**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 07th OF JULY, 2022

CRIMINAL APPEAL NO.76 of 2012

Between:-

1. **HALKAI @ GANESHRAM AHIRWAR S/O NANDA AHIRWAR, AGED- 68 YEARS.**
2. **RAMDAS AHIRWAR, AGED- 32 YEARS.**
3. **DHANIRAM AHIRWAR, AGED- 24 YEARS.**
4. **GUDDA @ KARAN SINGH AHIRWAR, AGED- 37 YERAS.**
5. **BHAGWANDAS AHIRWAR, AGED- 30 YEAR.**
   ALL OF SON ARE SHRI HALKAI @ GANESHRAM AHIRWAR.
   ALL ARE R/O VILLAGE SHAHARVASA, POLICE STATION- PATHARI, DISTRICT VIDISHA MADHYA PRADESH.
6. **RAMSEVAK, S/O KISHORILAL AHIRWAR, AGED- 33 YEARS, R/O VILLAGE NEHRA, POLICE STATION- KURWAI, DISTRICT VIDISHA MADHYA PRADESH.**

…....APPELLANTS

(SHRI R.K.S. KUSHWAH – LEARNED COUNSEL FOR

APPELLANT NOS.1 TO 5 AND SHRI S.S. SENGAR – LEARNED COUNSEL FOR APPELLANT NO.6)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION PATHARI, DISTRICT VIDISHA MADHYA PRADESH.

……..RESPONDENT

(BY SHRI A.K. NIRANKARI – LEARNED COUNSEL FOR THE RESPONDENT-STATE.)

Reserved on : 29th June, 2022
Delivered on : 07th of July, 2022

This appeal coming on for final hearing this day, ***Hon'ble Shri Justice G.S. Ahluwalia,*** *passed the following:*

JUDGMENT

1. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the Judgment and Sentence dated 15-12-2011 passed by Additional Judge, Vidisha to the Court of 2nd Additional Sessions Judge (Fast Track), Basoda, Distt. Vidisha in S.T. No. 75 of 2010 by which the Appellants have been convicted for the following offences :

Appellants	**Conviction under Section**	**Sentence**
Appellants	302/149 of IPC	Life Imprisonment and fine of Rs. 2000/- in default 6 months R.I. (two counts)
Appellants	325/149 of IPC	1 year R.I. and fine of

		Rs. 1,000/- in default 3 months R.I.
Appellants	323/149 of IPC for causing injuries to Bandrobai	6 months R.I. and fine of Rs. 1,000/- in default 3 months R.I.
Appellants	323/149 of IPC for causing injuries to Santosh	6 months R.I. and fine of Rs. 1,000/- in default 3 months R.I.

All sentences shall run concurrently.

2. It is not out of place to mention here that in total 8 accused persons were tried. Ramsewak son of Halkai and Gayaram son of Halkai were also tried along with the Appellants. However, they did not appear before the Trial Court on the date of judgment, therefore, warrants of arrest were issued against them. Although Ramsewak son of Halkai and Gayaram son of Halkai were also held guilty, but due to their absence, sentence could not be imposed by them. Therefore, Ramsewak @ Halkai and Gayaram son of Halkai are absconding.

3. The necessary facts for disposal of the present appeal in short are that on 7-10-2009, at about 7:30 P.M., Kashiram, Santosh, Goverdhan and Bandrobai were sitting in the house of Kashiram. Due to old enmity, the Appellants and absconding accused persons came to the house of Kashiram and started abusing them. When it was objected by Kashiram, then they started assaulting them. In order to save his life, Kashiram ran towards the house of Chittar. Halkai exhorted the remaining accused persons to kill Kashiram. Ramsewak assaulted on the head of Kashiram by farsa. By that time, the complainant Santosh, Goverdhan and Bandrobai also reached there. Dayaram gave a ballam blow on the head of Goverdhan and Karan pierced in his mouth. Halkai and Dhaniram

assaulted on the head of Goverdhan, Santosh and Bandrobai. After hearing the noise, Chittar Singh Rajput, Ramraj and Mohan Namdeo reached on the spot. It is alleged that thereafter, the accused persons went away after extending threat. Himmat Singh and Chowkidar Narayan took the injured to the hospital on a jeep. An information was sent by Doctor to the Police Station Kurwai. Dehati Nalishi was written in the hospital on the information given by Santosh. The injured Kashiram, Bandrobai, Santosh and Goverdhan were sent for medical examination. FIR was registered on the basis of Dehati Nalishi. The spot map was prepared. Blood and plain earth were seized from the spot. The injured persons were shifted to Hamidia Hospital for treatment. Kashiram succumbed to injuries during his treatment. Safina form was issued. Lash Panchnama was prepared. The post-mortem of the dead body of Kashiram was got done. The statements of witnesses were recorded. The Appellants were arrested and weapons of offence were seized. Query report was obtained from the Doctor. Police after completing investigation filed charge sheet against 8 accused persons (Including 6 Appellant) for offence under Sections 323,294,147,148,149,307,302 and 506 of IPC and under Section 25/27 of Arms Act.

4. The Trial Court framed charges under Sections 148,307/149,302/149 of IPC.

5. The Appellants abjured the guilt and pleaded not guilty.

6. The prosecution examined Sanju (P.W.1), Vijay Singh (P.W.2), Santosh (P.W.3), Dr. Vimla Prajapati (P.W.4), Kaluram Suryavanshi (P.W.5), Dr. S.S. Lal (P.W.6), Gheesu Lal (P.W.7), Murarilal Panthi

(P.W.8), Chittar Singh (P.W.9), Narayan Singh (P.W.10), Dr. Ashutosh Darbari (P.W.11), Phoolchand Verma (P.W.12), Santosh (P.W.13), Govardhan (P.W.14), Bandrobai (P.W.15), Kashiram (P.W.16), Dr. Hemant Agrawal (P.W.17), Ramraj (P.W.18), Gyarsi (P.W.19), Dr. A.K. Shrivastava (P.W.20), Kishan Lal (P.W.21), B.S. Kushwaha (P.W.22), M.R. Romade (P.W.23), Indresh Tripathi (P.W.24), and Dr. J.K. Chaurasia (P.W. 25).

7. The Appellants examined Balkishan (D.W.1), and Siyaram (D.W.2), in their defence.

8. The Trial Court by the impugned Judgment and Sentence, convicted and sentenced the Appellants for the above mentioned offences.

9. Challenging the judgment and sentence passed by the Court below, it is submitted by the Counsel for the Appellants that Sanju(P.W.1) is not a reliable witness, because in his statement recorded under Section 161 of Cr.P.C. he had merely stated that he had seen the accused persons going towards their house, whereas in Court, he projected himself as an Eye Witness. Further, at a later stage he had turned hostile. Similarly, there after material omissions and contradictions in the evidence of Bandrobai (P.W. 15). Gyarsi (P.W.19) is also not a reliable witness. The place of incident was not visible from the house of Kashiram. All the material witnesses have turned hostile.

10. Per contra, the Counsel for the State has supported the findings recorded by the Trial Court and supported the prosecution case.

11. Heard the learned Counsel for the parties.

12. Before adverting to the facts of the case, this Court would like to

consider as to whether the death of Kashiram was homicidal in nature or not?

13. Dr. Vimla Prajapati (P.W.4) is the autopsy surgeon and had conducted the post-mortem of the dead body of Kashiram, and gave the following report :

> Received Dead body of average built male wearing one white and blue check shirt full sleeves and one olive green underwear.
> Both eyes closed, mouth closed.
> Left eye black eye.
> Hospital bandage present all around wounds.
> Rigor-mortise present all over the body Hypostasis present on the back
> **Injuries**
> i. There is surgically stitched lacerated wound on left side of chin, transverse, 1.5m long going laterally towards left angle of mandible, skin deep.
> ii. There is fracture mandible in midline, surrounding tissues echhymosed.
> iii. There is incised looking wound of size 1.5 cm x 0.5cm superficial obliquely vertical on left side of face 1 cm lateral to left angle of mouth going downwards and laterally towards the left angle of mandible. Underneath Ecchymosis present.
> iv. There is a lacerated wound on left side of skull, horizontal, size 7.5 cm x 2.5 cm x 2.5 cm on the left parietal bone, 6 cm lateral to the sagittal section with direction downward. margins are irregular. There is depressed fracture of parietal bone. The fractured bone piece has pressed the underneath brain tissue. Underneath brain tissue is liquified.
> v. Lacerated wound of size 6 cm x 2.5 cm x bone deep present on left side of skull 5 cm above and posterior to above injury, margins irregular, direction backwards, surrounding tissues echhymosed.
> vi. Obliquely vertical lacerated wound of size 9 cm x 2.5 cm x 1 cm bone deep, margin irregular, direction backwards and medially present on forehead midline, then going upwards, backwards and laterally towards right side of head.

Surrounding tissues ecchymosed. Ecchymosis is also present on occipital region and vertex.
vii. Linear transverse abrasion below left nipple size 4.5 cm o.5 cm.
viii. Multiple friction abrasions of pin head to o.5cm diameter present on right knee, shin and dorsum of left foot.
ix. Friction abrasions of 3 cm diameter present just above left hip.
Death was due to shock and hemorrhage as a result of head injury caused by multiple infliction of hard blunt object all around head. Injuries are sufficient to cause death.
Death is homicidal.
Hospitalized case with alteration in wound conditions. Hence PMLC/MLC report has to be supplied at once to finalise the case.
Clothings have been preserved, sealed and handed over to the PC concerned.
Duration of death is within 24 hours since post-mortem examination.

The Post-mortem report is Ex. p.29.

14. This witness was cross-examined. In cross-examination, she expressed her inability to explain as to when the injuries were caused. She further stated that She had not found any cut mark on the cloths.

15. Further, Dr. S.S. Lal (P.W. 6) had medically examined the injured/deceased Kashiram and found following injuries on his body :

i. Poking injury with laceration with bleeding on lower side of face lateral and lower side of lower lip.1.2inch long and 1 inch deep injury.
ii. Swelling left side of face.
iii. Lacerated wound with cut injury side [illegible] bleeding head above left ear 2.5 inch long and 2 inch deep head on opposite side 1.5 inch long and .2 inch deep.
iv. Cut injury with sharp cut edges with bleeding right side head above right ear.
v. Right leg anterior aspect swelling present
vi. Some swelling seen on back.

The MLC of Kashiram is Ex. P.35.

16. This witness was cross-examined mostly in relation to injuries sustained by Goverdhan and no effective cross-examination was done in respect of injuries sustained by Kashiram.

17. Thus, it is clear from the post-mortem of Kashiram, that he died a homicidal death.

18. Now, the moot question for consideration is that whether the Appellants are guilty of committing offence or not?

19. Sanju (P.W.1) in his examination in chief had supported the prosecution case and had also projected himself as an eye witness, but his cross-examination was deferred. In cross-examination, which was done subsequently, he turned hostile and did not support the prosecution case.

20. Vijay Singh (P.W.2), Santosh (P.W.3) a seizure witness turned hostile and did not support the prosecution case.

21. Kaluram (P.W.5) had brought merg information of death of Kashiram from Kohefiza Police Station, Bhopal, Ex. P.30. Accordingly, Merg Intimation, Ex. P.31 was registered.

22. Gheesulal (P.W.7) has stated that he was posted on the post of Head Constable, Police Outpost Hamidia Hospital. An information was received regarding death of Kashiram through Telephone Attender, Jaswant Yadav. Merg Intimation Ex. P. 30 was registered by him. The dead body was shifted to mortuary. On 10-10-2009, he issued safina form, Ex. P.38 and lash Panchnama, Ex. P.39 was prepared. He gave a requisition for post-mortem of Kashiram, Ex. P.40.

23. Murarilal (P.W.8) is a Patwari who prepared spot map, Ex. P.41.

24. Chittar Singh (P.W.9) turned hostile and did not support the

prosecution case.

25. Narayan Singh (P.W.10) has stated that on the information given by son of Gubra, he went to the spot and found that the injured persons were lying on the spot in an injured condition. Bandrobai had informed that quarrel had taken with Ramsewak etc. They were shifted to hospital on a jeep. The blood stained and plain earth was seized by the police vide seizure memo Ex. P.1. This witness was cross-examined.

26. In cross-examination, he could not explain as to why the fact that Bandrobai had informed that quarrel had taken place with Ramsewak and etc is not mentioned in his police statement, Ex. D.1. Even he could not explain as to why the fact that he was informed by son of Gubra that fight has taken place in front of the house of Chittar Singh is also not mentioned in his police statement, Ex. D.1.

27. Phoolchand Verma (P.W.12) was posted as Head Constable. He had brought FIR in crime no. 0/09 registered at Police Station Kurwai and handed over to S.O. Indresh Tripathi and accordingly, FIR in crime no. 63/2009 was registered in Police Station Pathari, Ex. P.43.

28. Santosh (P.W.13) who is the complainant and an injured eye-witness has turned hostile. He stated that he heard some noise and saw that his nephew Kashiram was lying in an injured condition, similarly Goverdhan was also lying in an injured condition. He and Bandrobai reached on the spot. Since some body pushed them, therefore, he and Bandrobai sustained injuries. Thus, this witness turned hostile and did not support the prosecution case.

29. Goverdhan (P.W. 14) is also an injured eye-witness. He too did not support the prosecution case on the question of identity.

30. Bandrobai (P.W.15) is the widow of deceased Kashiram and is an eye-witness. She has supported the prosecution case. She stated that the Accused persons are known to her. At about 7:00 P.M., She was in her house along with her husband, her *Jeth* and Maternal father-in-law. The accused persons, namely Ramsewak, Gudda, Dhaniram, Dayaram, Karan Singh, one more Ramsewak as well as Halkai, total 8 persons came to her house. They assaulted Kashiram in front of the door of the house of Chittar Singh. They were abusing. The accused persons were armed with Farsa, Ballam, Tega, Axe and Lathi. The accused persons were challenging that no one would be spared and Kashiram will be killed. The accused persons also assaulted Goverdhan, Santosh and this witness. She sustained injury on her head. She was taken to Kurwai Hospital. Goverdhan was given stitches on his face. Thereafter, She fell unconscious. Thereafter she went to Vidisha Hospital. Thereafter, all the injured were referred to Hamidia Hospital. Her husband survived for one day and expired on the next day in the Hamidia Hospital. This witness was cross-examined.

31. In cross-examination, she stated that the house of the appellants is after 2-3 houses from her house. She was not aware of any previous enmity. The incident took place at about 7 P.M. There was no light at the time of incident. It is true that it was dark at the time of incident. It is true that initially Goverdhan reached on the spot, and thereafter Santosh and lastly She reached on the spot. When She reached there, her husband Kashiram was lying in front of the house of Chittar Singh. However, Santosh was not lying there. The house of Santosh is about 8-10 houses after her house. Santosh had come all alone. She denied that

other neighbours had also come out of the house after hearing noise. She further stated that the Appellants had abused in front of her house. After abuses were hurled, her husband Kashiram went towards the house of Chittar Singh. Police had interrogated her in her house. Police had come after 4-5 days of incident. Her husband was lying by the side of the road. The cloths of her husband had got stained with blood. Her cloths were also stained with blood and were seized by the police. She denied that She has falsely implicated the accused persons. She further stated that her husband was assaulted on the road. She on her own clarified that it was in front of the house of Chittar Singh. She admitted that her house is on the back side of the house of Chittar Singh. When She reached near to her husband, he was lying in an unconscious condition. He was having multiple injuries on his body. She denied that She fell unconscious after looking at the condition of her husband. She claimed that She too was given a Farsa blow on her head and thereafter, She fell down. They went to Bhopal by jeep. They reached Bhopal at about 3 A.M. She further admitted that in the jeep, they were asking about the names of assailants from her husband but he was not speaking. She admitted that after 7 days of the incident, they had deliberations that the accused persons are to be implicated. She denied that prior to the incident, Kashiram had teased the wife of Ramdas, son of Halkai. She denied that a criminal case was also registered. She admitted that there was an old enmity with the accused persons. She admitted that there was no property dispute with the accused persons. She admitted that enmity was on the issue that wife of Ramdas had lodged a report against late Kashiram. She denied that She had not sustained any injury. She

admitted that when police reached Bhopal, then She had refused to give statement and had informed that She would give her statement only after consulting her family members. After the death of her husband, She came back from Bhopal on the next day. She was visiting Mandi Badmora for her treatment. Police was regularly visiting the village.

32. Kashiram (P.W. 16) is a seizure witness. Although this witness has stated that Ramsewak son of Kishorilal was arrested but did not support on the question of memorandum, Ex. P.25 and Seizure Ex. P.26. Although he was declared hostile, but nothing could be elicited from his cross-examination, which may support the prosecution case.

33. Ramraj (P.W. 18) has also not supported the prosecution case.

34. Gyarsi (P.W. 19) is an eye-witness. He has stated that he was returning back to village from his field. In front of the house of Chittar Singh, he saw that fight was going on and Halkai, Ramsewak, Dayaram, Gudda, Karan Singh Bhagwandas, Dhaniram and Ramdas etc. were there. Some were having ballam and some were having Lathi or Sword. Kashi was lying dead. He and kisna put Kashiram and Gubra (Goverdhan) on the road. Their daughter-in-law Bandaria was also lying. Ramsewak was exhorting that whosoever will pick up the injured, then he too will be killed. Thereafter, he ran away from the spot, whereas the Appellants namely Halkai, Dhaniram, Bhagwandas, Ramdas, Gudda, Karan were standing there. Goverdhan had informed him that he was assaulted by Halkai, Ramdas, Dhaniram, Bhagwandas, Ramsewak, Karan Singh and Ramsewak. This witness was cross-examined.

35. In cross-examination, he stated that he had informed the police that fight was going on, but could not explain as to why this fact was not

mentioned in his police statement. He also stated that he had not informed to the police that the appellants were going towards their house, but could not explain as to how such fact was mentioned in his police statement. He also could not explain as to why the fact that some was armed with Ballam and some were having sword or Lathi is not mentioned in his police statement, Ex. D.3. He also stated that he had informed the police that when he reached on the spot, the Appellants were standing there, but could not explain as to why such fact was not mentioned in his police statement, Ex. D.3. The cross-examination of this witness could not be completed as the Court overs were over, and accordingly, he was further cross-examined on the next day. In further cross-examination, he took somersault and admitted that while coming back from his field, the place of incident doesnot fall in the way. He further stated that when he reached on the spot, the injured persons were lying unconscious. He met with Santosh after 15 days of incident. He further stated that whatever was stated by him on the previous day, was on the instructions of the public prosecutor. He further stated that since, he was tutored, therefore, he had alleged against the Appellants. Accordingly, this witness was re-examined by the public prosecutor. He admitted that yesterday, he had come to Court at 11 A.M. and was sleeping all the time on the platform. He entered inside the Court room, only when he was called by the Peon of the Court. He further admitted that neither he has seen the office of public prosecutor nor he can identify public prosecutor. He further stated that whatever was stated by him on the previous day was not correct. He denied that he did not have a talk with the Appellants. He admitted that today also, he had a talk

with the Appellants. However, denied that because of compromise, he has changed his version in their favor. He admitted that Goverdhan had sustained injuries. This witness was further cross-examined by the Court and this witness admitted that he was not tutored by the public prosecutor. He also stated that yesterday he was upset.

36. Dr. A.K. Shrivastava (P.W. 20) had given the query report and stated that the injuries sustained by the injured could have been caused by the weapons. The query report is Ex. P.49. In cross-examination, he stated that before giving query report, he did not re-examine the injured persons.

37. Kishan Lal (P.W. 21) did not support the prosecution case and was declared hostile.

38. B.S. Kushwaha (P.W.22) was posted in Police Station Kurwai and had written the Dehati Nalishi, Ex. P.44. The injured Santosh, Bandrobai, Goverdhan and Kashiram were sent for medical examination. The requisition for MLC of Santosh is Ex. P.32 A, Bandrobai, Ex. P.33A, Goverdhan, Ex. P.34A and of Kashiram is Ex. P.35 A. Thereafter, he registered FIR for offence under Section 307,294,323, 506,34 of IPC, Ex. P.51. The dying declaration of Goverdhan was got recorded by Doctor.

39. M.R. Romade (P.W.23) has stated that on the instructions of S.H.O., Pathari, he had recorded the statements of Goverdhan in Hamidia Hospital, Bhopal.

40. Indresh Tripathi (P.W. 24) is the investigating officer. He had recorded the FIR in Police Station Pathari, Ex. P. 43 on the basis of FIR in crime no. 0/09 registered at Police Station Kurwai. Spot map, Ex. P.3 was prepared on the information given by Sanju Ahirwar. The blood

stained and plain earth were seized vide seizure memo Ex. P.1. The statements of witnesses were recorded. The blood stained cloths of Goverdhan were seized vide seizure memo Ex. P.2. On 8-11-2009, Ramsewak son of Halkai had given a memorandum, Ex. P.4. Gudda had given a memorandum, Ex. P.5. Dhaniram had given memorandum, Ex. P.6. Ramdas son of Halkai had given Memorandum, Ex. P.7, Bhagwandas had given memorandum Ex. P.8, Dayaram had given memorandum, Ex. P.9. Halkai had given memorandum, Ex. P.10. One lathi was seized from Halkai vide seizure memo Ex. P.11. One Ballam was seized from Dayaram vide seizure memo Ex. P.12. One sword was seized from Bhagwandas vide seizure memo Ex. P.13. One Ballam was seized from Gudda vide seizure memo Ex. P.14. One Farsa was seized from Ramsewak son of Halkai vide seizure memo Ex. P.15. One Lathi was seized from Dhaniram vide seizure memo Ex. P.16. One Axe was seized from Ramdas vide seizure memo Ex. P.17. One the same day i.e., 8-11-2009, the Appellants were arrested vide arrest memos Ex. P. 18 to P.24. On 8-12-2009, Ramsewak son of Kishorilal was arrested. His memorandum Ex. P. 25 was recorded. One sword was seized vide seizure memo Ex. P.26. He was arrested vide arrest memo Ex. P.27. The cloths of deceased Kashiram were seized on 12-10-2009 vide seizure memo Ex. P. 51. The seized weapons were sent for query. The requisition is Ex. P.52. On 30-12-2009, the seized articles were sent to F.S.L. Bhopal. The FSL report is Ex. P. 54.

41. Thus, the entire prosecution story hinges around the evidence of Sanju Ahirwar (P.W.1), Bandrobai (P.W. 15) and Gyarsi (P.W. 19).

Sanju Ahirwar (P.W.1)

42. Examination-in-chief of this witness was recorded on 9-6-2010 and since Court hours were over, therefore, his cross-examination was recorded on 7-4-2011 i.e., after 10 months. In cross-examination, he resiled from the evidence given by him in his examination-in-chief.

43. There is an another aspect of the matter. In his police statement, Ex. D.3, he had stated that after hearing the noise, he rushed to the spot. He had kissan torch with him. He saw that his uncle Kashiram, was lying in front of the house of Chittar Singh. There was a bleeding from the head of Bandrobai. The maternal uncle of his father, namely Santosh was having injuries. His father (Goverdhan) was also injured and was not in a position to stand. Halkai Ahirwar, was having Lathi, Dayaram was having Ballam, Karan Singh (Gudda) was having Ballam, Ramsewak was having Farsa and 3-4 more persons were there. They all were challenging that today the injured have survived, but next time they all will be killed. After extending threat, all the accused persons went away. Thus, in his police statement, he did not allege that he had witnessed the incident, all though he had specifically stated about the presence of the accused persons with weapons. But in his examination-in-chief, he projected himself as an Eye-Witness. The effect of this omission shall be considered.

44. Important aspect is that this witness could not be cross-examined on the same day and his cross-examination was deferred as the working hours of the Court were over and accordingly, he was cross-examined after more than Ten months. From the order sheet of the Trial Court, it is clear that the Trial was fixed for 9-6-2010, 10-6-2010 and 11-6-2010. On 9-6-2010, the cross-examination of Sanju Ahirwar (P.W.1) could not

be concluded as working hours were over. However, instead of continuing the cross-examination on the next day, the Trial Court fixed the case for 13-7-2010 for further cross-examination of Sanju Ahirwar (P.W.1). In the meanwhile on 10-6-010 and 11-6-2010, the Trial Court examined formal witnesses as well as autopsy surgeon i.e., Vijay Singh (P.W.2), Santosh (P.W.3) Dr. Vimla Prajapati (P.W.4)and Kaluram Suryavanshi (P.W.5). Ultimately, the further cross-examination of Sanju (P.W.1)took place on 7-4-2011. The Supreme Court in the case of **Khujji Vs. State of M.P.** reported in **(1991) 3 SCC 627** has held as under :

> 3.....The High Court while ignoring the evidence of PW 3 Kishan Lal and PW 4 Ramesh relied on the evidence of PW 1 Komal Chand and came to the conclusion that his evidence clearly established the presence of the appellant as one of the assailants notwithstanding his effort in cross-examination to wriggle out of his statement in examination-in-chief in regard to the identity of the appellant. The High Court noticed that the examination-in-chief of this witness was recorded on November 16, 1976 whereas his cross-examination commenced on December 15, 1976 i.e. after a month and in between he seemed to have been won over or had succumbed to threat.

45. It is not out of place to mention here that this witness appeared for cross-examination only on execution of bailable warrant of arrest. In para 11 of his cross-examination, although this witness had denied that he has compromised with the Appellants, but in the next para, he admitted that Bandrobai has not compromised with the Appellants. He further denied that no compromise has taken place with Appellants. Thus, there is an intrinsic material on record to show that this witness was won over by the Appellants during the period of 10 months.

46. Therefore, this Court can ignore the cross-examination of this witness which took place after 10 months of his examination-in-chief.

47. The next question for consideration is that although in the police statement, Ex. D.4, this witness had not alleged that he had witnessed the incident, but in examination-in-chief, he specifically stated that he had seen the assault made by the Appellants.

48. Now the only question for consideration is that whether omission in his police statement, Ex. D.4 can be considered by this Court or not?

49. It is not out of place to mention here that in the cross-examination, the Counsel for the Appellants did not bring the attention of this witness to the omission in his police statement, Ex. D.4.

50. Section 145 of Evidence Act reads as under :

> **145. Cross-examination as to previous statements in writing.**—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

51. In order to take advantage of omission in the previous statement, the accused must prove the omission/contradiction by drawing the attention of the witness towards the said omission or contradiction, otherwise, this Court cannot read/consider the omission in the previous statement.

52. The Supreme Court in the case of **V.K. Mishra Vs. State of Uttarakhand** reported in **(2015) 9 SCC 588** has held as under :

> **14.** Mr K.T.S. Tulsi, learned Senior Counsel for the appellants submitted that FIR contains only allegations of torture and

cruel behaviour on the part of the appellants towards the deceased and in his statement recorded by the police under Section 161 CrPC, PW 1 had not stated anything about the alleged dowry demand whereas in his statement recorded by the police, PW 1 had only stated about many restrictions imposed on his daughter due to which Archana felt suffocated. Contending that there were no allegations of cruelty in connection with dowry demand or any such conduct of the appellants which could have driven Archana to commit suicide either in the FIR or in the statement of PW 1 recorded on the next day by the investigating officer, the learned Senior Counsel urged and tried to persuade us to look into the statement of PW 1 recorded under Section 161 CrPC.

15. Section 161 CrPC titled "*Examination of witnesses by police*" provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 CrPC can be used at any trial are indicated in Section 162 CrPC. Section 162 CrPC reads as under:

> "**162. Statements to police not to be signed: Use of statements in evidence**.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
>
> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be

used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

16. Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (*i*) of contradicting such witness by an accused under Section 145 of the Evidence Act; (*ii*) the contradiction of such witness also by the prosecution but with the leave of the Court; and (*iii*) the re-examination of the witness if necessary.

17. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145

of the Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under:

> "**145. Cross-examination as to previous statements in writing**.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to

police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.

53. The Supreme Court in the case of **Tahsildar Singh Vs. State of U.P.** reported in **AIR 1959 SC 1012** has held as under :

> **13**. The learned Counsel's first argument is based upon the words "in the manner provided by S. 145 of the Indian Evidence . Act, 1872" found in S. 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. In support of this contention reliance is place upon the judgment of this Court in Bhagwan Singh v. State of Punjab (1), 1952 SCR 812 : (AIR 1952 SC 214). Bose J. describes the procedure to be followed to contradict a witness under S. 145 of the Evidence Act thus at p. 819 (of SCR) : (at p. 217 of AIR) :
> "Resort to section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then S. 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."
> It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under S. 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under S. 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in two parts : the first part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross-

examination; the first part with cross examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to S. 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by S. 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of S. 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of S. 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of S. 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate : A says in the witness-box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness-box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generallly followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned Counsel may be illustrated thus : If the witness is asked "did you say before the police-officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies : one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police-officer. If a police-officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police-officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of S. 162 of the Code. The second fallacy is that by the illustration given by the

learned Counsel for the appellants there is no self-contradiction of the primary statement made in the witness-box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police-officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned Counsel based upon S. 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of S.162 of the Code of Criminal Procedure.

* * * *

19. "Contradict" according to the Oxford Dictionary means to affirm to the contrary. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining Counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that. there is something in writing which can be set against another statement made in evidence. If the statement before the police-officer - in the sense we have indicated - and the statement in the evidence before the Court are so inconsistent or irreconcilable with each other that both of them cannot co-exist, it may be said that one contradicts the other.

* * * *

22. As S. 162 of the Code of Criminal Procedure enables the prosecution in the reexamination to rely upon any part of the statement used by the defence to contradict a witness, it is contended that the construction of the section accepted by us would lead to an anomaly, namely, that the accused cannot ask the witness a single question, which does not amount to contradiction whereas the prosecution, taking advantage of a single contradiction relied upon by the accused, can re-examine the witness in regard to any matter referred to in his

> cross-examination, whether it amounts to a contradiction or not. I do not think there is any anomaly in the situation. Section 145 of the Evidence Act deals with cross-examination in respect of a previous statement made by the witness. One of the modes of cross-examination is by contradicting the witness by referring him to those parts of the writing which are inconsistent with his present evidence. Section 162, while confining the right to the accused to cross-examine the witness in the said manner, enables the prosecution to re-examine the witness to explain the matters referred to in the cross-examination. This enables the prosecution to explain the alleged contradiction by pointing out that if a part of the statement used to contradict be read in the context of any other part, it would give a different meaning; and if so read, it would explain away the alleged contradiction. We think that the word "cross-examination" in the last line of the first proviso to S. 162 of the Code of Criminal Procedure cannot be understood to mean the entire gamut of cross-examination without reference to the limited scope of the proviso, but should be confined only to the cross-examination by contradiction allowed by the said proviso.

54. Thus, this Court cannot suo moto make use of statement, which was made to the police, but not proved in compliance of Section 145 of Evidence Act. Therefore, the omission in the police statement of this witness, Ex. D.4, cannot be used against the prosecution.

55. Thus, it is held that Sanju Ahirwar (P.W.1) had witnessed the incident and had seen that all the Appellants and absconding accused persons were armed with respective weapons and had assaulted all the four injured persons including deceased Kashiram.

Bandrobai (P.W.15)

56. It is submitted by the Counsel for the Appellants that door of house of Chittar Singh is not visible from the house of this witness. Since, the incident took place in front of the house of Chittar Singh and

as this witness was in her house, therefore, She did not see the incident, and in fact She reached on the spot after the incident had already taken place and She sustained injuries as she fell down after seeing the condition of her husband.

57. Considered the submissions made by the Counsel for the Appellant.

58. Although this witness in her examination-in-chief had not stated that any part of incident had taken place in her house also, but in the cross-examination, She stated that only after abuses were hurled by the Appellants, her husband went towards the door of the house of Chittar Singh. Although an attention of the witness was drawn towards her police statement, Ex. D.2 to prove that She had not stated that the Appellants had hurled abuses in the house of the witnesses, but this Court after going through the police statement, Ex. D.2, finds that this witness in her police statement, Ex. D.2, had stated that She, her husband (Kashiram), Santosh and Goverdhan were sitting in her house. At that time, the Appellants started hurling abuses on account of old enmity. When her husband objected to it, then all the Appellants chased him. Thus, it is clear that there is no omission in her police statement, Ex. D2, that abuses were hurled by the Appellants in the house of the witness and only thereafter, the deceased went towards the house of Chittar Singh.

59. It is clear from the spot map, Ex. P.3, the house of Chittar Singh is situated at a distance of 200 feets from the house of this witness. The manner in which the incident took place, it cannot be said that this witness could not have witnessed the incident at all. While going towards the place of incident, a person would certainly watch the

incident, which was already going on. Only after reaching on the spot, She found that her husband was lying in an injured condition. Thus, it cannot be said that She had no opportunity to witness the incident.

60. Further more, this witness is an injured witness. It is well established principle of law that an injured witness enjoys a special status. The Supreme Court in the case of **State of U.P. v. Naresh,** reported in **(2011) 4 SCC 324** has held as under :

> 27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide *Jarnail Singh* v. *State of Punjab*, *Balraje* v. *State of Maharashtra* and *Abdul Sayeed* v. *State of M.P.*)

<u>Light on the spot</u>

61. It is submitted by the Counsel for the Appellants that since, Bandrobai (P.W. 15) has admitted that there was no light on the spot, and it was dark, therefore, She had no occasion of see the assailants. He further stated that even Gyarsi (P.W. 19) has stated that he was having Kissan Torch with him.

62. Considered the submissions made by the Counsel for the

Appellants.

63. This witness has stated that the house of the Appellants is situated about 2-3 houses from her house. Thus, it is clear that the Appellants are close door neighbours of this witness. Therefore, they are well known to the witness.

64. The incident took place in a village and it is a matter of common knowledge that the vision of villagers is conditioned to see even in the poor light. Further, the incident took place at two different places. First of all, they came to the house of this witness, where they started hurling abuses. Thereafter, Kashiram went towards the house of Chittar Singh, which is hardly 200 ft.s away from the house of this witness. Thus, this witness had every opportunity to see the Appellants from a very close range. The incident took place at 7 P.M. on 7-10-2009.

65. The Supreme Court in the case of **Ramesh v. State by Madhugiri Police** reported in **(2010) 15 SCC 49** has held as under:-

> "**14.** Bearing in mind the principle aforesaid, we proceed to examine the correctness of the impugned judgment. PW 3 Sakamma and PW 4 Annapoornamma are neighbours not only of the deceased but of the appellant also as it has come in their evidence that their houses are intervened by one or two houses of the informant and the appellant. They have clearly stated in their evidence that they had seen the appellant holding the hand of the deceased in the evening of 17-7-1994. The trial court has rejected this part of the prosecution story on the ground that these witnesses could not have identified the appellant in the evening as it is not the case of the prosecution that there was any light.
>
> **15.** As stated earlier, the appellant and these two witnesses (PWs 3 and 4) are neighbours and, therefore, knew the appellant well and their claim of identification cannot be rejected only on the ground that they have identified him in the evening, when there was less light. It has to be borne in mind

> that the capacity of the witnesses living in rural areas cannot be compared with that of urban people who are acclimatised to fluorescent light. Visible (*sic* visual) capacity of the witnesses coming from the village is conditioned and their evidence cannot be discarded on the ground that there was meagre light in the evening. There is nothing on record to show that these two witnesses are in any way interested and inimical to the appellant. Their evidence clearly shows that the deceased was last seen with the appellant and the High Court did not err in relying on their evidence. ”

66. The Coordinate Bench of this Court in **In Reference (Suo Moto) Vs. Manoj** passed in **CRRFC No.8 of 2019,** by judgment dated **28.07.2021** has held as under:-

> “**47.** It is a matter of common knowledge, that the villagers have the ability of identifying the things even in the poor light. Villages have limited number of inhabitants and are closely watched by each and every resident of the village. The evidence of this witness is that he had identified the said person from his back, style of walking, and body buildup, then it cannot be said that such witness is unreliable or he cannot identify the resident of the village from his back, or style of walking or body buildup, as the eyes of the villagers are conditioned to identify the villagers in poor light or from their walking style, or body build up etc.”

67. Thus, the submission made by the Counsel for the Appellants, that Bandrobai (P.W. 15) could not have seen the incident is hereby rejected.

Whether Bandrobai (P.W.15) had stated about the incident after due deliberations.

68. It is submitted by the Counsel for the Appellants that Bandrobai (P.W. 15) has admitted that She did not give her statement to the police and had made the statement after due deliberations with her family members.

69. Considered the submissions made by the Counsel for the Appellants.

70. In the present case, Dehati Nalishi was lodged promptly. A mental agony of a witness can be understood who not only sustained injuries in the incident, but also lost her husband during his treatment. Therefore, if She did not give the statement to the police immediately, then it cannot be said that allegations made by her were after due deliberations. It is well established principle of law that delay in recording the statement under Section 161 of Cr.P.C., by itself would not be fatal to the prosecution case. As already pointed out, this witness herself was injured. Her husband had sustained multiple injuries on his body. He was shifted to hospital, where he died during treatment. Further, her relatives were also in the hospital in an injured condition. There is no suggestion that with whom he had deliberations about the incident. Santosh and Goverdhan were already undergoing treatment in Bhopal. Thus, it is held that, under the facts and circumstances of the case, honest admission made by this witness that She gave a police statement only after coming back from Bhopal will not give any dent to the prosecution case.

Gyarasi (P.W.19)

71. In the Court evidence, this witness had slightly changed his version and said that when he reached on the spot, he saw that fight was going on and the accused persons were there with weapons. However, in his police statement, Ex. D.3, he had stated that when he reached on the spot, he saw that injured persons were lying on the ground whereas the appellants Halkai @ Ganeshram, Ramsewak, Dayaram, Karan Singh, Bhagwandas, Dhaniram, Ramdas etc who were armed with Ballam,

Sword, Lathi were going towards their house and when this witness lit the torch, then Halkai @ Ganeshram abused him and said that he is trying to play smart. The omission with regarding to witnessing the fight was confronted from this witness, therefore, omission and contradictions were proved in accordance with the provisions of Section 145 of Cr.P.C. However, his evidence to the effect that the Appellants were on the spot with weapons can be relied upon as the same is in conformity with his previous statement.

72. The examination-in-chief and a part of cross-examination was done on 28-4-2011 and since working hours were over, therefore, further cross-examination was done on the next day. On 29-4-2011, this witness took a somersault and resiled from his examination-in-chief, by alleging that said evidence was given under the pressure of Public Prosecutor. He further stated that neither he had seen the Appellants on the spot, nor has seen them assaulting the injured persons. On cross-examination by the Public Prosecutor, he admitted that neither he had gone to the office of Public Prosecutor nor he know the Public Prosecutor and after coming to the Court, he was sleeping outside the Court room, unless he was called by the Court peon. He further stated that it is incorrect to say that yesterday, he had no talks with the Appellants. He further admitted that today also, he had talks with the Appellants. In reply to question put by Court, he stated that he was never tutored by the Public Prosecutor.

73. Thus, in the light of Judgment passed by Supreme Court in the case of **Khujji (Supra),** this Court ignore the cross-examination which was done on 29-4-2011.

74. Therefore, it is held that the evidence of this witness that when he

reached on the spot, he saw the Appellants with weapons is reliable and hence accepted to that extent.

FSL Report

75. As per F.S.L. Report, Ex. P.54, blood was found on Ballam seized from Dayaram, sword seized from Bhagwandas and Farsa seized from Ramsewak.

Injuries sustained by Goverdhan, Bandrobai and Santosh

76. Dr. Hemant Agrawal (P.W.17) had medically examined Goverdhan, and found following injuries on his body :

i. One Lacerated wound over left ear 1cm x ½ cm x ¼ cm just above ear lobule.
ii. ? Fracture of Mandible with loose tooth
iii. Lacerated wound 10 cm x ½ cm x bone deep lower jaw
iv. Incised wound 5 cm x ½ cm x ¼ cm right cheek below right angle of mouth.

The M.L.C. is Ex. P. 46C.

77. Dr. Ashutosh (P.W.11) had also treated the injured Goverdhan an has proved the discharge ticket, Ex. P.43. Goverdhan had suffered fracture of jaw and compound fractures in his left and right leg. Thus, it is clear that Goverdhan had sustained atleast grievous injuries.

78. Dr. S.S. Lal (P.W.6) had also medically examined the injured persons and found following injuries :

Santosh Kumar (P.W.13)

i. Abrasion injury on left hand post aspect about 3 x 2 inch (2 in number).
ii. Swelling in left hand
iii. Complaint of pain in left elbow joint and wrist joint.

The M.L.C. is Ex. P.32.

Bandrobai (P.W.15)

i. Lacerated wound with cut injury on head about 2 inch long x 2 inch deep with bleeding, edges abraded.

ii. Complaint of pain in right wrist joint
iii. Complaint of pain in back.
The M.L.C. is Ex. P.33.

Goverdhan (P.W. 14)

i. Lacerated wound with sharp cut edges below chin edges bleeding on left side of chin about 2 inch long and 5 inch deep.
ii. Swelling on left side of cheek and bleeding present in ear left side
iii. All teeths are moving and bleeding specially lower jaw teeths.
iv. Fore hand right lateral side lacerated wound about 3 inch long and bone deep (Surroundings burnt)
v. Right leg right lateral side 3.5 inch long and 1 inch deep lacerated wound with bleeding.
The M.L.C. is Ex. P.34.

79. It is submitted by the Counsel for the Appellants that since, Santosh Kumar (P.W. 13) and Goverdhan (P.W. 14) have turned hostile, therefore, the conviction of the Appellants for causing injuries to them is unwarranted.

80. Heard the learned Counsel for the Appellant.

81. Sanju Ahirwar (P.W.1) and Bandrobai (P.W. 15) have specifically stated about the assault made on Santosh Kumar (P.W. 13) and Goverdhan (P.W. 14). Merely because these witnesses did not support the prosecution case, doesnot mean, that the Court cannot rely upon the evidence of other eye-witnesses. Therefore, in the light of the evidence of Sanju Ahirwar (P.W. 1), Bandrobai (P.W.15) and Gyarsi (P.W.19), this Court is of the considered opinion, that the prosecution has successfully established the guilt of the Appellants of causing injuries to Santosh Kumar (P.W. 13), Goverdhan (P.W. 14) and Bandrobai (P.W. 15).

82. Thus, the conviction of the Appellants for offence under Sections 302/149, 325/149,323/149 and 323/149 of IPC, recorded by the Trial

Court is hereby **affirmed.**

83. So far as the question of sentence is concerned, the minimum sentence for offence under Section 302 of IPC is Life Imprisonment. Therefore, the jail sentence awarded by the Trial Court doesnot call for any interference.

84. Ex-consequenti, the Judgment and Sentence dated 15-12-2011 passed by Additional Judge, Vidisha to the Court of 2nd Additional Sessions Judge (Fast Track), Basoda, Distt. Vidisha in S.T. No. 75 of 2010 is hereby **affirmed.**

85. The Appellant No.1 Halkai @ Ganeshram is on bail. His bail bonds are hereby cancelled. He is directed to immediately surrender before the Trial Court latest by 30th of July 2022 for undergoing the remaining jail sentence.

86. The Appellants 2 to 6 are in jail. They shall undergo the remaining Jail Sentence.

87. Let a copy of this judgment be immediately provided to the Appellants, free of cost.

88. The record of the Trial Court be sent back along with copy of this judgment, for necessary information and compliance. The Trial Court is directed to take coercive steps for ensuring the arrest of absconding accused persons.

89. The Appeal fails and is hereby **Dismissed.**

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE