

HIGH COURT OF MADHYA PRADESH : JABALPUR(i) Criminal Appeal No.346/2002

Prasanna Kumar and another
-Versus-
State of M.P.

(ii) Criminal Appeal No.423/2002

Ram Milan Patel and another
-Versus-
State of M.P.

(iii) Criminal Appeal No.1282/2011

Devraj Patel
-Versus-
State of M.P.

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Shri Surendra Singh, Senior Advocate with Shri O.P. Agnihotri, Advocate and Shri Narayan Dubey, Advocate for the appellants.

Shri Bramha Datt Singh, Government Advocate for the State.

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| Whether approved for reporting? | Yes |
| Law laid down | <p>1. None explanation of injuries to the accused or to the deceased with a particular weapon is not always fatal, if there is specific ocular evidence.</p> <p>2. Section 149 of IPC makes every member of an unlawful assembly at the time of committing the offence guilty of that offence on the principle of constructive liability.</p> <p>3. In the case of inconsistency between medical evidence and ocular evidence priority has to be given to ocular evidence ignoring the minor discrepancies.</p> |
| Significant paragraph Nos. | |

JUDGMENT
(Jabalpur dt.: 07.12.2017)

Per : V.K. Shukla, J.-

Criminal Appeal No.346/2002 and Criminal Appeal No.423/2002 are arising out of the common judgment of conviction and sentence, dated 15-02-2002 passed by the Sessions Court, Rewa in Sessions Trial No.04/1997, whereas in Criminal Appeal No.1282/2011 (Devraj Patel vs. State), challenge is to the judgment of conviction and sentence dated 10-03-2011 passed in Sessions Trial No.04/1997. The said trial was conducted after the common judgement of conviction and sentence passed in the previous two appeals, as the accused-appellant, Devraj Patel was declared abscond and was arrested later.

2. Criminal Appeal No.423/2002 is filed on behalf Ram Milan Patel, Ramavtar Patel, Ram Naresh Patel and Lalji Patel, appellants No.1 to 4 respectively. The appeal has already been been withdrawn on behalf of Ramavtar Patel (appellant No.2) and Ram Naresh Patel (appellant No.3). Thus, the said appeal only survives for consideration on behalf of the appellants No.1, Ram Milan Patel Patel and

the appellant No.4, Lalji Patel.

3. The descriptions of conviction and sentence as against the accused-appellants in Criminal Appeal No.346/2002, Criminal Appeal No.423/2002 and Criminal Appeal No.1282/2011, are as follows:

Criminal Appeal No.346/2002

| <u>Conviction</u> | <u>Sentence</u> |
|----------------------------|------------------------|
| Under Section 302/149 IPC. | For life. |
| Under Section 307/149 IPC. | R.I. for 7 years each. |
| Under Section 449/149 IPC. | R.I. for 7 years each. |
| Under Section 148 IPC. | R.I. for 2 years each. |

(Substantive sentence to run concurrently)

Criminal Appeal No.423/2002

| <u>Conviction</u> | <u>Sentence</u> |
|----------------------------|------------------------|
| Under Section 148 IPC. | R.I. for 2 years each. |
| Under Section 449/149 IPC. | R.I. for 7 years each. |
| Under Section 302/149 IPC. | For life. |
| Under Section 307/149 IPC. | R.I. for 7 years each. |

(Substantive sentence to run concurrently)

Criminal Appeal No.1282/2011

| <u>Conviction</u> | <u>Sentence</u> |
|-------------------------------|-------------------|
| Under Section 148 IPC. | R.I. for 2 years. |
| Under Section 324/149 IPC. | R.I. for 2 years. |
| Under Section 302/149 IPC. | For life. |
| Under Section 450/149 IPC. | R.I. for 3 years. |

(Substantive sentence to run concurrently)

4. The appellants have been convicted for having committed murder of one Jai Mangal Singh and for attempting to commit murder of his wife – Smt. Premlata Singh (PW-6). Four accused persons were convicted and sentenced and two accused, namely, Devraj and Lokman, were declared abscond. Later on the accused-appellant, Devraj was arrested, tried, and convicted by a separate judgment of conviction and sentence, dated 10-03-2011, which is subject-matter of challenge in the connected Criminal Appeal No.1282/2011. Be it noted, that since all the appeals arise out of the judgment of conviction relating to same incident, therefore, all the appeals are being adjudicated by this common judgment.

5. The case of the prosecution, succinctly stated, is that on 21-7-1996 at about 12:30 PM, Jai Mangal Singh

(since deceased) and his wife Smt. Premlata Singh (PW-6) were inside their house. At that time all the accused persons came over there. The appellant No.1 – Prasanna Kumar was carrying a 'lathi' and the appellant No.2, Ashok Kumar Patel was armed with a gun. The appellant Ramnaresh Patel was carrying a 'lathi', the appellant No.2 Ramavtar Patel was armed with a 'tangi', the appellant No.3, Ram Naresh Patel was having a 'Gadasa' whereas the accused-appellant Lalji Patel was having a 'farsa'. Against the appellant Devraj Patel it is alleged that he was armed with a 'Tangi'. It is alleged that the appellant – Ashok Kumar Patel entered into the house of the deceased and dragged him out. He then struck him with the butt of his gun, as a result of which the deceased fell on the ground. It is further alleged that the appellant – Ashok Kumar Patel handed over his gun to Devraj Patel and took his 'Tanga' and dealt with the same, one blow on the head of the deceased. Thereafter he handed 'Tanga' back to Devraj Patel and took possession of his gun. Thereafter, all the accused persons brutally assaulted the deceased with their respective weapons.

6. Intimation was given by one Surendra Pathak to the Police Station, Gurh, District Rewa, vide Ex.P/28 and Sanha No.591 was registered. On the said intimation PW-

17, R.K. Shukla, the then Station House Officer immediately proceeded to the place of the incident. He recorded the statement of the injured – Smt. Premlata Singh in the form of dying declaration (Ex.P/10). On the report of PW-3, Dharmpal Singh, 'dehati-nalish' was registered vide Ex.P/3 and thereafter Crime No.00/96 was instituted for offences punishable under sections 147, 148, 149, 302, 307 and 452 of the Indian Penal Code [for short 'the IPC']. He prepared the site plan, Ex.P/4 and also seized the bloodstained soil, vide Ex.P/5. Panchnama of the deadbody of the deceased – Jai Mangal Singh was prepared vide Ex.P/7 by the Investigating Officer, R.K. Shukla (PW-7) and the deadbody was sent for postmortem examination, vide Ex.P/25-A. The injured – Smt. Premlata Singh was also sent for medical examination, Ex.P/2-A to the Government Medical College, Rewa.

7. The investigating officer, R.K. Shukla (PW-7) on the discovery statement of the accused Ramavatar Patel, under Section 27 of the Evidence Act, vide Ex.P/13, recovered the weapon 'Tangi' vide Ex.P/14 and he was arrested vide arrest memo, Ex.P/15. On the same date, on the disclosure statement of the accused Ram Milan Patel vide Ex.P/16, a bamboo stick was seized vide Ex.P/18, from the appellant – Prasanna Kumar on his disclosure

statement, Ex.P/17, one 'lathi' was seized, vide Ex.P/19.

8. Shri S.A. Upadhyay (PW-14), the then Station House Officer, Gurh on 23-7-1996 on the statement of the accused – Ashok Kumar Patel on his disclosure statement, Ex.P/22, seized 12 bore gun vide Ex.P/22. The Patwari Lalbahadur (PW-17), prepared the spot map, vide Ex.P/12. The statements of the witnesses were recorded and the seized articles were sent for forensic analysis to the Forensic Science Laboratory, vide Ex.P/24. The injured witness was sent for medical examination to the Govt. Hospital Rewa and her bedhead ticket has been filed as Ex.P/29. The FSL report is Ex.P/23 which shows that human blood has been found on the seized 'lathi' as well as on the seized clothes worn by the deceased. The bloodstain was also found on the 'baniyan' belonging to the deceased. Initially the co-accused Devraj Patel, Sunil and Lokman were declared absconders and the charge-sheet was filed against the remaining accused persons.

9. The accused persons denied the charges levelled against them and submitted that they have been falsely implicated, because of the old rivalry. Defence chose to examine 8 witnesses. The trial Court convicted the accused-appellants as have been mentioned in the

preceding paragraphs.

10. Shri Surendra Singh, Senior Advocate for the appellants in the appeal of Prasanna Kumar and Ashok Kumar Patel submitted that the conviction of both the appellants are not based on proper appreciation of evidence but strongly assailed the conviction of the appellant No.1, Prasanna Kumar on the ground that against him the prosecution could not establish its case at all. It is submitted by him that the prosecution has alleged against him that he was armed with a 'lathi' but there is no injury to the deceased caused by a 'lathi', therefore, the prosecution has failed to establish its case and relied on the judgment passed by the Apex Court in **AIR 1976 SC 2263; AIR 1994 SC 957;** and **(2004) 10 SCC 682**. He further submitted that the appellant – Prasanna Kumar could not have been convicted with the aid of 149 of the IPC. It is contended that no role is attributed to the appellant – Prasanna Kumar and since the prosecution has also failed to show any 'lathi' injury on the person of the deceased, therefore, his conviction is unsustainable. So far as other appellant – Ashok Kumar Patel is concerned, he has submitted that the trial Court has failed to properly appreciate the ocular and medical evidence in proper perspective. He also contended that intimation was given by

one Surendra Pathak to the Police Station vide Ex.P/28, on the basis of which Sanha No.591 was registered, but he has not been examined by the prosecution.

11. In Criminal Appeal No.423/2002 (Rammilan Patel and others) it is submitted that the appeal has already been withdrawn by the appellants No.2 and 3 and the appeal is to be considered on behalf of the appellants – Rammilan Patel and Lalji Patel. Counsel for the appellants contended that the case of Rammilan is identical to the case of the appellant – Prasanna Kumar in Appeal No.346/2002 as against him also, allegation is that he was carrying a 'lathi', but no injury by 'lathi' has been found to the deceased. He relied on the judgment passed by the Division Bench of this Court in the case of ***Mohan vs. State of M.P., 2005 (4) MPLJ 183*** that mere presence of the accused who was not a companion of the unlawful assembly of other appellants only having 'lathi' in his possession, but there is no allegation of any overt act, therefore, he cannot be held to be responsible for the action of the other members of the unlawful assembly.

12. In Criminal Appeal No.1282/2011 filed by Devraj Patel, counsel for the appellant submitted that though allegation against the appellant is that he was armed with

a weapon 'tangi' but the 'tangi' has not been recovered from him and, therefore, his conviction is bad in law, as the prosecution could not prove his case beyond any doubt.

13. Before adverting to the arguments advanced on behalf of the appellants, we consider it apposite to first consider the statement of the injured eye witness (PW-6) – Smt. Premlata Singh, wife of the deceased. In para 1 of her deposition she has stated that when she was sleeping with her husband in the verandah of the house at about 12:00 in the night, the appellant No.1, Ashok Kumar Patel jumped into their house with a gun and he opened the door from inside. Other accused persons, namely, Lalji Patel, Ramnaresh Patel, Deveraj Patel, Lokman, Rammilan Patel, Ramavatar Patel, Prasanna Kumar Patel and Sunil Patel immediately entered into the house. Ashok Kumar Patel was having a gun; Lalji Patel was armed with a 'farsa'; Ramnaresh Patel with a 'gadasa'; Devraj Patel with a 'tangi'; Lala with a 'gupti'; and Rammilan Patel and Prasanna Kumar Patel were carrying 'lathis'; and the accused Sunil was armed with a sword. The accused – Ashok Kumar Patel dragged her husband from the verandah to the courtyard and when her husband tried to run away from the spot, the appellant – Ashok Kumar Patel hit the him with the butt of the gun, as a result of which he fell down. The accused –

Ashok Kumar took 'tanga' from Devraj and had given a blow on the head of the deceased with the 'tanga' and thereafter, he had given 'tanga' back to Devraj. Thereafter, he remained at the spot with a gun and asked all other accused-appellants to kill the deceased and if somebody intervenes, he will see him. It is further deposed by her that thereafter Lalji Patel, Ramnaresh Patel, Devraj Patel, Ramavatar Patel, Sunil Patel and Prasanna Kumar, all had beaten her husband. When she tried to save her husband, Rannaresh Patel, Lalji and Sunil Kumar had also beaten him. She has stated that the accused - Lalji Patel had hit her on the head and had given a 'farsa' blow on the left ear and the ear was amputated. Ramnaresh had beaten her with a 'gadasa' on the head and when she tried to save herself, she received injury near her left wrist. Thereafter, the accused - Sunil Kumar had also given her a blow and caused injury on the head and the same blow was received on the palm which was wounded, thereafter she had fallen down.

14. Testimony of PW-6 is further supported by evidence of Chandrakanta Singh (PW-9) who was also in the house of the deceased and had witnessed the incident

after hearing shouting of the deceased – Jaimangal Singh. She has also stated that the accused persons were armed with gun and the weapons as narrated by PW-6. She has also stated that Ashok Singh Patel first hit with the butt of the gun and thereafter the accused persons had caused injuries to the deceased with the weapons, as narrated by PW-6. She has also narrated that PW-6, Smt. Premlata Singh, when she was trying to save the deceased she was also inflicted injuries by the accused persons. She has also narrated the role of the accused persons corroborating the testimony of PW-6.

15. PW-2 Dr. A.A.Siddiqui was examined, who had examined PW-6 Premlata Singh. He has found one cut injury 4'x1' on the left side of the face and near angle mandible. Injury No.2 was again cut injury 2'x1 ½' on the left side of the shoulder and upper side of scapular region. Injury No.3 was again a cut injury 6x1x1 cm. on the left hand and at the bottom, he has found a wound on 1/3rd part. There was bleeding. Injury No.4 was again a cut injury 4x2x1 cm. on the right hand and 1/3rd on the upper portion. There was bleeding. All the injuries were found to have been caused without 24 hours and were inflicted by a sharp and cutting object. Thus, the injuries to PW-6 Premlata Singh as narrated by the eye witness is well

corroborated with the medical report Ex.P-2 and the testimony of PW-5 Dr.A.A.Siddiqui. She was referred for further treatment to the Medical College. Her further treatment was carried out by PW-7 Dr.Ramvilash Dubey, who has proved her treatment after hospitalization in the Medical College. The dying declaration of injured witness PW-6 Premlata Singh was also recorded vide Ex.P-10. The same has also been proved by PW-14 S.M.Upadhyay, who was Incharge of Police Station Gurh. However, the dying declaration has to be treated as previous statement of Premlata Singh. On perusal of the dying declaration, no inconsistency is found in her previous statement and in the said statement recorded before the court. PW-14 S.M.Upadhyaya has also stated about the recovery of the gun on the disclosure statement of appellant Ashok Kumar Patel vide Ex.P-22 and he has stated that he had sent the seized articles for chemical examination to FSL Sagar vide Ex.P-24. PW-17 R.K.Shukla, who is Investigating Officer of the case has stated that he had recorded the statement of injured witness Premlata Singh in Ex.P-10 and thereafter, she was sent for treatment. He has also stated that he has prepared the dead body panchnama of Jaymangal vide Ex.P-7 and the dead body was sent for postmortem report vide Ex.P-25A. He also stated that in

the presence of witnesses Ramlal Soni and Ramraksha Gupta, he had prepared the spot map. He has stated that the weapon 'Tangi' was seized on the disclosure statement of appellant Ram Milan Patel vide Ex.P-13, which was having blood stains. He also stated that the lathi was seized on the memorandum of appellant Ram Milan Patel vide Ex.P-18. Regarding appellant Prasanna Kumar, in para-15 of his statement, he deposed that on the memorandum Ex.P-17, lathi was seized. In the chemical report, on weapon lathi 'Article-C, Baniyan and Lungi, human blood was found to be present. However, blood stains on the items 1-3 i.e. liquid blood 'Article-A and Item No.3 Chaddi were found disintegrated.

16. So far the arguments of the learned Senior Counsel in Cri. Appeal No.346/2002 that the prosecution has failed to explain the injuries by lathi on the deceased and therefore, the conviction is unsustainable, we do not find any merit in the said contention. In the present case, the testimony of injured eye witnesses PW-6 Premlata Singh and PW-9 Chandrakanta Singh are coherent and consistent. All the appellants armed with weapons carrying sharp edged weapons lathi etc. had gone to the house of the deceased and PW-6 Premlata Singh has made categorical statement that all the accused persons had

beaten the deceased and when she tried to save her husband, she was also inflicted injury, which has been found to be proved by the medical evidence. Reliance has also been placed on the judgments passed by the Apex Court in the cases of **Lakshmi Singh and others etc. Vs. State of Bihar, AIR 1976 SC 2263, Jadu Yadav and others Vs. State of Bihar, AIR 1994 Supreme Court 957** and **Sahdeo and others Vs. State of U.P. (2004) 10 SCC 682**. The judgment of the Apex Court in the case of **Lakshmi Singh** (supra) would not of any aid in view of the facts of the present case. In the said case, the prosecution has miserably failed to offer any explanation regarding injuries sustained by the accused and the court has also found the omission on the part of the prosecution to explain the injuries on the person of the deceased considering the entire facts and evidence of the said case where the prosecution has failed to offer any explanation to the injuries on the person of the accused.

17. In the present case, there is no injury to the accused persons. In the case of **State of Gujarat**

Vs. Bai Fatima, AIR 1975 SC 1748, the Apex Court held that there may be cases where the non- explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to the cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy. In the present case, from the testimony of eye witnesses specially of injured Premlata Singh (PW-6), it is not only the mere presence of the appellants is established at the time of the incident but their active participation in the commission of offence has also been established. They had gone to the house of the deceased armed with deadly weapons. One of accused Ashok Kumar opened the door from the inside and thereafter all the accused persons entered into the house carrying weapons. In the other case of **Jadu Yadav(supra)**, the Apex Court has found that the ocular evidence was not at all supported by the medical evidence in respect of some of the accused persons and therefore, they were granted benefit of doubt. In the case of

Sahdeo and others (supra), there was old enmity between both the parties and the investigation was found highly unsatisfactory but still because they were members of the unlawful assembly, therefore, the Apex Court found that common object was clearly established and the conviction of accused persons was upheld. In respect of one of the accused person since the High Court has interfered with the order of acquittal, the Apex Court held that the High Court erred in interfering with the order of acquittal. However, the Apex Court has deprecated unsatisfactory investigation.

18. Another contention of the learned counsel for the appellants that non examination of Surendra Pathak, who had given first information to the police, therefore, an adverse inference be drawn under Section 114 of the Evidence Act, has also no merit in the facts of the present case. Prosecution witness PW-12 Vinod Pyasi has proved the presence of Surendra Pathak alongwith him at bus stand Gurh, the place of incident. He has also deposed in para-1 that Surendra Pathak had gone to the police station and had intimated to the police officer, which has been supported by the testimony of PW-13 Shriniwas Shukla.

19. The contention of the learned counsel for the appellant

Devraj Patel in Cri.Appeal No.1282/2011, in addition to the common submission that there is no recovery of weapon 'Tangi' from Devraj, therefore, the entire prosecution case is a false case can also not be accepted .It is found that Devraj Patel was absconding and he was arrested after a long period and thereafter a separate trial was conducted. Under these circumstances, the non recovery of weapon 'Tangi' would not be fatal when the prosecution has successfully proved the presence and the active role attributed to appellant Devraj Patel.

20. Thus, in the present case, merely because no lathi injury has been found to be on the person of the deceased, the conviction of appellants Prasanna Kumar and Ram Milan Patel cannot to be held unsustainable because there was no lathi injury. The presence of these two accused persons armed with weapons in the house of the deceased in the mid night has been clearly established . Further not only the presence of the two persons but also their participation in the commission of the offence has been established.

21. The common arguments of learned counsel for the appellants that there is no specific role attributed to them and therefore, they ought to have not been convicted

with the aid of Section 149 of IPC has no merit. In the case of ***Laljee Vs State of U.P. (1989)1SCC 437*** the Apex Court has held as under:

“19. Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common objects of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with lathis, and were parties to

the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. 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. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge.

22. In *Yunis Vs. State of M.P. (2003) 1 SCC 425*, learned counsel appearing for the appellant therein argued that no overt act was imputed to his client and he was being implicated only on the basis of Section 149 IPC. This Court ascribing no merit to the argument, held that :

“even if no overt act is imputed to a particular person, when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction”. Accordingly the Court”

Accordingly the Court in that case observed

that the appellant was a member of the unlawful assembly which itself is sufficient to hold him guilty when his presence has not been disputed.

23. Relying on Lalji Vs. State of U.P. this Court in ***Subal Ghorai Vs. State of W.B. (2013) 4 SCC 607*** held;

“ 52. If an offence is committed by a member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults intended victims, all may not take part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly”

24. Following the aforesaid judgments the Apex Court reiterated the principle in the cases of ***Anup Lal Yadav and another Vs. State of Bihar (2014)10 SCC 275***, regarding constructive liability for being part of the unlawful assembly held that it is well settled that once it is

established that unlawful assembly had a common object it is not necessary that in the presence unlawful assembly must be shown to have committed some overt act, rather they can be convicted under Section 149 of IPC.

25. Thus, on the evaluation of the evidence, it has been established that appellants Prasanna Kumar and Ram Milan Patel had gone to the house of the deceased armed with lathi and the testimony of injured witness PW-6 Premlata Singh read with her previous statement (dying declaration Ex.P-10), it is established beyond any doubt that the prosecution has successfully proved its case beyond any doubt. In view of the aforesaid discussion of the facts and evidence available on record, relying on the judgment passed by this court in the case of **Mohan Singh Vs. State of M.P. (2005(4) MPLJ 183** would not render any aid to the case of other appellants.

26. We also do not find any merit in the contention of the counsel for the appellants that there is inconsistency in the ocular and medical evidence, therefore, the prosecution case ought to have been disbelieved., On extensive evaluation of the deposition of the eye witnesses, the same can not be discarded merely because there is some inconsistency in the ocular and medical evidence. The Apex Court in the case of **Darbara**

Singh Vs. State of Punjab (2012)10 SCC 476 has held as under:

“10. So far as the question of inconsistency between medical evidence and ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved.”

27. The same view has been reiterated in the case of **Sadhu Saran Singh Vs State of U.P. & Ors. (2016)4 SCC**

357 that in the case of inconsistency between medical evidence and ocular evidence, priority has to be given to ocular evidence particularly in the case of minor discrepancies.

28. We also do not find any error in conviction of appellants in Cr.A.No.346/2002 and Cr.Appeal No.423/2002 for attempting to murder Smt. Premlata Singh on aforesaid appreciation of ocular and medical evidence.

29. In view of the evaluation of the entire evidence, we find that the evidence of the prosecution is trustworthy and inspire confidence in the mind of this court and by no stretch of imagination it can be believed that the accused persons have been falsely implicated .

30. In view of the aforesaid discussion, we do not find any merit in these appeals, as the prosecution has successfully proved the case against the present appellants on the basis of ocular and other evidence. Hence, all the appeals sans merit and are **dismissed**.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

hsp.