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THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

(Single Bench : Rajendra Mahajan, J.)

Cr.A No.67/2014

1. Sabhapati Vais S/o Ramlallu Vais aged about 38 years.
2. Ramlallu Vais S/o Rekman Vais aged about 57 years.
3. Shripati @ Pappu Vais S/o Ramlallu Vais aged about 22 years.

All are residing at village Tiwara (Pokhara Tola) P.S. Waidhan District Singrouli M.P.

Appellants

VERSUS

State of Madhya Pradesh
through Police Station Waidhan
District Singrouli M.P.

Respondent

.....
For appellants : Shri Y.P. Sharma, learned counsel.

For respondent : Shri Y.D. Yadav, learned counsel.
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J U D G M E N T

(Pronounced on the 26th day of April, 2017)

This appeal has been filed against the impugned judgment of conviction and order of sentence dated 18.12.2013 passed by the Second Additional Sessions Judge Waidhan District Singrouli in Sessions Trial No.190/2010 convicting each of the appellants under Sections 307 r.w. 34 and 324 r.w. 34 of the IPC and sentencing each of them

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thereunder to suffer on first count R.I. for five years with a fine of Rs.1000/- (one thousand) and second count R.I. for one year with a fine of Rs.500/- (five hundred) with default jail sentences. It is also ordered that the substantive jail sentences in the aforesaid Sections shall run concurrently.

2. For the purpose of convenience, hereinafter in this judgment the appellants shall be referred to as accused persons.

3. The uncontroverted facts of the case as noticed by this court are that complainant Siyaram (PW-1) is the son of Balakram (PW-2), Urmila (PW-3) is the wife of complainant Siyaram and Raju (not examined) is the son of Siyaram and Urmila. Accused Ramlallu is the father of accused persons namely Sabhapati and Shripati. Duiji is the wife of accused Ramlallu. Rajkumari is the wife of accused Sabhapati and thus, she is the daughter-in-law of accused Ramlallu. Balakram and accused Ramlallu are the real brothers. The complainant party and the accused party are residents of village Tiyyara. Both the parties have their residential houses and agricultural lands adjacent to each other in the village.

4. In short, the prosecution story is that on 26.07.2008 at about 9:30 a.m. complainant Siyaram lodged an oral report at Police Station Waidhan stating that on the selfsame day at about 8:00 a.m. his ox wandered into the paddy field of accused Ramlallu and ate some rice plants. Thereupon, he hurled filthy abuses at his father Balakram. He

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requested him not to abuse. Thereupon, accused persons namely Ramlallu, Sabhapati and Shripati started beating him with lathis and a spade. Seeing this, he and his wife Urmila reached the place of occurrence running to save him from being beaten by them. Accused Ramlallu also assaulted them and threatened to kill. Islam (PW-4) and Safiullah (PW-5) witnessed the incident. His father Balakram sustained injuries on his head, right hand, both knees and left wrist. He sustained injuries on head and left hand. His wife Urmila sustained injuries on her head and back. On the basis of the oral report, Head Constable Rampyare Mishra (PW-6) recorded the First Information Report Ex.P-1 and registered a case at Crime No.440/2008 against the accused persons for the offences punishable under Sections 294, 323, 506 and 34 IPC. Thereafter, he sent the injured persons for medico legal examinations to the District Hospital Waidhan, where Dr. R.B. Singh (PW-11) medico legally examined them and gave MLC reports Ex.P-6A, Ex.P-7A and Ex.P-8A of complainant Siyaram, Balakram and Urmila respectively. Upon the MLC reports and X-ray report Ex.P-7B, an offence under Section 307 IPC is later added.

5. Assistant Sub-Inspector Mahendra Sharma (PW-10) investigated the case. On 27.7.2008, in the presence of said Islam and Safiullah, he prepared spot map Ex.P-3 and seized blood-stained soil and plain soil vide seizure memos Ex.P-4 and Ex.P-5. On 30.07.2008, in the presence of Urmila and Islam he seized a blood stained *baniyan* from

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the possession of Balakram vide seizure memo Ex.P-2. On 01.08.2008, in the presence of Nandulal (PW-8) and Chotelal (PW-9), he arrested accused persons namely Ramlallu, Sabhapati and Shripati vide arrest memos Ex.P-11 to Ex.P-13 respectively. On the selfsame day, he interrogated the accused persons in the presence of the aforesaid witnesses and prepared disclosure statements of accused persons Ramlallu, Sabhapati and Shripati Ex.P-14 to Ex.P-16 respectively. On the basis of their disclosure statements, he seized one spade, a bamboo stick and a lathi from accused persons Ramlallu, Sabhapati and Shripati vide seizure memos Ex.P-11 to Ex.P-13 respectively. He also recorded case diary statements of the prosecution witnesses on various dates. He sent the seized articles for forensic examination to FSL Sagar, which later sent in the report Ex.P-23.

6. In the course of investigation, upon the order of the Investigating Officer, Halka (Area) Patwari Kedar Prasad Namdeo (PW-7) prepared *Nazri Naksha Mouka* Ex.P-8 in presence of independent witnesses.

7. Upon completion of the investigation, the police filed the charge-sheet against the accused persons in the court of Judicial Magistrate First Class Waidhan. Thereupon, Criminal Case No.800/2008 was registered. Vide order dated 27.09.2008, the case was committed. Thereafter, the case is numbered as Sessions Trial No.190/2010 and made over to the court of Second Additional Sessions Judge Waidhan.

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On 19.11.2009, the learned ASJ has framed the charges against the accused persons under Sections 294, 506-II, 307 in alternative 307 r.w. 34, 324 in alternative 324 r.w. 34, 323 in alternative 323 r.w. 34 for causing injuries to Balakram, complainant Siyaram and Urmila respectively. All the accused persons pleaded not guilty to the aforesaid charges and claimed to be tried. In their examinations under Section 313 Cr.P.C., they denied all the circumstances appearing against them in the evidence of the prosecution witnesses. Their general defence is that they have been falsely implicated in the case on account of old land disputes and enmity. However, they have not produced any evidence either documentary or oral evidence in their defence.

8. In the impugned judgment, the learned ASJ after having analyzed, appreciated and marshaled the evidence on record, has held the accused persons guilty for causing a dangerous injury to the life of Balakram on his head and other grievous injuries on his person and voluntarily causing a simple incised injury with a sharp edged weapon on the head of complainant Siyaram and other simple injuries on his person in furtherance of their common intention. Upon the aforesaid findings, the learned ASJ has convicted the accused persons for the offences punishable under Sections 307 r.w. 34 and 324 r.w. 34 IPC and sentenced them thereunder as stated in para 1 of this judgment and acquitted them of all the remaining charges.

9. Feeling aggrieved by and dissatisfied with the impugned

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judgment, the accused persons have filed this appeal.

10. Learned counsel for the accused persons has submitted that complainant Siyaram in the FIR Ex.P-1 and he, Balakram and Urmila in their case diary statements Ex.D-1 to Ex.D-3 have stated that the accused persons assaulted them in the course of the incident, whereas they have testified before the trial court that in addition to the accused persons, Duiji, the wife of accused Ramlallu, Rajkumari, the wife of accused Sabhapati and one younger daughter-in-law of accused Ramlallu, whose name they do not know, also assaulted them. Complainant Siyaram and Balakram have also deposed that Rajkumari inflicted injuries to them by means of a *Tangi*. However, they have failed to explain in their evidence as to why the aforestated facts are missing in the FIR and in their case diary statements. He submitted that there are material contradictions, omissions and inconsistencies in the evidence of complainant Siyaram, Balakram, Urmila and so called eyewitnesses namely Islam and Safiullah. He submitted that complainant Siyaram and Balakram have admitted in their cross-examinations that the police have registered a counter case against them for causing injuries to accused persons namely Ramlallu and Shripati. He submitted that this fact is also admitted by the Investigating Officer Mahendra Sharma in para 20 of his cross-examination as he had done investigation in the counter case. He submitted that the eye witnesses Safiullah and *Halka* Patwari Kedar Prasad Namdeo in their cross-examinations have admitted the fact that

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the incident occurred on the land bearing survey No. 409/1, that accused Ramlallu is owner of the said land and that he has possession over it. Upon these facts, he submitted that the accused persons in the cross-examinations of complainant Siyaram, Balakram, Urmila, Islam and Safiullah have taken the defence that complainant Siyaram and Balakram went to the land of accused Ramlallu and they assaulted him and accused Shripati. Thus, they were aggressors at the time of incident and that the accused person in exercise of right of private defence of their bodies inflicted injuries upon them. He submitted that the learned ASJ has not considered the aforestated material contradictions, inconsistencies, omissions and the plea of right of private defence of the accused persons in the impugned judgments. Thus, the findings of convictions of the accused persons under Sections 307 r.w. 34 and 324 r.w. 34 as recorded by the learned ASJ are erroneous and bad in law. Upon these submissions, he prayed to allow this appeal and set aside the impugned judgment.

11. In reply, learned Panel Lawyer has submitted that the contradictions, omissions and inconsistencies as pointed out by the learned counsel for the accused persons are minor in nature, which do not affect the prosecution case and the credibility of prosecution witnesses. He submitted that complainant Siyaram and his father Balakram sustained multiple injuries of various kinds in the course of the incident, therefore, the accused persons were aggressors. For the said

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reason, the accused persons cannot take the plea that the right of private defence had been accrued to them despite that the incident occurred in the agricultural field of the accused persons as alleged. Upon these submissions, he submitted that the learned ASJ has rightly convicted and sentenced the accused persons under Sections 307 r.w. 34 and 324 r.w. 34 IPC. Therefore, this appeal is devoid of merits and substance and is liable to be dismissed.

12. This court has earnestly considered the rival submissions made at the Bar and perused the impugned judgment, evidence and other materials on record.

13. Learned counsel for the accused persons has not challenged even obliquely in the course of arguments the findings recorded by the learned ASJ regarding the nature of injuries sustained by complainant Siyaram and his father Balakram. Upon the perusal of evidence on record, this court holds that the learned ASJ has recorded the said findings upon the proper appreciation of ocular and medical evidence. Therefore, the findings on injuries sustained by complainant Siyaram and Balakram are affirmed.

14. Complainant Siyaram (PW-1) has stated that soon before the incident, he was taking his oxen to his agricultural field for the purpose of ploughing. At that time, his ox strayed into the paddy field of accused Ramlallu and ate some rice plants. Thereupon, an altercation broke out. Moments later, all the three accused persons, Duiji, Rajkumari and one

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younger daughter-in-law of accused Ramlallu came with weapons such as Tangi, spade and lathi. They started assaulting him and his father Balakram with the weapons in their hands. He has also stated in his examination-in-chief and in para 11 of his cross-examination that Rajkumari inflicted blows of Tangi on his head and both legs.

15. Complainant Siyaram, on being confronted by the defence with the contents of FIR Ex.P-1 and his case-diary statement Ex.D-1, has admitted in paras 9 and 10 of his cross-examination that it has not been mentioned in the FIR and his case-diary statement that Duiji, Rajkumari and a younger daughter-in-law assaulted him and his father Balakram besides the accused persons and that Rajkumari inflicted blows of Tangi on his head and legs. In para 11 of his cross-examination, he has admitted that he had not sustained any injury with spade on his head, but he has stated in his case diary statement that accused Ramlallu inflicted a blow of spade on his head. He has stated in his examination-in-chief and cross-examination that on account of assault by the accused persons and other aforesaid persons, he sustained fractures (which are not specified by him in his evidence) on his person, but this fact has not been stated by him in the FIR and his case diary statement. He has stated in his case-diary statement that accused Ramlallu gave a blow of spade on the head of his father Balakram, on the other hand he has stated in his evidence that Rajkumari had inflicted blows of Tangi upon his head. Upon the perusal of entire evidence of complainant Siyaram,

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this court finds that he has not given any explanation much less satisfactory with regard to the said contradictions. In the opinion of this court, the aforesaid contradictions appearing in the evidence of complainant Siyaram are material. Therefore, his testimony does not inspire confidence in the mind of this court.

16. Balakram (PW-2) has deposed that the cause of the incident was that his ox strayed into the paddy field of accused Ramlallu. Thereupon, accused Ramlallu had an argument with him. At that time accused Ramlallu raised hue and cry, saying that he was being beaten by him. At this, accused Sabhapati and Shripati, Rajkumari, Duiji and one younger daughter-in-law of him came to the place of occurrence running. Thereafter, they started wielding weapons at him. He dodged a lathi blow of accused Ramlallu, which landed at the head of accused Shripati, causing an injury on his head. Later, all the three accused persons and the aforesaid persons assaulted him with the weapons they had. In the meantime, his son Siyaram came to the place of occurrence to save him. They also assaulted him.

17. Balakram has stated that the accused persons and other aforesaid persons assaulted him first and when his son/complainant Siyaram came, he was also assaulted by them, whereas complainant Siyaram has stated in his cross-examination that the accused persons and others assaulted him first and thereafter his father Balakram. This witness has stated that his grandson Raju was driving oxen from his

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residence to his agricultural field, whereas Siyaram has stated that he was carrying oxen from his house. Thus, there are material inconsistencies between the evidence of this witness and that of complainant Siyaram. This witness has stated in his examination-in-chief and cross-examination that Rajkumari, Duiji and younger daughter-in-law of accused Ramlallu came to the place of occurrence. Rajkumari inflicted blows of Tangi on his head and big toe of left leg. As a result, he fell down onto the ground. But he has failed to explain as to why these facts are missing in his case diary statement Ex.D-2. In para 15 of his cross-examination, he has deposed that he has not stated in his case diary statement Ex.D-2 that accused Ramlallu had inflicted a blow of spade on his head on account of which he fell down and lapsed into unconsciousness. In the opinion of this court, the aforesaid material inconsistencies and contradictions have shaken the credibility of this witness completely. Therefore, it is held that his testimony is not reliable.

18. It is apposite to mention at this stage that in the course of trial of the case neither the prosecution nor the complainant party had moved an application under Section 319 Cr.P.C. for making said Rajkumari, Duji and unnamed one younger daughter-in-law of accused Ramlallu, accused persons of the case after the recording of evidence of complainant Siyaram and Balakram.

19. Urmila (PW-3) has testified that at the time of incident, she

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was cooking a meal at her house, which is about a half kilometer away from the place of occurrence. Upon hearing loud noises, she reached the place of occurrence running. There, she saw that accused persons Ramlallu, Sabhapati, Shripati and other members of their family assaulting her husband Siyaram and father-in-law-Balakram with lathis, Tangis and spades. She also saw accused Ramlallu hitting them with Tangi and accused Sabhapati and Shripati inflicting blows of spades on Siyaram's head, whereas complainant Siyaram and Balakram have stated in their evidence that it was Rajkumari who inflicted blows of Tangi upon them. Thus, there are material inconsistencies between her evidence and those of complainant Siyaram and Balakram. In para 6, she has admitted that she reached the place of occurrence half an hour later, and she saw them injured. On the basis of that part of her statement, it can be said that she is not an eye witness and that she has falsely given aforesaid evidence. As per FIR, Urmila had sustained injuries in the course of incident, but complainant Siyaram, Balakram and she herself have not deposed on the point. Thus, in the FIR it is falsely stated by complainant Siyaram that she had sustained injuries. As per her MLC report Ex.P-8A, she had a swelling in her head. It is pertinent to mention here that the trial court had framed charges against the accused persons for causing voluntarily simple injuries to Urmila punishable under Section 323 in alternative 323 r.w. 34 IPC. But the learned ASJ has acquitted the accused persons of the said charges

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holding that she is not an eyewitness to the incident and that she had not sustained any injury. Upon the aforesaid analysis of evidence of this witness, it is held that the evidence of Urmila is wholly unreliable.

20. Islam (PW-4) has deposed that at the time of incident, he was in his house. At about 7:30 to 8:30 a.m., he heard loud ruckus. Thereupon, he reached the place of occurrence. He has given self-contradictory statements. On the one hand, he has stated that when he reached the spot, he saw complainant Siyaram and Balakram in the injured conditions. On the other, he has stated that he saw accused Shripati and Sabhapati assaulting them. At that time, accused Ramlallu was standing there. He has further stated that he saw only the accused persons at the place of occurrence whereas complainant Siyaram and Balakram have stated that Rajkumari assaulted them with Tangi. Upon the aforesaid analysis of evidence of this witness, it is highly doubtful that he witnessed the incident. Therefore, his evidence is not trustworthy.

21. Safiullah (PW-5) has stated that his agricultural field is adjacent to the agricultural field of complainant Siyaram. At the time of incident, he was in his agricultural field. He saw accused persons Ramlallu, Shripati and Sabhapati with lathis. Before the occurrence of incident, he went away. Later, he saw the injuries on the persons of Siyaram, Balakram, accused Ramlallu and accused Shripati. In the opinion of this court, the said evidence is very vague. Therefore, it has

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no evidentiary value. Moreover, the prosecution has declared him hostile. Thus, his evidence does not support the prosecution case.

22. From the perusal of the evidence of Investigating Officer Mahendra Sharma (PW-10), this court finds that he has done formal investigation. However, on being confronted by the defence regarding the case diary statements of complainant Siyaram, Balakram, Urmila, Islam and Safiullah, he has stated that he has truly recorded their statements without omitting any portion of their statements. In the opinion of this court, seizures of spade, bamboo stick and lathi at the instances of accused persons Ramlallu, Sabhapati and Shripati respectively by this witness, have no significance in the case as aforesaid articles are very common ones. Moreover, as per the FSL report, Ex.P-23 no blood stains much less human blood were found on the aforesaid articles.

23. Now, the point for consideration before this court is that whether the right of private defence had been accrued to the accused persons at the time of incident as claimed by them ? Before analysing the evidence on this point, it will be seen first the scope of the right of private defence as contemplated by Section 97 IPC. In Darshan Singh Vs. State of Punjab, [(2010) 2 SCC 333], the Supreme Court has culled out the following principles in para 58 of the decision with regard to the scope of right of private defence on the basis of its earlier pronouncements :-

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- (i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.
- (ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
- (iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
- (iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.
- (v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
- (vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
- (vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.
- (viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.
- (ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.
- (x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

It is worth mentioning here that the aforesaid principles have been followed by the Supreme Court in a recent judgment rendered in Suresh Singhal Vs. State (Dehli Administration) [(2017) 2 SCC 737], wherein the accused-appellants had claimed right of private defence to their bodies.

24. In the light of the above-stated principles, it will be seen what evidence is available on record to hold that at the time of incident, the

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accused persons had right of private defence to their persons? Admittedly the genesis of incident was that complainant Siyaram's ox wandered into the paddy field of the accused persons and ate some rice plants. Thus, the incident occurred all of sudden. Safiullah (PW-5) and Halka Patwari Kedar Prasad (PW-7) have admitted in paras 9 and 6 of their cross-examinations respectively that the incident occurred in the agricultural field owned and possessed by accused Ramlallu. However, complainant Siyaram and his father Balakram have denied in their cross-examinations that the place of occurrence was the agricultural field of accused Ramlallu. But their denial has no significance in view of the evidence of aforesaid independent prosecution witnesses. They have not explained in their evidence as to why they had gone to the agricultural field of the accused persons at the time of incident. Complainant Siyaram and Balakram have admitted in their cross-examinations that the police have registered a counter case against them for causing injuries to accused persons Ramlallu and Shripati. The accused persons in the cross-examinations of complainant Siyaram and Balakram have taken the defence that the right of private defence had been accrued to them as they had come to their agricultural field to assault accused Ramlallu, who had objected to straying of their ox into his paddy field and eating rice plants by it. In James Martin Vs. State of Kerala, [(2004) 2 SCC 203], the Supreme Court has held in para 14 of the decision that the number of injuries is not always a safe criterion for

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determining who the aggressor or aggressors was or were. Therefore, on the basis of injuries sustained by complainant Siyaram and his father Balakram, it cannot be decided that the accused persons were aggressors in view of the facts that the incident occurred in the agricultural field of the accused persons and accused persons Ramlallu and Shripati sustained injuries. This court is of the considered opinion that the aforesaid evidence is sufficient to hold that the right of private defence had been accrued to the accused persons to protect their persons at the time of incident. If evidence on record is appreciated and evaluated from the angle of right of private defence of accused persons, no offences are made out against the accused persons even excluding for the sake of arguments those parts of statements of complainant Siyaram and Balakram wherein they have stated that Rajkumari, Duiji and unnamed daughter-in-law of accused Ramlallu assaulted them.

25. In the light of foregoing reasons and discussions, this court holds that the prosecution has failed to prove its case beyond all reasonable doubts. On the other hand, the accused persons have proved that their acts of causing injuries to complainant Siyaram and Balakram are fully covered by their right of private defence. Consequently, this court allows this appeal by setting aside the impugned judgment of conviction and order of sentence. The accused persons/the appellants are acquitted of the offences punishable under Sections 307 r.w. 34 and 324 r.w. 34 IPC. Their bail-bonds are cancelled. The trial court or the

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successor court, as the case may be, is directed to refund fine amounts to the accused persons, subject to verification.

26. Before parting with this case, a few words are added, it is well settled in law long back by series of pronouncements of the Supreme Court and the High Courts that a case and a counter case/cross-cases shall be tried by the one and same court of Session irrespective of the fact that one case is exclusively triable by the court of Magistrate. Moreover, the judgments in such cases ought to be pronounced on the same day. In this connection, a reference may be made to the decision rendered by the Supreme Court in the case of Sudhir and others Vs. State of M.P. [(2001) 2 SCC 688 = AIR 2001 SC 826]. The record of committal proceedings and the record of trial court reveal that the learned Committal Magistrate and the learned ASJ were in the know through the material on record that a counter case was also registered by the police against complainant Siyaram and his father Balakram. Notwithstanding that fact, they did not take steps for trial of the present case and the counter case by one and the same court of Session. Non-observance of such a well settled law by the courts below impact adversely upon the Justice delivery system at large and it also amounts to making a dent into the Judicial discipline.

27. Accordingly, this appeal is finally disposed of.

(Rajendra Mahajan)
Judge