

**(2004) 04 JH CK 0015**

**Jharkhand High Court**

**Case No:** Death Reference No. 6 of 2003 and Cr. A. (DB) No. 995 of 2003

State of Jharkhand

APPELLANT

Vs

Sanjay Mahto and Others <BR>

Bijay Mahto and Another Vs

RESPONDENT

State of Jharkhand

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**Date of Decision:** April 21, 2004

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 149, 302, 364

**Citation:** (2004) 2 JCR 580

**Hon'ble Judges:** S.J. Mukhopadhaya, J; Lakshman Uraon, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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**Judgement**

Lakshman Uraon, J.

Death Reference No. 6 of 2003, and both the Appeals i.e. Cr. Appeal No 995 of 2003 and Cr. Appeal No. 1047 of 2003, having arisen out of the same judgment and order of conviction and sentence dated 17th June, 2003 and 26th June, 2003, passed by the learned 4th Additional Sessions Judge, Garhwa, in Sessions Trial No. 66 of 2000, arising out of Meral P.S. Case No. 97 of 1999, have been heard together and are being disposed of by this single judgment of this Court.

2. Appellants in both the Cr. Appeals have been convicted u/s 364/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs. 12,000/- each and in default of payment of fine, to undergo simple imprisonment for one year each. All the appellants have further been convicted u/s 302/149, of the Indian Penal Code, and have been awarded capital punishment for which the learned 4th Additional Sessions Judge. Fast Track Court, Garhwa, has referred under Letter No. 123 of 2003, dated 27th June, 2003, being Death Reference No. 6 of 2003, for confirmation u/s 366, of the Code of Criminal Procedure.

3. The prosecution case has arisen on the basis of the fardbeyan (Ext. 3) of the informant Triveni Mahto (PW 11), recorded by the S.I. Ramji Prasad of Meral Police Station on 16.10.1999 at 23.30 hours at village-Purwara, Tola-Meral. The informant (PW 11) is not the eye witness of the alleged occurrence. On 16.10.1999 at about 11.00 p.m. he was going to sleep at night. He heard alarm coming from Durga Mandap. He came out and on enquiry, he came to know that his son Ram Chandra Mahto and nephew Bhuneshwar Mahto as also Ram Nath Mahto were abducted by the extremists, who were in uniforms. He rushed to Durga Mandap where he was informed that 15 to 20 extremists in police uniforms, armed with rifles, surrounded the house of Bhola Mahto near Durga Mandap where his son Ram Chandra Mahto and nephew Bhuneshwar Mahto were playing cards along with others. The extremists inquired about their names on which his son and nephew disclosed their fake names. The appellant Umesh Mahto (Cr. Appeal No. 1047 of 2003) disclosed their real names, informing the extremists. The extremists having been disclosed the real names of Ram Chandra Mahto and Bhuneshwar Mahto by appellant Umesh Mahto, caught both of them, informing them that their days are complete. Thereafter, the extremists went to the house of Ram Nath Mahto and asked to open the door on the plea that some materials to perform Durga Pura is sought. When Ram Nath Mahto came out of the door, he was caught hold by the extremists. Sobran Mahto, son of Ram Nath Mahto, informed the informant that amongst the extremists he identified the villagers Bijay Mahto. Sanjay Mahto (both appellants in Cr. Appeal No. 995 of 2003), who were armed with rifles and saw them taking away Ram Nath Mahto. Out of fear, the villagers did not chase the extremists, who went towards east of the village. The informant heard the sound of firing. After some time of firing, Meral Police went to the place of occurrence and chased the extremists. The dead body of Ram Nath Mahto was found on the village road, having fire arm injury on his head, in a pool of blood. There was fired empty wades of rifles. When further proceeded ahead, at village-Akalbani near Sheo Temple on the road, leading towards village-Kumbhi, near a mango tree, the dead bodies of Ram Chandra Mahto, son of the informant, and Bhuneshwar Mahto, nephew of the informant, were found in a pool of blood, having injuries of fire arms. There also fired empty wades of rifles and one pumplet were found. In the pumplet the extremists have alleged that the deceased were torturing the villagers with the help of the police and the responsibility to cause three murders were taken by the People's War Group under the banner of C.P.I. (ML). The alleged occurrence took place only due to dispute of landed properties in between the deceased and Harkhan Mahto. Rabindra Mahto son of Harkhan Mahto has joined the extremist party, a banned organisation, who was in custody at that time. He had tried once to abduct Ram Chandra Mahto and Ram Nath Mahto to commit their murder but they managed to escape. One month prior to the alleged occurrence, Bijay Mahto, appellant in Cr. Appeal No. 995 of 2003 and Nanhku Mahto had picked up quarrel with Ram Chandra Mahto (deceased). Since then Bijay Mahto, his father Baijnath altos Nanhku Mahto and Harkhan Mahto were threatening to cause their murder. Ten days prior

to the alleged occurrence, Bijay Mahto with the help of Uday Sao son of Harkhu Mahto had published pamphlet in his printing machine alleging against Ram Chandra Mahto. The villager Ganga Mahto had informed 5/6 days prior to the alleged occurrence that Bijay, Sanjay (both appellants in Cr. Appeal No. 995 of 2003), Umesh and Subhash (both) appellants in Cr. Appeal No. 1047 of 2003) with the help of Harkhan Mahto, Harkhu Mahto, Baijnath alias Nanhku Mahto and the notorious extremists Loha Singh had planned to eliminate Ram Chandra Mahto, Bhuneshwar Mahto and Ram Nath Mahto with the help of these appellants. Loha Singh is the maternal uncle of appellant Bijay Mahto. The informant did not pay any need to this information, given by Ganga Mahto to him. On the basis of the fardbeyan (Ext. 3) Meral P.S. Case No. 97 of 1999 was registered on 17.10.1999 at 7.30 a.m. whereas the information was received in the police station on 16.10.1999 at 23.15 hours regarding an occurrence, alleged to have taken place on 16.10.1999 at 23.00 hours. The First Information Report was received in the Court of learned Chief Judicial Magistrate on 18.10.1999. After investigation, charge sheet was submitted against these appellants along with four others, namely Baijnaith Mahto alias Nanhku Mahto, Harakhan Mahto, Uday Sao and Harkhu Mahto, who were acquitted by the learned 4th Additional Sessions Judge, Fast Track Court, Garhwa, after considering the evidence of 12 prosecution witnesses, examined on behalf of the prosecution and five defence witnesses, examined on behalf of accused and convicts.

4. The learned 4th Additional Sessions Judge, Fast Track Court, Garhwa, has relied the evidence of the closely related witnesses, who were present at the place of occurrence, who are PW 1 Ramesh Mahto son of deceased Ram Nath Mahto, PW 2, Satendra Mahto, son of another deceased Bhuneshwar Mahto, PW 3, Kameshwar Mahto, an independent witnesses of the village, PW 4 Sundri Kunwar, wife of deceased Ram Chandra Mahto, PW 5, Fekni Kunwr, wife of deceased Ram Nath Mahto, PW 6 Sumitra Kunwar, wife of deceased Bhuneshwar Mahto, PW 7 Dr. Jawala Prasad Singh, who conducted autopsy on the dead bodies of three persons and found fire arm injuries to be the cause of death, within 12 to 24 hours, as also the evidence of the I.O. Krishna Nath (PW 8), who found objective evidence at the place of occurrence and recorded the statements of the witnesses, including the fardbeyan of PW 11 Triveni Mahto and his son Rajendra Mahto (PW 10), convicted these appellants for both the charges u/s 364/149 and 302/149 of the Indian Penal Code. After hearing on the point of sentence, the learned Court below opined that it is one of the rarest of the rare cases and as such, awarded capital punishment u/s 302/149 of the Indian Penal Code to all the appellants and referred the same before this Court for confirmation.

5. Assailing the judgment and order of conviction and sentence, passed by the learned Court below, the learned counsel for the appellants in both the Criminal Appeals has submitted that although it was Saptmi (7th day) of Durga Puja festival and a number of villagers had assembled at Durga Mandap near the house of Bhola Mahto, but the independent witnesses have not been examined by the prosecution.

In support of this contention, he has placed reliance on the decisions of the Supreme Court in the cases of State of Rajasthan v. Sri Teja Singh and Ors., reported in 2001 (1) ECC 224 , wherein, it has been held that "Where testimony of interested witnesses was not corroborated by the independent witnesses and there were other infirmities in the prosecution case, accused held entitled to acquittal." It is further submitted that in this case although persons were jointly tried by the learned Court below, only these four appellants were convicted, acquitting the others on the same evidence that they were also seen in police uniforms and are alleged to be the extremists. The learned Court below has not considered the evidence of five defense witnesses whose evidence has to be assessed at par with the prosecution witness and has relied on a case, reported in 2000 (3) ECC 927 (State of Uttar Pradesh v. Baburam) in which it has been held that "depositions of witnesses whether they are examined on the prosecution side or defence side or as Court witnesses are oral evidence in the case and hence the scrutiny thereof shall be without any prediction or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a Court witnesses. Its judicial scrutiny which has warranted in respect of the depositions of all the witnesses for which different yardsticks can not be prescribed as for those different categories of witnesses." It was further submitted on behalf of the appellants that the prosecution witnesses have not seen committing murder of three persons by anyone of the appellants, as deposed by PWs 1 to 6, 9 and 10, who are only relatives and highly interested witnesses except PW 2 who is independent village witness. The interested and closely related witnesses have given contradictory statements to each other and have falsified the prosecution version on all major counts, which was erroneously, illegally and improperly relied by the learned Court below while arriving at an erroneous finding of conviction and sentence, passed against these appellants. PW 11 Triveni Mahto is a hearsay witness whose statement is based on the information, given by the villagers. Even he has not visited the place of occurrence, his fardbeyan was recorded at 11.30 p.m. and by that time the other villagers and eye witnesses were also there, who also chased the assailants along with the police. No incriminating article was recovered from the possession of these appellants. The fardbeyan was prepared later on, giving concoction and embellishment to the prosecution case to implicate these appellants falsely due to enmity regarding landed properties and also due to village rivalry. One Sobran Mahto, son of deceased Ram Nath Mahto, who informed the informant, has not been examined by the prosecution. The other witnesses Baldeo Mahto and Ganga Mahto, who informed the informant about the alleged occurrence and the threatening given by the extremists to eliminate those three deceased, have also not been examined by the prosecution. And Bhola Mahto in whose house Bhuneshwar Mahto and Ram Chandra Mahto were playing cards was neither made accused nor witness by the prosecution. The others, who were seen in the police uniforms out side the house of Bhola Mahto have also not been made accused by the Investigating Officer. On these grounds it was submitted that the appellants deserve acquittal, giving them

benefit of doubt.

6. Learned A.P.P. refuting the arguments, advanced on behalf of the appellants, has submitted that these appellants were the members of the extremists, armed with rifles, who kidnaped Ram Chandra Mahto, Bhuneshwar Mahto and Ram Nath Mahto while they were in police uniforms and soon thereafter, they fired resulting their death. PW 1 Ramesh Mahto, PW 2, Satendra Mahto and PW 4 Sundri Kunwar, who are sons and widow respectively of deceased, are the eye witnesses, who have seen these appellants taking the deceased. PW 3 Kameshwar Mahto (Independent witness) also saw Nanhku Mahto, Harkhu Mahto and Harkhan Mahto in police uniforms, armed with rifles and outside the house of Bhola Mahto he identified appellants Bijay Mahto, Subash Mahto, Sanjay Mahto and Umesh Mahto. After abducting the deceased, they were shot at, resulting their death. The I.O. Krishna Nath (PW 8) hearing the sound of firing, along with other police officials went to the place of occurrence and chased the extremists, who could not be apprehended rather the dead bodies of three deceased were recovered. On these grounds, it was submitted that soon after abduction, all these appellants along with other extremists, who shot them dead within a short period, shows that they abducted the deceased with an intention to cause their murder and subsequently they caused murder by shooting at with rifles only because it is alleged that they were extorting the villagers with the help of the police for which under the banner of MCC (ML) they abducted and murdered Ram Chandra Mahto, Bhuneshwar Mahto and Ram Nath Mahto and while abducting, these appellants have disclosed that they are the members of extremists, which is a banned organization. The doctor (PW 7) conducted autopsy on the dead bodies of the three persons and opined the cause of death due to fire arm injuries. The I.O. (PW 8) prepared inquest reports, who proved that the dead bodies were found at the P.O. village. On these grounds it was submitted that the learned Court below considering the evidence of the interested witnesses, which could not be contradicted, has rightly placed reliance and convicted these appellants. There is no valid reason found by the learned Court below to discard their evidence only on the ground of enmity and the interested witnesses, who are closely related with the deceased.

7. The defence has examined DW 1, Ganga Mahto, DW 2 Latif Ansari, DW 3. Samindra Ram, DW 4 Kasim Sheikh and DW 5 Ganesh Sah, who have virtually given character certificates to these appellants DW 1, is Ganga Mahto, who had forewarned the informant Triveni Mahto (PW 11) that these appellants along with other extremists had planned to eliminate Ram Chandra Mahto, Bhuneshwar Mahto, who were son and nephew of the informant, and one Ram Nath Mahto of the village, alleging that they use to torture the villagers with the help of police. The informant did not care for the information, given by DW 1 Ganga Mahto. Ganga Mahto has not been examined on behalf of the prosecution. Had he been examined, he only would have given the circumstances regarding the murder of three persons but as a defence witness he has stated that on the day of the alleged occurrence he

along with Uday Sah, Sub-has Mahto, Umesh Mahto (Both appellants in Cr. Appeal No. 1047 of 2003) and Harakhan Mahto was in the Durga Mandap where drama was being played. He heard that the extremists came and abducted all the three deceased. He has given certificate that these four appellants in both the Criminal Appeals are not the extremists. On the other hand, all the three deceased were informer of the police and hence the extremists to teach a lesson, caused their murder. He has further deposed that none of the villagers is the member of the extremist organization. DW 2 has also deposed that the appellants were not the extremists and so also DW 3, DW 4 and DW 5 have deposed. When the evidence of PW 1, PW 2, PW 3, PW 4, PW 5 and PW 6 is considered, I find that there is corroborative evidence that these appellants in both the Criminal Appeals were armed with rifles in police uniforms and abducted Ram Chandra Mahto and Bhuneshwar Mahto from the house of Bhola Mahto where they were playing cards and the same group of extremists went to the house of Ram Nath Mahto where they asked to open the door, taking plea that Puja materials got short, which are required. When the door was opened and Ram Nath Mahto came out, he was also dragged by the extremists. PW 5 Fekni Kunwar, wife of Ram Nath Mahto, saw her husband being dragged. She begged the life of her husband but the extremists, who were in police uniforms, armed with rifles, did not listen to her. When considered, the evidence of defence witnesses, who have given good character certificates, stating that these appellants of both the Criminal Appeals, are not the members of the extremists, has got no leg to stand. In view of this fact, the authority relied by the learned defence counsel in the case of State of Uttar Pradesh v. Baburam, (supra) is not applicable in the facts and circumstances and evidence of the present case.

8. Learned counsel for the appellants has not challenged the murder of the three persons by extremists rather he has challenged the findings of the Court below that these appellants are the members of the extremists and have fired at the deceased, three in number, resulting their death. It was also argued on behalf of the appellants that there is no eye-witness of the alleged murder by fire arm of Ram Chandra Mahto, Bhuneshwar Mahto and Ram. Nath Mahto.

9. The I.O. Krishna Nath (PW 8) having heard the sound of firing on 16.10.1999 at 23.15 hours from north-east side of the police station towards Village-Purwara, Tola-Meral, proceeded along with the police force and reached Punvara Tola at 23.30 hours. He was informed by Triveni Mahto that his son and nephew, namely. Ram Chandra Mahto and Bhuneshwar Mahto and villager Ram Nath Mahto were abducted by the extremists and were taken towards east of the village. He found the dead bodies of Bhuneshwar Mahto and Ram Chandra Mahto in a pool of blood towards west of the village near Shiv Mandir under mango tree, having sustained bleeding injuries due to the fire arms where they were found dead. There he found the fired empty wades and pumplet of the extremists. He recorded the fardbeyan of the informant. On further search the dead body of Ram Nath Mahto was found on

the village road, who was also done to death by firing. He prepared inquest reports (Ext. 1 series) and also seized the material exhibits and prepared seizure list (Ext. 5 series) in presence of the witnesses, who signed on them. PW 7 Dr. Jwala Prasad Singh on 17.10.1999 at 9.30 a.m conducted autopsy on the dead body of Ram Nath Mahto and found.

(i) lacerated wound--6" x 3" deep to cervical cavity with fracture multiple on skull bone

(ii) Oval lacerated wound--1/2" x 1/3" margin blackish inverted right lateral side of the chest, right to nipple 1/2"

(iii) Lacerated wound oval--1-1/4" x 3/4" margin inverted lower and lateral side of chest

(iv) Oval lacerated wound 1/3" x 1/4" margin inverted lower and lateral side of right side chest

(v) Oval lacerated wound 3/4" x 1/2" left lateral side of neck margin inverted.

On dissection he found 3rd, 4th, 5th and 6th ribs right side (lateral) fractured. The cause of death was shock and haemorrhage due to above injuries, caused by fire arm, within 12 to 24 hours. The Post Mortem Report (Ext. 2) has been prepared in his pen and signature.

On the same day, he conducted autopsy on the dead body of Ram Chandra Mahto at 10-10 a.m. and found the following ante-mortem injuries on his person :

(i) Lacerated wound 4 1/2" x 3 1/2" upper part of right side face extended to right hand and right ear. Multiple pieces of fracture of skull bone brain matter coming out.

(ii) Oval lacerated wound 1/3" x 1/4" margin inverted and blackish colour upper part left side neck

(iii) Oval lacerated wound 1/3" x 1/4" mid of abdomen upper part left lateral side of mid line margin inverted

(iv) Oval lacerated wound 1" x 1/2" right lateral side of mid line back (lumber region).

He opined that the cause of death was due to shock and haemorrhage, within 12 to 24 hours by fire arm injuries. Ext. 2/1 is the Post Mortem Report, prepared in his pen and signature.

On that very day at 10.40 a.m. he also conducted the autopsy on the dead body of Bhuneshwar Mahto and found the following ante mortem injuries on his person ;

(i) Oval lacerated wound - 1/3" x 1/4" margin inverted. Blackish colour left side front just mid part

(ii) Oval lacerated wound - 1 1/4" x 3/4" right lateral side of chest margin inverted present at mid portion. Fracture of 8th, 9th and 10th ribs right lateral side.

(iii) Massive lacerated wound - 10" x 6" on forehead with loss of skin. Muscle, bone, brain matters, little amount present in cervical cavity. Multiple fracture of skull bone was found.

In his opinion, the death was caused due to shock and heamorrhage as a result of the injuries, caused by fire arm, within 12 to 24 hours. Ext. 2/2 is the Post Mortem Report, prepared in his pen and signature.

10. The eye-witnesses i.e. PW 1, PW 2, PW 3, PW 4, PW 5, PW 6 and PW 10 have deposed that these appellants of both the Criminal Appeals abducted all the three deceased from the house of Bhola Mahto and Ram Nath Mahto and soon thereafter, sound of firing was heard. When the police came and searched the dead bodies, they found in a pool of blood, having sustained fire arm injuries. The medical evidence of Dr. Jwala Prasad Singh (PW 7), who conducted autopsy on the three dead bodies found the cause of death due to the injuries caused by fire arms. He found several multiple injuries blackish in colour which shows that from a close range distance, the extremists fired at them, causing death of the deceased at two places, one near Shiv Mandir under mango tree and another on the village road itself near the house of Ramdeo Mahto. This corroborated the evidence of the witnesses, who heard sound of firing and the cause of death was due to firing, gives no doubt that the cause of death was due to fire arm. The Material exhibits i.e. pumplets of extremists organization and the empty fired cartridges, seized from the places where the dead bodies were found, also communicates that these appellants, who were in police uniforms, armed with rifles, along with other extremists took the deceased and shot them dead. Thus, the places where the dead bodies were found and from where they were abducted have well been corroborated by the eye-witnesses, who are the eye witnesses in respect of abducting the three deceased.

11. Now the question arises as to whether the four appellants in both the Criminal Appeals were responsible for causing murder of the three persons after abducting them from the house of Bhola Mahto and from the house of Ram Nath Mahto.

12. PW 8 Krishna Nath, I.O. of this case, having heard the sound of firing went to Village - Purwara, Tola - Meral, chased the assailants, followed by the villagers, recorded the fardbeyan of the informant (PW 11), who is hearsay witness, whose son and nephew were abducted and murdered, prepared inquest reports and recorded the statements of the witnesses. The alleged occurrence took place at about 11.00 p.m. night on 16.10.1999. Soon thereafter, when the I.O. went there, he recorded the fardbeyan at 11.30 p.m. on the same day i.e. 16.10.1999. He did riot enquire regarding the activities of Bhola Mahto in whose house deceased Ram Chandra Mahto and Bhuneshwar Mahto were playing cards along with others. The

house of Bhola Mahto is very near to the Durga Puja Man-dap. Although deceased Ram Chandra Mahto and Bhuneshwar Mahto and others were playing cards in the light of Dhibri but the prosecution witnesses have deposed that the light of generator was also coming into the verandah of Bhola Mahto where cards were being played and also there was light of the generator up to the house of Ram Nath Mahto. He has mentioned the names of extremists as disclosed by Kameshwar Mahto in the case diary, who has disclosed the names of these appellants Bijay Mahto amongst the extremists. PW 3 Kameshwar Mahto, an independent village witness, had gone to chew betel near the betel shop, situated at Durga Mandap. He was taken by Bhola Mahto, Ram Chandra Mahto, Bhuneshwar Mahto, Murli and others to play cards in the house of Bhola Mahto. He was also playing cards. Bhola Mahto, for a moment came out of his house and again entered into his house. This witness saw Nanhku Mahto, Harkhu Mahto and Harakhan Mahto standing outside the house in police uniforms, armed with rifles, along with 15/20 extremists. Out of them, he identified appellants Bijay Mahto, Sanjay Mahto, Subhash Mahto and Umesh Mahto. He could not identify the others. Thus, he has corroborated his earlier version, deposed in his statement u/s 161 Cr.P.C. regarding presence of these appellants in police uniforms, armed with rifles. Although he has exaggerated in his evidence in Court that the hands of Ram Chandra Mahto and Bhuneshwar Mahto were tied and were dragged by the extremists, assaulted them and uttering the words that it was the last day of their lives. Thereafter, as per his deposition they fired resulting the death of both of them and one Ram Nath Mahto, who was abducted from his house only due to longstanding land disputes.

13. PW 1 Ramesh Matho has also corroborated his statement made before the I.O. that he identified appellants Sanjay, Subhash and Bijay, who were armed with rifles. PW 2 Satendra Mahto has also corroborated the identification of the appellants. The I.O. of course did not seize the blood stained soil from the places where the dead bodies were found but it does not belie the places where the dead bodies were found as empty cartridges and pumplets were seized from those places. PW 3 Kameshwar Mahto has claimed that in his presence the police abducted the three deceased and caused their murder, which gets corroborated by the statement of the I.O. (PW 8) before whom the statement was recorded u/s 161 Cr. P.C. PW 5 Fekni Kunwar, wife of deceased Ram Chandra Mahto, has developed her statement in Court by saying that her husband was taken towards the hill, being assaulted, where he was done to death. But this exaggeration is not contradiction regarding abducting of her husband by these appellants.

14. The informant Triveni Mahto (PW 11) having heard Hulla that Naxalities have come, went out to enquire into the matter, who was informed that his son Ram Chandra Mahto and nephew Bhuneshwar Mahto were abducted by Sanjay, Harkhu, Harakhan, Nanhkh, Umesh, Vijay, Subhash, Uday and some members of the party. They also caused murder of Ram Chandra, Bhuneshwar and Ram Nath Mahto. The informant (PW 11) is not the eye-witness of the alleged occurrence.

15. When the evidence of PW 1. Ramesh Mahto, PW 2 Satendra Mahto, PW 3 Kameshwar Mahto, PW 4 Sundri Kunwar and PW 5 Fekni Kunwar are scrutinized, although they are interested witnesses, but have seen the appellants of both the Criminal Appeal in police uniforms, armed with rifles, who abducted Ram Chandra Mahto, Bhuneshwar Mahto and Ram Nath Mahto. As it was Saptmi (7th day) of Durga Puja festival, there was Provision of generator at the P.O. village. Some of the witnesses identified the appellants in the light of generator and some of them identified the appellants in the house of Bhola Mahto, where deceased Ram Chandra Mahto and Bhuneshwar Mahto were playing cards along with others in the light of Dhibri. These appellants were identified, who dragged them when their proper names were disclosed by Umesh Mahto. Soon thereafter, there was sound of firing and when the I.O. (PW 8) along with the police party reached there and chased, it found the dead bodies of Ram Chandra Mahto, Bhuneshwar Mahto and Ram Nath Mahto at two places. He prepared inquest reports in presence of the witnesses. The time of receiving the information at the police station is 23.15 hours on 16.10.1999 whereas the alleged occurrence took place at about 22.30 to 23.00 hours. The inquest reports were prepared in the morning of 17.10.1999 in between 5 to 5.15 hours although the dead bodies were seen by the I.O. at 23.00 hours on 16.10.1999. This is not discrepancy to damage the prosecution case regarding time of the alleged occurrence and preparing the inquest reports, including recording of fardbeyan at 23.30 hours at Village-Purwara, Tola - Meral of the informant (PW 11) rather I find that there is unimpeachable clinching evidence against these appellants that they were in police uniforms armed with rifles and disclosed that they are the members of the extremists party. They dragged three deceased alleging that they were informers of the police and used to torture the villagers for which pamphlet was also distributed in the village. There is no eyewitness of the alleged murder of three persons as to who fired, resulting their death by fire arm. But their death due to fire arm is not in dispute. There were other members of the extremists also. The main leader Loha Singh and others could not be apprehended by the police. The others, who were identified by the witnesses, had not dragged the three deceased and, as such, they were acquitted. But these three appellants were identified by the witnesses, who dragged them and took them away. Considering these facts the learned Court below has convicted these appellants, while acquitting the four others, namely, Harkhan Mahto, Harkhu Mahto, Baijnath Mahto and Udai Sao. I find that the learned Court below while convicting these appellants has considered the prevailing circumstances of the extremists and the corroborative evidence of their identification, while dragging the three deceased by the witnesses of the family of the deceased were rightly evaluated and assessed. The learned Court below has rightly not discarded their evidence only on the ground that they are closely related and interested witnesses. I find that there is no legal infirmity in convicting these appellants u/s 302/149, IPC these appellants have been sentenced to undergo imprisonment for life and also to pay fine of Rs. 12,000/-each and in default of payment of fine, further to undergo simple imprisonment for one year each, which,

in my view, is quite proper and can not be interfered with. So far as the capital punishment awarded to all these four appellants for the offence u/s 302/149, IPC is concerned, I have to consider as to whether the case in hand comes within the ambit of "rarest of rare cases" for confirmation of capital punishment, in this case, the witnesses are not the eye-witnesses to say as to who shot fired resulting the death of Ram Chandra Mahto, Bhuneshwar Mahto and Ram Nath Mahto. They have been convicted u/s 302/149 IPC only on the ground that they were identified while abducting the three deceased, who were also charged u/s 364/149 of the Indian Penal Code, and each of them have been sentenced to undergo imprisonment for life. Soon after abduction of the three deceased, sound of firing was heard and three persons were found dead, which corroborates that they were murdered by the extremists who were in police uniforms, armed with rifles and amongst them all the four appellants in both the Criminal Appeal were identified by the witnesses which co-relates their involvement being members of the unlawful assembly to commit murder of Ram Chandra Mahto, Bhuneshwar Mahto and Ram Nath Mahto. Hence they were convicted u/s 302/149 of the Indian Penal Code. The learned Court below while awarding capital punishment has held that these appellants are the members of the banned extremists party, who are menace to the society and while hearing on the point of sentence, he has also considered the authorities reported in AIR 1975 SC , AIR 1978 SC 1248 , AIR 1975 SC 76 and [Machhi Singh and Others Vs. State of Punjab](#), including the authorities reported in the case of Machhi Singh (supra) in which guidelines to attract the cases under the category of "rarest of rare cases" have been laid down, which are as follows, based on Bachan Singh's case

(i) The Extreme penalty of death need not be inflicted except in gravest cases of extreme culpability,

(ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration alongwith the circumstances of the "crime".

(iii) Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment, having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life can not be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances :

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

16. In the present case, the aggravating circumstances against the appellants is that they are the members of the extremists, a banned organization, and have abducted three persons to whom the extremists group subsequently shot dead. There is no

eye-witness as to who amongst the extremists shot fire, resulting the death of Ram Chandra Mahto, Bhuneshwar Mahto and Ram Nath Mahto. Thus, the evidence to convict them u/s 302/149 of the Indian Penal Code, is based on the circumstances that they were seen abducting the three deceased persons and have been convicted u/s 364/149 of the Indian Penal Code to undergo imprisonment for life and also to pay fine of Rs. 12,000/-each. Further mitigating circumstance is that these appellants, namely, Bijay Mahto, Sanjay Mahto, Umesh Mahto and Subhash Mahto, are aged 40 years, 25 years, 26 years and 35 years respectively. Thus, they are in the prime age group of their life. The learned 4th Additional Sessions Judge, Fast Track Court, Garhwa, while awarding capital punishment has opined that the modes operandi of the appellants was to strike maximum terror in the mind of the citizens, destroying the established edifices of civilized society. In these areas it is not uncommon or rarest case in the society. There is menace of the extremists in the society but in the present case when these appellants were not seen causing murder by firing who have been awarded capital punishment with the aid of Section 149 of the Indian Penal Code, I find that it does not come within the category of "rarest of the rare cases." There were other villagers also to whom they did not abduct nor they assaulted them rather according to the pamphlet circulated amongst the villagers, three deceased were extorting the villagers and were informers of the police. Hence it was a revengeful attitude adopted by the extremists. Generally I find that in these areas the poor persons, who are helpless and are not being protected by the society and also not getting protection at the hands of State, who are being tortured, humiliated and/or whose properties are grabbed by the influential rich persons of the area, the helpless and have not join the extremist party only to teach a lesson to them. This attitude can very well be remedied by the State itself. In view of this fact also, in my view, this case, considering the age of the convicts, does not fall within the ambit of "rarest of rare cases." I think that when there is alternative punishment of life imprisonment, in the facts and circumstances, it will next the ends of justice if the capital punishment awarded u/s 302/149 of the Indian Penal Code against all the appellants of both the Criminal Appeals is altered into life imprisonment.

17. In the result, I find no merit in both the Criminal Appeal, which fail and, accordingly, dismissed. The conviction u/s 364/149 of the Indian Penal Code, and sentence to undergo imprisonment for life is confirmed. So far capital punishment awarded u/s 302/149 against all the appellants of both the Criminal Appeals is concerned, the same is altered to undergo imprisonment for life, with modification of sentence in respect to conviction u/s 302/149 of the Indian Penal Code, as mentioned above. Both the Criminal Appeals are hereby dismissed. Death Reference No. 6 of 2003 is answered accordingly.