abducted the three persons Har Singh Banra, Sonda Sundi and Ram Rai Banra (deceased persons) from the house on plea of holding *panchayati* at the house of village Munda(village headman) Damu Sundi and killed them. Hence, the 30 accused persons inter alia were convicted by the learned trial Court under sections 364/149 and 302/149 of IPC and under section 201 of IPC. The accused Hajura Sumbrui (since dead) was also convicted under section 354 of IPC.

84. In the evidence laid before the trial Court, it has come that P.W.-1 Shanti Kui(informant), P.W.-5 Mecho Banra, P.W.-6 Nandi Banra, P.W.-7 Nandi Kui and P.W.-9 Gangi Kui, were present and had witnessed the first part of occurrence , when the three persons namely Har Singh Banra, Sonda Sundi and Ram Rai Banra, were abducted by the mob on Sunday on 23.02.1997 at about 3 P.M., from the house Sonda Sundi(deceased).

85. Later on, dead bodies of Har Singh Banra, Sonda Sundi and Ram Rai Banra, were recovered from Runku Ekir Nala of river Roro on 25.02.1997, on the disclosure made in the confessional statement (Ext.-3) of accused/ appellant Damu Sundi (village headman).

86. Therefore, this Court is now adverting to analyse and appreciate the circumstances whether on the basis of the circumstantial evidence, the culpability of the surviving appellants can be proved or not. Hence, this Court think it apposite to refer to certain authorities pertaining to delineation of cases that hinge on circumstantial evidence.

87. There is no quarrel with the settled position of law that in the case of circumstantial evidence, the chain should be complete then only there will be conviction of the concerned accused person, as has been laid down by the Hon'ble Apex Court in the case of ***Hanumant son of Govind Nargundlar vs. State of Madhya Pradesh, AIR 1952 SC 343*** wherein it has been held that "It is well to remember that in cases where

the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

88. The same view has been taken by the Hon'ble Apex Court in ***Bakhshish Singh vs. State of Punjab, (1971) 3 SCC 182*** wherein the Hon'ble Apex Court has observed that the principle in a case resting on circumstantial evidence is well settled that the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. These circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show

that within all human probability the act must have been done by the accused.

89. The Hon'ble Apex Court while laying down such proposition in the said case has considered the factual aspect revolving around therein and while considering the fact has only found the incriminating evidence against the appellant was his pointing the place where the dead body of the deceased had been thrown which the Hon'ble Apex Court has not considered to be circumstantial evidence though undoubtedly it raises a strong suspicion against the appellant. The Hon'ble Apex Court while coming to such conclusion has observed that even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place. In that pretext, the law has been laid down at paragraph-9 thereof, which reads as under:

"9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again, those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion

consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

90. It is, thus, evident from the close analysis of the aforesaid judgments, the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(iii) the circumstances should be of a conclusive nature and tendency,

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

91. The Hon'ble Apex Court has reiterated the said principle again in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116*** holding all the above five principles to be the golden principles which constitute the panch-sheel of the proof of a case based on circumstantial evidence. The Hon'ble Apex Court in the said case as under

paragraph-155, 156, 157, 158 and 159 has been pleased to hold that if these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. Paragraphs-155, 156, 157, 158 and 159 of the said judgment read as under:

"155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus: "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case [1952 NZLR 111] was approved by this Court in Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500] Lagu case [AIR 1960 SC 500] as also the principles enunciated by this Court in Hanumant case [(1952) 2 SCC 71] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases -- Tufail case [(1969) 3 SCC 198] , Ramgopal case [(1972) 4 SCC 625] , Chandrakant Nyalchand Seth v. State of Bombay [

Criminal Appeal No 120 of 1957,], Dharambir Singh v. State of Punjab [Criminal Appeal No 98 of 1958,]. There are a number of other cases where although Hanumant case [(1952) 2 SCC] has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration [(1974) 3 SCC 668, 670] , Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607,] , Shankarlal Gyarsilal Dixit v. State of Maharashtra [(1981) 2 SCC 35, 39] and M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 2 SCR 405,] -- a five-Judge Bench decision.

158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: "But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation. such absence of explanation or false explanation would itself be an additional link which completes the chain."

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with

reasonable definiteness, and (3) the circumstance is in proximity to the time and situation."

92. The foremost requirement in the case of circumstantial evidence is that the chain is to be completed. In ***Padala Veera Reddy v. State of A.P. [1989 Supp (2) SCC 706*** the Hon'ble Apex Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

"10. ... (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

93. In ***Ram Singh v. Sonia (2007) 3 SCC 1***, while referring to the settled proof pertaining to circumstantial evidence, the Hon'ble Apex Court reiterated the principles about the caution to be kept in mind by court. It has been stated therein as follows:

"39. ... in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It

has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts."

94. Thus, it is evident that for proving the charge on the basis of circumstantial evidence, it would be necessary that evidence so available must induce a reasonable man to come to a definite conclusion of proving of guilt; meaning thereby there must be a chain of evidence so far it is complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

95. In the backdrop the aforesaid settled position of law this Court is now reverting to the factual aspects of the present case.

96. This court finds that in the present case there are two places of occurrence. The first place of occurrence is the house of informant's father Sonda Sundi(deceased), which is situated at village Bara-Guira wherein family members had assembled on the occasion of *Maghe* festival. In this house, two incidents had occurred one after another, firstly, when accused Hajura Sumbrui (since dead) had entered into the house on Saturday night at about 9 P.M., on 22.02.1997, and had tried to outrage the modesty of Ganga Kui (P.W.-9) due to which Har Singh Banra, Ram Rai Banra and Sonda Sundi (deceased persons)

had assaulted the accused Hajura Sumbrui, with fist and slap. Secondly, on the next day on Sunday on 23.02.1997, mob including present appellants variously armed with weapon came to the house of Soma Sundi(deceased) and abducted all three persons Har Singh Banra, Ram Rai Banra and Sonda Sundi.

97. The second place of occurrence is Runku Ekir Nala of river Roro from where dead bodies of all the three deceased Har Singh Banra, Ram Rai Banra and Sonda Sundi were recovered on 25.02.1997, and each were tied with stone bolder.

98. Now this court is proceeding to examine whether the chain of evidences is complete or not from which the conclusion of guilt or innocence of the appellants herein can be found out.

99. Coming to the first place of occurrence i.e. the house of informant's father Sonda Sundi(seceased) situated at Village Bara Guira.

100. Informant Shanti Kui (P.W.-1) in her fardbeyan as well as in her evidence has stated that on Saturday night (22.02.997), at about 9 P.M., accused Hajura Sumbrui of village Karkata had entered the house of her father Sonda Sundi(deceased) and tried to outrage the modesty of Gangi Kui (P.W.-9), who was sleeping at the varandah and on cry of Gangi Kui, she and other family members of the house reached to Gangi Kui. On going there, they found Hajura

Sundi (since dead) catching hold of Gangi Kui. Then, Sonda Sundi, Har Singh Sundi and Ram Rai Sundi (deceased persons) had beaten Hajura Sumbrui with fist and slap and drove him out.

101. Informant further in her evidence had stated that one day after the aforesaid occurrence (the incidence of outraging the modesty of Gangai Kui), i.e. on 23.02.1997 at about 3:00 P.M., mob variously armed with bow and arrow, lathi and spear came to the house of her deceased father and members of the mob abducted Sonda Sundi, Ram Rai Banra and Har Singh Banra and took all the three persons to the house of Damu Sundi who was village Munda (the headman of the village).

102. Hence, this court finds from the evidence of the informant Shanti Kui that apart from Sonda Sundi, Ram Rai Banra and Har Singh Banra (deceased persons), P.W.-5 Mecho Banra (wife of deceased Ram Rai Banra), P.W.-6 Nandi Banra (daughter of deceased Ram Rai Banra) and P.W.-7 Nandi Kui(wife of deceased Sonda Sundi) had also arrived at the varandah, on hearing cry of Gangai Kui (P.W.-9)

103. Then, ongoing through the evidence of P.W.-5 Mecho Banra, P.W.-6 Nandi Banra and P.W.-7 Nandi Kui, this court finds that P.W.-5, P.W.-6 and P.W.-7 have also stated in their evidence that on Saturday night (i.e.22.09.1997) at about 9 P.M., on hearing cry of Gangi Kui(P.W.-9), they had rushed to Gangi Kui and found accused Hajura Sumbrui there, who had

tried to outrage the modesty of Gangi Kui. Then, Sonda Sundi, Har Singh Sundi and Ram Rai Sundi (deceased persons) had beaten Hajura Sumbrui with fist and slap and had drove out Hajura Sumbrui.

104. Further, ongoing through the evidence of Gangi Kui (P.W.-9), this court finds that Gangi Kui had stated in her evidence that in the night of Saturday, at about 9.00 P.M., she was sleeping at the house of her maternal grandfather Sonda Suri(deceased) at Village Bara Guira. Then, accused Hajura Sumbrui had entered into the house and he began to remove her clothes while she was sleeping. She cried to which Har Singh Banra, Ram Rai Banra and Sonda Sundi (deceased persons) came there and they had beaten Hajura Sumbrui by slaps and then Hajura Sumbrui went away saying that he would come again since he was assaulted.

105. Further, this court finds from the evidence of P.W.-5, P.W.-6,P.W.-7 and P.W.-9 that after the incident of trying to outrage the modesty of Gangi Kui (P.W.-9) by Hajura Sumbrui, in the Saturday night at about 9 P.M. on 22.02.1997, on the next day i.e. on Sunday on 23.02.1997 at about 3.P.M., mob variously armed with weapon came to the house of Sonda Sundi(deceased person) and abducted Har Singh Banra, Ram Rai Banra and Sonda Sundi(deceased persons) and these abducted persons were taken to the house of Damu Sundi (the headman of the village).

106. Hence, this court finds that at the first place of occurrence i.e. at the house of the Sonda Sundi (deceased person), P.W.-1, P.W.-5, P.W.-6, P.W.-7 and P.W.-9 were present and had witnessed both the incidents i.e. accused Hajura Sumbrui being beaten by Har Singh Banra, Ram Rai Banra and Sonda Sundi (deceased persons) in the night of 22.02.1997 at about 9 P.M., and thereafter, on the next day i.e. on Sunday on 23.02.1997, at about 3 P.M., the mob coming to the house Sonda Sundi (deceased person) and abducting Har Singh Banra, Ram Rai Banra and Sonda Sundi.

107. Now, coming to the second place of occurrence i.e. the Runku Ekir Nala of river Roro from where dead body of all three deceased Har Singh Banra, Ram Rai Banra and Sonda Sundi were recovered on 24.02.1997, which were tied with stone bolder.

108. From the evidence, this court finds that after abducting the aforesaid three persons Har Singh Banra, Ram Rai Banra and Sonda Sundi, their bodies were recovered on 25.02.1997, on the disclosure made in the confessional statement (Ext.-3) of accused /appellant Damu Sundi from Runku Ekir Nala of river Roro, and the bodies were tied with stone boulder.

109. Then, ongoing through the evidence of Paltu Karwa (P.W.-2) and Tulsi Karwa (P.W.-3), this court finds that both these witnesses are divers and both have stated in their evidence that on being asked by the police, they had dived into

the river water had taken out the three dead bodies which were tied with stone boulder.

110. Further, on going through the inquest report Ext.-5 of the deceased Har Singh Banra and inquest report Ext.-5/2 of Sonda Sundi, this court finds from their inquest report that string was tied in their waste and in the inquest report Ext.-5/1 of deceased Ram Rai Banra, it is mentioned that his wrist of his hand was tied with string.

111. Further, Doctor P.W.-4, who had conducted the post-mortem examination on the dead body of the deceased persons Har Singh Banra, Ram Rai Banra and Sonda Sundi, the doctor had found lacerated wound and crush on the chest and face of the deceased persons. Doctor had opined that time elapsed since death was within 72 hours from the time of post-mortem examination and death was due to injuries leading to hemorrhage and shock.

112. Hence, this court finds that from the second place of occurrence i.e. from Runku Ekir Nala of river Roro dead body of all three deceased Har Singh Banra, Ram Rai Banra and Sonda Sundi were recovered on 25.02.1997, which were tied with stone bolder and the recovery of the bodies were made on the disclosure made in the confessional statement (Ext.-3) of the accused/appellant Damu Sundi.

113. So, from the above discussion this court is of view that prosecution has been able to prove that P.W.-1, P.W.-5, P.W.-6, P.W.-7 and P.W.-9 were present at about 3 P.M. on

23.02.1997, at the house of Sonda Sundi(deceased) i.e. at the first place of occurrence and had witnessed the incidence of abducting of Har Singh Banra, Ram Rai Banra and Sonda Sundi(deceased persons) by the mob.

114. Further, the prosecution has also proved the recovery of three dead bodies of Har Singh Banra, Ram Rai Banra and Sonda Sundi from Runku Ekir Nala of river Roro, on 25.02.1997 i.e. from the second place of occurrence and the bodies were recovered on the disclosure made in the confessional statement (Ext.-3) of accused/appellant Damu Sundi.

115. Hence, this court is of the considered view that prosecution has by cogent evidence has been able to establish the chain of circumstances, which proves the homicidal death of the three persons Har Singh Banra, Ram Rai Banra and Sonda Sundi by the accused persons/appellants.

116. Accordingly, Issue No.1 has been answered.

Re : Issue No.2

117. Regarding the second issue i.e. whether the material, as has come in course of trial, is sufficient to attract the ingredients of offence committed under Sections 364/149,302/149 and 201 of the Indian Penal Code?

118. Learned *amicus curiae* for the appellants has argued that it is not a case of common object and there is complete absence of evidence in the regard that accused/appellants

having shares common object of unlawful assembly, as such, criminal liability against the appellants under Section 149 of the Indian Penal Code cannot be made out.

119. In the aforesaid context, it is necessary, therefore, to examine the provisions of Section 149 of the Indian Penal Code. Section 149 of the Indian Penal Code is to be found in Chapter VIII of that Code which reads as under:-

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

120. Further, a plain reading of the above would show that the provision is in two parts. The first part deals with cases in which an offence is committed by any member of the assembly "in prosecution of the common object" of that assembly. The second part deals with cases where the commission of a given offence is not by itself the common object of the unlawful assembly but members of such assembly "knew that the same is likely to be committed in prosecution of the common object of the assembly".

121. The Hon'ble Apex Court has exclusively dealt with application of ingredients of Section 149 in the case of ***Ramachandran vs. State of Kerala, (2011) 9 SCC 257*** and has observed at Paragraph Nos.17 to 27 as under:-

"17. Section 149 IPC has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting of five or more members, and (ii) such offence must be committed in prosecution of the common object (under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.

18. For "common object", it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on the spur of the moment; it is enough if it is adopted by all the members and is shared by all of them.

19. In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. (Vide *Bhanwar Singh v. State of M.P.*) Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under the second part of Section 149 IPC if it can be held that the offence was such as the members knew was likely to be committed. The expression "know" does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that if a body of persons go armed to take forcible possession of the land, it would be right to say that someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149 IPC. There may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 IPC cannot be ignored or obliterated.

20. However, once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object.

21. The crucial question for determination in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the

common objects specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly.

22. *In K.M. Ravi v. State of Karnataka this Court observed that mere presence or association with other members alone does not per se become sufficient to hold every one of them criminally liable for the offences committed by the others unless there is sufficient evidence on record to show that each intended to or knew the likelihood of commission of such an offending act.*

23. *Similarly, in State of U.P. v. Kishanpal this Court held that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. Mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in prosecution of the common object or such as the members of the assembly knew were likely to be committed.*

24. *In Amerika Rai v. State of Bihar this Court opined that for a member of an unlawful assembly having common object what is liable to be seen is as to whether there was any active participation and the presence of all the accused persons was with an active mind in furtherance of their common object. The law of vicarious liability under Section 149 IPC is crystal clear that even the mere presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly.*

25. *Regarding the application of Section 149, the following observations from Charan Singh v. State of U.P. are very relevant: (SCC pp. 209-10, para 13) "13. ... The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. ... The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may*

be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 has to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter."

26. In Bhanwar Singh v. State of M.P. this Court held: (SCC p. 674, para 44) "44. Hence, the common object of the unlawful assembly in question depends firstly on whether such object can be classified as one of those described in Section 141 IPC. Secondly, such common object need not be the product of prior concert but, as per established law, may form on the spur of the moment (see also Sukha v. State of Rajasthan). Finally, the nature of this common object is a question of fact to be determined by considering nature of arms, nature of the assembly, behaviour of the members, etc.

27. Thus, this Court has been very cautious in a catena of judgments that where general allegations are made against a large number of persons the court would categorically scrutinise the evidence and hesitate to convict the large number of persons if the evidence available on record is vague. It is obligatory on the part of the court to examine that if the offence committed is not in direct prosecution of the common object, it yet may fall under the second part of Section 149 IPC, if the offence was such as the members knew was likely to be committed. Further inference has to be drawn as to what was the number of persons; how many of them were merely passive witnesses; what were their arms and weapons. The number and nature of injuries is also relevant to be considered. "Common object" may also be developed at the time of incident.

122. Further, in the case of **Subal Ghorai Vs. State of W.B., (2013) 4 SCC 607**, the Hon'ble Supreme Court at Paragraph Nos. 42 to 47 and 50 to 53 has observed as under:-

"42. We must now deal with the submission that all the accused cannot be convicted for murder with the aid of Section 149 IPC because the prosecution story that all the accused were armed

with weapons and they attacked the deceased is based on omnibus statements of the eyewitnesses. In order to deal with this submission, we have reproduced the material portions of the evidence of the eyewitnesses. It is now necessary to refer to the judgments of this Court which have been relied upon by the counsel on this point so that the evidence of the witnesses can be examined in their light.

43. In Lalji this Court observed that Section 149 IPC makes every person who is the member of an unlawful assembly at the time of committing of the offence guilty of that offence. It creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of this assembly.

However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common object of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section, the question that he did nothing with his own hands, would be immaterial, because everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined and it is not necessary that all the persons forming an unlawful assembly must do some overt act.

44. It was further observed in Lalji case that: (SCC p. 442, para 10) "10. ... once the court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing of that offence was a member of the same assembly is to be held guilty of that offence."

This Court further observed that: (Lalji case, SCC p. 442, para 10) "10. ... After such a finding it would not be open to the court to see as to who actually did the offensive act or require the prosecution to prove which of the members did which of the offensive acts. The prosecution would have no obligation to prove it."

45. On the facts of the case before it, this Court held that after having held that: (Lalji case, SCC p. 442, para 11) "11. ... the

appellants formed an unlawful assembly carrying dangerous weapons with the common object of resorting to violence ... it was not open to the High Court to acquit some of the members on the ground that they themselves did not perform any violent act, or that there was no corroboration of their participation. In other words, having held that they formed an unlawful assembly and committed an offence punishable with the aid of Section 149 IPC, the High Court erred in examining which of the members only did actively participate and in acquitting those who, according to the court, did not so participate. Doing so would amount to forgetting the very nature and essence of the offence created by Section 149 IPC."

46. In Sherey 25 appellants were tried for offences punishable under Sections 147, 148, 302, 307, 323 and 325 all read with Section 149 IPC in respect of an incident of rioting. The rioting occurred because of the dispute over a grove between Hindus and Muslims. Twenty-five Muslims attacked Hindus. Three Hindus died. Six eyewitnesses deposed about the incident. PW 1 complainant gave a detailed version and attributed overt acts to nine accused. In deposition, he named five more persons who also attacked the deceased. Regarding the others, he mentioned in an omnibus way that they were armed with lathis. He did not attribute any overt act to any one of them. This Court observed that in the circumstances, it was difficult to accept the prosecution case that the other appellants were members of the unlawful assembly with the object of committing the offences with which they were charged. This Court expressed that it was highly unsafe to apply Section 149 IPC and make everyone of them constructively liable. This Court further observed that when there is a general allegation against a large number of persons the Court naturally hesitates to convict all of them on such vague evidence. Some reasonable circumstance must be found out to lend assurance. It was further observed that from that point of view it was safe only to convict the nine accused whose presence was not only consistently mentioned from the stage of FIR but also to whom overt acts were attributed. This Court concluded that the fact that they were armed with weapons and attacked the victims shows that they were members of an unlawful assembly with the common object of committing murder and other offences with which they were charged.

47. In Thakkidiram Reddy the case of the prosecution was that the 21 accused in the dead of night formed themselves into an

unlawful assembly armed with weapons and went to the house of the deceased. They attacked the inmates of the house of one Gankidi Reddy in which Gankidi Reddy lost his life. The accused, thereafter, left the place. The trial court acquitted 10 of them and convicted A-1 to A-11, inter alia, under Section 148 and Section 302 read with Section 149 IPC. In the appeal, the High Court set aside the convictions of A-2 to A-11 under Sections 148 and 302 read with Section 149 IPC and maintained all other convictions. The State carried an appeal to this Court. This Court referred to its previous judgments in Masalti v. State of U.P. and Lalji and observed (Thakkidiram Reddy case, SCC p. 562, para 17) that from these judgments, "it is evident that to ascertain whether a particular person shared the common object of the unlawful assembly, it is not essential to prove that he committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object. Once it is demonstrated from all the facts and circumstances of a given case that he shared the common object of the unlawful assembly in furtherance of which some offence was committed--or he knew was likely to be committed--by any other person, he would be guilty of that offence".

This Court further observed that undoubtedly, commission of an overt act by such a person would be one of the tests to prove that he shared the common object, but it is not the sole test. This Court rejected the submission that some of the accused had caused simple injuries and, hence, they did not share common object to murder and observed that the manner in which the incident took place clearly proved that even if this Court were to assume that those accused did not share the common object of committing the murder, they, being members of the unlawful assembly certainly knew that the murder was likely to be committed by A-1 in prosecution of the common object so as to make them liable under Section 302 read with the second part of Section 149 IPC. In the circumstances, order of acquittal of A-2 to A-5 and A-9 of the charges under Sections 148 and 302 read with Section 149 IPC recorded by the High Court was set aside and the order of the trial court convicting them for the said offences was restored.

50. In Pandurang Chandrakant Mhatre, after adverting to relevant judgments, this Court observed: (SCC p. 797, para 72) "72. ... that for determination of common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack is of relevant

consideration. At a particular stage of the incident, what is the object of the unlawful assembly is a question of fact and that has to be determined keeping in view the nature of the assembly, the arms carried by the members and the behaviour of the members at or near the scene of the incident."

51. In Waman this Court held that: (SCC p. 307, para 40) "40. ... whenever the court convicts any person or persons of any offence with the aid of Section 149 IPC, a clear finding regarding the common object of the assembly must be given and the evidence disclosed must show not only the nature of the common object but also that the object was unlawful. In order to attract Section 149 IPC it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly."

In that case, there was no recovery of weapon from A-12 therein, but weapons were recovered from other accused and prosecution witnesses asserted that A-12 therein dealt a blow of iron pipe on the deceased. This Court held that this was sufficient to attract Section 149 IPC.

52. The above judgments outline the scope of Section 149 IPC. We need to sum up the principles so as to examine the present case in their light. Section 141 IPC defines unlawful assembly to be an assembly of five or more persons. They must have common object to commit an offence. Section 142 IPC postulates that whoever being aware of facts which render any assembly an unlawful one intentionally joins the same would be a member thereof. Section 143 IPC provides for punishment for being a member of unlawful assembly. Section 149 IPC provides for constructive liability of every person of an unlawful assembly if an offence is committed by any member thereof in prosecution of the common object of that assembly or such of the members of that assembly who knew to be likely to be committed in prosecution of that object. The most important ingredient of unlawful assembly is common object. Common object of the persons composing that assembly is to do any act or acts stated in clauses "First", "Second", "Third", "Fourth" and "Fifth" of that section. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of common assembly is a relevant factor. At what point of time common object of unlawful assembly was formed would depend upon the facts and circumstances of each case. Once the case of the person falls within the ingredients of Section 149 IPC, the

question that he did nothing with his own hands would be immaterial. If an offence is committed by a member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults intended victims, all may not take part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly.

53. But this concept of constructive liability must not be so stretched as to lead to false implication of innocent bystanders. Quite often, people gather at the scene of offence out of curiosity. They do not share common object of the unlawful assembly. If a general allegation is made against large number of people, the court has to be cautious. It must guard against the possibility of convicting mere passive onlookers who did not share the common object of the unlawful assembly. Unless reasonable direct or indirect circumstances lend assurance to the prosecution case that they shared common object of the unlawful assembly, they cannot be convicted with the aid of Section 149 IPC. It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object. What the common object of the unlawful assembly is at a particular stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime. These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution."

123. In the light of aforesaid settled proposition of law, it can be safely inferred that Common object of the unlawful

assembly can be gathered from the nature of the assembly, and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.

124. In the background of the aforesaid settled legal proposition of law, this Court is now adverting to the facts of the case to decide the aforesaid issue and culpability of the surviving appellants in alleged commission of crime.

125. In the present case, gruesome murder of the three persons by the mob was done and hence, motive behind the occurrence has to be seen. However, this Court is conscious with the settled position of law that motive is not pre-requisite for commission of crime but in the instant case, since, the common object has been alleged, hence, it requires to establish motive behind the alleged occurrence in order to establish the common object.

126. In the fardbeyan informant had stated that Sonda Sundi(deceased) and accused/ appellant Damu Sundi were resident of Village Bara Guira and Damu Sundi, was village Munda (village headman) at that relevant time and both Sonda Sundi(deceased) and accused Damu Sundi, were in litigating terms due the land dispute.

127. Further, in the evidence of the prosecution witnesses, it has come that Hajura Sumbrui, who had tried to outrage the modesty of Ganga Kui (P.W.-9), on Saturday night at about 9

P.M., on 22.02.1997, was resident of village Karkata, and he was assaulted with fist and slap, by Har Singh Banra, Ram Rai Banra and Sonda Sundi (deceased persons).

128. Thereafter, on the next day on 23.02.1997 at about 3 P.M., accused Hajura Sumbrui (since dead) had come to village Bara Guira with his supporters of village Karkata and in leadership Damu Sundi (village headman) to the house of Sonda Sundi(deceased) forming a mob and had abducted Har Singh Banra, Ram Rai Banra and Sonda Sundi from the house of Sonda Sundi and later on basis of the confession statement of accused Damu Sundi (village headman) all the three dead bodies of Har Singh Banra, Ram Rai Banra and Sonda Sundi were recovered from Roro River.

129. Hence, this court finds that motive behind the occurrence of killing of three persons was that Hajura Sumbrui was resident of village Karkata and when he was assaulted by Har Singh Banra, Ram Rai Banra and Sonda Sundi, as Hajura Sumbrui had tried to outrage the modesty of Ganga Kui(P.W.-9),then, mob from village Karkata had come to village Bara Guira to take revenge from Har Singh Banra, Ram Rai Banra and Sonda Sundi and the accused Damu Sundi (village headman), also got opportunity to settle the score who had land dispute with the Sonda Sundi(deceased).

130. It is evident from impugned judgment, this court finds that 33 accused persons had faced trial out of whom 3 accused persons were acquitted by the learned trial court and

accordingly 30 persons were convicted by the learned trial court and sentenced as aforesaid.

131. Thereafter, 30 accused persons had filed batch of appeal before this court. Here it is pertinent to note that appellant Chara Hessa in Cr. Appeal (D.B.) No. 180 of 199(R) was granted remission in sentence by State Sentence Remission Board. Hence, Coordinate Bench of this Court by order dated 26.04.2018, had disposed the appeal of the appellant Chera Hessa, as it had become infructuous.

132. Now, out of the remaining 29 appellants, 8 appellants had died during the pendency of appeal as mentioned above.

133. Now the present appeal of rest surviving appellants has to be decided based upon their culpability in the alleged commission of crime by this court inter alia for their conviction under sections 364/149 ,302/149 and 201 of IPC.

134. Informant P.W.-1 Shanti Kui had stated in her evidence on 23.02.1997 at about 3 P.M., mob variously armed with weapon had come to the house of her father Sonda Sundi(deceased) and had abducted Har Singh Banra, Ram Rai Banra and Sonda Sundi (deceased persons) and they were taken to the house of Damu Sundi (village headman).

135. Informant P.W.-1 and P.W.-5 had stated in her evidence that accused/appellant Damu Munda (village headman) was member of the mob, who had abducted Har Singh Banra, Ram Rai Banra and Sonda Sundi (deceased persons) and the mob had taken the three persons to the house of

accused/appellant Damu Sundi (village headman).P.W.-9 has also in her examination-in-chief, had deposed that village Munda(village headman),whose she was not knowing the name, was saying the members of the mob to take all the three at his house for final decision in the matter.

136. Hence, P.W.-1, P.W.-5 and P.W-9 have specifically named accused/appellant Damu Sundi (village headman) as a member of the mob and all the three persons Har Singh Banra, Ram Rai Banra and Sonda Sundi were taken to the house of said Damu Sundi (village headman). Later, on body of all the three deceased persons tied with stone boulder were found on 25.02.1997, on the disclosure made by the accused/appellant Damu Sundi in his confessional statement (Ext.-3), from Runku Ekkir nala of river Roro.

137. Further, this court finds that informant P.W.-1 in her cross-examination at paragraph-15 had specifically stated that when the mob had come to the house of her father at that time accused Bijay Sumbrui (Bijoy Sumbrui) was armed with bow and arrow and *danda*(stick) and he had rope in his hand. Informant has also deposed that Choko Sundi (Chogo Sundi) was armed with *danda* (stick) and Turi Sumbrui was armed with bow and arrow and spear.

138. Hence, prosecution has been able to prove that appellants Damu Sundi (village headman),Bijoy Sumbrui (Bijay Sumbrui), Chogo Sundi and Turi Sumbrui on 23.02.1997, at 3 P.M., when mob had come to the house of

Sonda Sundi(deceased), were members of the mob and accused Bijay Sumbrui (Bijoy Sumbrui) was armed with bow and arrow and *danda*(stick) and he had rope in his hand. Informant has also deposed that Choko Sundi (Chogo Sundi) was armed with *danda* (stick) and Turi Sumbrui was armed with bow and arrow and spear.

139. Thus, from the aforesaid it is evident that the aforesaid accused persons namely Damu Sundi (village headman), Bijay Sumbrui (Bijoy Sumbrui), Turi Sumbrui and Choko Sundi (Chogo Sundi) were member of the said mob and actively participated in the alleged commission of crime i.e. abduction. Further on the basis of the confessional statement of Damu Sundi (village headman) dead bodies of all the three abducted Har Singh Banra, Ram Rai Banra and Sonda Sundi were recovered, therefore it can be safely inferred that the said accused persons namely Damu Sundi (village headman), Bijay Sumbrui (Bijoy Sumbrui), Turi Sumbrui and Choko Sundi (Chogo Sundi) having common object of abduction and killing of the deceased persons.

140. Thus, on the basis of discussion made hereinabove this Court is of the view that the prosecution has been able to prove the charges under sections 364/149,302/149 and 201 of IPC against appellants Chogo Sundi and Damu Sundi appellants in Cr. Appeal (DB) No.158 of 1999(R) and Appellants Bijoy Sumbrui (Bijay Sumbrui) and Turi Sumbrui in Cr. Appeal (DB) No.281 of 1999(R).

141. Accordingly, Conviction of the appellants Bijoy Sumbrui (Bijay Sumbrui) and Turi Sumbrui in Cr. Appeal (DB) No.281 of 1999(R), under section 148 of IPC, is also sustained and upheld.

142. Conviction of the appellants Chogo Sundi and Damu Sundi in Cr. Appeal (DB) No.158 of 1999(R), under section 147 of IPC, is hereby also sustained and upheld.

143. Accordingly, Issue No.2 has been answered.

144. Learned *amicus curiae* for the appellants have submitted that FIR was created subsequently since the FIR was sent to the court after two days i.e. on 26.02.1997.

145. Hence, in other words learned *amicus curiae* have submitted that there is delay in forwarding the F.I.R to the Court i.e. requirement of section 157 CrPC was not complied.

146. Before proceeding further, it would be useful to see the judgments delivered by the Hon'ble Apex Court on the issue of sending the report to the Magistrate as required under section 157 CrPC. The issue of sending the special report to the Magistrate as required under section 157 CrPC was dealt by Hon'ble Apex Court in case of **Ravi Kumar v. State of Punjab, (2005) 9 SCC 315** and paragraph-16 of this judgment is quoted herein below-

“16. Sending the copy of the special report to the Magistrate as required under Section 157 CrPC is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether

the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not.”

147. Hence, in **Ravi Kumar(Supra)**, Hon’ble court has held that delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not.

148. This court finds that in the present case formal FIR was drawn on 24.02.1997 at 5.00 P.M. and received in the court on 26.02.1997. So, there is delay of one day in sending the FIR to the Magistrate.

149. On going through the FIR, this court finds that in the FIR informant had stated that mob had taken away three persons namely Sonda Sundi, Ram Rai Banra and Har Singh Banra and all these three persons did not return home. Then, on the next day confessional statement (Ext.-3) of one of the accused Damu Sundi was recorded on 25.02.1997 and on his disclosure made in the confessional statement i.e. on

25.02.1997, bodies of these three abducted persons were recovered from Roro River in presence of the informant, her mother and sister from Runku Ekir Ghat of river Roro in Village Chhota Khunta, by the divers Tulsi Karwa and Paltu Karwa, who took out the dead bodies from river waters.

150. Hence, prosecution has been able to explain that on 25.02.1997, police was busy in recovery of the bodies of the abducted three persons, hence, there was delay of one day in sending the FIR to the Magistrate.

151. So, far as conviction of the remaining appellants are concerned, this court finds that there is no witnesses have alleged any overt act committed by them specifically in terms of their alignment with the common object or weapon carried by them and in the facts and circumstances, merely presence of these appellants at the scene of occurrence or they being simply named by prosecution witnesses, may not be cogent ground to convict theses appellants with the aid of Section 149 of IPC.

152. Hence, prosecution has failed to prove the charges under sections 364/149,302/149, 201 and 147 of IPC against the remaining other appellants.

153. In the result, impugned Judgment of conviction and order of sentence dated 20.04.1999 passed by learned 1st Additional Sessions Judge, Chaibasa, in Sessions Case No.257 of 1997, so far as it relates to the appellants **Bijoy**

Sumbrui and **Turi Sumbrui** in **Cr. Appeal (DB) No.281 of 1999(R)** and appellants **Chogo Sundi** and **Damu Sundi** in **Cr. Appeal (DB) No.158 of 1999(R)** are hereby sustained and upheld.

154. Consequent upon dismissal of the appeal of the appellants Bijoy Sumbrui (Bijay Sumbrui), Turi Sumbrui, Chogo Sundi and Damu Sundi, since the appellants are enjoying the suspension of sentence after order passed by this court directing to release him during pendency of the appeal, the bail bond of these appellants are hereby cancelled and appellants are directed to surrender before the learned trial court for serving out the sentence passed against him.

155. The remaining appellants, namely, Manjhi Sumbrui appellant in Cr. Appeal (DB) No.281 of 1999(R), Dildar Sundi, appellant in Cr. Appeal (DB) No.102 of 1999(R), Ramesh Sundi, appellant in Cr. Appeal (DB) No.136 of 1999(R), Nauru Sundi, Chhota @ Vijay Sundi, Bhagwan Sundi, Bishkishan Sundi, Pradhan Sundi, ganga sundi, Bagun Sundi, @ Mutu Sundi and Babu Lal Sundi, appellants in Cr. Appeal (DB) No.158 of 1999(R), Anand Sundi appellant in Cr. Appeal (DB) No.159 of 1999(R), Ram Singh Sundi, Dubraj Purty, Barju Sundi and Nara Purty, appellants in Cr. Appeal (DB) No.269 of 1999(R), are acquitted of the charges by giving them benefit of doubt. Hence, they are discharged from the liabilities of their bail bond.

156. Accordingly, the instant batch of appeal stands disposed of.

157. Let the Lower Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

158. Pending Interlocutory Application(s), if any, stands disposed of.

159. Before parting with this Judgment, we must record that we have been given able assistance by Mr. Manjeet Kr. Chaudhary, Mr. Imran Beig and Mr. Parambir Singh Bajaj, learned *amicus curiae* appointed by this Court for the appellants.

160. We accordingly, direct the Secretary, High Court Legal Services Committee, Ranchi, to make the payment of the prescribed remuneration to the learned *amicus curiae*.

161. Let a copy of this Judgment be sent to the Secretary, High Court Legal Services Committee, Ranchi, for the needful.

(Sujit Narayan Prasad, J.)

I agree.

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

Jharkhand High Court, Ranchi

Dated, the 8th April, 2026.

Birendra / **A.F.R.**

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