



DULESHWAR & ANR.

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v.

THE STATE OF M.P. (NOW CHHATTISGARH)

(Criminal Appeal No. 1813 of 2017)

JANUARY 21, 2020

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[A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Penal Code, 1860:

ss. 147, 148, 302, 302/149 and 325 - Prosecution under – Of 18 accused persons – For causing grievous injury to one person PW1 and causing death of another – In two different incidents – Eye-witnesses to both the incidents – High Court convicted 10 accused while acquitting 8 accused giving them benefit of doubt – Appeal by 9 of the convicted accused persons and Revision filed by complainant against acquitted accused persons – High Court affirmed the order of trial court – Appeal to Supreme Court by 7 of the convicted accused – Held: It is proved from the consistent testimonies of eye-witnesses that the appellants-accused 1, 2, 5, 7 and 12 formed unlawful assembly with weapons and indulged in the assault – Count of witnesses is further corroborated by recovery of blood-stained weapons and clothes – Hence their conviction is sustained – However, prosecution failed to prove its case beyond reasonable doubt against appellants-accused 8 and 13.

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Allowing the appeals filed by appellants-accused 8 and 13, while dismissing those filed by other appellants, the Court

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HELD:1. The fact that a large assembly was indeed formed, where the members were armed with weapons including *lathis* and *tangiyas* and they indulged in assault over the deceased, is evident on the face of record with the consistent testimonies of the eye-witnesses PW-2, PW-3, PW-4 and PW-5. Even the witness declared hostile i.e., PW-9 has also testified to the fact of assault by an assembly over the deceased; he even named at least two of the assailants. Thus, the fact of formation of an unlawful assembly with weapons is amply established. Once formation of unlawful assembly at the time of committing of offence is established, the question of specific role of an individual member of the assembly

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A is rendered secondary. In other words, the prosecution need not prove any specific overt act on the part of each and every member of that assembly. It is also established beyond doubt in the present case that the deceased was brutally beaten black and blue with extensive injuries all over his body, including contusions, lacerated wounds and multiple fractures of various bones and ribs. The post-mortem report and the medical opinion that the deceased died due to shock with rupture of liver and fracture of ribs leave nothing to doubt that he was done to harsh and gruesome death with merciless thrashing, including multiple use of blunt weapons like *lathi*. Thus, the fact that there had been an assembly with the common object of battering the deceased to death is hardly of any doubt. The manner of causing death makes it clear that the intention of assailants forming such assembly had only been to cause death and the acts were done with that intent alone. [Para 14][1027-A-F]

D *Lalji v. State of UP* (1989) 1 SCC 437 : [1989] 1 SCR 130; *Masalti v. State of U.P.* [1964] 8 SCR 133 – relied on.

2. In cases involving multiple accused persons and several witnesses, it is the quality of evidence that matters and not the quantity; and even the testimony of a single witness may be sufficient to establish the identity of an accused as member of an unlawful assembly but, when the size of assembly is quite large and many persons have witnessed the incident; and when a witness deposes in general terms, it would be useful to adopt the test of consistency of more than one witness so as to remove any doubt about identity of an accused as a member of the assembly in question. However, even if adopting such a test of consistency, what is to be looked for is the ‘*consistent account of the incident*’; and the requirement of consistency cannot be overstretched as if to search for repetition of each and every name of the accused in each and every testimony. In other words, the comprehension of overall evidence on record is requisite; and mere counting of heads or mere recitation of names or omission of any name in the testimony of any particular witness cannot be decisive of the matter. In such facts and circumstances, even the relevance of the corroborating facts and factors like that of recovery of weapons

or any other article co-related with the crime in question cannot be ignored altogether. [Paras 15 & 15.1][1028-C; 1029-C-F]

3. Coupled with oral testimony remains the fact that several blood-stained weapons and clothes were seized by I.O. during investigation. Though the witnesses to such seizure proceeding, PW-13 and PW-14 have been declared hostile but nothing has occurred in the testimony of PW-20 the Investigating Officer to disbelieve or discard his testimony as regards such seizure proceedings. [Para 17][1031-A-B]

4. There is substantial consistency in the account of the incident as given out by the eye-witnesses. The fact that there had been a large gathering that was searching for the deceased and after finding him, the members of the assembly pounced on him is consistently stated by the eye-witnesses PW-2, PW-3, PW-4, PW-5 and even PW-9. Further there had been consistency in the account of several of the witnesses, including PW-2, PW-3, PW-4 and PW-5, that the deceased was being dragged by his legs by two of the members of the assembly. Both PW-2 and PW-3 gave out the names of the persons who dragged the deceased as A-1 and A-4. There had been another fact consistently stated by PW-2 and PW-5 that when they attempted to intervene, some of the persons of the assembly threatened and asked them to move away. PW-5 specifically gave out that A-1, A-12, A-4 and A-5 were the accused persons who extended such a threat and asked him to move away. Even the hostile witness PW-9 specifically stated that A-6 and A-2 assaulted the deceased. [Para 19][1031-E-H; 1032-A]

5. In the aforesaid status of the testimony of the eye-witnesses and the nature of incident, the account given by PW-5 who had specifically named several of the accused persons, does not appear suffering from any infirmity and the conviction of some of the appellants, in whose relation no reasonable doubt exists, could be sustained on the basis of his testimony because the same stands corroborated on the material particulars in the testimony of other witnesses. [Para 20][1032-B]

6. So far as the appellant A-1 is concerned, it is established that he had been the part of assembly right from the beginning

- A inasmuch as he was amongst the assailants who caused grievous injuries to PW-1 Dhanwaram in the incident that preceded the incident resulting in demise of the deceased. The eye-witness PW-5 named him as one of the accused persons assaulting the deceased. It is also established in the testimony of the witnesses PW-2 and PW-5 that the deceased was dragged by legs by two persons, one being this accused A-1. Such a fact that the deceased was indeed dragged by legs has been stated by PW-3 and PW-4 also. The eye-witness PW-5 also stated that when the accused persons were assaulting the deceased, he went there to intervene but was threatened by four accused persons. The happening of the incident in question and threats by some of the assailants to the witnesses is duly corroborated in the testimony of PW-2. Coupled with these factors, the Investigating Officer seized one *tangiya* and a blood-stained lungi from A-1 (vide Ex. P/13). Though this accused alleged that he was not present during the incident and had been falsely implicated but there is no specific defence evidence on his plea of alibi nor there is any other specific defence version of this accused. In the given set of facts and circumstances, it is established beyond doubt that this accused A-1 had been the member of the assembly that attacked and thrashed the deceased. [Para 21.1][1032-D-H]
- E 7. As regards the appellant (A-2), again, it is established that he was amongst the assailants who caused grievous injuries to PW-1 in the incident that preceded the incident resulting in demise of the deceased. Apart from PW-5 naming him as one the members of the assembly that assaulted the deceased, even the otherwise hostile witness PW-9 specifically stated that this accused had been one of the persons who assaulted the deceased. Merely for this witness PW-9 turning hostile in relation to some part of the prosecution case, his entire testimony cannot be discarded, if it inspires confidence. There is no reason of false implication of this accused by PW-9. Moreover, PW-20, the Investigating Officer seized a *lathi* and a vest from this accused (vide Ex. P/14) both carrying blood-stains. This accused similarly alleged that he was not present during the incident and had been falsely implicated but there is no specific defence evidence on his plea of *alibi* nor there is any other specific defence version.
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In the totality of circumstances, it is established beyond doubt that A-2 had also been the member of the assembly that attacked and thrashed the deceased. [Para 21.2][1033-A-D] A

Paulmeli v. State of Tamil Nadu: (2014) 13 SCC 90 :
[2014] 6 SCR 420 – relied on.

8. As regards the appellant A-5, the eye-witness PW-5 named him as one of the accused persons assaulting the deceased. This accused was also named by PW-5 as one of the members of the assembly that threatened the witnesses to move away. The happening of the incident in question and threats by some of the assailants to the witnesses is duly corroborated in the testimony of PW-2. Coupled with these factors, PW-20, the Investigating Officer, seized a blood-stained *lathi* from this accused also (vide Ex. P/16). Though this accused stated that he was falsely implicated but there had not been any specific defence plea on his part. In the given set of facts and circumstances, there is no reason to doubt that he had also been the member of the assembly that attacked and thrashed the deceased. [Para 21.3][1033-E-F] B C D

9. So far as the appellant (A-7) is concerned, though other witnesses did not categorically state his name but the eye-witness PW-5, during his re-examination, specifically named him as one of the accused persons who assaulted the deceased.. The *lathi* recovered from this accused (vide Ex. P/18) also carried blood-stains. A feeble attempt was made for suggesting the plea of *alibi* where DW-1 said that this accused went to get his sewing machine repaired on the day of incident at about 1.30 p.m. However, there had been no such plea of this accused in his statement under Section 313 CrPC and there is no cogent evidence on record to establish the presence of this accused at any other place during the time of incident. In the totality of circumstances of this case, there is no reason to extend him the benefit of doubt and there is no reason to interfere with the findings that he had also been the member of the assembly that assaulted the deceased. [Para 21.4] [1033-G-H; 1034-A-B] E F G

10. So far as the appellant A-8 is concerned, it is difficult to endorse his conviction. Though one name has occurred in the

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A re-examination of PW-5 but not specifically the name of this
accused. The prosecution has not taken any steps to clarify if
there was any discrepancy in regard to the statement of PW-5.
No other eye-witness has named this accused as one of the
members of the mob that assaulted the deceased nor any other
act of this accused has come on record which could connect him
B with the assembly in question and the place of incident. Though
the *lathi* recovered at the instance of this accused (vide Ex. P/
19) allegedly carried blood-stains but his conviction cannot be
based on this recovery alone. For want of cogent and convincing
evidence about his presence at the scene of crime and his
C participation in assaulting the deceased A-8 is entitled to the
benefit of doubt and the findings in his relation cannot be
sustained. [Para 21.5][1034-C-E]

11. As regards the appellant A-12 though *lathi* said to have
been recovered from him (vide Ex. P/27) was not shown carrying
any blood-stains and it has been suggested in the submissions
on behalf of the State that his name is not taken by any witness
but then, it is noticed from the statement of PW-5 that he had
clearly named this accused as one of the persons who threatened
the witnesses and further stated his name in the re-examination
along with the name of other assailants. As noticed, the happening
E of the incident in question and threats by some of the assailants
to the witnesses is duly corroborated in the testimony of PW-2.
In the given circumstances, the case against this appellant more
or less stands at the same footing as that against the co-accused
A-1 and A-5. Though a witness DW-2 was examined in defence
F that this accused was present in his village at the relevant time
and was in the field, but no such specific plea was taken by him in
his defence version. The Trial Court has rejected such evidence
as after-thought and rightly so. In the given set of facts and
circumstances, there is no reason to interfere with the findings
that A-12 had also been the member of the assembly that assaulted
G the deceased. [Para 21.6][1034-F-G; 1035-A-B]

12. As regards the appellant A-13, it is noticed that PW-5
stated his name in the re-examination but then, no other
eye-witness named him as one of the members of the mob that
assaulted the deceased nor any other act of this accused has come
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on record which could connect him with the assembly in question and the place of incident. Thus, there had been want of corroboration of the statement of PW-5 by other witnesses in regard to the involvement of this accused. The alleged weapon *lathi* said to have been recovered at the instance of this accused (vide Ex. P/26) is also not shown carrying blood-stains. Though this accused also led in defence evidence in the form of DW-3 who deposed that this accused was in other village and left his village on 15.10.1998 at about 5.00-5.30 and that the distance of the two villages was about 15kms but then, there had been discrepancies regarding the dates and time in his testimony and no such specific plea of *alibi* was taken by this accused in his defence version. However, even if the defence evidence in his regard is not accepted, a reasonable doubt still remains if this accused was a part of the assembly in question. In the given circumstances, A-13 is also entitled to benefit of doubt. [Para 21.7][1035-C-F]

13. In summation, the involvement of appellants A-1, A-2, A-5, A-7 and A-12 as the members of the assembly that assaulted and thrashed the deceased to death is established on record and there appears no reason to interfere with the findings on their conviction. However, the prosecution has failed to prove its case beyond reasonable doubt against the appellants A-8 and A-13 and they are entitled to the benefit of doubt. On the given status of record, the accused persons A-4 and A-6 who have not appealed against their convictions, also form the part of the same assembly in question that attacked and thrashed to death. Thus, the accused-appellants A-1, A-2, A-5, A-7 and A-12 have rightly been convicted with other co-accused persons for the offences under Section 147,148, 302/149; and the appeals filed by these accused-appellants deserve to be dismissed. However, the prosecution has failed to prove its case beyond reasonable doubt against the accused-appellants A-8 and A-13, who deserve to be acquitted on benefit of doubt. [Paras 22, 23 and 25][1035-G-H; 1036-A, G; 1037-D-E]

Chandra Shekhar Bind and Ors. v. State of Bihar AIR
2001 SC 4024 : [2001] 3 Suppl. SCR 658; *State of
Rajasthan v. Sheeshpal* AIR 2016 SC 4958 : [2016] 8

A **SCR 380**; *Lala Ram (D) through Duli Chandi v. State of Haryana (1999) 9 SCC 525*; [1999] 3 Suppl. SCR 435; *Kallu v. State of Madhya Pradesh (2006) 10 SCC 313* : [2006] 1 SCR 201; *Madan Singh v. State of Rajasthan (1978) 4 SCC 435* – referred to.

B Case Law Reference

[2001] 3 Suppl. SCR 658	referred to	Para 10
[2016] 8 SCR 380	referred to	Para 10
[2014] 6 SCR 420	relied on	Para 11
C [1999] 3 Suppl. SCR 435	referred to	Para 11
[2006] 1 SCR 201	referred to	Para 11
(1978) 4 SCC 435	referred to	Para 11.1
[1989] 1 SCR 130	relied on	Para 11.2
D [1964] 8 SCR 133	relied on	Para 15

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1813 of 2017.

E From the Judgment and Order dated 12.09.2014 of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 3336 of 1999.

With

Criminal Appeal Nos. 1815 and 1814 of 2017.

F Raj Kishor Choudhary, Shakeel Ahmed, Anupam Bhati, Nakul Chaudhary, Sukumar, Faizan Ali, Advs. for the Appellants.

Nishanth Patil, Chirag Jain, Advs. for the Respondent.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

G Introductory with brief outline

H 1. These three appeals are directed against the common judgment and order dated 12.09.2014, as passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 3336/1999 whereby, the High Court has upheld the judgment and order dated 26.11.1999 by the Additional Sessions Judge, Dhamtari, Chhattisgarh in S.T. No. 114/1999, convicting

and sentencing the accused-appellants for multiple offences, including those punishable under Sections 147, 148, 302/149 and 325 of the Indian Penal Code ('IPC').

2. In a brief outline of the material aspects, it could be noticed that in the present case, the appellants, seven in number, being Accused Nos.1,2,5,7,8,12 and 13¹ were tried together with several other co-accused persons for the offences relating to the two incidents which took place in village Kodebod, police station Kurud, district Dhamtari (M.P. – now Chhattisgarh) on 15.10.1998: one at about 4.30-5.00 p.m., in which, the Prosecution Witness No. 1 Dhanwaram² sustained grievous injuries; and another at about 5.30 p.m., which led to the death of one Govind Singh. Out of the 18 accused persons tried in this matter, 8 were acquitted by the Trial Court, essentially after finding that the charges against them were not proved beyond reasonable doubt. However, Bharosaram (A-1), Duleshwar (A-2), Chintaram (A-4), and Vivekanand (A-9) were convicted for the offence under Section 325 IPC for causing grievous hurt to PW-1 Dhanwaram. Moreover, Bharosaram (A-1), Duleshwar (A-2), Chintaram (A-4), Bhanjan Singh (A-5), Khemraj (A-6), Keshav Prasad (A-7), Khemuram (A-8), Nand Kumar (A-12) and Lakhan (A-13) were convicted for the offences under Sections 147, 148, 302 and 302/149 IPC for forming unlawful assembly, rioting with deadly weapons and in furtherance of common object, causing death of Govind Singh by inflicting several injuries. The convicted accused persons were awarded varying sentences, including that of life imprisonment for the offence under Section 302/149 IPC. Except Vivekanand (A-9)³, other 9 accused persons preferred an appeal to the High Court against their conviction and sentence. A revision petition was also filed by the complainant against acquittal of the remaining accused persons. The High Court, however, found no ground to interfere and hence dismissed the appeal as also the revision petition and thereby, affirmed the decision of the Trial Court. As against the decision of the High Court,

¹ Accused Nos. 2 and 12 are the appellants in Criminal Appeal No. 1813 of 2017; Accused Nos. 1, 8 and 13 are the appellants in Criminal Appeal No. 1814 of 2017; and Accused Nos. 5 and 7 are the appellants in Criminal Appeal No. 1815 of 2017. Hereinafter, the respective appellants and other co-accused persons are also referred to as A-1, A-2 et al.

² Hereinafter the Prosecution Witnesses are also referred to as PW-1, PW-2 et al.

³ Vivekanand (A-9) was convicted only for the offence under Section 325 IPC and, as he was found to be minor on the date of incident, was awarded lesser sentence of one year and three months.

A Bharosaram (A-1), Duleshwar (A-2), Bhanjan Singh (A-5), Keshav Prasad (A-7), Khemuram (A-8), Nand Kumar (A-12) and Lakhan (A-13) have preferred these appeals. However, no such appeal is preferred on behalf of the other convicted co-accused namely, Chintaram (A-4) and Khemraj (A-6).

B 2.1. Essentially, the conviction of the appellants under Section 302/149 has been questioned in these appeals; and the principal ground of challenge is that there is no cogent evidence about their involvement in the crime in question. The reliability of evidence led by the prosecution has also been assailed in these appeals apart from other contentions concerning the surrounding factors. The relevant facts and background aspects could be noticed, keeping in view the points arising for determination in these appeals.

The relevant facts and background

D 3. The prosecution case has been that a dispute in relation to the fields and demarcation of ridge was going on between Biselal Sahu, brother of Mangalram (A-14) and Dhanwaram (PW-1), brother of the deceased; and a civil case related to this dispute was also pending. Due to the enmity because of this dispute, on 15.10.1998 at around 4.30-5.00 p.m., the accused persons Bharosaram (A-1), Duleshwar (A-2), Chintaram (A-4), Khemraj (A-6), Vivekanand (A-9), E and Kedarnath (A-18) assaulted Dhanwaram (PW-1) with different weapons and caused him injuries. Parvati Bai (PW-6), who was passing by, saw the accused persons assaulting Dhanwaram; she ran screaming and informed Khilawan (PW-7), son of the deceased, about the incident that she had witnessed. Khilawan went to the place of incident with F Ram Dhruv (PW-17) and found Dhanwaram lying unconscious on the ground. Khilawan and Ram Dhruv took Dhanwaram home. The accused persons, after assaulting Dhanwaram, went in search of Govind Singh, brother of Dhanwaram.

G 3.1. According to the prosecution, on the same day i.e., on 15.10.1998, another incident took place at around 5.30 p.m. in which Bharosaram, Chintaram, Khemraj, Bhanjan Singh, Khemuram, and other accused persons assaulted Govind Singh near Kalley Bridge and inflicted upon him varying injuries. When Santosh Kumar (PW-2) and Prahlad Yadav (PW-5) tried to intervene in the matter, they were threatened by some of the accused persons to stay away and else, they would also be H done away with; and therefore, they stepped back. Thereafter, two of

the accused persons dragged the deceased by his legs while the others kept on beating him with weapons; the deceased was dragged to a far away place towards the canal, where he succumbed to his injuries.⁴

3.2. The report relating to the incidents was made to the police by Khilawan (PW-7) at about 7.00 p.m. who narrated the aforesaid incident and alleged that after hiring a jeep and upon search, he found the dead body of his father across Kalley Canal with many injuries on his head, face, nose and whole of the body. The complainant alleged that Mukesh Nirmalkar, Duleshwar, Chintaram, Bhanjan, Khemraj, Keshav Prasad, Khemuram, Bharosaram, Vivekanand, Vasudev, Chemanand, Garibram and some other persons did *marpeet* with *lathi danda* to his father Govind Singh and uncle Dhanwaram due to which, Govind Singh died and Dhanwaram sustained serious injuries. On this report, FIR No. 186/1998 came to be registered and investigation was undertaken.

3.3. During the investigation, police obtained the post-mortem report of the deceased which confirmed that he succumbed to the injuries inflicted upon him. The injury report of Dhanwaram was also obtained. The site plan was prepared; *tangiya*, blood stained *lathis*, *dandas*, *baniyans*, *lungis* and shirts were seized and the statements of the witnesses were recorded. As per the chemical examination report of Assistant Chemical Examiner, Regional FSL Raipur, some of the seized weapons and clothes were found to contain blood stains. After completion of investigation, the charge sheet was filed in the Court of Special Judge, Schedule Tribe Prohibition of Atrocities, Raipur against 18 accused persons for causing rioting while being armed with deadly weapons, for causing murder of Govind Singh, and for attempting to cause murder of Dhanwaram. However, by the order dated 04.02.1999, the learned Special Judge held that the matter was not to be proceeded in the Special Court. Thereafter, the charge sheet was filed in the Court of Chief Judicial Magistrate, Dhamtari; and being sessions triable matter, the same was

⁴ It appears that on the same day and around the same time, but before the incident resulting in the death of Govind Singh, yet another incident took place involving the deceased Govind Singh and Mangalram (A-14). As per the statement of Tikuram Yadav (PW-16) at around 4.30 p.m., the deceased Govind Singh came to his farm on bicycle of Mangalram (A-14) with injuries on hand and head and on being asked by PW-16, the deceased told him that Mangal Patwari (A-14) had attacked him with sword. On the other hand, Mangalram (A-14) lodged a report at the police station alleging that Govind Ram attacked him with sword. On this report, FIR No. 185/1998 was registered.

- A committed to the Sessions Court, Raipur and was ultimately tried in the Court of Additional Sessions Judge, Dhamtari in S.T. No. 114 of 1999.

4. In the trial, the prosecution examined 21 witnesses being PW-1 Dhanwaram (the injured); PW-2 Santosh Kumar, PW-3 Bhuwan, PW-4 Rajesh, PW-5 Prahlad Yadav, PW-9 Hiradhar and PW-16 Tikuram Yadav as being the alleged witnesses/eye-witnesses to the assault of Govind Singh; PW-6 Parvati Bai, as being eye-witness to the assault of Dhanwaram; PW-7 Khilawan (the informant); PW-8 Daulal, PW-10 Nand Kumar and PW-11 Bhagatram, said to be the labourers working in the field of Tikuram who allegedly saw the deceased Govind Singh in injured condition before the assault in question; PW-12 Chandkishore, PW-13 Punarad Ram, PW-14 Reshamlal and PW-15 Dayaram as being the witnesses in the investigation proceedings relating to preparation of inquest report or seizure memo or site plan; PW-17 Ram Dhruv, the nephew of Khilawan who accompanied him to police station; PW-18 Dr. Pradeep Hishikar, who conducted post-mortem; PW-19 Dasrath Deycate Deputy Superintendent of Police, who recorded the statements of some of the witnesses; PW-20 V.S. Urmaliya, the Investigating Officer; and PW-21 Dr. V. Chatterjee, who examined the injured Dhanwaram and prepared his injury report⁵.

The evidence

- E 5. Having regard to the contentions urged and questions involved, we may briefly take note of the relevant aspects of the evidence of material witnesses examined in this matter.

- 5.1. The injured witness PW-1 Dhanwaram, while supporting the prosecution case, *inter alia*, stated that he fell prey to the beatings of Kedar, Mangal, Khemraj, Duleshwar, Vivekanand and Bharosa. PW-6 Parvati Bai, the eye-witness to the assault on Dhanwaram stated that the accused Mangal, Gareeb, Chintaram, Bhanjan, Bharosa, Narad, Keshav, Lakshman and their sons and daughter assaulted PW-1 Dhanwaram.

- G 5.2. PW-2 Santosh Kumar, the eye-witness to the incident where Govind Singh was assaulted stated that himself and Angad, Bhuwan Singh (PW-3), Rajesh (PW-4) and Prahlad Yadav (PW-5) were present near the place of incident where the accused persons, armed with *danda*, *tangiya* etc., started arguing with the deceased Govind Singh; and when

H ⁵ It may be noticed that PW-8, PW-9, PW-13 and PW-14 were declared hostile.

the witnesses tried to intervene, they were threatened by the accused persons to keep away. He also alleged that Bharosa and Chintaram held both the legs of the deceased and dragged him towards canal while the other accused persons kept on beating him. The relevant portion of the testimony of PW-2 reads as under: -

“.... At that time about 17-18 accused persons came from canal side. All were carrying stick (danda). Someone carried hatchet as well. I did not see any other weapon. They came and started argument with Govind Singh. Someone among the accused person said that uncle was assaulted and quarrelled. They told us to move away. They told that Govind Singh had to be killed, on which all person who were standing with me moved a side.

Thereafter, all the accused person together started assaulting by stick. Due to assault Govind Singh died on the place of occurrence. At the beginning we had tried to intervene but later on we did not try to intervene. Bharosa Ram and Chinta caught both legs of Govind and dragged him, others were going beating him....”

5.3. PW-3 Bhuwan stated that the accused persons came towards Kodebod Canal, stopped near culvert and asked about Govind Singh; and though he expressed want of knowledge, the accused persons saw Govind Singh near culvert and assaulted him. This witness further stated that during the said attack, when Govind fell down, he was dragged by holding his legs and while being dragged, the other accused persons kept on beating him. In cross-examination, this witness stated that he did not know the names of the accused persons and he did not disclose their names to the police nor could say who assaulted on which part of the deceased. The relevant part of the testimony of PW-3 reads as under: -

“..... I was near the culvert, it was 5:00 pm, Santosh, Prahlad, Rajesh and Nandlal were also with me. At that time accused person came towards Kodebode canal and stopped near the culvert. They asked me about Govind’s address. I replied, I do not know. At the same time they saw Govind near the culvert. They ran towards Govind, started assaulting him. All the accused person carried lathi in their hand. They were assaulting Govind with lathi itself. Due to assault Govind fell

A *down, at that time two persons caught his leg and dragged him towards canal, other were going beating him.”*

xxx Cross-examination

B *“ I do not know name of any of the accused person. In my police statement I did not tell the name of any of the accused person. Who assaulted on which part of the deceased, I can not tell. It is true that in my police statement I stated that 20-25 people came with lathi....”*

C 5.4. PW-4 Rajesh stated that on the date of incident, in the evening, while fishing in canal he heard the noise of quarrel whereupon he ascended the boundary of the canal and saw 15-20 persons attacking Govind Singh; two persons were dragging Govind Singh by legs across the canal while others kept on beating him; one or two persons were carrying *tangiya* and rest were holding *lathi*. The witness also stated that Santosh and Prahlad went to intervene but were asked not to intervene. This witness further stated in cross-examination that he did not know the names of accused persons and that he did not intervene.

D 5.5. Prahlad Yadav, examined as PW-5, is the star witness in this case who narrated the incident of assault on Govind Singh and specifically stated the names of some of the accused persons. Being the material witness whose testimony has largely formed the basis of conviction, the material parts of his deposition could be usefully extracted as under:

E *“... On 15.10.98 at 5.20 pm. I was near the Kulley Bridge. Santosh, Heeradhar, Bhuwan, Nandlal and Rajesh were with me. At the very moment accused persons came towards canal and road side. Govind Singh was also standing near the Kulley Bridge. Accused persons abused him. They were saying that Govind Singh has come after fighting. He has to be killed and they started assaulting. All the accused person carried lathi. They assaulted by danda. When I went there and forbade them to fighting. They stopped fighting. Thereafter, Bharosa, Nand, Chinta, Bhanjan came to me and told “You move away, otherwise you will be killed” Then I moved away from there. Govind Singh fell down, Bharosa caught his one leg and Chinta caught another leg, they dragged Govind to Kodebode from canal and other were going by beating him. I followed them from some distance. The accused persons dragged*

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Govind Singh for 2 Km. Thereafter, I returned home. Govind Singh had died... A

xxx Cross-examination

“...Except Mangal, I saw all the accused person at the time of incident. It is true that Kalley turning is 2½ Km. away from Kodebode. The barn of Tikaram is 1½ Km. away from Kalley turning. It is wrong to say that the matter of dragging by the leg by Bharosa and Chinta is being wrongly stated by me. The sticks hit the deceased at one time therefore I cannot tell which accused hit him on which part. I stated name of 7-8 persons. The quarrel went on for 10 minutes. I noted down the time and date of the incident. At present it is not with me. It is wrong to say that today the statement was read over to me. At the time of incident Santosh and I forbade them to fight. The accused person reached on Kalley Bridge altogether but they came from different direction...” B
C
D

Re-examination

“I stated name of Bharosa, Chinta, Bhanjan, Gareeb, Lakhan, Khemraj, Hemu, Keshav and Nand. I recognize the remaining accused person by face. I know such persons by name only.

xxx Re-cross-examination

I do not know if more persons named Chintaram, Keshav may be there. I know that Keshav is tailor but I did not state this to the police.....

At the time of recording of my police statement Ex-D/5 I stated that the accused persons came at the place of incident from different direction. I can not tell which of the accused came from which direction. The witness himself stated that all the accused persons gathered at the place of incident. F

..... It is true that my field is adjacent to the field of Chintaram and Gareeb Ram. It is wrong to say that I want to purchase their fields therefore I am implicating them....” G

5.6. PW-9 Hiradhar partly narrated the prosecution story but did not support the entire prosecution case and hence, was declared hostile. However, before being declared hostile, this witness, *inter alia*, stated as under: H

A *“I know the accused persons present in the court. I also know deceased Govind Singh. ... I was taking tea with Kheduram in a hotel near the Kalley Bridge. At that time Angad Sahu who belong to Kode bode came there and asked me if I had seen Govind. I told him I did not see him. At the very moment*
 B *I saw that Govind came from somewhere and stood there. At that time I went near Govind and told that Angad was searching him. He did not give any reply. Seeing blood on his cloths I asked him how his clothes had got stained with blood. What happened? He did not give any reply.*

C *At the very moment Santosh Satnami came and stood before Govind Singh, Prahlad also came there. When we stood there at that time accused persons who were resident of my village reached there. I asked Khemraj what happened, then Khemraj told that Govind has come beating Patwari, Duleshwar, the son of Patwari also stated the same. Santosh and Prahlad*
 D *told them to stop don't do anything here, saying that “we will not stop” the accused persons proceeded. Khemraj and Duleshwar gave one-two lathi blow to Govind due to which he fell down on the earth. Seeing this I got afraid and went near Kheduram who was present in shop. He told lets move from here and immediately we moved from there. Thereafter,*
 E *what happened I did not see.*

×××Cross-examination for accused

F *...I stated the matter of Govind being interrogated by Angad to the police, if police did not record I can not tell the reason. I saw blood stain on the clothes of the deceased, I stated this to the police. I did not see any injury on the body of Govind. I stated to police the matter of being told by Khemraj and Duleshwar about Govind Singh beating the Patwari and coming. I stated that Khemraj and Duleshwar assaulted Govind Singh by lathi to the police. If police did not record*
 G *the statement as per my version I can not tell the reason. I did not see Mangalram, Narad, Laxman, and Kedar there. I did not see even Lakhan committing marpit.”*

H 5.7. PW-16 Tikuram Yadav stated that at about 4:30 p.m., Govind Singh came to his barn on the bicycle belonging to Mangal Patwari and

he saw injuries on the persons of Govind Singh who said that Mangal Patwari had assaulted him by sword. According to this witness, Govind Singh demanded two hundred rupees which he did not give and thereafter, Govind Singh proceeded towards bus stand. The witness further stated that later on, he saw the assault on Govind Singh from a far away place and, therefore, he was unable to recognize the assailants; and later on, he got to know from his locality that deceased Govind Singh was assaulted by Bharosa, Chinta, Garib and their friends.

5.8. PW-8 Daulal, PW-10 Nand Kumar and PW-11 Bhagatram saw Govind Singh in injured condition after the alleged attack by Mangalram on him. PW-13 Punarad Ram and PW-14 Reshamlal had been the witnesses to seizure proceedings in Ex.P/13 to P/27. They were declared hostile. While admitting their signatures Ex.P/13 to P/27, they stated that they were shown sticks etc. but were not told from whom they were seized.

5.9. PW-18 Dr. Pardeep Hishikar conducted post-mortem on the body of the deceased Govind Singh. The description in the post-mortem report regarding the injuries on the person of deceased Govind Singh had been as under:-

"1. Two contusions over chest like chain mark size of each (a) 5" × 1" (b) 4" × 1".

2. Contusions over abdomen colour brownish blackish size of them (a) size of two contusions 5" × 1" (b) size of two contusions 3" × ½" transverse (c) two contusion size 3" × ½" transverse (d) one contusion size 8" × 1" vertical.

3. Contusions over medial aspect of right thigh colour blackish brownish sizes (a) 7" × ½" (b) 5" × ½" (c) 2" × ½" (d) 2" × ½"

4. Contusions over lateral aspect, right thigh, blackish brownish colour.

5. Contusions over front of knee size 4" × 2" blackish brownish colour.

6. Lacerated wound over base of 2nd and 3rd toe left side 1cm × ½ cm × ½ cm clotted blood ++

7. Contusion over front of knee left size 1cm × 1cm.

- A 8. *Lacerated wound over left wrist size 1" × ½" × ½" bone deep fracture lower third radius ulna left side.*
9. *Fractured proximal phalanx index and middle finger left and fracture 2nd and 4th metacarpal bone left side.*
- B 10. *Contusion dorsal aspect forearm size 1" × 1" and abrasion back of left elbow size 4 cm × 4 cm.*
11. *Two lacerated wound over dorsal aspect right wrist sizes of each 1cm × 1cm × 1cm. Fracture lower third radius.*
12. *Fracture proximal phalanx middle and ring finger and fracture of 2nd and 3rd metacarpal right ulna.*
- C 13. *Abrasion dorsal aspect elbow size 5cm × 4cm colour pinkish brownish.*
14. *Lacerated wound over right side face over cheek size 3 cm × 1 cm × 1 cm.*
- D 15. *Lacerated wound over right side face over cheek size 3 cm × 1 cm.*
16. *Contusion left side face size 3 cm × 2 cm colour blackish brownish.*
- E 17. *Lacerated wound mid portion of nose size 3 cm × ½ cm × ½ cm. Fracture of nasal bone.*
18. *Lacerated wound over scalp right parietal region size 3" × ½" × ½" liner fracture over right parietal bone."*

F This witness opined that the cause of death was shock, which may be due to sudden rupture of liver and fracture of ribs of right and left sides; and that the death was homicidal in nature.

G 6. On the other hand, the accused persons denied their involvement in the crime in question in their statements under Section 313 Code of Criminal Procedure, 1973 (CrPC) and examined 5 witnesses in defence, being DW-1 Latkhor who accompanied A-14 Mangalram to police station; DW-2 Dilip Kumar, DW-3 Barsan, DW-4 R.L. Chandrakar and DW-5 Dinesh Kumar in relation to the plea of alibi of A-12 Nand Kumar, A-13 Lakhan, A-18 Kedar and A-17 Narad respectively.

H

The findings of the Trial Court – as affirmed by the High Court A

7. Having taken the evidence and having heard the parties, the Trial Court framed as many as six points for determination in this case which read as under:-

- “1) *Whether Govind Singh Netam has been murdered?* B
- 2) *Whether attempt has been made to commit murder of Dhanwaram Netam?*
- 3) *Whether the accused persons have committed the said act by forming an unlawful assembly and committing riot and abetted the commission of aforesaid act in furtherance of common intention?* C
- 4) *Whether accused persons had intention to commit murder of Govind Singh and Dhanwaram?*
- 5) *Whether accused persons are guilty of rioting being armed with deadly weapons?* D
- 6) *If yes, then punishment.”*

7.1. In its judgment and order dated 26.11.1999, the Trial Court carried out in-depth analysis of the prosecution evidence including the testimony of injured witness PW-1 as also of the other witnesses, particularly the witnesses to the incidents in question being PW-2, PW-3, PW-4, PW-5, PW-6, PW-9, PW-16 as also the medical officers PW-18 and PW-21. The Trial Court also examined the evidence adduced by the accused persons and thereafter, found the prosecution case proved beyond reasonable doubt against some of the accused persons including the present appellants but not in relation to all the accused persons. The conclusions of the Trial Court, as occurring in paragraphs 44 to 48 of the judgment dated 26.11.1999 could be usefully reproduced as under: F

“44.... *There is no proof of intention to cause death of Dhanwaram because the injuries sustained by Dhanwaram were found on his palm, right side of head, left arm, jaw and back out of which fracture was found in jaw, hand and wrist. No serious injury was found on any vital part of the body. Therefore the aforementioned injuries were not sufficient in the ordinary course of circumstances to cause the death of Dhanwaram. In the evidence of Dhanwaram PW/1 there is no such statement that the accused persons wanted to kill him at the time of the incident..... According to the aforesaid, there* G H

- A *is evidence that after causing injury the accused persons left from the place. Therefore, in this circumstance only this conclusion can be drawn that the intention of the accused Bharosaram, Chintaram, Duleshwar and Vivekanand was merely to inflict injuries on Dhanwaram. It is proved that*
- B *Dhanwaram is severely injured and the same is knowingly or intentionally committed by the accused persons that on attacking Dhanwaram, he will be injured. Therefore, they have committed this act voluntarily. Hence, accused Bharosaram, Chintaram, Duleshwar and Vivekanand voluntarily caused grievous hurt to Dhanwaram by doing maarpet...*
- C *45.The evidence with regard to rioting armed with deadly weapons is considerable. The incident of causing death of Govind Singh is considered as riot. The witness of incident Santosh PW/2 stated that one of the accused was having a tangiya. Bhawan Singh PW/3 stated that all accused were having laathi. Rajesh PW/4 stated that 1-2 persons were having tangiya and all the others were having laathis. Prahlad PW/5 did not make any specific statement in this regard. Heeradhar PW/9 stated that only laathis were used. There is no evidence of using sword by any accused and no injury inflicted by any sharp weapon sword or tangiya is found on the body of the deceased. Therefore, it can be concluded that all the accused persons were laced with laathis. Whether laathi is dangerous weapon or not, it can be considered under the circumstances in which it is used. As in the case in hand, by the use of laathis such injuries were inflicted by which death of Govind Singh was caused, hence, it appears that the accused possessed laathis for the purpose of causing grievous hurt. Hence it is proved that the named accused persons being members of unlawful assembly committed riots by keeping laathi as dangerous weapons and caused death of Govind Singh.*
- D
- E
- F
- G *46. After considering the aforesaid evidence and all the other circumstances, it is concluded that the accused no. 1 Bharosaram, no. 2 Duleshwar, no. 4 Chintaram, no. 5 Bhajan Singh, no. 6 Khemraj, no. 7 Keshavprasad, no. 8 Khemuram, no. 12 Nand Kumar, no. 13 Lakhon on 15/10/1998 at around*
- H

5 PM by forming unlawful assembly laced with laathis as dangerous weapons, committed riot and whose common object was to cause death of Govind Singh and in furtherance of their common objective, the death of Govind Singh has been caused near Kalle Bridge by each of the accused by inflicting severe injuries with laathis. Hence, the offence under Sec. 147, 148, 302 and 302 read with 149 of IPC is found to be proved against the aforesaid accused persons.

47. The charge under Sec. 307 of IPC is not proved, but the circumstances under the aforesaid charge which have been brought on record prove a lesser offence under Sec. 325 of IPC. Such conviction can be ordered under under Sec. 222 of CrPC. Hence, the accused Bharosa, Chintaram, Duleshwar and Vivekanand are held guilty for the offence under Sec. 325 of the IPC for causing grievous hurt to Dhanwaram.

48. In the case in hand, no charge has been proved against rest of the accused persons namely, Mukesh Nirmalkar, Vasudev, Chemanand, Mangalram, Gareeb ram, Lakshman Singh, Naradram and Kedarnath. Therefore, all the above accused persons are acquitted for all charge leveled against them under Sec. 147, 148, 302 or 302 read with 149, 307 or 307 read with 149 of IPC. The accused persons amongst the aforesaid who are in custody be released forthwith if not required in any other case and their bail bonds stands cancel.”

7.2. As noticed, the convicted accused persons, except Vivekanand (A-9), were awarded varying sentences, including that of life imprisonment. Vivekanand (A-9) was found to be minor at the time of incident and he was sentenced to one year and three months while noticing that he had already undergone the sentence for a period of 405 days.

8. Against the aforesaid order of conviction, the appellants and other convicted accused preferred Criminal Appeal No. 3336 of 1999 before the High Court, whereas the complainant preferred a Criminal Revision No. 517 of 2000 against the acquittal of the other accused persons. While passing the common judgment and order dated 12.09.2014, the High Court, after dealing with the contentions urged on behalf of the appellants herein and the co-accused, affirmed the decision of the Trial Court and held that no defence had been taken by the accused persons

A that they had gathered at the place of occurrence for some purpose other than assaulting the deceased. Further, no evidence was found against the acquitted accused persons. Hence, the appeal as also the revision petition were dismissed. The High Court, *inter alia*, observed and held as under: -

B “23. True it is that every offence committed by a member of an
unlawful assembly will not be necessarily ascribed to or
vicariously fastened upon every other member of that
assembly with the aid of Section 149 of IPC. The likelihood
C of causing of death by the nature of the actions of the assembly
must be shown to be within the knowledge of member who is to
be made vicariously liable for the death. Such knowledge
may reasonably be collected from the nature of the assembly,
arms or behaviors at or before the scene of action. In the
D present case, there is evidence that accused No.3 Mukesh
was saying that he would definitely burst two firecrackers
and that there was pre-planning of the accused/appellants
for killing two persons. Furthermore, no defence has been
taken by the accused/appellants that they had gathered at
the place of occurrence for some purpose other than
assaulting the deceased. There is enough evidence to show
E that the accused/appellant were having inimical relation with
the deceased party, they all were searching him for beating,
they arrived at the spot at the same time, though from different
directions, waylaid the deceased and started beating him.
Thereafter, while the deceased was being dragged by accused
F no. 1 Bharosaram and accused no. 4 Chintaram by holding
both his legs, he was being beaten by the other accused/
appellants.

24. From the facts and the evidence adduced by the
prosecution, it is apparent that all the accused/appellants had
reached the place of occurrence duly armed with weapons. If
G this is the manner in which the accused/appellants had come
to the spot, it can not be said that they had not formed an
unlawful assembly within the meaning of the said expression
as appeared in Section 141 of IPC. While membership of an
unlawful assembly itself is an offence under Section 143 of
H IPC, use of force by members of unlawful assembly gives rise

to the offence of rioting which is punishable either under Section 147 or 148 of IPC. The availability of arms in the hands of the accused/appellants and use of them has clearly been established by the prosecution not only by oral evidence but also by medical evidence, according to which as many as 18 injuries were found on the body of the deceased. Thus considering the evidence of the eyewitnesses, including injured eyewitness PW-1 Dhanwaram, as well as the medical evidence, the number and nature of injuries caused to the deceased Govind as well as PW-1 Dhanwaram, the manner in which they were assaulted resulting in death of Govind, it is quite apparent that common object of their unlawful assembly was to commit murder of the deceased and to voluntarily cause grievous hurt to PW-1 Dhanwaram. For the reason stated above, we find no force in the arguments of the counsel for the appellants that case of the accused/ appellants is covered by Exception 4 to Section 300 of IPC making them, at best, liable to be convicted under Section 304 Part -II of IPC. The trial Court after due appreciation of the entire evidence on record has rightly convicted and sentenced the appellants as mentioned above and there is no illegality or infirmity in the judgment impugned necessitating interference by this Court.

25. As regards acquittal of respondents No. 2 to 10 (in Cr. Rev No. 517 of 2000), the trial Court after considering all the factual and legal aspects of the case in its proper perspective has recorded a finding that there is absolutely no evidence against these accused/respondents connecting them with the crime in question. The said finding is based on proper appreciation of the evidence on record. We find no illegality or perversity in the said findings to upset it.

26. In the result, Cr. A. No.3336/1999 and Cr. Rev. No. 517/ 2000 being without any substance are liable to be dismissed and they are dismissed as such....”

Rival Contentions

9. Assailing the judgment and order aforesaid, affirming their conviction and upholding the sentence as awarded, the appellants have preferred the present appeals.

A 10. Learned counsel for the appellants, while restricting his
submissions only to the charge under Section 302/149 IPC, has
strenuously argued that the alleged eye-witnesses made general
statements that all the accused persons who were 17-18 in number came
and assaulted the deceased Govind Singh but the appellants were not
B specifically named by these witnesses and conviction could not have
been based on such vague and cursory statements which are not sufficient
to prove the culpability of any of the appellant in the crime in question.
The learned counsel has referred to the decision in *Chandra Shekhar
Bind and Ors. v. State of Bihar: AIR 2001 SC 4024* to submit that
while dealing with this case concerning a large number of alleged
C offenders, conviction could be sustained only if two or more witnesses
gave a consistent account of the incident. The learned counsel would
argue that out of the four-five alleged eye-witnesses to the assault of
Govind Singh, no two witnesses named the accused persons except the
appellant Bhaorosaram (A-1) and another accused Chintaram (A-4);
D and there being no cogent and consistent evidence against the other
appellants, they deserve to be exonerated like the acquitted accused
persons. The learned counsel has also relied upon the decision in *State
of Rajasthan v. Sheeshpal : AIR 2016 SC 4958* to submit that the
guilt of the accused must be proved beyond all reasonable doubts; and
on the facts and in the circumstances of this case, when two views are
E possible on the evidence adduced, one pointing to the guilt of the accused
and other to his innocence, the view which is favourable to the accused
should be accepted.

10.1. The learned counsel for the appellants has also argued in
the alternative that even if on the evidence on record, the accusation
F against the appellant Bharosaram (A-1) is found established, he had
undergone nearly 11 years of imprisonment and in the facts and
circumstances of the case and looking to the role assigned, his conviction
may be altered to that under Part I of Section 304 of IPC and the sentence
may be reduced to the period already under gone while the other
appellants Duleshwar, Nand Kumar, Bhanjan Singh, Keshav Prasad,
G Khemuram and Lakhan be acquitted from the charge under Section
302/149 IPC.

11. *Per contra*, learned counsel for the State has supported the
conviction of appellants with the submission that the Trial Court and the
High Court have dealt with each and every argument raised by the
H appellants and the impugned judgments do not suffer from any infirmity

so as to call for interference. The learned counsel has argued that all the accused appellants have been identified by the eye-witnesses and particularly by the star witness PW-5, who categorically deposed the names of the appellants. According to the learned counsel, PW-2, PW-3, PW-4 and PW-5 have been able to corroborate the details of the incident and the weapons used to kill the deceased. The learned counsel has also relied upon the decision in *Paulmeli v. State of Tamil Nadu: (2014) 13 SCC 90* to submit that even the testimony of a hostile witness cannot be rejected in *toto* as the evidentiary value of his testimony is not lost and can be accepted to the extent that the version is found corroborated with other material evidence. The learned counsel has referred to the testimony of PW-9 Hiradhar and has contended that even if this witness turned hostile, he has specifically taken the name of two accused persons Khemraj and Duleshwar being involved in beating the deceased Govind; and his testimony fortifies the case against them. Further, with reference to several decisions of this Court including those in *Lala Ram (D) through Duli Chandi v. State of Haryana : (1999) 9 SCC 525* and *Kallu v. State of Madhya Pradesh : (2006) 10 SCC 313*, the learned counsel has contended that the minor discrepancies in the testimony of eye-witnesses do not operate against the case of the prosecution; rather some discrepancies in the narrations are bound to occur when the witnesses speak on details. According to the learned counsel, there being no material contradiction, the evidence on record consistently prove the case against the accused persons.

11.1. The learned counsel for the respondent State has also referred to the decision in *Madan Singh v. State of Rajasthan: (1978) 4 SCC 435* to submit that recovery of bloods stained clothes and weapons from the accused persons having been established in the statement of PW-20, the IO; and the evidence of such recovery having not been effectively controverted, the complicity of the appellants in the case is further corroborated and their conviction does not call for interference.

11.2. Lastly, learned counsel for the respondent State has referred to the decision in *Lalji v. State of UP : (1989) 1 SCC 437* to submit that once it is found that the accused persons formed an unlawful assembly and committed the offence, every member of such unlawful assembly would remain liable and no proof of any particular role or act on the part of any particular accused is requisite. However, the learned counsel has submitted in his written submissions that Nand Kumar (A-12) has not been named in the testimony of eye-witnesses.

- A 12. We have heard learned counsel for the parties at length and have scanned through the entire material on record.

The incidents in question and formation of unlawful assembly

- B 13. As noticed, the prosecution case had been that two incidents took place in the afternoon and evening hours of 15.10.1998: one in which PW-1 Dhanwaram sustained grievous injuries and another which led to the death of Govind Singh, who was brother of PW-1 Dhanwaram. Going by what has been suggested on behalf of the appellants and other accused persons, another incident took place the same day and around the same time, in which the deceased Govind Singh allegedly assaulted C Mangalram (A-14). The fact that there had been a dispute in relation to the fields, involving Biselal Sahu (brother of the accused Mangalram) on one hand and PW-1 Dhanwaram on the other hand remains undeniable. It is also apparent that the incidents in question had their genesis in such a dispute. It had been the prosecution case that at least six of the accused persons namely, Bharosaram (A-1), Duleshwar (A-2), Chintaram D (A-4), Khemraj (A-6), Vivekanand (A-9) and Kedarnath (A-18) assaulted PW-1 Dhanwaram about 4.30-5.00 p.m. This assault on him led to multiple injuries including fracture of jaw bones and the injured Dhanwaram fell unconscious. For this incident and for assault on E Dhanwaram, the accused persons were also tried for the offence under Section 307 IPC in this very case; and four of them, including the appellants Bharosaram (A-1) and Duleshwar (A-2), were convicted, albeit for the offence under Section 325 IPC. Such conviction has not specifically been challenged in these appeals and even otherwise, there appears no reason to disturb such conviction based on cogent evidence. It is, thus, seen that there existed enmity in the parties and on the fateful F day, the tempers soured high, with assault on PW-1 Dhanwaram. It is the prosecution case that after such assault on Dhanwaram, the assembly went in search of Dhanwaram's brother (i.e., the deceased Govind Singh) and after finding him near Kalley Bridge, the members of the assembly pounced upon him and he was beaten to death while being dragged by G legs. In these appeals, we are concerned essentially with the conviction of appellants under Section 302/149 IPC. The relevant questions arising in these appeals may be examined in the backdrop of the facts and surrounding factors as noticed above.

- H 14. Formation of an unlawful assembly with common object being the basic ingredient for invoking Section 149 IPC, the first point to be

determined is as to whether formation of such an unlawful assembly is established. In a comprehension of the evidence on record, in our view, the fact that a large assembly was indeed formed, where the members were armed with weapons including *lathis* and *tangiyas* and they indulged in assault over Govind Singh, is evident on the face of record with the consistent testimonies of the eye-witnesses PW-2 Santosh Kumar, PW-3 Bhuwan, PW-4 Rajesh and PW-5 Prahlad Yadav.⁶ Even the witness declared hostile i.e., PW-9 Hiradhar has also testified to the fact of assault by an assembly over Govind Singh; he even named at least two of the assailants. We shall come to the question of identity of each of the accused person a little later. Suffice it to observe at this juncture that the fact of formation of an unlawful assembly with weapons is amply established. It has rightly been argued on behalf of the respondents with reference to *Lalji's* case (supra), that once formation of unlawful assembly at the time of committing of offence is established, the question of specific role of an individual member of the assembly is rendered secondary. In other words, the prosecution need not prove any specific overt act on the part of each and every member of that assembly. It is also established beyond doubt in the present case that the deceased Govind Singh was brutally beaten black and blue with extensive injuries all over his body, including contusions, lacerated wounds and multiple fractures of various bones and ribs. The post-mortem report and the medical opinion that Govind Singh died due to shock with rupture of liver and fracture of ribs leave nothing to doubt that he was done to harsh and gruesome death with merciless thrashing, including multiple use of blunt weapons like *lathi*. Thus, the fact that there had been an assembly with the common object of battering Govind Singh to death is hardly of any doubt. The manner of causing death of Govind Singh makes it clear that the intention of assailants forming such assembly had only been to cause death and the acts were done with that intent alone. The question of identity of the particular accused as the member of this assembly would, of course, require consideration to find if the prosecution case is proved beyond reasonable doubt against him or not.

⁶ PW-2 to PW-4 have even stated the approximate number of members of such assembly. According to PW-2 Santosh Kumar, the assembly had been of about 17-18 persons whereas according to PW-3 Bhuwan, they had been 20-25 in number and according to PW-4 Rajesh, the number of members of this assembly was about 15-20.

A **Multiple accused persons and several eye-witnesses:
principles for appreciation of evidence**

15. Before embarking on the question aforesaid, we may refer to the facts that in the present case, as many as 12 persons were named in the FIR and as many as 18 persons were tried for the offences in question. In the trial, apart from other witnesses, the prosecution examined several persons as eye-witnesses, including PW-2 Santosh Kumar, PW-3 Bhuwan, PW-4 Rajesh, PW-5 Prahlad Yadav, PW-9 Hiradhar and PW-16 Tikuram Yadav. The Trial Court convicted 9 accused persons, including the present appellants, for the offences under Sections 147, 148 and 302 read with Section 149 IPC and the High Court confirmed such conviction.⁷ In regard to such a case involving multiple accused persons and several witnesses, it would be worthwhile to refer to the principles expounded in *Masalti v. State of U.P.: (1964) 8 SCR 133*, as reiterated in the case of *Chandra Shekhar Bind*(supra) in the following:

D “9. However, this is an incident in which a large number of accused had participated. The Constitution Bench of this Court has, in the case of *Masalti v. State of U.P.: AIR 1965 SC 202* held that under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict the accused persons, whereas evidence given by half-a-dozen witnesses which is not trustworthy would not be enough to sustain the conviction. It was held that where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. It was held that in a sense, the test may be described as mechanical, but it cannot be treated as irrational or unreasonable. It was held that even though it is the quality of the evidence that matters and not the number of witnesses, still it is useful to adopt such a mechanical test.

G **10.** This two-witness theory has also been adopted by this Court in the case of *Binay Kumar Singh v. State of Bihar: 1997 1 SCC 283*. It is held that there is no rule of evidence that no conviction can be based unless a certain minimum number of

H ⁷ As noticed, 7 of these convicted accused are before us as appellants whereas the other two namely, Chintaram (A-4) and Khemraj (A-6) have not appealed against their conviction and sentence.

witnesses have identified a particular accused as a member of the unlawful assembly. It is held that it is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. It is held that even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. It is held that all the same, when the size of the unlawful assembly is quite large and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as a participant in the rioting.”

15.1. Thus, it is the quality of evidence that matters and not the quantity; and even the testimony of a single witness may be sufficient to establish the identity of an accused as member of an unlawful assembly but, when the size of assembly is quite large and many persons have witnessed the incident; and when a witness deposes in general terms, it would be useful to adopt the test of consistency of more than one witness so as to remove any doubt about identity of an accused as a member of the assembly in question. However, even if adopting such a test of consistency, what is to be looked for is the ‘consistent account of the incident’; and the requirement of consistency cannot be overstretched as if to search for repetition of each and every name of the accused in each and every testimony. In other words, the comprehension of overall evidence on record is requisite; and mere counting of heads or mere recitation of names or omission of any name in the testimony of any particular witness cannot be decisive of the matter. In such facts and circumstances, even the relevance of the corroborating facts and factors like that of recovery of weapons or any other article co-related with the crime in question cannot be ignored altogether.

15.2 In the present case, it is noticed that the Trial Court painstakingly analysed the evidence on record but while recording its conclusion, largely proceeded to record conviction on the basis of the testimony of PW-5 Prahlad Yadav only, though it referred to the corroboration in relation to some of the accused persons in the testimony of some of the other witnesses too. The High Court, though the first Court of appeal, essentially proceeded only on the basis of findings of the Trial Court. In the circumstances of the case, it appears just and

- A proper that overall scenario emerging from the evidence on record be taken note of and then, the case in relation to each of the accused person be analysed.

The overall scenario concerning the incident in question

- B 16. As per the testimony of PW-2 Santosh Kumar, on the date of incident, around 5.00 p.m., he was present at the Cycle Shop near Kalley Bridge with PW-3 Bhuwan, PW-4 Rajesh and PW-5 Prahlad Yadav along with another person Angad. It was asserted by PW-2 Santosh Kumar that the accused persons came to the spot carrying sticks and hatchet; they started arguments with Govind Singh; and they asked the other witnesses to move away while avowing that Govind Singh had to be killed. The witness also testified that the accused persons started assaulting Govind Singh; and that Bharosaram and Chintaram caught both legs of Govind Singh and dragged while others kept on beating him. PW-3 Bhuwan and PW-4 Rajesh again testified to the occurrence with deceased being caught by legs and dragged while others kept on beating him. However, PW-3 and PW-4 did not name any particular person as being the assailant.

- F 17. In the testimony of PW-5 Prahlad Yadav, not only the incident has been narrated in fuller details but several names of assailants have occurred. In the first place, he asserted that Bharosa (A-1), Nand (A-12), Chinta (A-4) and Bhanjan (A-5) asked him to move away. The witness further stated that Bharosaram (A-1) and Chintaram (A-4) caught the deceased by legs while others kept on beating him. He specifically denied the presence of the accused Mangalram (A-14) during the incident. In re-examination, he specifically stated the names of Bharosaram (A-1), Chintaram (A-4), Bhanjan Singh (A-5), Garib Ram Sahu (A-15), Lakhan (A-13), Hemu (a person of this name was neither mentioned in FIR nor tried by the Trial Court), Keshav Prasad (A-7) and Nand Kumar (A-12). PW-9 Hiradhar, though declared hostile for not fully supporting the prosecution case, did corroborate the testimony of PW-2 Santosh Kumar and PW-5 Prahlad Yadav about the assembly of persons searching for deceased Govind Singh; and Khemraj (A-6) and Duleshwar (A-2) having given *lathi* blows to Govind Singh due to which he fell down. This witness stated that he moved away after such blows were given to Govind Singh and did not see the happenings thereafter. PW-16 Tikuram Yadav was also cited as an eye-witness but stated that he had seen such assault from a faraway place and he was

unable to recognise the assailants. Coupled with such testimony remains the fact that several blood-stained weapons and clothes were seized by I.O. during investigation. Though the witnesses to such seizure proceeding, PW-13 Punarad Ram and PW-14 Reshamlal, have been declared hostile but nothing has occurred in the testimony of PW-20 V.S. Urmaliya, the Investigating Officer to disbelieve or discard his testimony as regards such seizure proceedings.

Individual cases of the accused persons

18. Keeping in view the scenario concerning the incident in question and the account given out by the eye-witnesses, we may analyse the case in relation to the appellants before us. It could be usefully reiterated that as many as 18 accused persons were tried in this case and the Trial Court convicted 9 of them for the offences under Sections 147, 148, 302/149 IPC while acquitting the others for these charges pertaining to the incident leading to the death of Govind Singh. So far as the acquitted accused persons are concerned, with dismissal of the revision petition by the High Court, and there being no further challenge, such acquittal has, obviously, attained finality. As noticed, so far as the 9 convicted accused persons are concerned, 7 have appealed to this Court while the others, namely Chintaram (A-4) and Khemraj (A-6) have not challenged their conviction.

19. As noticed, there is substantial consistency in the account of the incident as given out by the eye-witnesses. The fact that there had been a large gathering that was searching for Govind Singh and after finding him near Kalley Bridge, the members of the assembly pounced on him is consistently stated by the eye-witnesses PW-2, PW-3, PW-4, PW-5 and even PW-9. Further there had been consistency in the account of several of the witnesses, including PW-2, PW-3, PW-4 and PW-5, that the deceased Govind Singh was being dragged by his legs by two of the members of the assembly. Both PW-2 and PW-3 gave out the names of the persons who dragged Govind Singh as Bharosaram (A-1) and Chintaram (A-4). There had been another fact consistently stated by PW-2 Santosh Kumar and PW-5 Prahlad Yadav that when they attempted to intervene, some of the persons of the assembly threatened and asked them to move away. PW-5 Prahlad Yadav specifically gave out that Bharosa (A-1), Nand (A-12), Chinta (A-4) and Bhanjan (A-5) were the accused persons who extended such a threat and asked him to move away. Even the hostile witness PW-9 specifically stated that

- A Khemraj (A-6) and Duleshwar (A-2) assaulted the deceased Govind Singh.

20. In the aforesaid status of the testimony of the eye-witnesses and the nature of incident, in our view, the account given by Prahlad Yadav (PW-5), who had specifically named several of the accused persons, does not appear suffering from any infirmity and in our view, the conviction of some of the appellants, in whose relation no reasonable doubt exists, could be sustained on the basis of his testimony because the same stands corroborated on the material particulars in the testimony of other witnesses.

- C 21. Having noticed the overall scenario relating to the incident in question and the position obtaining on record in relation to the testimonies of the witnesses, we may now examine the case of each of the appellants before us individually.

D 21.1. So far as the appellant Bharosaram (A-1) is concerned, it is established that he had been the part of assembly right from the beginning inasmuch as he was amongst the assailants who caused grievous injuries to PW-1 Dhanwaram in the incident that preceded the incident resulting in demise of Govind Singh. The eye-witness PW-5 named him as one of the accused persons assaulting the deceased. It is also established in the testimony of the witnesses PW-2 and PW-5 that the deceased was dragged by legs by two persons, one being this accused Bharosaram (A-1). Such a fact that the deceased was indeed dragged by legs has been stated by PW-3 Bhuwan and PW-4 Rajesh also. The eye-witness PW-5 also stated that when the accused persons were assaulting Govind Singh, he went there to intervene but was threatened by Bharosa, Nand, Chinta and Bhanjan. The happening of the incident in question and threats by some of the assailants to the witnesses is duly corroborated in the testimony of PW-2 Santosh Kumar. Coupled with these factors, the Investigating Officer seized one *tangiya* and a blood-stained lungi from this accused Bharosaram (vide Ex. P/13). Though this accused alleged that he was not present during the incident and had been falsely implicated but there is no specific defence evidence on his plea of alibi nor there is any other specific defence version of this accused. In the given set of facts and circumstances, in our view, it is established beyond doubt that this accused Bharosaram (A-1) had been the member of the assembly that attacked and thrashed the deceased Govind Singh.

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21.2. As regards the appellant Duleshwar (A-2), again, it is established that he was amongst the assailants who caused grievous injuries to PW-1 Dhanwaram in the incident that preceded the incident resulting in demise of Govind Singh. Apart from PW-5 Prahlad Yadav naming him as one the members of the assembly that assaulted the deceased, even the otherwise hostile witness PW-9 Hiradhar specifically stated that this accused Duleshwar had been one of the persons who assaulted the deceased Govind Singh. As observed, merely for this witness PW-9 turning hostile in relation to some part of the prosecution case, his entire testimony cannot be discarded, if it inspires confidence [vide *Paulmeli's* case (supra)]. There is no reason of false implication of this accused by PW-9. Moreover, PW-20, the Investigating Officer seized a *lathi* and a vest from this accused (vide Ex. P/14) both carrying blood-stains. This accused similarly alleged that he was not present during the incident and had been falsely implicated but there is no specific defence evidence on his plea of alibi nor there is any other specific defence version. In the totality of circumstances, in our view, it is established beyond doubt that this accused Duleshwar (A-2) had also been the member of the assembly that attacked and thrashed the deceased Govind Singh.

21.3. As regards the appellant Bhanjan Singh (A-5), the eye-witness PW-5 named him as one of the accused persons assaulting the deceased. This accused was also named by PW-5 as one of the members of the assembly that threatened the witnesses to move away. The happening of the incident in question and threats by some of the assailants to the witnesses is duly corroborated in the testimony of PW-2 Santosh Kumar. Coupled with these factors, PW-20, the Investigating Officer, seized a blood-stained *lathi* from this accused also (vide Ex. P/16). Though this accused stated that he was falsely implicated but there had not been any specific defence plea on his part. In the given set of facts and circumstances, there is no reason to doubt that he had also been the member of the assembly that attacked and thrashed the deceased Govind Singh.

21.4. So far as the appellant Keshav Prasad (A-7) is concerned, though other witnesses did not categorically state his name but the eye-witness PW-5 Prahlad Yadav, during his re-examination, specifically named him as one of the accused persons who assaulted the deceased. The *lathi* recovered from this accused (vide Ex. P/18) also carried blood-

A stains. A feeble attempt was made for suggesting the plea of alibi where DW-1 Latkhor said that this accused went to Dhamtari to get his sewing machine repaired on the day of incident at about 1.30 p.m. However, there had been no such plea of this accused in his statement under Section 313 CrPC and there is no cogent evidence on record to establish the presence of this accused at any other place during the time of incident.

B In the totality of circumstances of this case, we find no reason to extend him the benefit of doubt and there is no reason to interfere with the findings that he had also been the member of the assembly that assaulted the deceased Govind Singh.

C 21.5. So far as the appellant Khemuram (A-8) is concerned, we find it difficult to endorse his conviction. Though one name 'Hemu' has occurred in the re-examination of PW-5 Prahlad Yadav but not specifically the name of this accused Khemuram⁸. The prosecution has not taken any steps to clarify if there was any discrepancy in regard to the statement of this witness PW-5. No other eye-witness has named this accused

D Khemuramas one of the members of the mob that assaulted the deceased Govind Singh nor any other act of this accused has come on record which could connect him with the assembly in question and the place of incident. Though the *lathi* recovered at the instance of this accused (vide Ex. P/19) allegedly carried blood-stains but his conviction cannot

E be based on this recovery alone. For want of cogent and convincing evidence about his presence at the scene of crime and his participation in assaulting the deceased, in our view, this accused Khemuram (A-8) is entitled to the benefit of doubt and the findings in his relation cannot be sustained.

F 21.6. As regards the appellant Nand Kumar (A-12), though *lathi* said to have been recovered from him (vide Ex. P/27) was not shown carrying any blood-stains and it has been suggested in the submissions on behalf of the State that his name is not taken by any witness but then, it is noticed from the statement of PW-5 Prahlad Yadav that he had clearly named this accused as one of the persons who threatened the

G witnesses and further stated his name in the re-examination along with the name of other assailants. As noticed, the happening of the incident in question and threats by some of the assailants to the witnesses is duly corroborated in the testimony of PW-2 Santosh Kumar. In the given

H ⁸ We have examined the original record too and it is clear that the name mentioned in the re-examination of PW-5 is 'Hemu' and not 'Khemu'.

circumstances, the case against this appellant Nand Kumar more or less stands at the same footing as that against the co-accused Bharosaram (A-1) and Bhanjan Singh (A-5), as discussed in the foregoing paragraphs 21.1 and 21.3. Though a witness DW-2 Dilip Kumar was examined in defence that this accused Nand Kumar was present in his village Darra on 15.10.1998 at the relevant time and was in the field from 3.00-6.00 p.m. but no such specific plea was taken by him in his defence version. The Trial Court has rejected such evidence as after-thought and rightly so. In the given set of facts and circumstances, there is no reason to interfere with the findings that Nand Kumar (A-12) had also been the member of the assembly that assaulted the deceased Govind Singh.

21.7. As regards the appellant Lakhan (A-13), again, it is noticed that PW-5 Prahlad Yadav stated his name in the re-examination but then, no other eye-witness named him as one of the members of the mob that assaulted the deceased Govind Singh nor any other act of this accused has come on record which could connect him with the assembly in question and the place of incident. Thus, there had been want of corroboration of the statement of PW-5 by other witnesses in regard to the involvement of this accused Lakhan. The alleged weapon *lathi* said to have been recovered at the instance of this accused (vide Ex. P/26) is also not shown carrying blood-stains. Though this accused also led in defence evidence in the form of DW-3 Barsan who deposed that this accused was in other village Bhururenga and left his village on 15.10.1998 at about 5.00-5.30 and that the distance of the two villages was about 15 kms but then, there had been discrepancies regarding the dates and time in his testimony and no such specific plea of alibi was taken by this accused in his defence version. However, even if the defence evidence in his regard is not accepted, as noticed, a reasonable doubt still remains if this accused Lakhan was a part of the assembly in question. In the given circumstances, we are of the view that this accused Lakhan (A-13) is also entitled to benefit of doubt.

22. In summation of what has been discussed in the foregoing paragraphs, in our view, the involvement of appellants Bharosaram (A-1), Duleshwar (A-2), Bhanjan Singh (A-5), Keshav Prasad (A-7) and Nand Kumar (A-12) as the members of the assembly that assaulted and thrashed the deceased Govind Singh to death is established on record and there appears no reason to interfere with the findings on their

- A conviction. However, in our view, the prosecution has failed to prove its case beyond reasonable doubt against the appellants Khemuram (A-8) and Lakhan (A-13) and they are entitled to the benefit of doubt.

23. In the passing, we may also usefully reiterate, having regard to the nature of inquiry herein, particularly that relating to the formation of unlawful assembly within the meaning of Section 149 IPC, that 2 of the accused persons who stand convicted for offences under Sections 147, 148, 302/149 IPC in this very case viz., Chintaram (A-4) and Khemraj (A-6) have not appealed against their conviction and on the given status of record, they do form the part of the same assembly in question that attacked and thrashed Govind Singh to death. As noticed, the eye-witness PW-5 named Chintaram (A-4) as one of the accused persons assaulting the deceased and one of the assailants who threatened the witnesses at the time of the incident. The happening of the incident in question and threats by some of the assailants to the witnesses is duly corroborated in the testimony of PW-2 Santosh Kumar. Moreover, PW-2 Santosh Kumar as also PW-5 PrahladYadav have specifically named the accused Chintaram (A-4) as one of the persons dragging the deceased by legs. The fact that the deceased was indeed dragged by legs has been stated by PW-3 Bhuwan and PW-4 Rajesh also. PW-20 V.S. Urmaliya, the Investigating Officer seized a *lathi* and vest from this accused Chintaram (A-4), both carrying blood-stains (vide Ex. P/15). As regards Khemraj (A-6), it is noticed that his participation in the assembly that had battered Govind Singh to death has been stated by at least 2 witnesses namely, PW-5 Prahlad Yadav and PW-9 Hiradhar. As noticed, PW-9 Hiradhar was declared hostile for not supporting the prosecution case in *toto*, but he specifically stated that this accused Khemraj (A-6) and the other accused-appellant Duleshwar (A-2) assaulted the deceased Govind Singh. It is also noticed that the investigating officer, PW-20 V.S. Urmaliya seized one *lathi* and one shirt from this accused Khemraj (A-6), carrying blood-stains (vide Ex. P/17). Thus, on the given status of record, the said accused persons Chintaram (A-4) and Khemraj (A-6) also form the part of the same assembly in question that attacked and thrashed Govind Singh to death.

24. Before concluding, we may also deal with the submissions made in the alternative for converting the conviction to the one under Part I of Section 304 IPC. In our view, the submissions in this regard remain bereft of substance and could only be rejected. As noticed, it is

evident that the deceased Govind Singh was brutally beaten black and blue by a large assembly of assailants and he sustained extensive injuries all over his body, including contusions, lacerated wounds and multiple fractures of various bones and ribs and he died due to shock with rupture of liver and fracture of ribs. The manner of execution of its object by the assembly with dragging of the deceased by legs and merciless thrashing, including multiple use of blunt weapons like *lathi*, leave nothing to doubt that the intention of assailants forming such assembly had only been to cause death and the acts were done with that intent alone. In the given set of facts and circumstances, there appears no reason to consider the present one to be a case of culpable homicide not amount to murder. In our view, conviction of the accused persons, against whom the case of the prosecution is established beyond reasonable doubt, for offences under Sections 147, 148 and 302/149 remains unexceptionable.

Conclusion

25. For what has been discussed hereinabove, we find that the accused-appellants Bharosaram (A-1), Duleshwar (A-2), Bhanjan Singh (A-5), Keshav Prasad (A-7) and Nand Kumar (A-12) have rightly been convicted with other co-accused persons for the offences under Section 147,148, 302/149; and the appeals filed by these accused-appellants deserve to be dismissed. However, in our view, the prosecution has failed to prove its case beyond reasonable doubt against the accused-appellants Khemuram (A-8) and Lakhan (A-13), who deserve to be acquitted on benefit of doubt.

26. Accordingly, Criminal Appeal Nos. 1813 of 2017 and 1815 of 2017 are dismissed whereas Criminal Appeal No. 1814 of 2017 is allowed in part and the impugned judgments are set aside in relation to the accused-appellants Khemuram (A-8) and Lakhan(A-13). They be set at liberty forthwith, if not required in any other case.