

[Against the judgment of conviction dated 06.08.2022 and order of sentence dated 18.08.2022 passed by Sri Rajendra Kumar Sinha, learned Additional Sessions Judge-IV, East Singhbhum, Jamshedpur in Sessions Trial No. 199/2021]

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<b><u>Death Ref. No. 02 of 2022</u></b>		
.....		
The State of Jharkhand	... ..	<b>Appellant</b>
<b>Versus</b>		
Ramai Karua and Others	... ..	<b>Respondents</b>
With		
<b>Criminal Appeal (DB) No. 922 of 2022</b>		
.....		
Shoaib Akhtar	... ..	<b>Appellant</b>
<b>Versus</b>		
The State of Jharkhand	... ..	<b>Respondent</b>
With		
<b>Criminal Appeal (DB) No. 923 of 2022</b>		
.....		
Md. Tauqueer @ Md. Touqeer	... ..	<b>Appellant</b>
<b>Versus</b>		
The State of Jharkhand	... ..	<b>Respondent</b>
With		
<b>Criminal Appeal (DB) No. 968 of 2022</b>		
.....		
Jani Ansari @ Md. Jani Ansari	... ..	<b>Appellant</b>
<b>Versus</b>		
The State of Jharkhand	... ..	<b>Respondent</b>
With		
<b>Criminal Appeal (DB) No. 1039 of 2022</b>		
.....		
Shivshankar Paswan	... ..	<b>Appellant</b>
<b>Versus</b>		
The State of Jharkhand	... ..	<b>Respondent</b>
With		
<b>Criminal Appeal (DB) No. 1223 of 2022</b>		
.....		
Gopal Tiriya	... ..	<b>Appellant</b>
<b>Versus</b>		
The State of Jharkhand	... ..	<b>Respondent</b>
With		
<b>Criminal Appeal (DB) No. 1267 of 2022</b>		
.....		
Sharat Gope @ Sarat Gope	... ..	<b>Appellant</b>
<b>Versus</b>		
The State of Jharkhand	... ..	<b>Respondent</b>
With		
<b>Criminal Appeal (DB) No. 1268 of 2022</b>		
.....		
Basudeo Mahto @ Basu Dev Mahato	... ..	<b>Appellant</b>
<b>Versus</b>		
The State of Jharkhand	... ..	<b>Respondent</b>

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With

**Criminal Appeal (DB) No. 1276 of 2022**

.....

Sonu Lal ... .. **Appellant**

**Versus**

The State of Jharkhand ... .. **Respondent**

With

**Criminal Appeal (DB) No. 1300 of 2022**

.....

Sanjay Diggi ... .. **Appellant**

**Versus**

The State of Jharkhand ... .. **Respondent**

With

**Criminal Appeal (DB) No. 1399 of 2022**

.....

Ajit Das @ Chotta Das ... .. **Appellant**

**Versus**

The State of Jharkhand ... .. **Respondent**

With

**Criminal Appeal (DB) No. 1519 of 2022**

.....

1. Gangadhar Khandait @ Ganga Khandait A2  
2. Shyamu Jojo @ Shyamo Jojo @ Saimu Jojo @ Samu Jojo, A3  
3. Sriram Angaria, A4  
4. Panchanan Patro @ Panchanand Patro @ Panchanand Patr, A21  
... .. **Appellants**

**Versus**

The State of Jharkhand ... .. **Respondent**

With

**Criminal Appeal (DB) No. 1559 of 2022**

.....

Arup Kumar Bose A-14 ... .. **Appellant**

**Versus**

The State of Jharkhand ... .. **Respondent**

With

**Criminal Appeal (DB) No. 94 of 2023**

.....

1. Ajay Mallah A17  
2. Pinku Purty A18 ... .. **Appellants**

**Versus**

The State of Jharkhand ... .. **Respondent**

With

**Criminal Appeal (DB) No. 222 of 2023**

.....

Ramrai Surin @ Sachin Surin A13 ... .. **Appellant**

**Versus**

The State of Jharkhand ... .. **Respondent**

With

**Criminal Appeal (DB) No. 229 of 2023**

.....

1. Saurav Kumar Singh A22  
2. Rishi Lohar A20

3. Sumit Singh A19

... .. **Appellants**

**Versus**

The State of Jharkhand

... .. **Respondent**

.....

For the Appellants : Mr. Vikas Kumar, Mr. Sourav Kumar,  
Advocate  
(In Cr. Appeal (DB) 922/2022 & Cr. Appeal (DB) 923/2022)  
Mr. Rohit Agarwal, Mr. Arvind Kr.  
Choudhary, Mr. Shambhu Nath Tiwari,  
Advocate  
(In Cr. Appeal (DB) 968/2022 & Cr. Appeal (DB) 1039/2022)  
Mr. Rajesh Kumar, Mr. Ramesh Kumar,  
Advocate  
(In Cr. Appeal (DB) 1223/2022)  
Mr. J.N. Upadhyay, Advocate  
(In Cr. Appeal (DB) 1267/2022)  
Mr. A.K. Kashyap, Sr. Advocate,  
Mr. Anurag Kashyap, Mrs. Supriya Dayal,  
Advocates  
(In Cr. Appeal (DB) 1268/2022 & Cr. Appeal (DB) 1399/2022)  
Mr. Rakesh Kumar, Advocate  
(In Cr. Appeal (DB) 1276/2022)  
Mr. Lalit Yadav, Advocate  
(In Cr. Appeal (DB) 1300/2022 & Cr. Appeal (DB) 923/2022)  
Dr. H. Waris, Advocate  
(In Cr. Appeal (DB) 1519/2022, Cr. Appeal (DB) 1559/2022, Cr. Appeal (DB) 94/2023, Cr. Appeal (DB) 222/2023, Cr. Appeal (DB) 229/2023)

For the Respondents : Mr. Pankaj Kumar, P.P,  
Mr. Vineet Kr. Vashistha, Mrs. Vandana  
Bharti, Mr. Priya Shrestha, Shailendra  
Kr. Tiwari, Manoj Kr. Mishra, Mrs.  
Kumari Rashmi, Mr. Vineet Kr.  
Vashistha, Mr. Pankaj Kr. Mishra, Mrs.  
Nehala Sharmin, Mr. Bhola Nath Ojha,  
Spl. P.Ps,. & A.P.Ps.

**P R E S E N T**

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**  
**HON'BLE MR. JUSTICE AMBUJ NATH**

.....

**C.AV. on 02.03.2023**

**Pronounced on 05.04.2023**

Per. R. Mukhopadhyay. J.: Heard the learned counsel for the respective sides.

**2.** These appeals are directed against the judgment of conviction dated 06.08.2022 and order of sentence dated 18.08.2022 passed by Sri Rajendra Kumar Sinha, learned

Additional Sessions Judge-IV, East Singhbhum, Jamshedpur in Sessions Trial No. 199/2021, whereby and whereunder all the appellants have been convicted for the offences punishable u/s 147/148/323/149/307/149/325/149 of the I.P.C. while the appellants Ramai Karua, Gangadhar Khandait, Shyamo Jojo, Sriram Angaria, Gopal Tiriya, Basudeo Mahto, Sharat Gope, Shivshankar Paswan, Jani Ansari, Sanjay Diggi, Ramrai Surin, Arup Kr. Bose, Ajay Mallah, Pinku Purty and Panchanan Patro have been additionally convicted for the offence punishable u/s 302/120B of the I.P.C. and all the appellants have been sentenced to undergo R.I. for 10 years for the offence punishable u/s 307/149 of the I.P.C., R.I. for 05 years for the offences punishable u/s 325/149 of the I.P.C., R.I. for the 01 year for the offence punishable u/s 323/149 of the I.P.C, R.I. for 01 year for the offence punishable u/s 147 of the I.P.C., R.I. for 02 years for the offence punishable u/s 148 of the I.P.C., while the appellants Ramai Karua, Gangadhar Khandait, Shyamo Jojo, Sriram Angaria, Gopal Tiriya, Basudeo Mahto, Sharat Gope, Shivshankar Paswan, Jani Ansari, Sanjay Diggi, Ramrai Surin, Arup Kr. Bose, Ajay Mallah, Pinku Purty and Panchanan Patro have been sentenced to death which shall mean that they shall be hanged by neck till their death along with a fine of Rs. 5,000/- and in default of payment of fine to further undergo S.I. for 01 year for the offence u/s 302/120B of the I.P.C.

The prosecution case arises out of a written report of Superintendent, Central Jail, Ghaghidih, Jamshedpur addressed to the Officer-in-Charge, Parsudih, Jamshedpur, wherein it has been stated that on 25.06.2019 at about 4:45 P.M. he was telephonically informed by the Jailor that inside the Jail two groups are involved in a fight. At this information he came to the Jail gate and on entering saw 700-800 prisoners in an agitated state and they were searching for the prisoners involved in the brawl. When he reached near the Library of the Jail, he met the Shift In-charge Warden Shri Shailesh Kumar who was coming with an under trial prisoner namely Harish Singh. On seeing Harish

Singh the prisoners aimed their anger at him and were intent to inflict bodily injury upon him but due to the prompt action of the Jailor and the informant Harish Singh was safeguarded. On receiving an information from the Jailor that some prisoners have suffered injuries he had gone to the Jail Hospital where on the advice of the Doctor two of the under trial prisoners namely Manoj Kumar Singh and Sumit Singh were sent to MGM, Medical College & Hospital. It was telephonically informed by the driver Chotelal Paswan that Manoj Kumar Singh had expired.

It was informed by the Shift In-charge Warden Sri Shailesh Kumar and Sri Shiv Dutt Sharma that under trial prisoner Harish Singh had gone to the telephone booth and by intending to exert his dominance snatched the telephone from one of the prisoners and started dialing a number. This resulted in a scuffle and one Avinash Kumar Srivastava had suffered cut injuries. Immediately after this occurrence Harish Singh, Avinash Srivastava, Sumit Singh, Manoj Kumar Singh and others became violent and upon entering Ward No. 1 of Sector 'E' they committed assault upon a convict Pankaj Dubey. Out of fear of retribution Manoj Singh hid himself in the top floor of Sector Aaruni. When the prisoners and the Warden came to know that Manoj Kumar Singh was hiding 15 prisoners and 04 Wardens started brutally assaulting him with lathis and dandas. On assessing the condition of Manoj Kumar Singh and Sumit Singh to be serious they on the recommendation of the Jail Doctor were sent to MGM, Medical College & Hospital from where at 7:30 to 8:00 P.M. information was received about the death of Manoj Kumar Singh.

As per the CCTV footage the following under trial and convicted prisoners were involved in the assault upon Pankaj Dubey in Ward No. 1 of Sector 'E'.

- i) Manoj Singh, S/o Anirudh Singh
- ii) Harish Singh, S/o Suryawans Singh
- iii) Rishi Lohar, S/o Chandra Shekhar Lohar
- iv) Avinash Srivastava, S/o Anand Kishor Prasad
- v) Sonu Lal, S/o Ramesh Lal
- vi) Sumit Singh, S/o Abhay Kr. Singh

- vii) Ajit Das, S/o Dilip Das
- viii) Tauqueer, S/o Md. Riyaz
- ix) Saurav Singh, S/o Samresh Singh
- x) Soaib Akhtar @ Shibu, S/o Sohail Akhtar and Others.

As per the CCTV footage the following convicts and Wardens were involved in brutally assaulting Manoj Singh at the top floor of Sector- Aaruni:

- i) Basudev Mahto, S/o Late Hiralal Mahto
- ii) Rameshwar Angariya, S/o Kuwar Singh Angaria
- iii) Ganga Khandait, S/o Sahdev Khandait
- iv) Arup Kumar Bose, S/o Ajit Kumar Bose
- v) Ramay Karuwa, S/o Damu Karuwa
- vi) Jani Ansari, S/o Kurban Ansari
- vii) Ajay Mallah, S/o Jaihind Mallah
- viii) Panchanand Patro, S/o Bharat Chandra Patro
- ix) Gopal Tiriya, S/o Late Nara Tiriya
- x) Pinku Purti, S/o Kande Purti
- xi) Shyamu Jojo, S/o Bashu Jojo
- xii) Sanjay Diggi, S/o Kanu Ram Diggi
- xiii) Ramrai Surin, S/o Late Sitaram Surin
- xiv) Shiv Shankar Paswan, S/o Late Madan Paswan
- xv) Sarat Gope, S/o Akhchay Gope
- xvi) Anil Kumar
- xvii) Pankaj Kumar Mandal
- xviii) Ram Pratap Yadav
- xix) Santosh Kumar and Others.

**3.** Based on the aforesaid allegations Parsudih P.S. Case No. 139/2019 was instituted for the offences punishable u/s 147/ 148/ 149/ 341/ 323/ 324/ 325/ 307/ 302/120B of the I.P.C. against 29 named and some unknown persons. On completion of investigation charge-sheet was submitted u/s 147/ 148/ 149/ 341/ 323/ 325/ 307/ 120B of the I.P.C against Harish Singh, Avinash Srivastava, Sonu Lal, Sumit Singh, Ajit Das, Md. Tauqueer, Saurav Kr. Singh, Shoaib Akhtar and Rishi Lohar showing Manoj Kumar Singh as dead and u/s 147/ 148/ 149/ 323/ 341/ 325/ 307/ 302/120B of the I.P.C. against Ramai Karua, Gangadhar Khandait, Shyamu Jojo, Sriram Angaria, Gopal Tiriya, Basudeo Mahato, Sharat Gope, Shiv Shankar Paswan, Jani Ansari, Sanjay Diggi, Ramrai Surin, Arup Kr. Bose, Ajay Mallah,

Pinku Purty, Panchanan Patro, Anil Kumar, Pankaj Mandal, Ram Pratap Yadav and Santosh Kumar showing lack of evidence against Rameshwar Angaria. After submission of charge-sheet cognizance was taken and the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 199/2021. The case record of Harish Singh, Avinash Sriastava, Anil Kumar, Pankaj Mandal, Ram Pratap Yadav and Santosh Kumar was separated vide order dated 05.03.2022. Charge was framed against the accused Shoaib Akhtar, Md. Tauqueer, Ajit Das, Sonu Lal, Sumit Singh, Rishi Lohar and Saurav Kr. Singh for the offences punishable u/s 147/ 148/ 323/ 341/ 325/ 307/ 149 of the I.P.C. and against the accused Ramai Karua, Gangadhar Khandait, Shyamu Jojo, Sriram Angaria, Gopal Tiriya, Basudeo Mahato, Sharat Gope, Shivshankar Paswan, Jani Ansari, Sanjay Diggi, Ramrai Surin, Arup Kr. Bose, Ajay Mallah, Pinku Purty and Panchanan Patro for the offences punishable u/s 147/ 148/ 149/ 323/ 341/ 325/ 302/ 120(B) of the I.P.C. which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

**4.** The prosecution has examined as many as 15 witnesses in support of its case.

**5.** P.W.1 (Sudhir Kumar Singh) has stated that in the year 2018 he was working as a CCTV Operator in Ghaghidih Central Jail. The CCTV camera in Ghaghidih Jail was installed by M/s. Vantage Integrated Security Solution Company Pvt. Ltd. He works as a technician in the said company. He has stated that on 25.06.2019 an incident of assault had taken place inside the Jail. The footage of the recording of assault was transferred by him to a pen drive and given to the Police. The CCTV footage converted into the pen drive covered the incident of Ward No. 1 in 'E' Block and first floor in the Aaruni Block. He has identified his signature in the seizure list which has been marked as Exhibit-P1/PW1. The footage of 'E' Block was from 16:24 to 17:00 hours and that of Aaruni was from 16:54 to 17:24 hours. The authentication certificate with respect to the pen drive was prepared by his

company in which he and Mahboob Ansari had put their signature. He has proved the certificate which has been marked as Exhibit-P2/PW1. He has also proved his signature in Memo No. 3017 dated 18.07.2019 of the Office of the Superintendent, Central Jail, Ghaghidih, Jamshedpur addressed to the Officer-in-Charge, Parsudih which has been marked as Exhibit-P3/PW1.

He has proved the application given by the Operator-cum-Technician which apart from him included two other signatories, Md. Mahboob Ansari and Rahul Kumar addressed to the Superintendent, Central Jail, Ghaghidih, Jamshedpur specifying therein that the video and footage of 32 cameras from one server has become corrupted. This application has been marked as Exhibit-P-4/PW1.

He has identified his signature in the seizure list prepared on 19.07.2019 at 16:00 hours which has been marked as Exhibit-P5/PW1.

In cross-examination on behalf of Tauqueer Shibu, Ajit Das, Sumit Singh, Sriram Angaria, Shyamu Jojo, Gangadhar Khandait, Ramrai Karua and Panchanan Patro he has deposed that he had not issued the authentication certificate.

In cross-examination on behalf of Basudeo Mahato, Gopal Tiriya, Ramrai Surin, Sanjay Diggi and others he has deposed that after doing his intermediate he had completed his ITI training. He has stated that in the authentication certificate in which he has proved his signature neither the same is in the letterhead of the Jail nor the company or it contains the seal of the Jail or the company.

**6.** P.W.2 (Md. Mahboob Alam Ansari) was working on 04.06.2018 at Ghaghidih Central Jail as CCTV Operator. The CCTV camera was installed in Ghaghidih Central Jail by Vantage Integrated Security Solution Company Pvt. Ltd. He is a technician in the said company.

On 25.06.2019 an incident of assault had taken place inside the Jail. The footage of the recording was produced to the Police in a pen drive by Sudhir Kumar Singh. He



has stated that the CCTV footage included the incident which had taken place at Ward No. 1 in 'E' Block and the first floor in Aaruni Block. He has proved his signature in the seizure list which has been marked as Exhibit-P-1/1/PW2. The footage produced by Sudhir Kumar Singh was from 16:24 to 17:00 hours and 16:54 to 17:24 hours. The authentication certificate with respect to the pen drive was given by his company in which he and Sudhir Kumar Singh had signed. The certificate is as per Section 65B of the Evidence Act. The certificate has been marked as Exhibit-P-2/1/PW2. He has also proved his signature in Memo No. 3017 dated 18.07.2019 issued from the Office of Superintendent, Central Jail Ghaghidih, Jamshedpur addressed to the Officer-in-Charge, Parsudih P.S. which has been marked as Exhibit-P-3/1/PW2. He has proved his signature in the application given to the Superintendent, Central Jail Ghaghidih, Jamshedpur addressed by all the three Operators-cum-Technicians including himself relating to the video and footage of 32 cameras of one server becoming corrupt and which has been marked as Exhibit-P-4/1/PW2. He has also proved his signature in the seizure list prepared on 19.07.2019 at 16:00 hours and which has been marked as P-5/1/PW2.

In cross-examination on behalf of Tauqueer Shibu and Ajit Das, he has deposed that he had not issued the authentication certificate.

In cross-examination on behalf of Basudeo Mahato, Sumit Singh, Gopal Tiriya, Ramrai Surin, Sriram Angaria, Shyamu Jojo, Gangadhar Khandait, Ramrai Karua, Panchanan Patro Sanjay Diggi and others he has deposed that he is the student of Intermediate. He does not have the knowledge as to from which devices the pen drive was prepared. The authentication certificate does not contain the seal of the company or the Jail. The certificate has also not been prepared in the letterhead of the company or the Jail. The certificate was typed on a plain paper. He had put his signature in the certificate on the saying of Sudhir. The authentication certificate was not written by him but had come

from the company in which he had put his signature.

7. P.W.3 (Rakesh Kumar Jha) was posted as a clerk in Ghaghidih Central Jail. He has stated that on 25.06.2019 an incident of violence had taken place inside the Jail involving two groups. He has proved his signature in two seizure lists which have been marked as Exhibit-P-1/PW3 and P-2/PW3.

In cross-examination on behalf of Tauqueer and Shoaib @ Shibu he has deposed that the pen drive was not seized in his presence.

8. P.W.4 (Sitaram Mundari) did not support the case of the prosecution and was declared hostile.

9. P.W.5 (Baleshwar Prasad Singh) was posted as a Warden in Central Jail, Ghaghidih and on 25.06.2019 at 2:30 P.M. he had gone to his residence for lunch. At around 4:45 P.M. the clerk had informed him on his mobile that a fight is going on between two groups inside the Jail. He has stated that he immediately left for the office of the Jail and on the way he had informed the Jail Superintendent. As soon as he reached the Jail gate the Jail Superintendent Satyendra Choudhary and newly appointed Jailor Sri Anjay Kumar Srivastav joined him and when all three entered inside they found 700-800 prisoners with small dandas in their possession shouting that the atmosphere of the Jail has been polluted by Harish Singh and he will be murdered. On proceeding ahead they found the In-charge Warden Sri Shailesh Kumar taking away Harish Singh to the Jail Office. Seeing the gravity of the situation he and the Jail Superintendent managed to free Harish Singh from the prisoners and brought him to the Jail Office. They thereafter again entered the Jail where they found two groups of prisoners fighting amongst themselves. Somehow the situation was brought under control and the prisoners were locked in their wards while the injured prisoners were sent to the Jail Hospital for treatment. On the recommendation of the Jail Doctor two of the prisoners namely, Manoj Singh and Sumit Singh were sent to MGM, Medical College & Hospital. The Ambulance Driver later on informed that Manoj

Singh has died.

He has stated that in course of inquiry it came to light that near the telephone booth the prisoners were standing in a queue when Harish Singh along with a few prisoners went near the telephone booth and snatched the receiver from a prisoner in order to use the telephone himself as well as the prisoners who had accompanied him. This was objected by Aman Mishra at which Manoj Singh, Sumit Singh, Patpat and others committed assault upon him. The prisoners of Harish Singh group went to the ward of Pankaj Dubey who is a friend of Aman Mishra and Rishi Lohar and the other prisoners started assaulting Pankaj Dubey. The Jail alarm bells were ringing and amidst the commotion Manoj Singh went and hid in the Aaruni Ward. When the prisoners and wardens came to know that Manoj Singh had hid himself in the Aaruni Ward they went and assaulted Manoj Singh. The Wardens who were involved in the assault were Anil Kumar, Ram Pratap Yadav and three others. There were about fifteen prisoners who were involved in the assault upon Manoj Singh though he does not remember their names. The Officer-in-Charge of Parsudih P.S. was informed and a First Information Report was lodged. The written report was typed by Pinkesh on the direction of this witness and the Jail Superintendent Sri Satyendra Choudhary. The written report was proved and marked as Exhibit- P-1/PW5.

The CCTV is installed in the Jail whose maintenance and technical works are looked after by Vantage Company. He has stated that the CCTV footage of Aaruni Ward and the ward in which Pankaj Dubey stayed were produced before the Police.

He has also stated that the Police had seized 12-13 lathis and dandas and a seizure list was prepared which was signed by him as a witness and he has identified his signature which has been marked as P-2/PW5. He had also proved his signature in the certificate issued as per Section 65B of the Evidence Act and which has been marked as Exhibit-P-3/PW5. He has stated that he can identify the accused persons involved in the

incident by face.

In cross-examination on behalf of Tauqueer and Shoaib @ Shibu he has stated that he had not witnessed the occurrence. No Test Identification Parade was held of the prisoners who were involved in the incident.

In cross-examination on behalf of Basudeo Mahato, Sanjay Diggi, Sumit Singh, Sriram Angaria, Ramrai Karua, Panchanan Patro, Shyamu Jojo, Gangadhar Khandait and the rest accused he has deposed that it is correct that in the certificate issued u/s 65B of the Evidence Act there was no Seal or Memo No. of Ghaghidih Central Jail nor it was written in the letterhead of Ghaghidih Central Jail. In the certificate no Seal of Vantage Company was present nor was it in the letterhead of the company.

**10.** P.W.6 (Devashish Chakraverty) did not support the case of the prosecution and was declared hostile.

**11.** P.W.7 (Sandeep Tiwary) has also been declared hostile by the prosecution

**12.** P.W.8 (Anjay Kumar Srivastav) is the newly appointed Jail Warden who did not support the case of the prosecution and was declared hostile by the prosecution.

**13.** P.W.9 (Satyendra Choudhary) was posted as Superintendent, Central Jail, Ghaghidih and on 25.06.2019 at around 4:45 P.M. he was intimated by the Jailor Sri Baleshwar Prasad Singh that a scuffle is going on between the prisoners inside the Jail. He was in his residence and on such information he came to the Jail and with him were the Jailors Baleshwar Prasad Singh and Anjay Kumar Srivastav. He saw 700-800 prisoners in a very agitated state and they wanted to assault Harish Singh. Harish Singh was somehow brought inside the Jail Office. The prisoners who suffered injuries were sent to the Jail Hospital. On the recommendation of the Jail Doctor Manoj Singh and Sumit Singh were sent to the MGM Hospital from where the ambulance driver informed that Manoj Singh had succumbed to his injuries. He has stated that an inquiry into the incident was conducted and

the CCTV footage was recovered. It was informed by the In-charge Chief Warden Sri Shivdutt Sharma and the Shift In-charge Warden that Hari Singh had proceeded towards the telephone booth by jumping the queue which was objected by the other inmates at which Harish Singh and ten other prisoners had assaulted them. Thereafter Harish Singh and the others went to 'E' Ward and committed assault upon Pankaj Dubey. However, with the assistance of some prisoners and the Jail Officials they were chased away from 'E' Ward. From the CCTV footage, it could come to light that in the Aaruni Ward Manoj Singh was subjected to assault by the prisoners and the Jail Officials.

With respect to the incident in the Jail a written application was given to the Police Station jointly signed by him and Baleshwar Prasad Singh. He has identified his signature in the seizure list of lathis and dandas and which has been marked as Exhibit-P-1/PW9. He has also proved his signature in the Section 65B of the Evidence Act certificate which has been marked as Exhibit-P-2/PW9.

He had named the prisoners involved in the assault in his written application. He has stated that the Police had recorded his restatement in which also he had disclosed the name the prisoners and the Jail Officials involved in the ruckus. The Wardens involved in the assault were Pankaj, Anil and two others the names of whom he does not remember. The prisoners involved in the incident were Rishi Lohar, Harish Singh, Sumit Singh, Manoj Singh, Shivshankar Paswan and some others whose names he does not remember. The CCTV footage transferred into the pen drive were run in the official laptop and after seeing the same he has stated that the footage is of the Jail and based on this footage the identity of the prisoners and wardens could be ascertained.

In cross-examination on behalf of Tauqueer, Shoaib @ Shibu, Ajit Das @ Chota Das, Sriram Angaria, Ramrai Karua, Panchanan Patro, Shyamu Jojo, Gangadhar Khandait, Gopal Tiriya and Ramrai Surin he has deposed that no Test Identification Parade was held of the prisoners who were seen in

the CCTV footage.

In cross-examination on behalf of Basudeo Mahato and Sanjay Diggi he has deposed that in the Section 65B of the Evidence Act certificate the seal of the Jail was not present and it was also not in the letterhead of the Jail. The said certificate was also not in the letterhead of Vantage Integrated Security Solution Pvt. Ltd and does not contain the seal of the company. As per the certificate issued u/s 65B of the Evidence Act three persons were involved in transferring the CCTV footage to the pen drive.

**14.** P.W.10 (Dr. Abhijeet Guha) was posted at Tata Memorial Hospital, Jamshedpur as a Junior Registrar in the Dept. of Emergency and on 26.06.2019 he had examined Sumit Singh and had found the following injuries on his person:

- i) Stitched wound- Stitched wound overhead, 3 cm x 0.5 cm.*
- ii) Abrasion- Swelling with abrasion over right hand.*
- iii) Stitched wound over left elbow. 4 cm x 0.5 cm.*
- iv) Cause of injuries hard and blunt.*
- v) Age of Injuries- less than 6 hrs.*

The opinion has been reserved so far as the nature of injuries are concerned. The injury report has been proved and marked as Exhibit-P-1/PW10.

**15.** P.W.11 (Dr. Premanand Sah) was posted as a Tutor in F.M.T. Department, MGM Medical College, Jamshedpur and on 26.06.2019 he along with the other Doctors comprising the Medical Board had conducted autopsy on the dead body of Manoj Kumar Singh and had found the following:

- A) Mark of identification- Semi dark complexion, black beard moustache scalp hair and pubic hair.*
- B) Green while blue colour checked full shirt, black and white checked half pant red colour Janghiya, red sacred thread on right wrist white bandage present overhead, lower part of right leg bandage with cardboard present over left leg.*
- C) The findings were- average built,*

*rigormortis present all over body, both eyes partially open, mouth partially open with visible teeth, length-178 cm.*

*D) Following antemortem external injuries found over his bodies-*

- (i) Incised wound of size 5 cm x ½ mm x up to bone over mid parietal area of head.*
- (ii) Lacerated wound of size 4 cm x 1 cm x up to bone deep over right side of occipital area of head.*
- (iii) Stitched wound of size*
  - (a) 5 cm of left parietal area of head*
  - (b) 4 cm over mid area of front of left leg.*
  - (c) 3-1/2 cm over front of left leg below (iii) (b), (d) 2 cm over front of right leg*
- (iv) bruise of size*
  - (a) 82 cm x 24 cm placed over left scapular area, left lateral aspect of upper arm, for arm and dorsum of palm of left side with abrasion at places*
  - (b) 74 cm x 21 cm placed over right scapular area to anterior postero-lateral aspect of right upper limb with abrasion at places*
  - (c) 14 cm x 10 cm over back of right thigh*
  - (d) 12 cm x 6 cm over right buttock*
  - (e) 26 cm x 12 cm over lateral aspect of right leg*
  - (f) 4 cm x 3 cm lateral aspect of right ankle*
  - (g) 13 cm x 11 cm over back of left thigh with fracture of underneath lower shaft of left femur bone.*
  - (h) 15 cm x 3 cm over left side of back of chest.*
- (v) Patterned bruise (railway track bruise) of size*
  - (a) 15 cm x 2 cm with 1 cm pale area in between over right and mid area of front of chest*
  - (b) 13 cm x 2-1/2 cm with 1 ½ cm pale area in between placed over right side of front of abdomen and lower chest (placed obliquely)*
  - (c) 5 cm x 2 ½ cm with 1 ½ cm pale area in between over left subcostal*

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*area of abdomen*

*(d) 20 cm x 2 cm with 1 cm pale area in between over left side of front of abdomen at the level of umbilicus (placed transversely)*

*(e) 31 cm x 2½ cm with ½ cm pale area in between over right side of back of chest.*

*(f) 22 cm x 2½ cm with ½ cm pale area in between placed over left side of back of abdomen and chest.*

*(vi) Abrasion of size*

*(a) 12 cm x 5 cm over front side of mid of left leg.*

*(b) 14 cm x 4 cm over front side of mid of right leg.*

*E) On dissection of scalp, skull, brain, brain there is contusion of scalp found of size*

*(a) 11 cm x 10 cm placed over left parietal area.*

*(b) 12 cm x 6 cm over right parietal occipital area, brain is found congested.*

*F) On dissection of thoraco- abdominal cavity, chest muscle of both side are found contused, both lungs are found pale and contused, both chamber of heart contain little blood, liver if sound adhered to peritoneum and pale spleen and kidneys are found pale, stomach contain yellowish colored fluid of about 200 ml.*

*G) On dissection of neck, tracheal mucosa is found congested and its lumen contain scanty mucous.*

*H) On dissection of extremities and back, underneath tissue under the bruised area are found contused.*

The cause of death was opined to be due to hemorrhage and shock as a result of the above noted injuries, combined effect of which is fatal in nature. The incised wound is caused by sharp cutting edge light weight weapon. All the other injuries were caused by hard and blunt object. The postmortem report has been proved and marked as Exhibit-P-1/PW11.

**16.** P.W.12 (Dr. Uma Shankar Prasad) was posted as an Assistant Professor in the Dept. of F.M.T., M.G.M. Medical College, Jamshedpur and on 26.06.2019 he was a member of the Medical Board which had conducted autopsy on the dead body of



Manoj Kumar Singh. He has identified his signature in the postmortem report which has been marked as Exhibit P-1/PW12.

**17.** P.W.13 (Dr. Rajeev Kumar Sharma) was posted as a Medical Officer, Central Jail Ghaghidih, Jamshedpur and on 26.06.2019 he had examined Sumit Singh and had found the following:

**M/1-**

- (i) A cut scar mark in chin.
- (ii) A mole near umbilical region.

**Site of Injury-**

- (i) Right forearm swelling (4x2x2) cm.
- (ii) Lacerated wound vertex of scalp (4x1.5x1) cm.
- (iii) Lacerated wound left parietal part of scalp. (2.5x1x0.5) cm.
- (iv) Lacerated wound left elbow posterior aspect. (2x1x0.5) cm.

**Nature of Injuries-** Simple

**Nature of Weapon-** Hard and rough.

The nature of injuries was opined to be simple. He has proved the injury report which has been marked as Exhibit-P-1/PW13.

On the same day he had examined Pankaj Kr. Dubey and had found the following:

**M/1**

- (i) A scar mark middle of neck.
- (ii) A scar mark of left elbow.

**Site of Injury-** Swelling of right hand dorsal aspect-10 cm x 5 cm.

**Nature of Injuries-** Simple

**Nature of Weapon-** Hard and blunt.

The nature of injuries was opined to be simple. He has proved the injury report which has been marked as Exhibit-P-2/PW13.

He has also examined on the same day Rishi Lohar and had found the following injuries:

**M/1**

- (i) A mole below right eye.
- (ii) A scar mark over right elbow.

**Site of Injury-**

- (i) Abrasion over back (5x2) cm

**Nature of Injuries-** Simple

**Nature of Weapon-** Hard and rough

*substance.*

The nature of injuries was opined to be simple. The injury report has been proved and marked as Exhibit-P-3/ PW13.

On the same day he had examined Md. Touqeer and had found the following:

**M/1**

(i) *A mole in the middle of back.*

(iii) *A scar over left hand.*

**Site of Injury-**

(i) *Abrasion right thigh (5x0.5) cm*

(ii) *Abrasion right wrist (4x0.7) cm*

**Nature of Injuries-** Simple

**Nature of Weapon-** Hard and rough substance.

The nature of injuries was opined to be simple. The injury report has been proved and marked as Exhibit-P-4/ PW13.

He had also examined Ajit Das on the same day and had found the following:

**M/1**

(i) *A scar mark over left ankle.*

(iii) *A mole over nose.*

**Site of Injury-** Lacerated wound right side forehead. (1.5x0.2x0.2) cm.

**Nature of Injuries-** Simple

**Nature of Weapon-** Hard and blunt.

The nature of injuries was opined to be simple. The injury report has been proved and marked as Exhibit-P-5/PW13.

He had examined Sagar Lohar on the same day and had found the following injuries:

**M/1**

(i) *A scar on right hand wrist.*

(ii) *A mole on left side of neck.*

**Site of Injury-** Lacerated wound occipital part of scalp (6x0.5x0.5) cm

**Nature of Injuries-** Simple

**Nature of Weapon-** Hard and blunt.

The nature of injuries was opined to be simple. The injury report has been proved and marked as Exhibit-

P-6/PW13.

On the same day he had examined Aman Mishra and had found the following:

**M/1**

- (i) A scar below chin
- (iv) A scar over left leg.

**Site of Injury-** Lacerated wound left tempo parietal part of scalp (4x0.5x0.5) cm.

**Nature of Injuries-** Simple

**Nature of Weapon-** Hard and blunt.

The nature of injuries was opined to be simple. The injury report has been proved and marked as Exhibit-P-7/PW13.

He had also examined Sonu Lal on the same day and had found the following:

**M/1**

- (i) A cut mark scar on left wrist.
- (ii) A mole over left side of stomach.

**Site of Injury-** Lacerated wound left parietal part of scalp (4x0.5x0.2) cm.

**Nature of Injuries-** Simple

**Nature of Weapon-** Hard and blunt.

The nature of injuries was opined to be simple. The injury report has been proved and marked as Exhibit-P-8/PW13.

On the same day he had examined Avinash Srivastava and had found the following:

**M/1**

- (i) A scar below lower lip.
- (iv) A scar over right side of nose.

**Site of Injury-** Clean incised wound at nape of neck (5x0.5x0.5) cm.

**Nature of Injuries-** Simple

**Nature of Weapon-** Sharp Object.

The nature of injuries was opined to be simple. The injury report has been proved and marked as Exhibit-P-9/PW13.

**18.** P.W.14 (Dr. Ajay Kumar Agarwal) was posted at TMH as Urology Specialist, in the Department of Urology, East Singhbhum and on 26.06.2019 he had given opinion regarding the scrotum injury of Sumit Singh. The nature of injury has been

opined to be grievous. He has proved the injury report which has been marked as Exhibit-P-1/PW14.

**19.** P.W.15 (Animesh Kumar Gupta) was posted as Officer-In-Charge of Parsudih P.S. and on 26.06.2019 on the basis of the written application of Satyendra Choudhary a First Information Report was instituted against 28 named and some unnamed persons. The entire written application was proved and marked as Exhibit-P-1/PW15. He has proved the formal First Information Report which has been marked as Exhibit-P-2/PW15. After the formal First Information Report was registered he had himself taken over investigation. He had seized the pen drive of 16 G.B. in which the CCTV footage was transferred and the seizure list has been proved and marked as Exhibit-P-3/PW15. He has also produced the certificate issued in terms of Section 65B of the Evidence Act and which has been marked as Exhibit-P-4/PW15. In course of investigation he has seized the lathis and dandas used in the incident and the seizure list has been proved and marked as Exhibit-P-5/PW15.

In course of investigation, he had recorded the statement of Sudhir Kumar Singh, Md. Mahboob and Rakesh Kumar Jha all of whom were involved in producing the CCTV footage. He had recorded the restatement of Satyendra Choudhary and the statement of Baleshwar Prasad. Both had supported the allegations made in the First Information Report and had also given out the name of the accused persons. The witness Anjay Kumar Srivastava in his statement had also supported the allegations. He had arrested Santosh Kumar, Anil Kumar and Ram Pratap Yadav from the Jail premises itself.

He had inspected the place of occurrence and the first place of occurrence is the telephone booth situated inside the Central Jail, Ghaghidih. The telephone booth is situated centrally in front of a kiosk where the inmates of the Jail avail of the facility by waiting in line. This is the place where from 3:00 P.M. to 4:30 P.M. Harish Singh and his accomplices had assaulted Aman Mishra of Pankaj Dubey faction. After this incident, Harish

Singh and nine other accused had gone to Ward No. 1 in 'E' Block and committed an assault as disclosed by the informant and other witnesses.

The second place of occurrence is the first floor of 'E' Block in Ward No. 1 which has a pathway in between having a width of 3½ feet and on both sides platforms have been made for the prisoners. Inside the barrack a CCTV camera has been installed. As per the statement of the informant based on the CCTV footage near about 16.44 hours Manoj Singh, Harish Singh, Avinash Srivastav, Sumit Singh, Rishi Lohar, Sonu Lal, Ajit Das, Tauqueer, Saurav Singh, Shoaib Akhtar @ Shibu and other prisoners had assaulted Pankaj Dubey and his associates. On the eastern side of the second place of occurrence there is an iron gate and a verandah, on the western side is a lavatory, on the northern side is Ward No. 2 of the 'E' Block and in the southern side is a wall and Sector 'D'. The third and most important place of occurrence is the first floor of Aaruni Ward. This was the place where Manoj Singh had hid himself in the lavatory and from where the accused persons had dragged him out and assaulted him with lathis and dandas.

The Ward in the first floor is south facing. There is a pathway inside the ward and platforms are on two sides where the prisoners sleep. In the northern side in the middle of the ward is a lavatory. The main door to this ward is in the southern direction.

In course of investigation, he had obtained the antecedents of the accused person which was entered in para 42 of the case diary. He has proved the inquest report which has been marked as Exhibit-P-6/PW15. He had recorded the statement of the independent witnesses Sandeep Tiwari, Sitaram Mundari and Devashish Chakravarty. He has proved the seizure list of 15 still photos prepared from the CCTV footage which has been marked as Exhibit-P-7/PW15.

He had recorded the statement of the witnesses to the seizure list namely Baleshwar Singh and Ajay

Kumar Srivastav. He had also recorded the statements of prisoners Pankaj Dubey, Aman Mishra, Rohit Singh @ Patpat, Harish Singh, Rishi Lohar, Md. Tauqueer, Avinash Srivastav, Shoaib Akhtar @ Shibu, Saurav Singh, Ajit @ Chota Das, Sumit Singh, Sonu Lal and Sharad Gope. He had recorded the statement of Sudhir Kumar Singh who looks after the CCTV installed inside the Jail. He has proved the letter of Superintendent, Central Jail, Ghaghidih as contained in Memo No. 3017 dated 18.07.2019 which has been marked as Exhibit-P-8/PW15. The seizure list of pen drive has been proved and marked as Exhibit-P-9/PW15.

**20.** On completion of investigation he had submitted charge-sheet No. 279/19 dated 16.09.2019 u/s 147/148/149/341/323/324/307/302/34 of the I.P.C. The fifteen still photographs from the CCTV footage of the incident at first floor of Aaruni Ward was proved and marked as Exhibit-P-10/PW15 to P-24/PW15. The six still photographs obtained from CCTV footage of the incident at Ward No. 1 in 'E' Block has been proved and marked as Exhibits-P-25/PW-15 to P-30/PW15. The photographs were sealed in two envelopes which were then sealed in a big envelope and all the three envelopes have been marked as Exhibits-P-31/PW15, P-32/PW15, P-33/PW15. The certificate issued u/s 65B of the Evidence Act has been marked as Exhibit-P-34/PW15 with objection. The sealed envelope containing the pen drive has been proved and marked as Exhibit-P-35/PW15. The pen drive which was produced from the valid envelope has been marked as Exhibit-P-36/PW-15. The second pen drive was inside a plastic cover which was in a sealed condition and which has been proved and marked as Exhibit-P-37/PW-15. On opening the seal a 16 G.B. pen drive of Soni was found which has been marked as Exhibit-P-38/PW15.

In cross-examination on behalf of Md. Tauqueer, Shibu, Sriram Angaria, Panchanan Patro, Ramrai Karua, Shyamu Jojo, Gangadhar Khandait, Shivshankar Paswan, Ajay Mallah, Pinku Purty and others it has been deposed that it is a fact that in the letter sent from the office of the Superintendent,

Central Jail, Ghaghidih it was written that from 25.06.2019 to 04.07.2019 the CCTV cameras were not in a working condition. It is also true that under Memo No. 2761/2019 dated 20.07.2019 in which it was communicated through the Jail Superintendent to the concerned agency that in case the data is found in order all the datas from the server two hours prior and two hours after the incident on 25.06.2019 after recovering from the complete data by competent technicians should be made available. In para 105 of the case diary the statement of the technicians have been recorded in which it has been stated that it is difficult to pinpoint as to in which hard disc the incident has been recorded. The still photographs were never sent to FSL. He had not conducted Test Identification Parade of any of the accused as all were inmates of the Jail and were named in the First Information Report.

In cross-examination on behalf of Basudeo Mahato and Sanjay Diggi he has deposed that it is true that the certificate in terms of Section 65B of the Evidence Act was received by him from the Jail administration and it did not contain the details of CCTV cameras and the main hard disc. The certificate also does not contain the description as to through which process the data was transferred from the original device. He has admitted that on several occasions he had requested the Jail Administration to make available the hard disc of the CCTV footage but it was not done by giving a technical reason that it is difficult to fathom as to from which camera the recording was being made in the hard disc.

**21.** The statement of the accused persons were recorded u/s 313 Cr.P.C. in which they have denied their involvement in the murder.

**22.** Mr. A.K. Kashyap, learned Senior Counsel for the appellants has submitted that the ocular evidence does not speak of any witness having seen the incident. The entire basis for conviction of the appellants is the CCTV footage though no specific role has been assigned to any of the appellants. Learned Senior Counsel has submitted that the authentication certificate submitted by P.W.1 is not in the teeth of Section 65B of the

Evidence Act and the evidence of P.W15 reveals about the recovery of the data by the technicians of the service provider from corrupted source which further undermines the admissibility and reliability of the CCTV footage. It has further been submitted that no Test Identification Parade was held to ensure the presence of the appellants committing the assault more so when the prosecution has failed to substantiate the allegations leveled against the appellants who are named in the First Information Report. Even the Jailor (P.W.8) has been declared hostile and some of the key witnesses who also are injured witnesses namely, Pankaj Dubey, Sagar Lohar and Aman Mishra have not been examined by the prosecution. Mr. Kashyap, while referring to the authentication certificate has submitted that the same has been signed by P.W.1 and P.W.2 who are merely technicians in the service provider company and not by any responsible officer as envisaged in Section 65B (4) of the Evidence Act though the certificate was issued by the service provider. The learned trial court according to Mr. Kashyap, has not given due weightage to the frailties appearing in the authentication certificate but has primarily concentrated on the angle of conspiracy and other fringe issues which would have gained relevance if the CCTV footage was shorn of any short comings and accompanied by a valid authentication certificate.

The other counsels' espousing the cause of the appellants in their respective appeals have more or less adopted the submissions advanced by Mr. A.K. Kashyap.

**23.** Mr. Pankaj Kumar, learned P.P. has submitted that the authenticity of the still photographs and pen drives which have been supplied to all the conducting counsels in the trial have never been challenged by them. The requirement of Section 65B of the Evidence Act have been fulfilled as P.W.1 and P.W.2 who were the technicians deputed to carry out smooth functioning of CCTV cameras installed by the service provider in the premises of the Central Jail are the signatories to the authentication certificate. It has been submitted that the still photographs prepared from the CCTV footage clearly demonstrates



the role played by each of the appellants. The autopsy report is in consonance to the role played by each of the accused sentenced to death in the assault committed upon the deceased Manoj Kumar Singh. It has been submitted that P.W.5 in his evidence has claimed to have identified the assailants who were produced from various Jails. He has also relied upon the evidence of P.W.8 and P.W.9 while submitting that the involvement of the appellants in the assault is apparent and the entire circumstances have been rightly appreciated and considered by the learned trial court. So far as the imposition of death sentence on fifteen appellants are concerned, the same was rightly passed on consideration of the mitigating and the aggravating circumstances and the brazen manner in which the appellants took the law in their own hands and committed such assault.

**24.** We have heard the learned counsel for the respective sides and have also perused the Lower Court Records.

**25.** The allegations in the First Information Report are in two parts: the first being the act of Harish Singh who jumped queue in the telephone booth, snatched the telephone from an inmate and started dialing a number which infuriated some of the inmates resulting in a scuffle and the incident was further aggravated by Harish Singh and his associates including Manoj Kumar Singh (deceased) entering into Ward No. 1 of Sector 'E' and assaulting Pankaj Dubey; the second incident was by way of a retaliatory measure as several inmates entered into the first floor of Aaruni Block which included some wardens of the Jail and caused a brutal assault with lathi and danda upon a cowering Manoj Kumar Singh who succumbed to his injuries. Both the incidents should have led to registration of separate First Information Reports as one of the aggressors later on became a victim of violence unleashed by the inmates but surprisingly both the incidents have been clubbed together leading to a solitary First Information Report being registered.

It is to be gathered from the evidence adduced by the prosecution as to whether the appellants in one way or the

other involved in the incidents which had taken place inside the Jail premises.

**26.** So far as the ocular evidence is concerned fifteen witnesses have been examined by the prosecution out of which P.W.4, P.W.6, P.W.7 and P.W.8 have been declared hostile by the prosecution. Out of these four hostile witnesses P.W.8 is an official witness being a warden in the Jail. P.W.10, P.W.11, P.W.12, P.W.13 and P.W.14 are Medical practitioners who either have treated the injured or had conducted postmortem upon the deceased Manoj Kumar Singh. P.W.1 and P.W.2 are the technicians of M/s. Vantage Integrated Security Solution Company and who have issued the authentication certificate in terms of Section 65B of the Evidence Act. P.W.3 is a seizure list witness who is formal in nature. P.W.5 and P.W.9 are the Warden and Superintendent of the Jail respectively and P.W.15 is the Investigating Officer. It appears that P.W.5 and P.W.9 are the only witnesses of substance so far as the incident of assault is concerned.

**27.** P.W.5 in his testimony has stated that he is not an eye-witness to the occurrence though in his chief he has stated about witnessing the scuffle between two groups of Jail inmates. The tenor of his evidence seems to revolved around what has been seen from the CCTV footage. The evidence of P.W.9 who is the informant and the Superintendent of Central Jail, Ghaghidih has also based his evidence on the CCTV footage. The ocular evidence therefore does not indicate about any of the witnesses seeing the incident in person and have come to a conclusion about the involvement of the appellants in the sporadic acts of violence by looking at the CCTV footage. In the backdrop of the ocular evidence the CCTV footage assumes considerable significance and if we may say so has catapulted itself into a position of paramount importance. Section 65B of the Evidence Act reads as follows:

**65-B. Admissibility of electronic records.—(1)**

*Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or*

*magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

*(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—*

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;*
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and*
- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.*

*(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—*

- (a) by a combination of computers operating over that period; or*
- (b) by different computers operating in succession over that period; or*
- (c) by different combinations of computers operating in succession over that period; or*

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

*Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]*

**28.** Since in the present case the CCTV footage was transferred and stored in a pen drive such evidence becomes secondary evidence and therefore it has to be in order to be made admissible be backed up by a certificate as envisaged in Section 65B(4) of the Evidence Act. We may in such context profitably quote from the case of *“Arjun Panditrao Khotkar versus Kailash Kushanrao Gorantyal and Others”* reported in (2020) 7 SCC 1, which reads as follows:

**“34.** Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where “the computer”, as defined, happens to be a part of a “computer system” or “computer network” (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of *Anvar P.V.* which reads as “... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...”. This may more appropriately be read without the words “under Section 62 of the Evidence Act,...”. With this minor clarification, the law stated in para 24 of *Anvar P.V.* does not need to be revisited.”

It has further been held as follows:

**“60.** It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a “responsible official position” in relation to the operation of the relevant device, as also the person who may otherwise be in the “management of

*relevant activities” spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the “best of his knowledge and belief”. [Obviously, the word “and” between knowledge and belief in Section 65-B(4) must be read as “or”, as a person cannot testify to the best of his knowledge and belief at the same time.]*

**61.** *We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V., and incorrectly “clarified” in Shafhi Mohammad. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor, which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.”*

**29.** The authentication certificate in terms of Section 65B (4) of the Evidence Act has been issued under the signature of the CCTV technicians of M/s. Vantage Integrated Security Solution Company namely, Sudhir Kumar Singh and Md. Mahboob Alam Ansari who have been examined as P.W.1 and P.W.2 respectively. As per Section 65B (4) of the Evidence Act such certificate fulfilling the requirements as laid down in sub-Section 4 has to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of relevant activities (whichever is appropriate). In the present case the certificate has been given by the technicians who have been examined as P.W.1 and P.W.2. In fact, the certificate seems not to have been issued by P.W.1 and P.W.2 being in the “management of relevant activities” but has been issued by the company. In his examination-in-chief P.W.1 has stated about the authentication certificate having been prepared by his company

and similar statement has been given by P.W.2. Both P.W.1 and P.W.2 were merely the signatures to the authentication certificate. Since the authentication certificate was issued by the company it was but natural that the same should have been proved by a person occupying a responsible official position in the company. The authentication certificate though is said to have been issued by the company but neither the same is in its letterhead nor does it bear the seal of the company. If P.W.1 and P.W.2 were the authors of the authentication certificate its invalidity could have been minimized had the other factors favored the prosecution but as it seems no effort was made by the prosecution to get the authentication certificate proved by a competent person in terms of Section 65B (4) of the Evidence Act. As has been held in the case of **“Arjun Pandit Rao Khodkar versus Kamlesh Keshav Rao Grantial and Others”** (supra) that the certificate required u/s 65B (4) of the Evidence Act is a condition precedent to the admissibility of evidence by way of electronic record.

**30.** Another interesting feature is the authenticity of the CCTV footage transferred to pen drive. The incident of assault in the Jail premises had taken place on 25.06.2019 and P.W.15 has admitted that in the letter sent from the Office of the Jail Superintendent, Central Jail, Ghaghidih it was mentioned that from 25.06.2019 to 04.07.2019 the CCTVs were not in a working condition. P.W.1 has proved an application signed by him and two other technicians certifying that the video and footage of 32 cameras and one server have become corrupted. Nothing has been stated as to whether the corrupted data included the video footage of the incident or not. The entire circumstances have created a doubt about the authenticity of the electronic record adduced by the prosecution and since it has no other evidence to fall back upon it therefore cannot secure the conviction of the appellants.

**31.** There is no denying the fact that Manoj Kumar Singh had met with a homicidal death. There is also no denying the fact that several inmates suffered injuries on account of the scuffle inside the Jail premises. The involvement of the

appellants in the brawl and the indiscriminate assault upon Manoj Kumar Singh however has not been proved by the prosecution as none of the witnesses have claimed themselves to be the eye-witnesses and since the inadmissibility of electronic evidence has been considered and discussed above, the identification of some of the appellants from the CCTV footage also as a consequence pales into insignificance.

**32.** The learned trial court has not properly appreciated the ocular evidence as well as electronic evidence which were the trump card for the prosecution though held to be inadmissible in evidence by this Court.

**33.** We, therefore, on the basis of the discussions made hereinabove come to the conclusion that the impugned judgment of conviction dated 06.08.2022 and the order of sentence dated 18.08.2022 passed by Sri Rajendra Kumar Sinha, learned Additional Sessions Judge-IV, East Singhbhum, Jamshedpur in Sessions Trial No. 199/2021 is not sustainable in the eye of law and, accordingly, the same is hereby set aside.

**34.** These appeals are allowed.

**35.** The Death Reference is answered accordingly.

**36.** The appellants are directed to be released immediately and forthwith if not wanted in any other case.

**37.** Pending I.As., if any, stands disposed of.

**(Rongon Mukhopadhyay, J.)**

**(Ambuj Nath, J.)**

**High Court of Jharkhand at Ranchi**

*Dated, the 5<sup>th</sup> day of April, 2023.*

*Alok/NAFR*