

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Criminal Appeal No. 38 OF 2004****Kallu Singh @ Hakim Singh & Ors.****-Vs-****State of M.P.**

Shri Arun Barua, Counsel for the appellants.

Shri Prakhar Dhengula, Panel Lawyer for the respondent/State.

J U D G M E N T
(19/04/2017)

This criminal appeal has been filed under Section 374 of Cr.P.C. against the judgment dated 27.12.2003 passed by Second Additional Sessions Judge, Dabra, District Gwalior in S.T.No.25/2003 by which the appellants have been convicted and sentenced as under:-

Appellants No.1, 3, 5 and 6:-

Section	Act	Imprisonment	Detail of fine/if deposited	Imprisonment in lieu of fine
148	IPC	6 months RI	---	---
307	IPC	3 Years RI	500/-	6 Months RI

Appellant No.8:-

Section	Act	Imprisonment	Detail of fine/if deposited	Imprisonment in lieu of fine
148	IPC	6 Months RI	-	--
307/149	IPC	3 Years RI	500/-	6 Months RI

Appellants No.2, 4 and 7:-

Section	Act	Imprisonment	Detail of fine/if deposited	Imprisonment in lieu of fine
147	IPC	6 Months RI	-	-
307/149	IPC	3 Years RI	500/-	6 Months RI

The necessary facts for the disposal of the present appeal in short are that the complainant Laxman Singh lodged a FIR on 14.9.2002 alleging that he along with his brother Raghuvir were going to their houses. It was about 7:00 in the evening, the appellant Kunwar Singh armed with gun, Kallu armed with Farsa, Rajvir armed with Lathi, Raje armed with sword, Puttu armed with Lathi, Anar Singh armed with Farsa, Santu and Karan Singh armed with lathi came there and scolded his brother Raghuvir as to why he is not repaying the money. On the dispute of money transaction, the appellant Kallu with an intention to kill his brother assaulted by means of Farsa causing injury on his head, Raje assaulted by means of axe causing injury on his forehead, Anar Singh assaulted by means of Farsa causing injury above the left eye, Karan Singh assaulted by means of axe causing injury above the left ear, Kunwar Singh was standing there pointing his gun whereas Puttu, Santu, Rajvir assaulted by means of lathis, as a result of which, injuries were sustained by his brother. Ghanshyam Jat, Bali Jat etc. came there after hearing the alarm and they have also seen the incident. The police registered the crime, prepared the spot map, arrested the accused persons, seized the weapons of crime, sent the injured Raghuvir for medical treatment and after recording the statements of the witnesses filed the charge sheet for offences under Sections 307, 147, 148, 149 of IPC.

The Trial Court by order dated 28.1.2003 framed the charges against the appellant Pappu for an offence under Sections 148, 307/149 of IPC against Puttu, Sattu, Rajvir for offences under Sections 147, 307/149 and 323 of IPC, against the appellants Kallu, Raje, Anar Singh and Karan Singh for offences under Sections 148, 307 of IPC.

The appellants abjured their guilt and pleaded not guilty.

The prosecution in order to prove its case examined

Laxman Singh (PW-1), Ghanshyam Singh (PW-2), Roop Singh (PW-3), Gyan Singh (PW-4), Raghuvir Singh (PW-5), Sumer Singh (PW-6), Jainarayan (PW-7), Shivram (PW-8), Sobran Singh (PW-9), Bali @ Devendra Singh (PW-10), R.K. Gupta (PW-11), R.N.S. Gaur (PW-12), Dr. Alok Kediya (PW-13), Dr. R.K. Agrawal (PW-14), Bankaram (PW-15), Rajendra Sharma (PW-16), Dr. Ramlakhan Singh Sengar (PW-17) and Jagdish Prasad Bhatt (PW-18).

The appellants examined Bhupendra Singh (DW-1), Shriram (DW-2), Ravendra Singh (DW-3) and Baijnath (DW-4) in their defence.

Dr. R.K. Agrawal (PW-14) has stated that on 14.9.2002 he was posted on the post of Medical Officer, Community Health Centre, Dabra. On the said date, he had examined the injured Raghuvir and had found the following injuries:-

1. Incised wound 13x1.0xbone deep over forehead region transversely.
2. Incised wound 6x1.5x8cm below left eye.
3. Incised wound 9x.5x bone deep middle of left ear width.
4. Incised wound 5x0.9x0.5cm on left temporal bone.
5. Incised wound 5.5x0.6x0.6cm on occipital bone.
6. Incised wound 4x0.6x0.3cm on middle of head.
7. Incised wound 5.2x0.6x0.4cm on right temporal bone."

The injuries were collectively dangerous to life. The patient was referred to Gwalior for x-ray and for other expert opinion. The MLC of the injured Raghuvir is Ex.P/19. In cross-examination, this witness admitted that none of the injury found on the body of the injured could have been caused by hard and blunt object and all the injuries were on the bony part of the injured. This witness further admitted that he had mentioned that the injuries were incised in nature, therefore,

it is clear that after thorough examination of the nature of the injuries he has mentioned the same. He further admitted that no weapons were sent to him for his opinion with regard to the nature of the injuries. He further specifically stated that he had not examined the injured in a hurry and specifically stated that he had referred the injured after examining him minutely and had provided first aid.

Dr. Ramlakhan Singh Sengar (PW-17) had treated the injured in J.A. Hospital, Gwalior. He has stated that at the time of the admission, the injured was unconscious. On 15.9.2002 the C.T. Scan was got done and the fracture on the head as well as the fracture on left side lateral wall of left orbit, swelling on left side of temporal parietal region was found. The report of the CT scan is Ex.P/24. The injured had remained admitted in the hospital for treatment till 23.9.2002. The covering letter which is signed by Dr. Manish is Ex.P/21 and the photocopy of the same is Ex. P/21/C. The progress chart of the injured Raghuvir from 15.9.2002 to 22.9.2002 is Ex.P/22 and P/23 and the photocopies of the same are Ex.P/22/C and Ex.P/23/C. This witness was cross-examined. He specifically stated that in Ex.P/24 which is the CT scan report, except fracture of left frontal orbit and left temporal bone and swelling, no other deformity was found. He further stated that a person may get unconscious in case if his head gets dashed against a solid material.

Dr. Alok Kediya (PW-13) has conducted the x-ray of the injured Raghuvir. In x-ray, a fracture of left frontal bone and superior orbital margin of skull was seen. The x-ray report is Ex.P/18.

Thus, the prosecution has established beyond reasonable doubt that the injured Raghuvir had sustained seven incised wounds on different parts of his head and had also sustained the fracture of left frontal bone and superior orbital margin of

skull.

The next question for determination is that who is the author of these injuries.

Raghuvir Singh (PW-5) is the injured. He has stated that he along with his brother Laxman were coming back to his house and on the way they found that the appellants were standing. Kallu and Anar Singh were having Farsa, Kunwar Singh was having gun, Raje was having sword, Karan Singh was having axe and Rajvir, Santu and Puttu were having Lathis. The moment they reached near the appellants, they were stopped by them and Kallu scolded that why he is not repaying his money. When this witness assured that the money would be repaid by tomorrow, at that time Kallu assaulted on his left side of his head by means of a Farsa, Raje assaulted by means of sword above the eyebrow, Anar Singh assaulted by means of Farsa which landed on his left eye, Karan Singh assaulted by means of an axe causing injury on his left ear. Kunwar Singh had pointed his gun towards the complainant Laxman. Puttu assaulted this witness by means of a lathi causing injury on his right hand, Santu assaulted by means of lathi causing injury on his left hand and Rajvir assaulted by means of a lathi causing injury on his head. Due to the injuries sustained by him, he became unconscious and fell down. All the appellants ran away. The incident was seen by Ghanshyam and Bali. He remained admitted in the Neurology Department till 23rd of the month and he is still undergoing treatment for his eye. In cross-examination, this witness admitted that the incident took place on the issue of non-payment of money. This witness on his own stated that he had taken only an amount of Rs. 500/- from Kallu and except that he had no dispute with him. As the interest part was to be calculated, therefore, he did not repay the amount to Kallu at that time. He further admitted that he regained consciousness

in the hospital after three days of the incident and his case diary statement was recorded after 11 days of the incident. As the doctor had not enquired from him about the incident, therefore, he did not inform the doctors about the incident. The house of Kailash Pandit is situated at a distance of about 20 feet from the place of incident and the house of other persons are situated there but those persons did not come on the spot. He further stated that he had suffered a fracture on the index finger of left hand but admitted that he never got treatment for that injury from the doctor. This witness was confronted with the omission in his case diary statement that Santu had assaulted him on the left hand by means of lathi but this witness could not explain as to why this fact is not mentioned in his police case diary statement which is Ex.D/3. He further admitted that he had not shown this injury to the doctor and, therefore, he has not treated the said injury. He was further confronted with the omission in his case diary statement that Rajvir had assaulted by means of lathi causing injury on his head, but this witness could not explain as to why such allegation is not mentioned in his police case diary statement which is Ex.D/3.

Laxman Singh (PW-1) is the complainant who stated that he was going back to his house along with the injured Raghuvir. He further stated that Kallu and Anar Singh were having Farsa, Raje was having sword, Karan was having axe, whereas Santu, Puttu and Rajvir were having lathis & Kunwar Singh was standing along with the gun. It was stated that his brother Raghuvir was surrounded by these appellants and Kallu scolded Raghuvir that he has not repaid his money. When the injured replied that he would return the amount by tomorrow at that time Kallu assaulted the injured by means of a Farsa which landed on the left side of his head, Raje assaulted by means of sword causing injury on forehead of

Raghuvir, Anar Singh assaulted by means of Farsa causing injury on left side of eye of the injured and Karan assaulted by means of axe causing injury on his head. Santu, Puttu and Rajvir assaulted the injured Rajvir by means of lathis causing injuries on the back of head of the injured. Kunwar Singh during the whole period of assault was standing and had pointed the gun towards this witness. Ghanshyam and Bali reached on the spot. The injured was taken to the police Station along with Bali and Ghanshyam where FIR Ex.P/1 was lodged. The injured was sent to Dabra Hospital for medical treatment from where he was referred to Gwalior Hospital. In Gwalior, the injured remained admitted in the Neurology Department till 23rd. Thereafter for the operation of his eye, he was referred to the eye hospital. On 27th he was operated upon for treatment of his eye but he could not get any benefit from that and his treatment of eye is still going on. This witness was also cross-examined in detail. He admitted that several criminal cases were registered against his brother including the offence under Sections 307 and 306 of IPC but he denied that as several criminal cases are pending against his brother Raghuvir, therefore, lot of persons have enmity with him. He further stated that when they reached on the spot, the appellants were already standing there. This witness was confronted with the omission in F.I.R. Ex.P/1 as well as case diary statement which is Ex./D1 about the allegation that Kallu demanded money from Raghuvir and in reply Raghuvir said that he would repay the amount by tomorrow and this witness could not explain the reason that as to why this allegation was not mentioned. This witness was also confronted with his FIR Ex.P/1 and case diary statement which is Ex.D/1 with regard to the omission of the allegation that Kunwar Singh had pointed the gun "towards him" and this witness could not explain as to why the allegation of pointing

the gun "towards him" is not mentioned. He further stated that as the appellant Kunwar Singh has pointed his gun towards this witness, therefore, he did not intervene in the matter. He further stated that the other witnesses had reached on the spot after hearing the alarm raised by the injured Raghuvir. Raghuvir was shouting at the time when he was being assaulted. He further admitted that no gunshot was fired during the entire incident and none of the accused persons assaulted this witness. He further denied this fact that he was not present on the spot, therefore, he was not assaulted. This witness was further confronted with the omission in his FIR Ex.P/1 and police case diary statement which is Ex.D/1 with regard to the allegation that Puttu and Rajvir had assaulted the injured by means of lathi on head and back of the injured Raghuvir (PW-5) and this witness could not explain as to why the said allegation is not mentioned. This witness also admitted that when he lifted the injured from the spot, his clothes also got stained with blood but as he was concerned about the injured, therefore, he did not show his clothes to the police. He further admitted that after about 11 days of the incident his case diary statement was recorded.

Ghanshyam Singh (PW-2) has also supported the prosecution case and has stated that he had seen the incident as narrated by Raghuvir Singh (PW-5) and Laxman Singh (PW-1). This witness was cross-examined. In cross-examination, he also admitted that his case diary statement was recorded about 10-11 days of the incident. He denied the suggestion that as the independent witnesses were not ready to give false evidence, therefore, he has been introduced as a witness being the relative of the injured. He further admitted that he never disclosed to the police that Rajvir and Puttu had assaulted the injured by means of Lathi.

Roop Singh (PW-3) has turned hostile and has not

supported the prosecution case. He was a witness of the arrest of the appellant Rajvir and was a witness of seizure of lathi from the possession of Rajvir. This witness has accepted his signatures on the arrest memo Ex.P/2 and the seizure memo Ex.P/3 but stated that neither the appellant Rajvir was arrested nor any weapon of crime was seized.

Gyan Singh (PW-4) was also a witness to the arrest of appellant Rajvir as well as the seizure of lathi from the possession of Rajvir. This witness has also not supported the prosecution case and was declared hostile. He was cross-examined by the Public Prosecutor. In cross-examination, he admitted his signatures on the arrest memo Ex.P/2 and the seizure memo Ex.P/3.

Sumer Singh (PW-6) has also not supported the prosecution case and was declared hostile. This witness was the witness of preparation of spot map as well as the seizure of blood stained earth and the plain earth from the spot. This witness was cross-examined by the Public Prosecutor but nothing could be elicited from the evidence which may support the prosecution case.

Jainarayan (PW-7) was also the witness of spot map as well as the seizure memo of blood stained earth and the plain earth from the spot. He also did not support the prosecution case and was declared hostile. He was cross-examined by the Public Prosecutor but nothing could not elicited from the evidence which may support the prosecution case.

Shivram (PW-8) also did not support the prosecution case and he was declared hostile. He denied that the appellant Kallu, Puttu Singh, Karan Singh and Santu Singh were arrested in his presence. He also denied that one lathi from the possession of Puttu, one lathi from the possession of Santu and an axe from the possession of appellant Karan Singh and one Farsa from the possession of appellant Kallu

were seized in his presence and nothing could be elicited from the evidence which may support the prosecution case.

Similarly Sobran Singh (PW-9) has also not supported the prosecution case and was declared hostile. He has also stated that none of the appellant was arrested in his presence and has also not supported the seizure of the weapons of crime from the possession of the appellants.

Bali @ Devendra Singh (PW-10) has supported the prosecution case and has narrated the incident as stated by Raghuvir Singh (PW-5), Laxman Singh (PW-1) and Ghanshyam Singh (PW-2). Apart from the role played by other co-accused persons, this witness has stated that Rajvir assaulted the injured by means of lathi causing injury on his head whereas Puttu assaulted the injured by means of a lathi causing injury on his back and Santu assaulted the injured by means of lathi causing injury on his left hand. Thereafter, they took the injured Raghuvir to the police station where the FIR was lodged and at that time this witness was sitting outside the police station in the tractor only. This witness was also cross-examined in detail. In cross-examination, he has stated that as his buffalo was lost, therefore, he went towards the spot in search of his buffalo otherwise there was no reason for him to go to the spot of incident. As he noticed that Raghuvir and Laxman were coming, therefore, he stopped there but could not explain the reason for stopping. This witness was confronted with his case diary statement with regard to omission that the appellant Kunwar Singh had pointed his gun towards Laxman Singh (PW-1) and he could not explain as to why that allegation is not mentioned in his case diary statement. In cross-examination, he denied that he and the complainant party belong to one party in the village. He further stated that the injured belongs to Thakur whereas his father is Patel.

R.K. Gupta (PW-11) has stated that on 19.9.2002 vide Ex.P/6 he had arrested the appellant Kallu. On the same day, Puttu Singh was arrested vide arrest memo Ex.P/7, Karan Singh was arrested vide arrest memo Ex.P/8 and Santu Singh was arrested vide arrest memo Ex.P/9. On 26.9.2002, he had arrested the appellant Raje vide arrest memo Ex.P/14 and Anar Singh was arrested vide arrest memo Ex.P/15. One Farsa was seized from the possession of Anar Singh vide seizure memo Ex.P/16 and one sword was seized from the possession of Raje & Rajendra vide seizure memo Ex.P/17. On 19.9.2002 itself he had seized one lathi from the possession of Puttu Singh vide seizure memo Ex.P/10 and one lathi was seized from the possession of Santu Singh vide seizure memo Ex.P/11. One axe was seized from the possession of Karan Singh vide seizure memo Ex.P/12 and one Farsa was seized from the possession of Kallu @ Hakim Singh vide seizure memo Ex.P/13. In cross-examination, this witness admitted that on 19.2.2002 when he arrested Kallu Singh, Puttu Singh, Karan Singh and Santu Singh they were having the weapons with them and since separate seizure memo were prepared, therefore, the said fact is not mentioned in the arrest memo. He further stated that none of the weapons were stained with blood, therefore, they were not sent for chemical examination. He further denied the suggestion that no weapon of crime was seized from the possession of the appellants.

R.N.S. Gaur (PW-12) has stated that on the report lodged by Laxman Singh, Crime No.129/2002 for offences under Sections 307, 341, 147, 148, 149 of IPC was registered and the FIR is Ex.P/1. Spot map was prepared which is Ex.P/4 and the blood stained earth and plain earth was seized from the spot which is Ex.P/5. Rajvir was arrested vide seizure memo Ex.P/2 and one lathi was seized from the possession of Rajvir vide seizure memo Ex.P/3. In cross-examination, this

witness has admitted that the witnesses had not specified that on which part of the body of the injured the appellant Sattu, Puttu and Rajvir had caused the injuries. He further admitted that although it was not specifically stated by the witnesses that Kunwar Singh was standing and was pointing his gun towards "Laxman" but this witness has stated on his own that it was informed that Kunwar Singh has pointed his gun. This witness further stated that after lodging the FIR the injured was sent to the hospital. He went on the spot in the night itself but since no witness was found, therefore, again he went in the morning. This witness further stated that he had tried to record the statement of the independent witnesses but all of them had expressed their absence at the time of the incident. The family members Kailash Pandit, Sobran and Durga Modi were not inclined to give their statements. He denied that he had lodged the FIR subsequently. Although he admitted the overwriting on the timings of the FIR.

Bankaram (PW-15) also did not support the prosecution case. He denied that the appellant Raju was arrested in his presence although he admitted his signatures on the arrest memo which is Ex.P/14. He further denied that the appellant Anar Singh was arrested in his presence but admitted his signatures on arrest memo Ex.P/15. He further denied that a Farsa was seized from the possession of Anar Singh but he admitted his signatures on Ex.P/16. He further denied the seizure of sword from the possession of Raje but he admitted his signatures on seizure memo Ex.P/17. In cross-examination, this witness has stated that while he was going in front of the police station, at that time his signatures were obtained by the police on the documents.

Rajendra Sharma (PW-16) has stated that on 16.9.2002 he had submitted the copy of the FIR to the Court of JMFC which was received by the Clerk. The Dak Book is Ex.P/20.

Jagdish Prasad Bhatt (PW-18) had seized one gun from the possession of Pappu @ Kunwar Singh Chauhan vide seizure memo Ex.P/25 and had arrested the appellant Pappu @ Kunwar Singh Chauhan vide arrest memo Ex.P/26. In cross-examination, this witness has admitted that he was searching for the appellant Pappu @ Kunwar Singh and when he could not find him, therefore, he had filed an application under Section 82, 83 of Cr.P.C. for attachment of the property of the appellant Pappu @ Kunwar Singh.

Bhupendra Singh (DW-1) has stated that he had not seen the appellant assaulting the injured Raghuvir and he had merely seen the injured lying in an unconscious stage on the spot and at that time he was all alone.

Shriram (DW-2) has stated that as per his information no incident has taken place.

Ravendra Singh (DW-3) has stated that he had not seen the assailants assaulting the injured Raghuvir.

Bajnath (DW-4) has stated that at about 7:00 PM he heard the shouts and saw that 4-5 persons were assaulting the injured Raghuvir but he could not identify the assailants but the present appellants were not there. It was further stated that after noticing this witness the assailants had ran away.

From the appreciation of the evidence which has come on record, it is clear that Raghuvir Singh (PW-5), Laxman Singh (PW-1), Ghanshyam (PW-2) and Bali @ Devendra Singh (PW-10) have specifically stated that the appellant Kunwar Singh was having a gun, Kallu and Anar Singh were having Farsa, Raje was having a sword and Karan Singh was having an axe. According to these witnesses Rajvir, Santu and Puttu were having lathi.

So far as the role played by appellant No.1 Kallu @ Hakim Singh, appellant No.5 Raje @ Rajendra Singh, appellant

No.6 Anar Singh, appellant No.3 Karan Singh and appellant No.8 Pappu @ Kunwar Singh is concerned, all the witnesses have spoken in the similar voice that Pappu @ Kunwar Singh was having gun and he had pointed the gun towards Laxman Singh (PW-1), Kallu and Anar Singh assaulted the injured Raghuvir by means of Farsa whereas Raje and Karan Singh by means of sword and an axe. Seven incised wounds were also found on the body of the injured Raghuvir. Thus, the evidence of Laxman Singh (PW-1), Ghanshyam Singh (PW-2), Raghuvir Singh (PW-5) and Bali @ Devendra Singh (PW-10) is corroborated by the medical evidence.

It is submitted by the counsel for the appellants that so far as Laxman Singh (PW-1), Ghanshyam Singh (PW-2), Bali @ Devendra Singh (PW-10) are concerned undisputedly they are the witnesses who are closely related to the injured Raghuvir (PW-5) and, therefore, their evidence should not be relied upon. The submission made by the counsel for the appellants is misconceived and is hereby rejected.

The Supreme Court in the case of **Jodhan vs. State of M.P.** reported in **(2015) 11 SCC 52** has held as under:-

"24. First, we shall deal with the credibility of related witnesses. In *Dalip Singh v. State of Punjab AIR 1952 SC 54*, it has been observed thus: (AIR p. 366, para 25)

"25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar v. State of Rajasthan (1981) 3 SCC 675.*"

In the said case, it has also been further

observed: (AIR p. 366, para 26)

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

25. In *Hari Obula Reddy v. State of A.P.* (1974) 3 SCC 277, the Court has ruled that evidence of interested witnesses per se cannot be said to be unreliable evidence. Partisanship by itself is not a valid ground for discrediting or discarding sole testimony. We may fruitfully reproduce a passage from the said authority: (SCC pp. 683-84, para 13)

"13. ... an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

26. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false

implication, the court before relying upon his testimony should seek corroboration in regard to material particulars. In the instant case, the witnesses who have deposed against the accused persons are close relatives and had suffered injuries in the occurrence. Their presence at the scene of occurrence cannot be doubted, their version is consistent and nothing has been elicited in the cross-examination to shake their testimony. There are some minor or trivial discrepancies, but they really do not create a dent in their evidence warranting to treat the same as improbable or untrustworthy."

The Supreme Court in the case of **Satbir Singh & Ors. vs. State of Uttar Pradesh** reported in **(2009) 13 SCC 790** has held as under:-

"**26.** It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon. Furthermore, as noticed hereinbefore, at least Dhum Singh (PW 7) is an independent witness. He had no animus against the accused. False implication of the accused at his hand had not been suggested, far less established."

The Supreme Court in the case of **Balraje @ Trimbak vs. State of Maharashtra** reported in **(2010) 6 SCC 673** has held as under:-

"**31.** In our case, as observed earlier, the trial court and the High Court have analysed the testimony of PWs 1, 2 and 4 in great detail. It is revealed that the appellant had inflicted the first blow on the deceased in his chest and he fell on the ground. The High Court found that the role ascribed to the others was not fully satisfied."

It is also a matter of common knowledge that nowadays the independent witnesses try their level best to stay away from the incident and generally they do not come forward to depose in order to avoid any enmity with the accused persons. Thus, merely because where independent witnesses have not supported the prosecution case, it cannot be said that the evidence of the related witnesses cannot be relied upon. The only requirement of law is that their evidence should be closely scrutinized and should be accepted with caution. In the present case apart from the evidence of Laxman Singh (PW-1), Ghanshyam Singh (PW-2), Bali @ Devendra Singh (PW-10) the evidence of the injured witness Raghuvir Singh (PW-5) is also available on record. The testimony of an injured witness has its own significance and it has to be placed reliance upon unless and until there are strong reason for rejection of his evidence on the basis of major contradictions and omissions. The fact that seven incised wounds were sustained by Raghuvir Singh (PW-5) that by itself is an inbuilt guarantee of his presence on the spot. Even Bhupendra Singh (DW-1) and Baijnath (DW-4) have accepted that they had seen the injured Raghuvir lying on the spot. Baijnath (DW-4) has gone to the extent of saying that he had seen 4-5 unidentified persons assaulting the injured Raghuvir. Thus, the fact that Raghuvir was assaulted and he had received injuries has not been denied/disputed by the appellants. In fact by examining their defence witnesses the appellants themselves have admitted that some incident did take place with injured Raghuvir and he had sustained injuries. In absence of any contradiction or inconsistency in the evidence of the witnesses, although Laxman Singh (PW-1), Ghanshyam Singh (PW-2), Bali @ Devendra Singh (PW-10) are related to the injured Raghuvir Singh (PW-5) and even when the independent witnesses could not come forward to depose about the incident and

the counsel for the appellants also could not point out any contradiction or inconsistency in the evidence of the witnesses, this Court is of the considered opinion that the evidence of Laxman Singh (PW-1), Ghanshyam Singh (PW-2) and Bali @ Devendra Singh (PW-10) is reliable so far as their allegations against Pappu @ Kunwar Singh, Raje @ Rajendra Singh, Karan Singh, Kallu Singh @ Hakim Singh and Anar Singh is concerned.

Further, the FIR was lodged on 14.9.2002 at about 9.05 PM. Although there is an overwriting on the timings of the FIR but it is not of much importance as the injured was medically examined by Dr. R.K. Agrawal (PW-14) at 9:45 PM. It is the case of the prosecution that initially the injured was taken to the police station and after the FIR was lodged he was sent for medical treatment. Thus in any circumstance, the FIR was lodged at least prior to 9:45 PM. The incident is alleged to have taken place at approximately 7:00 PM and the FIR was lodged within 2-2½ hours of the incident. A specific role has been assigned to Pappu @ Kunwar Singh to the effect that he was having a gun and had pointed the gun towards the witnesses, although there is an omission in the statements of the witnesses to the effect that the appellant Pappu @ Kunwar Singh had pointed the gun towards the witness "Laxman Singh (PW-1)" but in the considered opinion of this Court this omission is not of such a nature which may give deep dent to the prosecution case. As this omission is minor in nature, therefore, it cannot be treated to be contradiction which may falsify the allegation against the appellant Pappu @ Kunwar Singh. So far as the role played by the appellants Kallu, Raje, Anar Singh and Karan Singh is concerned, the evidence of all the four witnesses namely Laxman Singh (PW-1), Ghanshyam Singh (PW-2), Raghuvir Singh (PW-5) and Bali @ Devendra Singh (PW-10) is consistent. The evidence of the witnesses is

consistent with regard to the weapon used by the appellants. Thus, this Court is of the considered opinion that the prosecution has succeeded in establishing that Kunwar had pointed the gun at the time of the incident whereas Kallu, Raje, Anar Singh and Karan Singh had assaulted the injured Raghuvir by means of Farsa, Axe and sword causing injuries on the head of the injured Raghuvir. Two fractures on the head region of the injured Raghuvir were also found.

So far as the role played by Rajvir, Puttu and Santu is concerned, it is clear that Dr. R.K. Agrawal (PW-14) did not find any lacerated wound or any wound on the body of the injured which could have been caused by hard and blunt object. In paragraph 3 of his cross-examination, Dr. R.K.Agrawal (PW-14) has specifically admitted that no injury which could have been caused by hard and blunt object was found on the body of the injured Raghuvir. The Trial Court also in paragraph 40 of its judgment has given a finding that the prosecution has failed to prove that the appellant Puttu, Santu and Rajvir had assaulted the injured Raghuvir by means of Lathi. Accordingly, Puttu, Santu and Rajvir were acquitted of the charge under Section 323 of IPC.

The next question for determination would be that whether Rajvir, Santu and Puttu were the members of an unlawful assembly and whether they can be convicted with the help of Section 149 of IPC.

The Supreme Court in the case of **State of Maharashtra vs. Ramlal Devappa Rathod & Ors.** reported in **(2015) 15 SCC 77** has held as under:-

"21. That brings us to the question whether in an attack such as the present one, how far the principle laid down by this Court in *Masalti AIR 1965 SC 202* is applicable? In *Masalti AIR 1965 SC 202* one Laxmi Prasad and his armed companions had proceeded to the house of

one Gayadin. On the instigation of Laxmi Prasad, the assailants broke open the doors of the house of Gayadin, killed four persons including Gayadin and dragged their bodies out of the house whereafter one more person was killed. These five dead bodies were then taken to the field and set on fire. Out of thirty-five accused who were convicted, ten accused were given death sentence. The High Court confirmed their sentence of death and out of the remaining accused, seven were given benefit of doubt. Insofar as the accused who were convicted with the aid of Section 149, the High Court adopted a test and held that unless at least four witnesses had shown to have given a consistent account against any of the appellants, the case against them could not be said to have been proved. The decision discloses that except Laxmi Prasad, none of the assailants was assigned any particular part. The evidence as regards other accused was that they were part of unlawful assembly which is evident from the following observations of this Court: (*Masalti case AIR 1965 SC 202, AIR p. 207, para 7*)

"7. ... It also considered another feature which characterised the evidence of all the witnesses and that was that they gave their account of the incident substantially in similar terms and did not assign particular parts in respect of overt acts to any of the assailants except Laxmi Prasad, Accused 1."

The observations of this Court further show that though testimony of a single witness would be enough to convict an accused person, in a case involving large number of accused, where the witnesses depose to the fact that certain persons were members of unlawful assembly which had committed the offences in question, a test so adopted by the High Court was found to be safe. It was observed that though every member of the unlawful assembly would be liable for the offence committed by anyone actuated by and

entertaining common object of the unlawful assembly, in the absence of any overt act or specific allegation, it was possible to adopt such test.

22. We may at this stage consider the law of vicarious liability as stipulated in Section 149 IPC. The key expressions in Section 149 IPC are:

(a) if an offence is committed by any member of an unlawful assembly;

(b) in prosecution of common object of that assembly;

(c) which the members of that assembly knew to be likely to be committed in prosecution of that object;

(d) every person who is a member of the same assembly is guilty of the offence.

This section makes both the categories of persons, those who committed the offence as also those who were members of the same assembly liable for the offences under Section 149 IPC, if other requirements of the section are satisfied. That is to say, if an offence is committed by *any person* of an unlawful assembly, which the members of that assembly knew to be likely to be committed, *every member* of that assembly is guilty of the offence. The law is clear that *membership* of unlawful assembly is sufficient to hold such members vicariously liable.

23. It would be useful to refer to certain decisions of this Court. In *State of U.P. v. Kishanpal (2008) 16 SCC 73* it was observed: (SCC p. 93, para 47)

"47. ... It is well settled that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words, mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew

were likely to be committed.”

Further, in *Amerika Rai v. State of Bihar (2011) 4 SCC 677* it was observed as under: (SCC p. 682, para 13)

“13. The law of vicarious liability under Section 149 IPC is crystal clear that even the presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly.”

24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons. But in a situation where assault is opened by a mob of fairly large number of people, it may at

times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are not attributed of having done any specific overt act, were innocent bystanders or were actually members of the unlawful assembly. It is for this reason that in *Masalti AIR 1965 SC 202* this Court was cautious and cognizant that no particular part in respect of an overt act was assigned to any of the assailants except Laxmi Prasad. It is in this backdrop and in order to consider

“whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly”, (AIR p. 211, para 17)

this Court at SCR pp. 148-49 in *Masalti AIR 1965 SC 202* observed that his participation as a member of the unlawful assembly ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in *Masalti AIR 1965 SC 202* was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but what was alleged against them was about their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain named assailants, it would directly run counter to the well-known maxim that “evidence has to be weighed and not counted” as statutorily recognised in Section 134 of the Evidence Act.”

The Supreme Court in the case of **Subal Ghorai & Ors. vs. State of West Bengal** reported in **(2013) 4 SCC 607**

has held as under:-

"52. The above judgments outline the scope of Section 149 IPC. We need to sum up the principles so as to examine the present case in their light. Section 141 IPC defines unlawful assembly to be an assembly of five or more persons. They must have common object to commit an offence. Section 142 IPC postulates that whoever being aware of facts which render any assembly an unlawful one intentionally joins the same would be a member thereof. Section 143 IPC provides for punishment for being a member of unlawful assembly. Section 149 IPC provides for constructive liability of every person of an unlawful assembly if an offence is committed by any member thereof in prosecution of the common object of that assembly or such of the members of that assembly who knew to be likely to be committed in prosecution of that object. The most important ingredient of unlawful assembly is common object. Common object of the persons composing that assembly is to do any act or acts stated in clauses "First", "Second", "Third", "Fourth" and "Fifth" of that section. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of common assembly is a relevant factor. At what point of time common object of unlawful assembly was formed would depend upon the facts and circumstances of each case. Once the case of the person falls within the ingredients of Section 149 IPC, the question that he did nothing with his own hands would be immaterial. If an offence is committed by a member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults intended victims, all may not take

part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly.

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

The Supreme Court in the case of **Balaka Singh & Ors. vs. State of Punjab** reported in **(1975) 4 SCC 511** has held

as under:-

"8. The suggestion of the appellants is that they were falsely implicated because the prosecution could not succeed in convicting Balaka Singh for the murder of Gurnam Singh in the previous murder case. It was to wreak fresh vengeance on the accused that they had been falsely implicated in the present case. It is true that there are as many as eight witnesses who are alleged to have seen the occurrence and they have given a parrot-like version of the entire case regarding the assault on the deceased by the various accused persons. All these witnesses have with one voice and with complete unanimity implicated even the four accused persons, acquitted by the High Court, equally with the appellants making absolutely no distinction between one and the other. A perusal of the evidence of the prosecution witnesses would show that the prosecution case against the appellants and the four accused is so inextricably mixed up that it is not possible to sever one from the other. It is true that, as laid down by this Court in *Zwinglee Ariel v. State of M.P.* AIR 1954 SC 15 and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply. We are satisfied that in the facts of the present case, having regard to the partisan and interested evidence of the prosecution witnesses who can implicate the appellants and the four accused equally with regard to the assault on the deceased it is not possible to reject the prosecution case with

respect to the four accused and accept it with respect to the other five appellants. If all the witnesses could in one breath implicate the four accused who appear to be innocent, then one cannot vouchsafe for the fact that even the acts attributed to Balaka Singh, Joginder Singh, Pritam Singh, Darbara Singh and Jarnail Singh may have been conveniently made to suit the needs of the prosecution case having regard to the animus which the witnesses as also Banta Singh bore against the appellants. In these circumstances, therefore, we are satisfied that in view of the finding of the High Court that the FIR was a belated document having come into existence much later than the time it is said to have been recorded and which adds the names of the four accused against whom the prosecution case is absolutely identical with the appellants, the case of the appellants cannot at all be distinguished from that of the four accused in any respect. If the case against the four accused fails, then the entire prosecution will have to be discarded and it will not be possible for this Court to make out a new case to convict the appellants as has been done by the High Court."

The Supreme Court in the case of **Ganesh vs. State of Karnataka & Ors.** reported in **(2008) 17 SCC 152** has held as under:-

"15. As a rule of universal application, it cannot be said that when a portion of the prosecution evidence is discarded as unworthy of credence, there cannot be any conviction. It is always open to the court to differentiate between an accused who has been convicted and those who have been acquitted. (See *Gurcharan Singh v. State of Punjab AIR 1956 SC 460* and *Sucha Singh v. State of Punjab (2003) 7 SCC 643*) The maxim *falsus in uno, falsus in omnibus* is merely a rule of caution. As has been indicated by this Court in *Sucha Singh case (2003) 7 SCC 643* in terms of felicitous metaphor, an attempt has to be

made to separate the grain from the chaff, truth from falsehood. When the prosecution is able to establish its case by acceptable evidence, though in part, the accused can be convicted even if the co-accused have been acquitted on the ground that the evidence led was not sufficient to fasten guilt on them. But where the position is such that the evidence is totally unreliable, and it will be impossible to separate the truth from falsehood to an extent that they are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, conviction cannot be made."

The Supreme Court in the case of **Sucha Singh & Anr. vs. State of Punjab** reported in **(2003) 7 SCC 643** has held as under:-

"18. To the same effect is the decision in *State of Punjab v. Jagir Singh (1974) 3 SCC 277* and *Lehna v. State of Haryana (2002) 3 SCC 76*. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence, prayer is to apply the principle of "*falsus in uno falsus in omnibus*" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove the guilt of other accused persons. Falsity of a particular material witness or a material particular would not

ruin it from the beginning to the end. The maxim "*falsus in uno falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars. The maxim "*falsus in uno falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See *Nisar Ali v. State of U.P. AIR 1957 SC 366*) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See *Gurcharan Singh v. State of Punjab AIR 1956 SC 460.*) The doctrine is a dangerous one, especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate

exaggeration, embroideries or embellishment. (See *Sohrab v. State of M.P.*(1972) 3 SCC 751 and *Ugar Ahir v. State of Bihar AIR 1965 SC 277.*) An attempt has to be made to, as noted above, in terms of the felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of M.P. AIR 1954 SC 15* and *Balaka Singh v. State of Punjab (1975) 4 SCC 511*) As observed by this Court in *State of Rajasthan v. Kalki (1981) 2 SCC 752* normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi v. State of Bihar (2002) 6 SCC 81*. Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned."

The Supreme Court in the case of **Ugar Ahir vs. State of Bihar** reported in **AIR 1965 SC 277** has held as under:-

"6. The maxim falsus in uno, falsus in

omnibus (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. That is what the courts have done in this case. In effect, the courts disbelieved practically the whole version given by the witnesses in regard to the pursuit, the assault on the deceased with lathis, the accused going on a bicycle, and the deceased wresting the bhala from one of the appellants and attacking with the same two of the appellants, the case that the accused attacked the witnesses, and the assertion of the witnesses of their being disinterested spectators. If all this was disbelieved, what else remained? To reverse the metaphor, the courts removed the grain and accepted the chaff and convicted the appellants. We, therefore, set aside the conviction of the appellants and the sentence passed on them."

The Supreme Court in the case of **Ranjit Singh vs. State of Punjab** reported in **(2013) 16 SCC 752** has held as under:-

"26. It is trite that even when exaggerations and embellishments are galore the courts can and indeed are expected to undertake a forensic exercise aimed at discovering the truth. The very fact that a large number of people were implicated in the incident in question who now stand acquitted by the High Court need not have deterred the High Court from appreciating the evidence on record and discarding what was not credible while

accepting and relying upon what inspired confidence. That exercise was legitimate for otherwise the Court would be seen as abdicating and surrendering to distortions and/or embellishments whether made out of bitterness or any other reason including shoddy investigation by the agencies concerned. The ultimate quest for the court at all times remains "discovery of the truth" and unless the court is so disappointed with the difficulty besetting that exercise in a given case, as to make it impossible for it to pursue that object, it must make an endeavour in that direction. Inasmuch as the High Court made an attempt in that direction in the case at hand, it did not, in our opinion, commit any mistake. The question whether the conclusions drawn by the High Court as to the guilt of the appellants before us are reasonably supported by the evidence on record, is a different matter to which we must turn immediately."

Thus, it is clear that the maxim falsus in uno, falsus in omnibus has no application. It is the duty of the Court to separate the grain from the chaff and merely because if the evidence of witness is partially found unbelievable would not mean that his entire evidence should be discarded. Although in the present case the FIR was lodged within 2-2 ½ hours of the incident and the names of the appellants Rajvir, Puttu and Santu were specifically mentioned in the FIR, a specific role was assigned to these three appellants of assaulting the injured by means of lathi. It was the case of the prosecution that these three appellants were present on the spot and were the members of the unlawful assembly. It is well established principle of law that once it is found proved that a person was the member of unlawful assembly then any overt act on his part is not necessary but where a specific role has been assigned to an accused and if it is found that the said accused had not participated in the actual assault and the role assigned

to him was not found proved by the evidence led by the prosecution then the next question would be that whether he was a member of unlawful assembly or not? When the evidence of the witnesses was found contrary to the medical evidence in respect of the assault made by the appellants Santu, Puttu and Rajvir then it is difficult to hold that these three appellants were also present on the spot sharing the common object. If the membership of an accused of unlawful assembly is not found proved then he cannot be convicted with the aid of Section 149 of IPC. In the present case even the Trial Court has found that the role assigned to the appellant Puttu, Santu and Rajvir was not found corroborated by the medical evidence and accordingly these three accused persons were acquitted for the offence under Section 323 of IPC then under these circumstances it would be unsafe to rely on the evidence of the prosecution witnesses namely Laxman Singh (PW-1), Ghanshyam Singh (PW-2), Raghuvir Singh (PW-5) and Bali @ Devendra Singh (PW-10) with regard to the presence and membership of these three appellants of unlawful assembly. Therefore, this Court is of the considered opinion that the prosecution has failed to prove the presence of the appellants Santu, Puttu and Rajvir on the spot. Consequently it is held that the prosecution has failed to prove that these three persons were the members of the unlawful assembly. Accordingly, their conviction under Sections 147, 307/149 of IPC is hereby set aside. They are acquitted of all the charges.

So far as the appellants Kallu @ Hakim Singh, Raje @ Rajendra Singh, Anar Singh and Karan Singh are concerned, looking to the assault made by these appellants and the nature of the weapons which was used by these appellants, it is clear that they had caused seven injuries on the head of the injured Raghuvir which is a vital part of the body and,

therefore, they had an intention and knowledge that their act may cause death of the injured Raghuvir. Accordingly they are held guilty of committing offence under Sections 148, 307 of IPC. So far as the role played by Pappu @ Kunwar Singh in remaining present on the spot and pointing his gun towards the witness Laxman Singh (PW-1) is concerned it is clear that he was also sharing the common object along with the co-accused Raje @ Rajendra Singh, Anar Singh, Karan Singh, Kallu @ Hakim Singh. Accordingly, Pappu @ Kunwar Singh is held guilty of committing an offence under Sections 148, 307/149 of IPC.

So far as the question of sentence is concerned, it is submitted by the counsel for the appellants that the incident took place in the year 2002 and 15 long years have passed, therefore, the period of sentence which has already been undergone by the appellants Pappu @ Kunwar Singh, Kallu, Raje @ Rajendra Singh, Anar Singh and Karan Singh should be held to be sufficient.

From the record, it appears that Raje @ Rajendra Singh had remained in jail for a period of 182 days during the trial, Karan Singh had remained in jail for a period of 180 days during the trial, Anar Singh had remained in jail for a period of 182 days during the trial, Pappu @ Kunwar Singh had remained in jail for a period of 7 days during the trial, Kallu @ Hakim Singh had remained in jail for a period of 176 days during the trial. They were convicted by judgment dated 27.12.2003. They were granted bail by this Court by order dated 20.1.2004. Thus, it is clear that the appellant No.5 has remained in jail for 208 days, whereas appellants No.3, 6, 8 and 1 have remained in jail for a period of 206, 208, 33 and 202 days respectively. The manner in which the offence was committed by the appellants, the number of the injuries, the nature of the weapon and the part of the body on which the

injury was caused, it is clear that a very lenient view has been adopted by the Trial Court by awarding the jail sentence of three years only. Merely because the incident had taken place in the year 2002 that by itself cannot be a ground for adopting a lenient view by imposing a jail sentence for the period which has been undergone by the appellants. Accordingly, it is held that no interference is called for on the question of sentence awarded to the appellant No.1 Kallu Singh @ Hakim Singh, appellant No.3 Karan Singh, appellant No.5 Raje @ Rajendra Singh, appellant No.6 Anar Singh and appellant No.8 Pappu @ Kunwar Singh. Accordingly, the jail sentence of rigorous imprisonment of three years awarded by the Trial Court is affirmed. The appellant No.1 Kallu Singh @ Hakim Singh, appellant No.3 Karan Singh, appellant No.5 Raje @ Rajendra Singh, appellant No.6 Anar Singh and appellant No.8 Pappu @ Kunwar Singh are on bail. Their personal bonds and bail bonds are cancelled. They are directed to immediately surrender before the Trial Court for undergoing the remaining jail sentence.

The appeal filed by the appellant No.2 Santu Singh @ Santram, appellant No.4 Puttu @ Kumre and appellant No.7 Rajvir is **allowed**. They are acquitted of all the charges. Their bail bonds and personal bonds stand discharged. The appeal filed by appellant No.1 Kallu Singh @ Hakim Singh, appellant No.3 Karan Singh, appellant No.5 Raje @ Rajendra Singh, appellant No.6 Anar Singh, appellant No.8 Pappu @ Kunwar Singh is **dismissed**.

(alok)

(G.S. AHLUWALIA)
Judge