

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**CRIMINAL APPEAL No 352 OF 2013**

**BETWEEN:-**

1. **BAHDURSINGH S/O NANSINGH BHIL  
AGE – 40 YEARS, OCCUPATION LABOUR,  
R/O VILLAGE GHUTIYADEV, P.S. BAG,  
DISTRICT DHAR M.P.**
2. **PRATAPSINGH S/O DEEPSINGH BHIL  
AGE- 40 YEARS, OCCUPATION LABOUR  
R/O VILLAGE GHUTIYADEV, P.S. BAG,  
DISTRICT DHAR**

**.....APPELLANTS**

***(BY MS SHRADHA DIXITI- ADVOCATE)***

**AND**

**STATE OF MADHYA PRADESH  
THROUGH P.S. BAG, DISTRICT DHAR  
(MADHYA PRADESH)**

**.....RESPONDENT**

***(BY MS. VARSHA THAKUR - GOVERNMENT ADVOCATE)***

**CRIMINAL APPEAL No 496 OF 2013**

**BETWEEN:-**

**RADUSINGH S/O HIMANSINGH @  
HEMANTSINGH, AGE - 35 YEARS,  
OCCUPATION TEACHER, R/O VILLAGE  
GHUTIYADEV, P.S. BAG, DISTRICT  
DHAR (MP)**

**.....APPELLANT**

***(BY SHRI VIVEK SINGH - ADVOCATE)***

**AND**

**STATE OF MADHYA PRADESH THROUGH  
POLICE STATION BAG DISTRICT DHAR  
(MADHYA PRADESH)**

**.....RESPONDENT**

***(BY MS. VARSHA THAKUR - GOVERNMENT ADVOCATE)***

**CRIMINAL APPEAL No 485 OF 2013**

**BETWEEN:-**

**BILAM SINGH S/O KERU BHIL, AGE- 45  
YEARS, OCCUPATION AGRICULTURE, R/O  
GHUTIYADEV, P.S. BAG, DISTRICT DHAR  
(MP)**

**.....APPELLANT**

***(BY SHRI SANTOSH KUMAR MENA - ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH  
THROUGH POLICE STATION BAG DISTRICT  
DHAR (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY MS. VARSHA THAKUR - GOVERNMENT ADVOCATE)***

**CRIMINAL APPEAL No 10398 OF 2022**

**BETWEEN:-**

**JULAB SINGH S/O VARJAN, AGE- 48 YEARS,  
OCCUPATION NOTHING, R/O GHUTIYADEV,  
TEHSIL KUKSHI, DISTRICT DHAR (MP)**

**.....APPELLANT**

***(BY MS. SHARMILA SHARMA - ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH  
THROUGH POLICE STATION BAG DISTRICT**

**DHAR (MADHYA PRADESH)**

**.....RESPONDENT**

**(BY MS. VARSHA THAKUR - GOVERNMENT ADVOCATE)**

**Reserved on : 08/02/2024**

**Pronounced on : 21/02/2024**

*These appeals having been heard and reserved for orders, coming on for pronouncement this day, **JUSTICE ANIL VERMA** passed the following:*

**J U D G M E N T**

This judgment shall govern disposal of criminal appeal No. 352 of 2013, criminal appeal No. 496 of 2013, criminal appeal No. 485 of 2013 and criminal appeal No. 10398 of 2022 as all these appeals arise out of the common judgment of conviction dated 7.2.2013 passed by Second Additional Sessions Judge (Fast Track) Kukshi District Dhar in ST No. 323/2012, whereby the appellants have been convicted and sentenced as under:-

Name of the appellant/accused	Conviction	Sentence	Fine	Imprisonment in lieu of payment of fine
<b>Bilam Singh</b>	302 IPC	Life imprisonment	Rs. 2,000/-	1 year R.I.
	302/149 IPC	Life imprisonment	Rs. 2,000/-	1 year R.I.
	323/149 IPC	1 year's R.I.	Rs. 1,000/-	1 month R.I.
<b>Bahadur Singh</b>	148 IPC	3 years R.I.	Rs. 1,000/-	1 month R.I.
	302/149	Life imprisonment	Rs. 2,000/-	1 year R.I.
	302/149	Life imprisonment	Rs. 2,000/-	1 year R.I.
	323/149	1 year's R.I.	Rs. 1,000/-	1 month R.I.

	148	3 years R.I.	Rs. 1,000/-	1 month R.I.
<b>Pratap</b>	302/149	Life imprisonment	Rs. 2,000/-	1 year R.I.
	302/149	Life imprisonment	Rs. 2,000/-	1 year R.I.
	323	1 year's R.I.	Rs. 1,000/-	1 month R.I.
	148	3 years R.I.	Rs. 1,000/-	1 month R.I.
<b>Radu Singh</b>	302/149	Life imprisonment	Rs. 2,000/-	1 year R.I.
	302/149	Life imprisonment	Rs. 2,000/-	1 year R.I.
	323/149	1 year's R.I.	Rs. 1,000/-	1 month R.I.
	148	3 years R.I.	Rs. 1,000/-	1 month R.I.
<b>Julab Singh</b>	302	Life imprisonment	Rs. 2,000/-	1 year R.I.
	302/149	Life imprisonment	Rs. 2,000/-	1 year R.I.
	323/149	1 year's R.I.	Rs. 1,000/-	1 month R.I.
	148	3 years R.I.	Rs. 1,000/-	1 month R.I.

2. For the sake of convenience, the facts are taken from criminal appeal No. 352/2013.

3. The facts of the case in brief are that complainant Jagan (PW-2) lodged an FIR at police station Bag District Dhar on 24.3.2012 at 6.45 pm by stating that on 24.3.2012 at about 6.00 pm deceased Sobhan came to village Bagh alongwith deceased Navalsingh, injured Harsingh and complainant Jagansingh. While they were going back to village Ghutiadev on two motorcycles, one motorcycle was driven by Sobhan on which Naval Singh and Har Singh were sitting and another motorcycle was driven by complainant Jagan Singh, and reached nearby

Hanuman Tekari Banda, then accused Bilam Singh, Pratap Singh and Bahadur Singh came there in a pickup vehicle and appellant Radu and Julab Singh came on motorcycle. They stopped the motorcycles of Sobhan and Naval Singh. Appellants Bahadur, Pratap and Bilam caught hold Naval Singh. Accused inflicted a blow of Falia on the head of Naval Singh, due to which head of Naval Singh was cut from the head and fell down on the ground. Appellants Julab Singh and Radu chased Sobhan, due to which he fell down on the spot and then Julab Singh gave a blow of Falia on the head of Sobhan due to which he died on the spot. Appellant Pratap pelted stone upon victim Har Singh. Then Har Singh fled away towards the forest. Accused persons committed murder of both deceased due to the previous enmity regarding earlier Panchayat election.

**4** The prosecution story in further is that Inspector Suresh Gangrani (PW-11) lodged Akal Mrityu Suchana and Marg and reached on the spot and prepared spot map and Naksha Panchayatnama of both the deceased. Dr. H.S. Muvel (PW-12) conducted postmortem of deceased Sobhan Singh and Naval Singh and also conducted the MLC of victim Har Singh. He opined that the death of both deceased persons was homicidal in nature. Investigating officer Suresh Gangrani also seized blood stained and simple soil from the spot and also recovered blood stained cloths of deceased. During investigation all the accused persons were arrested and on the basis of their discovery statement, three Falias were recovered from possession of appellants Bilam Singh and Pratap Singh and motorcycle was recovered from possession of appellant Radu. All seized articles were sent to FSL for its chemical examination.

5. After due investigation charge sheet was filed before JMFC Kukshi who committed the case to the court of Sessions, Dhar which was later on transferred to the court of Additional Sessions Judge (Fast Track) Kukshi for trial. The trial court framed charges against the appellants. The appellants/accused persons abjured their guilt and pleaded that they have been falsely implicated in this offence. The prosecution examined as many as 12 witnesses and defence has examined single witness.

6. The trial Court after appreciating the evidence available on record, convicted and sentenced the appellants as mentioned herein above. Being aggrieved by the judgment of conviction and order of sentence, the appellants/accused have preferred present appeals before this court.

7. Learned counsel for the appellants contended that the judgment of the trial Court is contrary to law and facts on record. It is neither legal nor proper nor correct. The trial court erred while relying upon statements of prosecution witnesses. The prosecution failed to prove its case beyond reasonable doubt. The incident was occurred all of a sudden, therefore, there was no common object. Conviction of the appellants is bad in law. Hence, he prays that the appeals be allowed and the impugned judgment of conviction and sentence passed by the trial Court be set aside and appellants be acquitted from the charges.

8. *Per contra*, learned counsel for the respondent / State opposes the prayer by supporting the impugned judgment passed by the trial Court and prays for dismissal of these appeals by submitting that the learned trial court on proper appreciation of evidence has rightly convicted the appellants and same does not call for any interference. Hence all these

appeals deserve to be dismissed.

**9.** We have heard learned counsel for both the parties at length and perused the entire record of the trial Court with due care.

**10.** In order to appreciate the merits of rival contentions in right perspective, it is necessary to first advert to the medical evidence available on record.

**11.** In the instant case, first of all it has to be considered that, as to whether death of deceased Naval Singh and Sobhan Singh was homicidal in nature or not? In this connection the statement of Dr. H.S. Muvel (PW-12) is quite important, who has conducted the autopsy of both the deceased persons. Dr. H.S. Muvel (PW-12) during the conduction of autopsy of deceased Sobhan Singh found 7 incised injuries all over the body including the vital parts i.e. left ear, neck, head, shoulder and chin and he opined that the aforesaid injuries were caused by hard and sharp object. During the internal examination, he found that the occipital bone was fractured, brain was also ruptured, 3<sup>rd</sup> vertebra bone was cut, vertebra spinal cord and esophagus were also found cut down and mode of death was asphyxia due to the cut injuries found on the neck on account of the cardio respiratory failure. Postmortem report of deceased Sobhan Singh is Ex.P/30. Dr. H.S. Muvel (PW-12) also conducted autopsy of the deceased Naval Singh and opined that the death was caused due to the cardio respiratory failure by the injuries sustained over the neck. He found four incised injuries on the head, palm of the left hand and on the right shoulder. His postmortem report is Ex.P/32.

**12.** Dr. H.S. Muvel (PW-12) also conducted the MLC of the victim

Harsingh and found lacerated wound on the left side of the skull, which was caused by hard and blunt object within 12 to 18 hours and also advised for x-ray.

**13.** Dr. H.S. Muvel (PW-12) opined that the injuries found on the dead bodies of both the deceased persons were sufficient in ordinary course of nature to cause death. Nothing is available on record which shows that the aforesaid injuries sustained by both the deceased persons were caused by themselves or sustained in any other incident case. Thus, there is no reason to disbelieve the opinion given by Dr. H.S. Muvel (PW-12) that death of both the deceased were homicidal in nature.

**14.** Besides the medical evidence, victim Harsingh (PW-1) is an injured person and also an eyewitness. He deposed before the trial Court that at the time of incident at about 5.45 p.m. he along with his uncle Naval Singh and Sobhan Singh were returning to their village, when they reached nearby Banada Hanuman Tekri, at that time a pick-up was standing before them and accused Bilam, Bahadur and Pratap armed with Falia came out from the pick-up and they surrounded them and started beating them by Falia. First of all Bilam inflicted injury by Falia on the neck of Naval Singh, due to which his neck cut down. Thereafter Bahadur and Pratap caused injury to Naval Singh by means of Falia, due to which he sustained injury over the head. Sobhan Singh was also beaten by Julabsingh by Falia over his neck. Naval Singh and Sobhan Singh fell down on the spot and succumbed there. Pratap also hit stone to him, due to which he sustained injury over his head. Due to the fear of the appellants, he ran towards the forest and hidden himself in the forest. On the next day he went to the Police Station – Bag. The incident



occurred due to the previous enmity regarding the Panchayat Election. Jagan also witnessed the incident.

**15.** Jagan (PW-2) also corroborated the statement of Harsingh (PW-1) and deposed in the same manner and also stated that Sobhan Singh was caught hold by Radu and Bilam, Bahadur and Pratap gave blow by Falia on the neck of Naval Singh. Julab Singh gave 6-7 blows by Falia to Sobhan Singh. Then accused persons fled away from the spot in the pick-up vehicle. Then he went to Police Station Bag and lodged the FIR (Ex.P/1).

**16.** Learned counsel for the appellants submits that there are material contradictions and omissions in the statements of Harsingh (PW-1) and Jagan (PW-2) in their police statement under Section 161 of Cr.P.C. and the court statement, therefore, their statements cannot be relied upon due to the material contradictions and omissions. Counsel for the appellants has placed reliance upon the judgment of the Hon'ble Apex Court in the case of State of Rajasthan Vs. Rajendra Singh reported in 1998(II) MPWN Note 153. In that case it was held that it is a trite law that when there is material contradictions, omissions and material improvement contradicting etc. from police statement, such witnesses are not reliable.

**17.** We have gone through the contents of FIR (Ex.P/1) as well as the police statements (Ex.D/1 & D/2) respectively. In the FIR it is not specifically mentioned that only Bilam was having a Falia and Pratap and Bahadur Singh were not having any arms in their hands. It is only said that all three of them caught hold Naval Singh. In the statement under Section 161 of Cr.P.C. (Ex.D/1), Harsingh (PW-1) specifically stated that Bilam, Bahadur and Pratap came there in a pick-up vehicle

having Falia in their hands. Julab Singh was also having Falia in his hand, who came on a motorcycle. Further, it is stated that Bilam, Bahadur and Pratap caught hold Naval Singh and then they all started giving blows on him by Faia. Similar statement was made by Jagan (PW-2) in Ex.D-2. Their statements are well supported by medical evidence of Dr. H.S. Muvel (PW-12) who performed the autopsy of deceased Sobhan Singh and Naval Singh. This shows that more than one blow was given to them. Therefore, in view of the above, statements of both the eyewitnesses cannot be disbelieved.

**18.** Learned counsel for the appellants submits that there is material contradictions and omissions in the statement of Jagan (PW-2) and FIR (Ex.P/1). However some discrepancy has been found in the FIR and the statement of Jagan (PW-2), but his statement is well supported by the medical evidence. The neck of Naval Singh was separated from his body. The coordinate Bench in the case of *Miss X (victim) vs. Santosh Sharma reported in ILR 2020 MP 461* has held that the FIR is information of incident at the first instance and, therefore, FIR need not contain minute details. The same principle has been laid down by this Court in the case of *State of M.P. Vs. Chhakkilal reported in ILR 2019 MP 507 (SC)*, in which it has been mentioned that the FIR is not an encyclopedia which is expected to contain all minute details of prosecution case. It may be sufficient if broad effects of the case is stated therein. In the instant case, FIR is lodged on the same day, therefore, there is no inordinate delay in lodging the FIR.

**19.** All the citations are fully applicable in the instant case, therefore, FIR (Ex.P/1) and statement of Jagan (PW-2) appears to be trustworthy.

20. Learned counsel for the appellants submits that Harsingh (PW-1) and Jagan (PW-2) are the family members of the deceased persons, therefore, they are interested witnesses and their evidence cannot be relied upon. It is true that Harsingh (PW-1) is the nephew of the deceased Naval Singh and Sobhan Singh and Jagan (PW-2) is younger brother of the deceased Naval Singh, but their presence on the spot at the relevant point of time is quite natural. Their version also appears to be trustworthy and reliable and well corroborated by the statement of other witnesses. FIR (Ex.P/1) was promptly lodged and duly proved by the Inspector Suresh Gangrani (PW-11). Hence, we are not inclined that witnesses Harsingh (PW-1) and Jagan (PW-2) are the interested witnesses.

21. The Hon'ble Apex Court in the case of **Jodhan Vs. State of Madhya Pradesh (2015) 11 SCC 52** has held as under with regard to appreciation of evidence of interested and inimical witness thus:

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

**22.** So far as the motive of the incident is concerned, Harsingh (PW-1) and Jagan (PW-2) both of them categorically stated in their statements that due to the enmity of Panchayat Election, appellants have murdered both the deceased. Same fact was also corroborated by Thakur Singh (PW-4) and Indersingh (PW-3). Therefore, the prosecution has successfully proved the motive of the crime also.

**23.** Investigating officer Inspector Mr. Suresh Gangrani (PW-11) categorically stated that he has arrested the accused Bilam Singh, Bahadur Singh and Pratap on 30.3.2012 through arrest memo Ex.P/8 to P/10 and he has also arrested the co-accused Radu Singh and Julab Singh through arrest memo Ex.P/23 & P/5. In custody accused Bilam Singh has given discovery statement (Ex.P/11). Pratap Singh, Bahadur Singh, Radu and Julab Singh also gave discovery statement Ex.P/12, P/13, P/24 & P/6 and thereafter he recovered a Falia and pick-up Van at the instance of Bilam Singh through seizure memo (Ex.P/14). He also recovered blood stained Falia from the possession of Bahadur Singh, Pratap Singh and Julab Singh through seizure memo Ex.P/15, P/16 & P/7. He has sent all the seized articles to FSL for their chemical examination. Although independent witness of seizure, arrest and discovery statement Pyarsingh (PW-5), Jitendra (PW-6), Karam Singh (PW-8) and Bhanwar Singh (PW-9) have turned hostile and not supported the case of the prosecution, but there is no reason to disbelieve the statement of Inspector Suresh Gangrani (PW-11), which is well supported by the documentary evidence. Therefore, on the basis of the statement of Inspector Suresh Gangrani (PW-11), the aforesaid seizure of the weapons has been proved by the prosecution. So far as the

unlawful assembly is concerned, the co-ordinate bench of this Court in the case of **Rambabu Vs. State of M.P. ILR 2022 M.P. 1234 (DB)** held that *“it is not necessary that each and every member of unlawful assembly must play some overt act in commission of offence. In order to find out whatever assembly was unlawful or not, the role played by an individual coupled with language used, arms carried by members and their behavior prior to, during and after the incident along with surrounding circumstances, plays an important role. An assembly which was not unlawful at the very inception, may become unlawful at the later stage”*.

**24.** We need not expand on the either side decisions, because the basic principles remains that the important ingredient of unlawful assembly or the number of persons forming it *i.e.* five and their common object. Common object of the persons composing that the assembly could be formed on the spur of moment and does not require prior deliberations. The course of conduct adopted by the member of such assembly, their behaviour before, during, and after the incident and the arms carried by them, they are a few basic and relevant factors to determine the common object. In the instant case, the number of accused persons are five and they reached on the spot armed with deadly weapons. They have previous enmity with the deceased persons due to the Panchayat Election. They have attacked the deceased persons with deadly weapons. This clearly brings down the motive of such attack as also the object of the unlawful assembly. Moreover, the blows hurled on the members of the complainant party had been wide sufficient force and chosen aims, due to which two persons were died. The background aspects as also the

conduct of the accused persons at and during the time of incident leaves nothing to doubt that each of the member of the assembly remains liable for the offence committed by himself as well as every member of the assembly.

**25.** From the aforesaid cogent evidence proved by the prosecution, which is available on record, we are quite satisfied that the appellants were members of the unlawful assembly within the meaning of Section 141 of IPC, sharing common object to cause murder of deceased Tony, Minchu and Ishwar and they were armed with deadly weapons used for commission of offence punishable under Section 302 of IPC. Therefore, conviction of all the accused persons under Section 302 read with Section 149 of IPC being more than five in number is, therefore, proper and no case is made out for calling any interference by this Court in this appeal. The offence under Sections 25 and 27 of Arms Act is also proved.

**26.** In the result, we find no merit and substance in these appeals and as such it deserves to be dismissed.

**27.** The judgment of conviction and sentence passed by the trial Court is hereby affirmed. Appeals fail and are hereby dismissed.

**28.** Office is directed to send a copy of this judgment along with record of the trial court forthwith to the concerned trial court.

**29.** Signed order be kept in the file of CRA No.352/2013 and a copy thereof be placed in the file of connected CRA Nos.496/13, 485/13 & 10398/22.

**(VIVEK RUSIA)**  
**JUDGE**

**(ANIL VERMA)**  
**JUDGE**

