HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SB : Justice G.S. Ahluwalia

Criminal Appeal No. 1014 of 2015

Ramjilal @ Munna and others
Vs.
State of Madhya Pradesh

Shri R.K.S. Kushwah, counsel appointed as *amicus curiae*.
Shri Vijay Sundaram, Panel Lawyer for the respondent/State.

Date of hearing : 27/07/2019
Date of judgment : /08/2019
Whether approved for reporting : Yes

J U D G M E N T
(14/08/2019)

This criminal appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 08.10.2015 passed by 2nd Additional Sessions Judge, Sabalgarh, District Morena in Sessions Trial No. 170/2008, by which the appellants have been convicted and sentenced for the following offences:-

Name of appellants	Sections	Sentence	Fine (Rs.)	Default stipulation
No. 1- Ramjilal @ Munna	307/149 of IPC	10 years RI	2000/-	30 days RI
	324/149 of IPC	2 years RI	2000/-	30 days RI
	323 (2 counts) of IPC	1 year RI	1000/-	15 days RI
	148 of IPC	1 year RI	1000/-	15 days RI
	147 of IPC	No separate sentence has been awarded in view of Section 71 of IPC.		

No. 2- Horilal	307/149 of IPC	10 years RI	2000/-	30 days RI
	324/149 of IPC	2 years RI	2000/-	30 days RI
	323 (2 counts) of IPC	1 year RI	1000/-	15 days RI
	148 of IPC	1 year RI	1000/-	15 days RI
	147 of IPC	No separate sentence has been awarded in view of Section 71 of IPC.		
No. 3 - Jagmohan	307/149 of IPC	10 years RI	2000/-	30 days RI
	324/149 of IPC	2 years RI	2000/-	30 days RI
	323 (2 counts) of IPC	1 year RI	1000/-	15 days RI
	148 of IPC	1 year RI	1000/-	15 days RI
	147 of IPC	No separate sentence has been awarded in view of Section 71 of IPC.		
No. 4 - Khema @ Khemraj	307/149 of IPC	10 years RI	2000/-	30 days RI
	324 of IPC	2 years RI	2000/-	30 days RI
	323 (2 counts) of IPC	1 year RI	1000/-	15 days RI
	148 of IPC	1 year RI	1000/-	15 days RI
	147 of IPC	No separate sentence has been awarded in view of Section 71 of IPC.		
No. 5 - Hukum Singh	307/149 of IPC	10 years RI	2000/-	30 days RI
	324/149 of IPC	2 years RI	2000/-	30 days RI
	323 (2 counts) of IPC	1 year RI	1000/-	15 days RI
	148 of IPC	1 year RI	1000/-	15 days RI
	147 of IPC	No separate sentence has been awarded in view of Section 71 of IPC.		

No. 6 - Brajesh	307 of IPC	10 years RI	2000/-	30 days RI
	324/149 of IPC	2 years RI	2000/-	30 days RI
	323 (2 counts) of IPC	1 year RI	1000/-	15 days RI
	148 of IPC	1 year RI	1000/-	15 days RI
	147 of IPC	No separate sentence has been awarded in view of Section 71 of IPC.		
No. 7 - Barelal	307/149 of IPC	10 years RI	2000/-	30 days RI
	324/149 of IPC	2 years RI	2000/-	30 days RI
	323 (2 counts) of IPC	1 year RI	1000/-	15 days RI
	148 of IPC	1 year RI	1000/-	15 days RI
	147 of IPC	No separate sentence has been awarded in view of Section 71 of IPC.		

2. The necessary facts for the disposal of the present appeal, in short are that in Sabalgarh hospital, the complainant Shivnarayan gave an information to the SHO to the effect that his dispute with appellant Ramjilal is going-on on the question of mud boundary between the field. On the date of incident, his son Roop Singh had gone to the field for irrigation purposes, whereas the complainant, his wife and his another son Bir Singh were in the another field, where they heard the shouts of Roop Singh. When they reached near Roop Singh, they found that he was surrounded by the appellants. The appellants were having ballam, lohangi, lathi and axe and they were scolding Roop Singh that he has broken the mud boundary of their field and, accordingly, the appellant Ramjilal Rawat started throwing

stones, when Roop Singh objected to it, then the appellant Brajesh gave an axe blow on the head of Roop Singh, as a result of which, he fell down. Appellant Jagmohan gave a lathi blow, which landed on the knee of his right leg. When the complainant Shivnarayan, Bir Singh and Baikunthi tried to save Roop Singh, then appellant Khema @ Khemraj Rawat gave a farsa blow which landed on the right side of forehead of Shivnarayan. All the appellants assaulted Bir Singh and Baikunthi by lathi, axe and ballam. The incident was intervened by Hazarilal and Harcharan, and saved them. All the appellants extended a threat that although today they have survived, but they would be killed. Roop Singh became unconscious on the spot and, therefore, he was taken to Sabalgarh hospital, where he has been admitted. On the information given by the Doctor, SHO had reached the Sabalgarh hospital, where a Dehati Nalishi (Ex.P-14) was lodged on the information of the complainant Shivnarayan. Since the pre-MLC report of the injured Roop Singh was already prepared, therefore, injured Shivnarayan, Bir Singh and Baikunthi were got medically examined and on the basis of Dehati Nalishi report, the police registered an offence under Sections 147, 148, 149, 294, 307, 506-B of IPC, which is Ex. P-15. The spot map Ex.P-16 was prepared. The blood stained and plain earth was seized by seizure memo Ex.P-17. The blood stained clothes of injured Roop Singh were seized by seizure memo Ex.P-18. The appellants were arrested by seizure memo Ex.P-19 to P-24. Their houses were searched and search memo Ex.P-25 and P-26 were prepared. The statements of the

witnesses were recorded. The police after concluding the investigation filed the charge-sheet against the appellants for offence under Sections 147, 148, 149, 294, 506-B and 307 of IPC.

3. The Trial Court by order dated 05.03.2009 framed the charges under Sections 147, 148, 307/149, 506 (part-II) and 294 of IPC. Thereafter by order dated 05.09.2014, charges under Sections 324, 324/149 and 323 (3 counts) were additionally framed.

4. The appellants abjured their guilt and pleaded not guilty.

5. The prosecution in order to prove its case examined Hazarilal (PW-1), Roop Singh (PW-2), Dr. S.K. Karkhur (PW-3), Shivnarayan (PW-4), ASI Sultan Ahmad Khan (PW-5), Bir Singh (PW-6), Baikunthi Bai (PW-7), Banti (PW-8), SHO R.S. Jakhaniya (PW-9) and Head Constable Mahendra Singh Jadon (PW-10).

6. The appellants examined Anant Singh (DW-1), Kiroi (DW-2), Vijay Kumar (DW-3), Dr. S.K. Karkhur (DW-4), ASI M.S. Jadon (DW-5), Ramjilal (Appellant No.1) (DW-6) and Tole Sharma (DW-7).

7. The Trial Court by impugned judgment and sentence convicted the appellant No.6 – Brajesh for offence under Sections 307, 324/149, 323 (2counts), 147, 148 of IPC, appellant No.4 - Khema @ Khemraj for offence under Sections 324, 307/149, 323 (2counts) and 147 and 148 of IPC and the appellant No.1 – Ramjilal, No.2 - Horilal, No.3 - Jagmohan, No.5 - Hukum Singh and No.7 - Barelal were convicted under Sections 307/149, 324/149, 323 (2 counts), 147 and 148 of IPC and sentenced them as mentioned above.

8. Challenging the judgment and sentence passed by the Court

below, it is submitted by the counsel for the appellants that the appellant Ramjilal had also suffered injuries, which have not been explained by the prosecution. The Trial Court has failed to consider that on the report of Ramjilal, a non-cognizable offence under Sections 323 and 504 of IPC was found. The ocular evidence is not supported by the medical evidence. The appellant Horilal was not present on the spot as he was attending a meeting of Society. All the witnesses are related and interested witnesses, therefore, their evidence is not reliable. It is further submitted that the appellant No.6 Brajesh is still in jail and he has completed almost 4 years of actual incarceration and sentence undergone by Brajesh is sufficient to meet the ends of justice. It is further submitted that so far as other appellants are concerned, there is no allegation that they had assaulted the injured Roop Singh and, therefore, the sentence for the period already undergone by the remaining appellants is sufficient to meet the ends of the justice.

9. *Per contra,* it is submitted by the counsel for the State that merely because the witnesses are related, therefore, their evidence can not be rejected. The witnesses has sustained injuries, which clearly establishes their presence on the spot. The ocular evidence is fully supported by the medical evidence. The appellants were the member of the unlawful assembly and in pursuance of their common object, they had assaulted the injured persons and, accordingly, each and every appellant is vicariously liable for the act of others.

10. Heard the learned counsel for the parties.

11. Hazarilal (PW-1) has stated that it was about 04:00 to 4:30 PM, he was in his field. Appellant Ramjilal was throwing stones in the field of the complainant Shivnarayan and the injured Roop Singh was objecting to it. On that issue, a quarrel took place between them. Thereafter, Barelal, Khemraj, Jagmohan, Hukum etc. total seven persons also came there. The appellant Brajesh was having axe and appellant Hukum was having ballam whereas other persons were having Lathi. Brajesh Singh gave an axe blow on the head of Roop Singh whereas Khemraj gave a farsa blow on the head of Shivnarayan, Ramji Lal gave a lathi blow on the left hand of Bir Singh and thereafter all the accused persons assaulted Shivnarayan, Roop Singh, Baikunthi and Bir Singh. Thereafter, this witness and Harcharan intervened in the matter. Even they were also threatened by the appellants, thereafter, Roop Singh was taken to the hospital on a Jeap. On the next day, the police prepared a spot map on the information of this witness. The Blood stained earth and plain earth was seized and his thumb impression was obtained by the police on the paper. He further stated that he is issueless and is an unmarried person and he had given his land to the injured Shivnarayan by registered sale deed. One Sunti of Bupdipura village had stayed with him for one year or two and one child was born. However, he denied that Sunti is his married wife and had stayed with him as a wife for 15 years. He further stated that on the allegation of keeping a live cartridge, he was arrested by Sabalgarh police and thereafter he was handed over to Maharashtra police and he remained detained in the

Maharashtra jail for a period of 1-2 years. He further admitted that prior to present dispute, he has already transferred his entire land in favour of the complainant Shivnarayan and he further admitted that at the time of the quarrel, this witness was not having any land in the village. He denied that he is staying in the house of Shivnarayan for the last 15 years. He further denied that the wife and son of Shivnarayan have objected to that. He further admitted that the name of his father is Sundarlal, whereas the name of father of Shivnarayan is Angad. Shivnarayan and Harvilas are two brothers. He further admitted that name of grand father of Shivnarayan is Jhandu and the father of this witness and grand father of Shivnarayan namely Jhandu are real brother. He further admitted that Shivnarayan is his nephew. He further admitted that Harcharan, who had intervened in the matter, is the son of brother of Shivnarayan namely Harvilas. This witness has further stated that he had gone to the hills for collecting woods and the hills are situated at a distance of about 50 feets from the field of complainant Shivnarayan and there is only a public way between the fields of Shivnarayan and the hills. He further admitted that the incident took place in the field of Ramjilal. When he was going to collect their woods, he had seen the injured Roop Singh in his own field and while going to collect the woods, he had passed through the field of victim Roop Singh and Roop Singh was irrigating his field. At that time, the appellant Ramjilal was standing all alone in his field and at the time, when the quarrel took place between Roop Singh and Ramjilal, he was at a distance of about 50 meters from Roop Singh.

After the incident was over, he did not bring back his woods. Harcharan has 5 bighas of land and he was also all alone in his field. At the time of incident, Harcharan was guarding his field. This witness and Harcharan had requested Ramjilal not to use the abusive language, then these two witnesses were also threatened by Ramjilal. At that time, they were standing about 20 steps from Ramjilal, thereafter, Ramjilal started throwing stones in the field of Roop Singh, which was objected by Roop Singh. Ramjilal gave a lathi blow to Roop Singh, which landed on the knee of his right leg. At that time, all the accused persons came there and Roop Singh was standing. Under the hope and belief that the incident would come to an end, this witness and Harcharan did not try to take away Roop Singh with them. Horilal, Barelal, Brajesh, Hukum and Jagmohan also came there from their respective fields. Except the appellants and the injured Roop Singh as well as this witness and Harcharan, there was no other person on the field. After sustaining the injury, Roop Singh had fallen unconscious. When they lifted Roop Singh from the spot, he had bleeding from his head. He further admitted that the appellants are also his family members. He further stated that while taking to the Jeap, his clothes had not stained with blood of Roop Singh. He further admitted that while Roop Singh was being kept in the police Jeap, lot of persons had gathered. The appellants had assaulted by means of axe and started assaulting. The first assault by axe was made by Brajesh, which landed at back side of the head of Roop Singh. Further Jagmohan had given a lathi blow on the knee of

his right leg. At that time, Roop Singh was already lying on the ground. Jagmohan had given a single lathi blow to Roop Singh. Thereafter, Horilal, Barelal, Hukum and Khemraj assaulted Roop Singh by ballam and lathi. Hukum had assaulted Roop Singh by blunt side of ballam. Horilal had assaulted on the back of Roop Singh by means of lathi. Ramjilal had exhorted that whatever money would be required, he would spent, but everybody should be beaten. He further admitted that in his police case diary statement that he had not disclosed that he had gone to collect the woods. On the contrary, he admitted that he had informed the police that he was in his filed. It is further stated that all the appellants except Ramjilal came there from their respective fields and immediately started assaulting Roop Singh. He further stated that he had informed the police that Jagmohan had given a lathi blow on the right leg of Roop Singh, but the same is not mentioned. Khemraj had given a farsa blow on the head of Shivnarayan. Shivnarayan had already reached the spot before the beginning of assault. Shivnarayan, Baikunthi and Bir Singh had reached the spot on their own after noticing the quarrel. He further stated that he had not seen any injury on the body of Shivnarayan except a farsa blow on the head of Shivnarayan. He further denied that as Shivnarayan is his nephew, therefore, he is giving a false statement. He further admitted that about 4 years back, Ramjilal had fallen in a well, as a result of which, he has sustained permanent disability, however, denied that Ramjilal cannot walk without the help of lathi. He further denied that Shivnarayan and Roop Singh have

encroached upon a small portion of field of Ramjilal. He further denied that Roop Singh was making a boulder boundary in the field of Ramjilal. He further denied that when Ramjilal objected to it, then Roop Singh had abused him, thereafter, Roop Singh had called Bir Singh, Kripar Singh, Shivnarayan, Baikunthi, Harcharan, Ramlakhan, Banti and Munesh. He further denied that Sua Bai, wife of Ramjilal was beaten by these persons. He further denied that the appellant Ramjilal was beaten by these persons. He further denied that Ramjilal had sustained injuries.

12. Roop Singh (PW-2) is the person, who had sustained injury on his head. He has stated that it was about 3-4 PM and he was all alone in his field. His field and field of Ramjilal are adjoining to each other with a common mud boundary. Ramjilal was throwing stones in his field, which was objected by these witnesses and thereafter all the accused persons came to the spot. Ramjilal was having lathi, Jagmohan was having lohangi lathi, Khemraj was having farsa, Brajesh was having axe, Barelal and Horilal were having lathi. All the accused persons surrounded him and on hearing his shouts, his brother Bir Singh, mother Baikunthi and father Shivnarayan also reached on the spot. All the accused persons were using abusive language, thereafter, Brajesh gave an axe blow on the back of his head, as a result of which, he fell down. Jagmohan gave a lathi lohangi blow on the knee of his leg. The appellants also assaulted Shivnarayan, Baikunthi and his brother Bir Singh. In cross-examination, this witness has stated that the field of Ramjilal is

situated on the eastern side of field of this witness and there is a public way on the western side. The field of Horilal is situated in the northern side and there is a hill on the southern side of his field. A common mud boundary is between his field and the field of Ramjilal. At the time of incident, the width of the mud boundary was about 2 feets. He had gone to his field at about 02:00-03:00. He was irrigating the land from the well situated in his field. Ramjilal was cultivating his field by tractor. Stones were kept on the mud boundary, which were lying there for the last about 50 years. About 20-25 stones were thrown by Ramjilal. When Ramjilal had thrown stones, except Ramjilal and the driver of the tractor, no other person was present on the spot. At the time of the incident, Ramjilal was not handicapped. The stones thrown by Ramjilal were not seized by the police and when he objected to Ramjilal that he should not throw the stones in his field, then the abusive language was used and other accused persons were called. At that time, he was all alone in his field. When abuses were being hurled, his parents and brother had also come. His clothes had got stained. After his beating had started, the parents and brother had come and by that time, he had not fallen unconscious. After he fell down, he did not became unconscious immediately and while he was lying on the field, Jagmohan had given a lathi blow. Only after his brother and parents were beaten, he fell unconscious and regained consciousness in Gwalior hospital. The first axe blow was given by Brajesh on the back side of his head. Except the injury on his head and on his leg, he had not suffered any injury. He had not

seen injury of father, mother and brother as he already became unconscious. The father, mother and brother were working in another field. He did not have any talk with Brajesh. He further denied that tractor was of one Pandey. He further stated that he does not wear watch. Certain omissions in his police case diary statement (Ex. D-9) were pointed out. The tractor driver had left the place of incident before assault could start. The name of tractor driver was Tole. He never tried to find out the name of the owner of the tractor. He further denied for want of knowledge that the tractor belongs to Tole @ Brajesh and further submitted that he does not know that whether the said tractor was still in the name of Tole @ Brajesh or not ? This witness has further stated that the weight of biggest stone thrown by the appellant Ramjilal was approximate 5 kg. However, he could not narrate the weight of smallest stone. He further stated that the stones were thrown on the corner of his field.

13. Shivnarayan (PW-4) has stated that the incident took place at about 04:00 PM and he was sowing mustard in his field. Bir Singh and Baikunthi were also with him. The field of Ramjilal is adjoining to his field. Ramjilal started throwing stones in his field, which was objected by Roop Singh, thereafter Ramjilal called Horilal, Barelal, Hukum, Khemraj, Brajesh and Jagmohan. Khemraj was having farsa, Brajesh was having axe, Jagmohan was having lohangi, Hukum was having ballam and others were having lathi. As his son Roop Singh had shouted that he has been surrounded, therefore, he, his wife Baikunthi and son Bir Singh went to the spot. The appellants had also

abused these persons. Brajesh gave an axe blow to Roop Singh which landed on the back side of his head. The blow was given by sharp side of the axe. Roop Singh fell down on the ground. Jagmohan gave a lohangi blow on the leg of Roop Singh. By folding his hands, this witness pleaded for mercy but Khemraj gave a farsa blow which landed on the front side of the head of this witness. (The Court has noticed the farsa injury mark on the forehead of this witness.) Thereafter, Horilal gave a lathi blow which landed on the wrist of his left hand. Hukum Singh gave a ballam blow which landed on the elbow of left hand of Bir Singh. Barelal had given a lathi blow to Bir Singh which landed on the knee of his left leg. Barelal had also given a lathi blow which landed on the left shoulder of his wife. Barelal has also given a lathi blow which landed on the right side of his ribs. Hazari and Harcharan also came on the spot and intervened in the matter and after the incident is over, all the accused persons went away. Thereafter, this witness along with his wife and children came to Sabalgarh hospital, where they were treated. The police had also reached there and the Dehati Nalshi Ex. P-14 was lodged. Roop Singh was referred from Sabalgarh hospital to Gwalior. In cross-examination, he admitted that Hazarilal is his uncle and land of Hazarilal has been mutated in his name. Harcharan is the son of his brother. Roop Singh was irrigating the field and the said field was in the name of the complainant from very beginning. After death of father of the complainant, this field was transferred in his name. He further denied that the said field was in the name of Kunwar Raj. The

field is also known as Manwali field. He was sowing mustard in his field which is known as Kasela Wala. The field of the appellant Ramjilal is situated between both the fields of the appellant. He further stated that when he reached on the spot, except the appellant and Roop Singh, no other person was there. He remained hospitalized for 20 days and statement was recorded after two weeks. The incident took place in the field known as Patiyawala field. This witness also could not explain as to how the injured witness went to Patiyawala field. He further stated that Ramjilal had thrown about 20-25 stones. He further denied that Ramjilal was dragged from the tractor by these persons. He further denied that Ramjilal had sustained injuries. He further denied that Horilal was attending Panchayat of the Society. Khemraj had given a farsa blow to this witness. He had tried to save Roop Singh by folding hand and pleaded for mercy. He further denied that Patiyawala field belongs to Basanti.

14. Bir Singh (PW-6) has stated that Brajesh had given an axe blow on the head of Roop Singh. Khemraj had given a farsa blow on the forehead of his father. Barelal had assaulted this witness Bir Singh by means of lathi. Hukum Singh had given a ballam blow to his mother which landed on the left side of ribs. All the accused persons had assaulted and they were hurling abuses. These witnesses were shifted to hospital. This witness was also cross-examined in detail. However, nothing could be elucidated in his cross-examination which may make his evidence unreliable.

15. Baikunthi (PW-7) has stated that Brajesh had given an axe

blow to Roop Singh which landed on his head. Jagmohan had given a lathi blow. Farsa blow was given to her husband which landed on his head. Jagmohan had given a lathi blow on the right side of her ribs and Horilal had given a lathi blow on the left hand of her husband. Thereafter, Barelal had given a lathi blow to Bir Singh which landed on the elbow of his left hand. Brajesh had given an axe blow to Bir Singh which landed on his shoulder. Hukum had given a ballam blow which landed on the left side of her back. After hearing their shouts, Hazarilal and Harcharan also reached there. This witness was also cross-examined in detail. However, nothing could be elucidated which may make her evidence unreliable.

16. Dr. S.K. Karkhur (PW-3) had examined Roop Singh, Shivnarayan, Bir Singh and Baikunthi. This witness had found following injuries on the body of Roop Singh (MLC report is Ex. P-1):-

> (i) lacerated wound 8x1/2 cm x bony deep on right occipital area of scalp. Profuse bleeding occur, injury caused by hard and blunt object.
>
> (ii) Contusion 6x4 cm anterior aspect of middle of right thigh. Injury caused by hard and blunt object.
>
> Injury No. 1 was opined as dangerous to life.

17. Following injuries were found on the body of Shivnarayan (MLC report is Ex. P-3):-

> (i) Incised wound – 6 x ½ cm x muscle deep at right frontal area muscle deep margins clean cut,

injury caused sharp object.

(ii) Contusion 6x2 cm right side occipital region, hard and blunt object.

(iii) Contusion 7x2 cm at right lateral aspect right chest middle, caused by hard and blunt object.

(iv) Contusion 12x2 cm posterior aspect left middle chest longitude placed, hard and blunt object.

(v) Abrasion 4x2 cm dorsal aspect left ankle region, hard and blunt object.

(vi) Contusion 10x2 cm at left middle arm, hard and blunt object.

18. Following injuries were found on the body of Bir Singh (MLC report is Ex. P-5):-

(i) Contusion 8x6 cm at right posterior aspect upper part forearm injury caused by hard and blunt object.

(ii) Contusion 4x2 cm dorsal aspect base left thumb injury, caused by hard and blunt object.

(iii) Contusion 3x2 cm posterior aspect left shoulder, caused by hard and blunt object.

(iv) Abrasion 4x2 cm anterior aspect just below knee, caused by hard and blunt object.

19. Following injuries were found on the body of Baikunthi (MLC report is Ex. P-7):-

(i) Contusion with abrasion 6x3 cm left side of scapular region injury caused by hard and blunt object.

20. On Xray, no bony injury was found on the body of Bir Singh. X-ray report is Ex. P-8. No bony injury was found on the body of Shivnarayan. X-ray report is Ex. P-12 and no bony injury was found

on the body of Baikunthi. X-ray report is Ex. P-13.

21. In cross-examination, this witness has stated that the injured Roop Singh was brought to the hospital at about 06:00 PM and this witness has further admitted that no requisition was received from the police station for the medical examination of Roop Singh. He further stated that a written information was given by the hospital to the SHO of the concerned police station. The injured was not in a position to talk, therefore, he had not enquired from Roop Singh about the history of the case. He further admitted that he had not found any incised wound on the body of Roop Singh and except two injuries, there was no other injury. He further stated that the injury was found on the frontal area of head of Shivnarayan. Frontal area and parietal area are two different parts. He further stated that by mistake, he had mentioned that Shivnarayan has sustained injury on the left side of parietal part of his head, whereas in fact the injury was on frontal area.

22. Banti (PW-8) has stated that nothing was seized from the spot. After 3-4 days of the incident, the police had seized the blood stained and plain earth from the fields of the complainant Shivnarayan by seizure memo Ex. P-17. However, in cross-examination, this witness has stated that the earth was seized from the field of appellant Ramjilal.

23. On 02.12.2007 R.S. Jakhaniya (PW-9) has stated that he had recorded the statements of Shivnarayan, Roop Singh, Bir Singh and Smt. Baikunthi and on 07.12.2007 he had recorded the statement of

Harcharan. Thereafter on 10.02.2008, he had arrested Ramjilal @ Munna by arrest memo Ex. P-18 and on 19.03.2008 he had arrested Horilal. On 12.05.2008 he had arrested Jagmohan, Khemraj, Hukum Singh, Brajesh and Barelal and their arrest memos are Ex. P-19 to P-24. On 12.05.2008 the house of Jagmohan was searched and search report is Ex. P-25 and on the same day, houses of Barelal, Khema, Hukum Singh and Brajesh were also searched and the search report is Ex. P-26.

24. Mahendra Singh (PW-10) has stated that on 26.10.2007 at about 00:10 hours, the constable Kaptan Singh had brought a Dehati Nalishi from Sabalgarh hospital Ex. P-14 and on the basis of the same, FIR No. 69/2007 Ex. P-15 was recorded and the copy of the same was sent to the JMFC, Sabalgarh District Morena and the investigation was handed over to Sultan Ahmad Khan. However, on the same day at about 12:20 AM, a packet containing blood stained clothes of Roop Singh and a specimen of seal was handed over to Sultan Ahmad, which was seized vide seizure memo Ex. P-18.

25. The appellants have examined Anant Singh (DW-1) who had stated that on 25.02.2007 a meeting of Society had taken place in Joura Mandi Committee which started at about 11:00 AM and continued till 04:00 PM. Horilal is the treasurer. About 500 persons had attended the meeting. The meeting proceedings of 25.10.2007 is Article – A and the signature of Horilal is at page 2 from A-A. Horilal had signed meeting proceedings and signed in the meeting itself. Meeting came to an end at 04:00 PM. Thereafter, at about 04:30 PM,

this witness along with Horilal and other persons went to Sabalgarh and reached there at about 06:00 – 06:30 PM. In cross-examination, this witness has stated that Horilal is the treasurer of the entire Morena district. However, he denied that the Society is not registered. He denied that no elections took place. He denied that no meeting had taken place on 25.10.2007. He further stated that the previous meeting was held on 07.07.2007. However, he could not narrate that on what date, the subsequent meetings were held. He further stated that after 25.10.2007 near about 20 – 21 meetings have taken place and the register contains the proceedings of all those meetings. He further denied that forged register has been prepared.

26. Kiroi (DW-2) has also stated that about 5 years back, Barelal and Hukum had come to his place at about 08:00-09:00 AM for taking *Karab* and went back at about 06:00 PM after taking *Karab.* He further stated that the village Jatoli is situated at a distance of 2-3 km from Rampahadi. He further stated that Hukum and Barelal had come on a bullock-cart. However, he could not narrate the date of Deewali festival in the said year. He also could not disclose the date of Holi festival. He also stated that as fight had taken place on 25th therefore, out of memory he has stated that Barelal and Hukum had come on 25th. He denied that Hukkum and Barelal were in the fight and have not come to his house.

27. Vijay Kumar (DW-3) has stated that he is working on the post of CEO, Janpad Panchayat, Sabalgarh. Register of handicapped persons is maintained. According to which, the name of Ramjilal is

mentioned at Sr. No. 423. According to which, Ramjilal is suffering from permanent disability of 60%. The register is Ex. D-5 and its photocopy is Ex. D-5(c) and the identity card is Ex. D-6 and its photocopy is Ex. D-6(c). In cross-examination, this witness has admitted that there is no document in the office on the basis of which, the permanent disability of Ramjilal has been mentioned as 60%.

28. Dr. S.K. Karkhur (DW-4) has stated that he had found the following injuries on the body of Ramjilal:-

1. Contusion 1 1/2x 2 cm left side of back
2. Contusion 2x1cm just below right eye
3. Contusion 2x1 cm on wrist of left hand
4. Complaining pain in chest but no external injury was found.

The MLC report is Ex. D-7C.

29. In cross-examination, this witness has stated that the injuries were not self inflicted but they can be sustained because of fall on the ground.

30. M.S. Jadon (DW-5) has stated that on 25.10.2007, he had recorded an information in Rojnamcha Sanha No. 542 which was lodged by Ramjilal at about 17:30 hours and it was mentioned that it is a non-cognizable offence. Since the injuries sustained by the complainant Ramjilal were suspicious, therefore, he was sent for medical examination and after receipt of medical report, since the offence was non-cognizable, therefore, no FIR was registered. The Rojnamcha Sanha is Ex. D-8 and its photocopy is Ex. D-8(c).

31. Ramjilal (DW-6), who is the appellant No. 1, himself appeared as defence witness and has stated that Shivnarayan, Roop Singh, Bir

Singh, Kripar Singh and Baikunthi are constantly encroaching upon his field. As his spinal cord was broken, therefore, he was unable to move and he used to stay back in the house. On 25.10.2007 at about 04:00-04:30 PM, he and his wife had gone to the field for sowing mustard and found that Baikunthi and Roop Singh were preparing new mud boundary by putting stones. When he objected that why they are making new mud boundary, then Roop Singh, Bir Singh and Shivnarayan challenged him and started abusing him. He was sitting on the tractor. Roop Singh came to him and started dragging him from the tractor. As he was holding the tractor by his one hand, therefore, Roop Singh gave a lathi blow on the upper part of his right eye, one lathi blow was given to wrist of right hand. When Roop Singh dragged him from the tractor then Roop Singh fell on the spade and this witness fell on Roop Singh and as Roop Singh fell down on the spade, therefore, he sustained injury. Thereafter, Shivnarayan, Baikunthi and Bir Singh also reached there. Tractor was being driven by Tole. As Baikunthi had thrown stones towards Tole, therefore, he suffered injury on his back, as a result of which, he went away along with his tractor. He was beaten by Roop Singh, Bir Singh, Shivnarayan. Thereafter, he was brought by Sua Bai to the Police Station Tentra, where he regained consciousness, where he lodged the report and was sent to Sabalgarh hospital. He further stated that his statement was recorded at Police Station Tentra. The farmers are fed up with Shivnarayan, who used to encroach upon their lands. Shivnarayan had encroached upon 5-6 bighas land belonging to his

uncle Kunwar Raj, as a result of which, Kunwar Raj committed suicide by jumping in front of running train. Shivnarayan had also encroached upon the land of Motilal, as a result of which, he also died. Shivnarayan had also forcibly taken possession of the land of Hazarilal. 3 bighas of land of Mahipati as well as his house was forcibly taken by Shivnarayan. Shivnarayan has also encroached upon one bigha land of his brother Ramlakhan. All the residents of village are afraid of Shivnarayan, therefore, nobody comes forward to depose against him. Since the police had not taken any action against Shivnarayan and Roop Singh, therefore, he has filed a complaint which is still pending. In cross-examination, this witness has stated that Hazarilal is still alive. The persons whose lands were forcibly taken have already expired. Moti did not have any issue. He had two sisters, out of which, one is blind and another has expired. He further denied that he had assaulted Roop Singh. He further denied that he is giving false statement in order to save himself.

32. Tole Sharma (DW-7) has stated that on 25.07.2008 at about 03:00-04:00 PM, the appellant Ramjilal came to this witness for tractor and thereafter this witness went to the field of Ramjilal by his tractor and started sowing mustard. Thereafter, Ramjilal and Roop Singh started fighting with each other. Some stones were lying on the mud boundary of Ramjilal and those stones were being thrown by Ramjilal in the field of Shivnarayan and son of Roop Singh in retaliation was throwing back stones and on this issue, quarrel took place between the parties. At that time, mother of Roop Singh,

Baikunthi had also come there and she started pelting stones, as a result of which, this witness also sustained injury on his right shoulder and thereafter he came back along with the tractor. In cross-examination, this witness has fairly stated that he had purchased the tractor in the year 2003. He had seen Roop Singh and nobody else was in the field of Ramjilal. He further admitted that he has come to the Court at the request of Ramjilal. However, he denied that he has disclosed the date of incident on the instructions of Ramjilal. He further stated that as the quarrel had taken place, therefore, he did not take his labour charges from Ramjilal. He further stated that he had not taken any money in advance.

33. The prosecution case in short is that the quarrel started only when the appellant No.1 Ramjilal, started throwing stones in the field of Roop Singh. Tole Sharma (DW-7), who claims to be present on the spot, has stated that Ramjilal was throwing the stones in the field of victim Roop Singh (PW-2) and Victim Roop Singh (PW-2) in retaliation was throwing back the stones. Thus, according to Tole Sharma (DW-7), the quarrel was started by Ramjilal. The presence of Tole Sharma (DW-7) has been claimed by Ramjilal (DW-6) himself. Thus, the prosecution story of initiation of quarrel by Ramjilal by throwing stones in the field of Roop Singh (PW-2) is supported by the evidence of Tole Sharma (DW-7).

34. The appellant no.1 Ramjilal (DW-6) has appeared as a defence witness. After an accused decides to appear as a defence witness then he looses all the immunities which are available to an accused. The

accused can maintain silence on a particular issue, but once, he appears as a defence witness, then he has to explain each and every circumstance. This Court in the case of **Rakesh Garg Vs. State of M.P.** by judgment **dated 10-5-2019** passed in **Cr.A. No. 6426 of 2017 (Gwalior Bench)** has held as under :-

> "30..... It can be safely said that by filing an application under Section 315 of Cr.P.C. to appear as a defence witness, the accused, impliedly waives his rights as an accused and he is liable to suffer the consequences of his action if the statements in his evidence are found to be self-criminative. Once, an accused decides to appear as defence witness, then he enjoys the status of like any other witness and in view of Section 132 of Evidence, he cannot claim any immunity to answer a question. Even leading questions tending to implicate him can also be put in the cross examination....."

35. Ramjilal (DW-6) has stated that he was sitting on the tractor of Tole Sharma (DW-7) and he was dragged by Roop Singh from the tractor. As this witness was holding the tractor by his one hand, therefore, he was assaulted by Roop Singh by lathi. Roop Singh fell on a spade and this witness fell on Roop Singh, as result of which, Roop Singh had sustained injuries. Thus, this witness has admitted that quarrel had taken place between him and Roop Singh. However, Tole Sharma (DW-7) the driver of the Tractor, did not say that Ramjilal was sitting on the Tractor and he was dragged by Roop Singh and injuries were also caused by Roop Singh to Ramjilal or Roop Singh fell on a Spade. On the contrary, this witness has stated that after stones were pelted by Baikunthi (PW-7), he went away from the spot along with his tractor. Thus, the defence taken by Ramjilal

(DW-6) as a defence witness doesnot find corroboration from the evidence of Tole Sharma (DW-7).

36. Thus, this Court is of the considered opinion, that the prosecution has established beyond reasonable doubt that it was the appellant no.1 Ramjilal who started the quarrel by throwing stones in the field of Roop Singh. When Roop Singh objected to it, then the other accused persons also came on the spot.

37. All the prosecution witnesses have spoken in a singular voice that it was Brajesh who had given an axe blow on the back side of the head of Roop Singh. In MLC report Ex. P. 1, a lacerated wound was found on the back side of the head of Roop Singh. It is contended by the Counsel for the appellants, that since, axe is a sharp edged weapon and since, a lacerated wound was found, therefore, it is clear that the allegation against Brajesh is false. Considered the submissions made by the Counsel for the appellants.

38. The skull bone is considered to be the toughest bone in the body. Because of padding of scalp hair, the victim may not receive the sharp cut injury on his head. Further, because of hard bone, some times, the incised wound may also appear to be lacerated one. Therefore, it is always advisable that the nature of injury on the head, should be assessed by using magnifying glass. Modi in his Medical Jurisprudence and Toxicology (26th Edition) has observed as under :

> "Most scalp injuries are homicidal, and are generally produced by blunt weapons, for example, a *lathi*, a stone or a wooden pestle (*musal)* and occasionally by a cutting instrument, such as a *gandasa* a *Khurpi*, an axe or a sword.

> The injuries are mostly contusions and lacerated wounds, as well as incised and punctured wounds. A Scalp wound by a blunt weapon may resemble an incised wound, hence the edges and ends of the wound must be carefully seen to make out a torn edge from a cut and also to distinguish a crushed hair bulb from one cut or torn."

39. Further in the present case, not a single weapon could be seized by the prosecution. Thus, it is not known, that whether the axe used by Brajesh had sharp edge or not? Thus, it is held that the medical evidence, is not contrary to the ocular evidence, making the ocular evidence improbable. The Supreme Court in the case of **Latesh v. State of Maharashtra,** reported in **(2018) 3 SCC 66** has held as under :

> **"48.** ..... It is settled law that oral evidence takes precedence over the medical evidence unless the latter completely refutes any possibility of such occurrence [*Rakesh* v. *State of M.P., Kathi Bharat Vajsur* v. *State of Gujarat* and *State of U.P.* v. *Hari Chand*]....."

40. The Supreme Court in the case of **Yogesh Singh v. Mahabeer Singh,** reported in **(2017) 11 SCC 195** has held as under :

> **"43.** The learned counsel appearing for the respondents has then tried to create a dent in the prosecution story by pointing out inconsistencies between the ocular evidence and the medical evidence. However, we are not persuaded with this submission since both the courts below have categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eyewitnesses. We hold that there is no material discrepancy in the medical and ocular evidence and there is no reason to interfere with the judgments of the courts below on this ground. In any event, it has been consistently held by this Court that the evidentiary value of medical evidence is only

> corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. [See *Solanki Chimanbhai Ukabhai* v. *State of Gujarat*, *Mani Ram* v. *State of Rajasthan*, *State of U.P.* v. *Krishna Gopal*, *State of Haryana* v. *Bhagirath*, *Dhirajbhai Gorakhbhai Nayak* v. *State of Gujarat*, *Thaman Kumar* v. *State (UT of Chandigarh)*, *Krishnan* v. *State*, *Khambam Raja Reddy* v. *Public Prosecutor*, *State of U.P.* v. *Dinesh*, *State of U.P.* v. *Hari Chand*, *Abdul Sayeed* v. *State of M.P.* and *Bhajan Singh* v. *State of Haryana*.]"

41. Thus, it is held that the prosecution has established that the appellant Brajesh had given an axe blow on the back side of the head of Roop Singh (PW-2).

42. It is the case of Prosecution that Jagmohan had given a Luhangi lathi blow on the right side of the thigh of the injured Roop Singh (PW-2). The said injury is also corroborated by the MLC report, Ex. P-1 of Roop Singh (PW-2).

43. It is the case of the prosecution that Khemraj had given a Farsa blow on the front side of the head of the victim Shivnarayan (PW-4). Horilal had given a lathi blow on the wrist of left hand of this witness. Barelal had given a lathi blow which landed on the right side of ribs. The injuries sustained by the complainant Shivnarayan (PW-4) are corroborated by medical evidence Ex. P-3.

44. It is the case of Prosecution that Barelal had given a lathi blow to Beer Singh (PW-6) which landed on the elbow of left. Thereafter, all the appellants assaulted the injured. This witness has also sustained multiple injuries and his ocular evidence is corroborated by

medical evidence, Ex. P-5.

45. It is the case of prosecution that Hukum had given a ballam blow to Baikunthi (PW-7). Shivnarayan (PW-4) has stated that the blunt side of ballam was used. The evidence of Baikunthi (PW-7) and Shivnarayan (PW-4) is corroborated by the medical evidence. The MLC of Baikunthi is Ex. P-7.

46. It is submitted by the Counsel for the appellants, that Horilal was not present on the spot, and in fact he was in Joura and was in the meeting of the Society which started at about 11 A.M. and continued till 4 P.M., and Horilal came back to the village at around 06:00-06:30 P.M. In order to prove the plea of alibi, Horilal has examined Anant Singh (DW-1) who claims himself to be the president of the Society. Anant Singh (DW-1) has denied that the Society has no registration number, however, no document has been filed to show that the Society is registered under any law. This witness has also not filed any document to show that he was elected as a President and the appellant Horilal was elected as Treasurer. This witness also could not disclose that on what dates, meetings were subsequently held after 25-10-2007. Thus, this Court is of the considered opinion, that the evidence of Anant Singh (DW-1) cannot be accepted that Horilal was present in the meeting which was held on 25-10-2007 at Joura. Further, it is well established principle of law that plea of alibi has to be proved beyond reasonable doubt.

47. The Supreme Court in the case of **Vijay Pal v. State (Govt. of NCT of Delhi),** reported in **(2015) 4 SCC 749** has held as under :

"25. At this juncture, we think it apt to deal with the plea of alibi that has been put forth by the appellant. As is demonstrable, the trial court has discarded the plea of alibi. When a plea of alibi is taken by an accused, burden is upon him to establish the same by positive evidence after onus as regards presence on the spot is established by the prosecution. In this context, we may profitably reproduce a few paragraphs from *Binay Kumar Singh* v. *State of Bihar*: (SCC p. 293, paras 22-23)

"*22*. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (*a*) given under the provision is worth reproducing in this context:

> '(*a*) The question is whether *A* committed a crime at Calcutta on a certain day. The fact that, on that date, *A* was at Lahore is relevant.'

23. The Latin word alibi means 'elsewhere' and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. *The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to*

> *believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt*. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi."
>
> (emphasis supplied)
>
> The said principle has been reiterated in *Gurpreet Singh* v. *State of Haryana*, *Sk. Sattar* v. *State of Maharashtra* and *Jitender Kumar* v. *State of Haryana*."

48. The Supreme Court in the case of **Sk. Sattar v. State of Maharashtra,** reported in **(2010) 8 SCC 430** has held as under :

> **"35.** Undoubtedly, the burden of establishing the plea of alibi lay upon the appellant. The appellant herein has miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. The plea of alibi had to be proved with absolute certainty so as to completely exclude the possibility of the presence of the appellant in the rented premises at the relevant time. When a plea of alibi is raised by an accused it is for the accused to establish the said plea by positive evidence which has not been led in the present case. We may also notice here at this stage the proposition of law laid down in Gurpreet Singh v. State of Haryana as follows: (SCC p. 27, para 20)
>
> > "20. … This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that fact against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the abovenoted concurrent finding of fact."

> **36.** But it is also correct that, even though the plea of alibi of the appellant is not established, it was for the prosecution to prove the case against the appellant. To this extent, the submission of the learned counsel for the appellant was correct. The failure of the plea of alibi would not necessarily lead to the success of the prosecution case which has to be independently proved by the prosecution beyond reasonable doubt. Being aware of the aforesaid principle of law, the trial court as also the High Court examined the circumstantial evidence to exclude the possibility of the innocence of the appellant."

49. The Supreme Court in the case of **Binay Kumar Singh v. State of Bihar,** reported in **(1997) 1 SCC 283** has held as under:

> **"22.** We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (*a*) given under the provision is worth reproducing in this context:
>
> "The question is whether *A* committed a crime at Calcutta on a certain date; the fact that on that date, *A* was at Lahore is relevant."
>
> **23.** The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the

> burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey* v. *State of U.P.*; *State of Maharashtra* v. *Narsingrao Gangaram Pimple*."

50. Thus, the burden to prove the plea of alibi is heavy on the accused and the plea of alibi cannot be proved by preponderance of probabilities. In the considered opinion of this Court, the appellant Horilal has failed to prove his plea of alibi.

51. It is next contended by the Counsel for the appellants, that the appellant no.1 Ramjilal had also sustained injuries which have not been explained by the prosecution, therefore, the very genesis of the incident has been suppressed by the prosecution. Considered the submissions made by the Counsel for the appellants.

52. This Court has already held that the defence themselves have proved the case of the prosecution that it was Ramjilal who started the quarrel by throwing stones in the field of Roop Singh. Even

otherwise, the appellant Ramjilal had sustained minor injuries. It is well established principle of law that non-explanation of minor injuries on the body of the accused is not fatal to the prosecution case.

53. The Supreme Court in the case of **Mano Dutt v. State of U.P., (2012) 4 SCC 79** has held as under :

> **"39.** Before the non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case, the Court has to be satisfied of the existence of two conditions:
>
> (i) that the injuries on the person of the accused were also of a serious nature; and
>
> (ii) that such injuries must have been caused at the time of the occurrence in question."

54. The Supreme Court in the case of **Krishnegowda v. State of Karnataka, (2017) 13 SCC 98** has held as under :

> **"35.** The other glaring defect in the investigation is when A-1 has sustained injuries and admittedly a complaint was given by his father, a duty is cast upon the prosecution to explain the injuries. The doctor has also categorically deposed about the injuries sustained by A-1. These lapses on the part of the investigating officer assume greater importance and prove to be fatal to the case of the prosecution. When the investigating officer deposed before the Court that the complaint given by A-5's father was investigated and he filed "B form" and the case was closed, not marking the document is fatal to the case of the prosecution. The investigating officer further suppressed the fact that there was a direct evidence to seize the gun used by the deceased and register a complaint against the deceased under the relevant provisions of the Arms Act which is evident from the endorsement made on Ext. P-22."

55. The Supreme Court in the case of **Gurwinder Singh v. State of**

Punjab, (2018) 16 SCC 525 has held as under :

> **"11.** It cannot be held as an invariable proposition that as soon as the accused received the injuries in the same transaction, the complainant party were the aggressors—it cannot be held as a rule that the prosecution is obliged to explain the injuries and on failure of the same, the prosecution case should be disbelieved. It is well settled that before placing the burden on the prosecution to explain the injuries on the person of the accused, two conditions are to be satisfied:
>
> (i) the injuries were sustained by the accused in the same transaction; and
>
> (ii) the injuries sustained by the accused are serious in nature.
>
> **12.** This Court considered the effect of non-explanation of injuries sustained by the accused person in Takhaji Hiraji v. Kubersing Chamansing and held as under: (SCC p. 154, para 17)
>
> "17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In Rajender Singh v. State of Bihar, Ram Sunder Yadav v. State of Bihar and Vijayee Singh v. State of U.P., all three-Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in

> probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case."
>
> (emphasis supplied)

56. The Supreme Court in the case of **Kumar v. State, (2018) 7 SCC 536** has held as under :

> **"28.** The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the authorities concerned to take up the investigation in a neutral manner, without having regard to the ultimate result. In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked.
>
> **29.** Another point put forth by the learned counsel on behalf of the appellant-accused is that the prosecution has not explained the injuries suffered by the accused and hence the prosecution case should not be believed. At the outset, it would be relevant to note the settled principles of law on this aspect. Generally failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true (see Mohar Rai v. State of Bihar).
>
> **30.** In Lakshmi Singh v. State of Bihar this Court observed: (SCC p. 401, para 12)
>
> "12. … where the prosecution fails to explain the injuries on the accused, two results follow:
>
> (1) that the evidence of the prosecution witnesses is untrue; and

(2) that the injuries probabilise the plea taken by the appellants."

It was further observed that: (SCC p. 401, para 12)

"*12*. … in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

(*1*) *that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version*;

(*2*) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;

(*3*) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

(emphasis supplied)

* * * *

32. From the evidence of IO, PW 24 it is apparent that in the scuffle PW 2 (Arumugham) received "simple" injuries and he had taken the statement of Dr Lavanya (PW 17) who treated PW 2. He had also examined Dr Illayaraj (PW 18) who conducted post-mortem on the body of the deceased. But, in the case of appellant-accused, PW 24, IO admits that he was aware of the fact that the appellant-accused was admitted as in-patient and the appellant-accused had sustained injuries. He further states that neither did he arrest the accused nor he examined the doctor in regard to the injuries of the accused. In the circumstances in which the deceased, accused and also PW 2 (Arumugham) got injuries, it is obligatory on the part of IO to examine the doctor and seek information about the injuries sustained

> by the accused and the same should have been made part of the record. A duty is cast on the prosecution to furnish proper explanation to the court how the person who has been accused of assaulting the deceased, received injuries on his person in the same occurrence. We may note that the injuries alleged to have been caused are not properly explained. An alternative story is set up wherein the injuries are attributed to mob justice, such allegations without substantive evidence cannot be accepted."

57. Dr. S.K. Karkhur (DW-4) has stated that following injuries were found on the body of Ramjilal :

1. Contusion 1 1/2x 2 cm left side of back
2. Contusion 2x1cm just below right eye
3. Contusion 2x1 cm on wrist of left hand
4. Complaining pain in chest but no external injury was found.

The MLC report is Ex. D-7C.

58. Thus, from the MLC report, Ex. D-7C, it is clear that Ramjilal had sustained minor injuries.

59. The contention of the Counsel for the appellants, that non-explanation of injuries on the body of Ramjilal is fatal to the prosecution because the very genesis has been suppressed is concerned, this Court has already held that the very genesis of the incident has been proved by the appellants by examining Tole Sharma (DW-7). Thus, it is clear that in fact Ramjial was the person who had initiated the quarrel. Further, as the injuries sustained by Ramjilal are minor, thus, non-explanation of the same is not fatal to the prosecution case.

60. It is next contended by the Counsel for the appellants that Ramjilal Rawat is a handicapped person and cannot walk without any

help. The defence has relied upon the certificate Ex. D-5C. The contention of the Counsel for the appellants cannot be accepted for the simple reason, that it is the case of Ramjilal (DW-6) himself, that he was in his field along with Tole Sharma (DW-7). Thus, the contention that since, Ramjilal is a handicapped person, therefore, he cannot walk without the help, is hereby rejected.

61. It is next contended by the Counsel for the appellants, that in fact only Brajesh had given an axe blow on the back side of the head of Roop Singh, therefore, it cannot be said that the remaining appellants were sharing common object or they were the members of unlawful assembly.

62. Considered the submission made by the Counsel for the appellants.

63. Common object can develop even on the spot. In the present case, the presence of all other appellants was not innocent presence but there are specific allegations, that they too had assaulted the injured persons, and the ocular evidence is corroborated by the medical evidence. Thus, it cannot be said that the appellants no. 2,3,4,5, and 7 were merely silent spectators, but on the contrary they had played an active role in the assault.

64. The Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra,**reported in **(2016) 10 SCC 537** has held as under :

> **"21.** An offence committed in prosecution of common object of an unlawful assembly by one person renders members of unlawful assembly sharing the

common object vicariously liable for the offence. The common object has to be ascertained from the acts and language of the members of the assembly and all the surrounding circumstances. It can be gathered from the course of conduct of the members. It is to be assessed keeping in view the nature of the assembly, arms carried by the members and the behaviour of the members at or near the scene of incident. Sharing of common object is a mental attitude which is to be gathered from the act of a person and result thereof. No hard-and-fast rule can be laid down as to when common object can be inferred. When a crowd of assailants are members of an unlawful assembly, it may not be possible for witnesses to accurately describe the part played by each one of the assailants. It may not be necessary that all members take part in the actual assault. In *Gangadhar Behera*, this Court observed: (SCC pp. 398-99, para 25)

> "*25*. The other plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is untenable. A four-Judge Bench of this Court in *Masalti case* observed as follows: (AIR p. 210, para 15)
>
> > '*15*. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is

true and which is not."

65. The Supreme Court in the case of **Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel,** reported in **(2018) 7 SCC 743** has held as under :

> **"24.** To understand the true scope and amplitude of Section 149 IPC it is necessary to examine the scheme of Chapter VIII (Sections 141 to 160) IPC which is titled "Of the offences against the public tranquility". Sections 141 to 158 deal with offences committed collectively by a group of 5 or more individuals.
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> **25.** Section 141 IPC declares an assembly of five or more persons to be an "unlawful assembly" if the common object of such assembly is to achieve any one of the five objects enumerated in the said section. One of the enumerated objects is to commit any offence. "The words falling under Section 141, clause third "or other offence" cannot be restricted to mean only minor offences of trespass or mischief. These words cover all offences falling under any of the provisions of the Penal Code or any other law." The mere assembly of 5 or more persons with such legally impermissible object itself constitutes the offence of unlawful assembly punishable under Section 143 IPC. It is not necessary that any overt act is required to be committed by such an assembly to be punished under Section 143.
>
> **26.** If force or violence is used by an unlawful assembly or any member thereof in prosecution of the common objective of such assembly, every member of such assembly is declared under Section 146 to be guilty of the offence of rioting punishable with two years' imprisonment under Section 147. To constitute the offence of rioting under Section 146, the use of force or violence need not necessarily result in the achievement of the common object. In other words, the employment of force or violence need not result in the commission of a crime or the achievement of any one of the five enumerated common objects under Section 141.
>
> **27.** Section 148 declares that rioting armed with deadly weapons is a distinct offence punishable with the longer period of imprisonment (three years). There is a distinction between the offences under Sections 146 and 148. To constitute an offence under Section 146, the members of the "unlawful assembly" need not carry weapons. But to constitute an offence under Section 148,

a person must be a member of an unlawful assembly, such assembly is also guilty of the offence of rioting under Section 146 and the person charged with an offence under Section 148 must also be armed with a deadly weapon.

28. Section 149 propounds a vicarious liability in two contingencies by declaring that (*i*) if a member of an unlawful assembly *commits an offence in prosecution of the common object of that assembly*, then every member of such unlawful assembly is guilty of the offence committed by the other members of the unlawful assembly, and (*ii*) even in cases where all the members of the unlawful assembly do not share the same common object to commit a particular offence, *if they had the knowledge of the* fact that some of the other members of the assembly are likely to commit that particular offence in prosecution of the common object.

29. The scope of Section 149 IPC was enunciated by this Court in *Masalti*: (AIR p. 211, para 17)

> "*17*. … The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in *Baladin* assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly."

30. It can be seen from the above, Sections 141, 146 and 148 create distinct offences. Section 149 only creates a vicarious liability. However, Sections 146, 148 and 149 contain certain legislative declarations based on the doctrine of vicarious liability. The doctrine is well known in civil law especially in the branch of torts, but is applied very sparingly in criminal law only when there is a clear legislative command. *To be liable for punishment under any one of the provisions, the fundamental requirement is the existence of an unlawful assembly as defined under Section 141 made punishable under Section 143 IPC.*

31. The concept of an unlawful assembly as can be seen from Section 141 has two elements:

(*i*) The assembly should consist of at least five persons; and

(*ii*) They should have a common object to commit an offence or achieve any one of the objects enumerated therein.

32. For recording a conclusion, that a person is (*i*) guilty of any one of the offences under Sections 143, 146 or 148 or (*ii*) vicariously liable under Section 149 for some other offence, it must first be proved that such person is a member of an "unlawful assembly" consisting of not less than five persons irrespective of the fact whether the identity of each one of the 5 persons is proved or not. If that fact is proved, the next step of inquiry is whether the common object of the unlawful assembly is one of the 5 enumerated objects specified under Section 141 IPC.

33. The common object of assembly is normally to be gathered from the circumstances of each case such as the time and place of the gathering of the assembly, the conduct of the gathering as distinguished from the conduct of the individual members are indicative of the common object of the gathering. Assessing the common object of an assembly only on the basis of the overt acts committed by such individual members of the assembly, in our opinion is impermissible. For example, if more than five people gather together and attack another person with deadly weapons eventually resulting in the death of the victim, it is wrong to conclude that one or some of the members of such assembly did not share the common object with those who had inflicted the fatal injuries (as proved by medical evidence); *merely* on the ground that the injuries inflicted by such members are relatively less serious and non-fatal.

34. For mulcting liability on the members of an

unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence *by the members of the assembly* is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed.

35. The identification of the common object essentially requires an assessment of the state of mind of the members of the unlawful assembly. Proof of such mental condition is normally established by inferential logic. If a large number of people gather at a public place at the dead of night armed with deadly weapons like axes and firearms and attack another person or group of persons, any member of the attacking group would have to be a moron in intelligence if he did not know murder would be a likely consequence."

66. The Supreme Court in the case of **Mahendran v. State of T.N.,** reported in **(2019) 5 SCC 67** has held as under :

"51. In *Gangadhar Behera case*, while considering Section 141 IPC, it was held that common object is not common intention as the mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object. Common object does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view if the five or more act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. The Court while considering the plea that definite roles ascribed to the accused and therefore Section 149 is not applicable was not accepted. It is held as under: (SCC pp. 398-99, paras 25-28)

."*25.* The other plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is untenable. A four-Judge Bench of this Court in *Masalti case* observed as follows: (AIR p. 210, para 15)

> "*15.* Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."

26. To similar effect is the observation in *Lalji* v. *State of U.P.* It was observed that: (SCC p. 441, para 8)

> "*8.* … Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case."

27. In *State of U.P.* v. *Dan Singh* it was observed that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. Reference was made to *Lalji case* where it was observed that: (SCC p. 442, para 9)

> "*9.* … While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149."

28. Above being the position, we find no substance

> in the plea that evidence of eyewitnesses is not sufficient to fasten guilt by application of Section 149. So far as the observations made in *Kamaksha Rai case* are concerned, it is to be noted that the decision in the said case was rendered in a different factual scenario altogether. There is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases (see *Padma Sundara Rao* v. *State of T.N.*). It is more so in a case where conclusions relate to appreciation of evidence in a criminal trial, as was observed in *Krishna Mochi case*."
>
> **52.** In *Sanjeev Kumar case*, the conviction under Section 302 with the aid of Section 149 was maintained when, it was found that there was no object of killing but only of stopping the deceased and other contestants from elections. It was held that it cannot be ruled out that the common intention to kill might have arisen on the spur of the moment.
>
> **53.** It is held in *Gangadhar Behera case* that the words of a judgment cannot be treated as words in a legislative enactment. It is to be remembered that judicial orders are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases, therefore, whether there was common object of the accused in each case would depend upon cumulative effects of the facts of that particular case.

67. It is next contended by the Counsel for the appellants, that since, all the prosecution witnesses are closely related and interested witnesses, therefore, their evidence is not reliable.

68. The Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra, (Supra)** has held as under :

> **"32.** We may also refer to the judgment of this Court in *Masalti* v. *State of U.P.* to the effect that the evidence of interested partisan witnesses though required to be carefully weighed, the same could not be discredited mechanically. When a crowd of unlawful assembly commits an offence,

it is often not possible to accurately describe the part played by each of the assailants. Though the appreciation of evidence in such cases may be a difficult task, the court has to perform its duty of sifting the evidence carefully."

69. The Supreme Court in the case of **Harbeer Singh Vs. Sheeshpal** reported in **(2016) 16 SCC 426** has held as under :

> **"18.** Further, the High Court has also concluded that these witnesses were interested witnesses and their testimony was not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.
>
> **19.** In *Darya Singh* v. *State of Punjab*, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said: (AIR p. 331, para 6)
>
> "*6*. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. … But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. … If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."

> **20.** However, we do not wish to emphasis that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.
>
> **21.** Further, in *Raghubir Singh* v. *State of U.P.*, it has been held that: (SCC p. 84, para 10)
>
> "*10*. … the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced without unnecessary and redundant multiplication of witnesses. … In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind."

70. Thus, this Court has already held that in fact the defence itself has proved the initiation of quarrel between appellant Ramjilal and victim Roop Singh. The injuries sustained by the injured persons fully corroborates the ocular evidence. Merely because, the witnesses are related witnesses, therefore, their testimony cannot be discarded. Further, the victim Roop Singh (PW-2), Shivnarayan (PW-4), Beer Singh (PW-6) and Baikunthi (PW-7) have also sustained injuries, therefore, their presence on the spot is not in doubt. Even Tole Sharma (DW-7) has proved the presence of Baikunthi on the spot. Thus, it is held that the evidence of prosecution witnesses cannot be discarded, merely on the ground that they are related witnesses.

71. It is next contended by the Counsel for the appellants that since, the weapons could not be recovered, therefore, the prosecution

story should be thrown overboard.

72. It is well established principle of law that mere non-recovery of weapon of offence would not make ocular evidence unreliable.

73. The Supreme Court in the case of **Nankaunoo V. State of U.P.** Reported in **(2016) 3 SCC 317,** has held as under :

> **"9.** The learned counsel for the appellant contended that the courts below failed to take note of the fact that the alleged weapon "country-made pistol" was never recovered by the investigating officer and in the absence of any clear connection between the weapon used for crime and ballistic report and resultant injury, the prosecution cannot be said to have established the guilt of the appellant. In the light of unimpeachable oral evidence which is amply corroborated by the medical evidence, non-recovery of "country-made pistol" does not materially affect the case of the prosecution. In a case of this nature, any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined de hors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

74. The Supreme Court in the case of **Mritunjoy Biswas Vs. Pranab** reported in **(2013) 12 SCC 796** has held as under :-

> **"33.** The learned counsel for the respondent has urged before us that there has been no recovery of weapon from the accused and hence, the prosecution case deserves to be thrown overboard and, therefore, the judgment of acquittal does not warrant interference.
>
> **34.** In *Lakshmi* v. *State of U.P. (2002) 7 SCC 198*this Court has ruled that: (SCC p. 205, para 16)
>
> > "*16*. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been

> inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder."
>
> **35.** In *Lakhan Sao* v. *State of Bihar (2000) 9 SCC 82* it has been opined that: (SCC p. 87, para 18)
>
> "*18*. The non-recovery of the pistol or spent cartridge does not detract from the case of the prosecution where the direct evidence is acceptable."
>
> **36.** In *State of Rajasthan* v. *Arjun Singh (2011) 9 SCC 115* this Court has expressed that: (SCC p. 122, para 18)
>
> "*18*. … mere non-recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place."

75. Thus, in the light of direct ocular evidence of injured witnesses, the prosecution case, cannot be disbelieved merely on the ground of non-recovery of weapon of offence.

76. No other argument is advanced by the Counsel for the appellants.

77. Accordingly, it is held that the appellant no. 1,2,3,5, and 7 are held guilty of committing offence under Sections 307/149, 324/149, 323 (on two counts), and 147/148 of I.P.C. Similarly, the appellant no. 4 Khemraj is held guilty of committing offence under Sections

307/149, 324, 323 (on two counts), and 147/148 of I.P.C. The appellant no. 6 Brajesh is held guilty of committing offence under Sections 307, 324/149, 323 (on two counts), and 147/148 of I.P.C.

78. So far as the sentence is concerned, for offence under Sections 307 or 307/149 of I.P.C., the appellants have been sentenced to undergo the R.I. of 10 years and a fine of Rs.2000/- with default imprisonment . In the considered opinion of this Court, the manner in which the incident took place, the sentence of R.I. of 10 years is on a higher side. Since, no minimum sentence is provided for offence under Section 307 of IPC, therefore, the sentence of R.I. of 10 years awarded to appellants no. 1 Ramjilal @ Munna, No. 2 Horilal No.3 Jagmohan, No.4 Khema @ Khemraj, No. 5 Hukum Singh, and No. 7 Barelal for offence under Section 307/149 and R.I. of 10 years awarded to appellant no. 6 Brajesh for offence under Section 307 of IPC is reduced to R.I. of 5 years with fine of Rs. 10,000/- for each of the appellant. In default, the appellants shall undergo the rigorous imprisonment of 6 months. The sentence awarded for other offences shall remain the same. All the sentences shall run concurrently.

79. With aforementioned modifications, the judgment and sentence dated 8-10-2015 passed by 2nd Additional Sessions Judge, Sabalgarh, Distt. Morena in Sessions Trial No. 170/2008 is hereby affirmed.

80. The appellants No. 1 Ramjilal @ Munna, No. 2 Horilal, No.3 Jagmohan, No.4 Khema @ Khemraj, No. 5 Hukum Singh, and No. 7 Barelal are on bail. Their bail bonds are hereby cancelled. They are directed to immediately surrender before the Trial Court for

undergoing the remaining jail sentence.

81. The appellant no. 6 Brajesh is in jail. He shall undergo the remaining jail sentence.

82. The appeal partially succeeds and is **partially Allowed accordingly.**

(G.S. Ahluwalia)
Judge

Abhi