

**Tukesh Singh & Ors.**

v.

**State of Chhattisgarh**

(Criminal Appeal No. 1157 of 2011)

14 May 2025

**[Abhay S. Oka,\* Pankaj Mithal and  
Ahsanuddin Amanullah, JJ.]**

**Issue for Consideration**

Issue arose as regards the effect of the failure of the eyewitnesses to identify the accused in the court on the prosecution case.

**Headnotes<sup>†</sup>**

**Witness – Eyewitness – Failure of the eyewitnesses to identify the accused in the court – Effect on the prosecution case – Prosecution case that accused persons with a common object, armed with deadly weapons, murdered two persons and attempted to kill others, who are now the injured witnesses – Trial Court convicted the accused persons for the offences punishable u/ss.147, 148, 307, rw s.149 and s.302 rw s.149 and sentenced accordingly – High Court upheld the judgment of trial court – Correctness:**

**Held:** In cases where eyewitness knew the accused before the incident, they must identify the accused sitting in the dock as the same accused whom they had seen committing the crime – In cases where eyewitness did not know the accused before the incident, it is necessary to hold a Test Identification Parade – If it is not held and if the evidence of eyewitness is recorded after a few years, the identification of such an accused by the eyewitness in the Court becomes vulnerable – Identification of the accused sitting in Court by the eyewitness is of utmost importance – Unless the eyewitnesses identify the accused present in Court, it cannot be said that, based on the testimony of the eyewitnesses, guilt of the accused has been proved – None of the eyewitnesses specifically identified any of the accused in the Court – Failure of the eyewitnesses to identify the accused in the court as the accused they had seen

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\* Author

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committing the crime is fatal to the prosecution's case – There are material omissions brought on record in the cross-examination of the eyewitnesses – Versions of eyewitnesses differ – Guilt of the accused not been proved beyond reasonable doubt – Impugned judgment quashed and set aside – Penal Code, 1860 – ss.147, 148, 149, 302, 307. [Paras 21-26]

#### **Case Law Cited**

*Sudhir & Ors. v. State of M.P. [2001] 1 SCR 813 : (2001) 2 SCC 688; Kuldip Yadav & Ors. v. State of Bihar [2011] 5 SCR 186 : (2011) 5 SCC 324; Nand Lal & Ors. v. State of Chhattisgarh [2023] 2 SCR 276 : (2023) 10 SCC 470 – referred to.*

#### **List of Acts**

Penal Code, 1860; Code of Criminal Procedure, 1973.

#### **List of Keywords**

Murder; Common object; Injured eyewitnesses; Deadly weapons; Test Identification Parade; Specifically identified accused; Eyewitness knew accused before incident; Identification of accused in open court; Material omissions.

#### **Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1157 of 2011

From the Judgment and Order dated 10.09.2010 of the High Court of Chhattisgarh at Bilaspur in CRLA No. 454 of 2003

With

Criminal Appeal No. 1608 of 2011 and Criminal Appeal No. 1713 of 2012

#### **Appearances for Parties**

*Advs. for the Appellants:*

Sidharth Luthra, Rajesh Pandey, Sr. Advs., Mahesh Pandey, Mihir Joshi, Ms. Nishi Prabha Singh, Chandrika Prasad Mishra, Ms. Prashasti Singh, Ms. Mridula Ray Bharadwaj, Ms. Swati Surbhi, Mahesh Pandey, Mihir Joshi, Ms. Nishi Prabha Singh, Chandrika

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Prasad Mishra, Ms. Prashasti Singh, Ms. Mridula Ray Bharadwaj, Ms. Swati Surbhi, Sameer Shrivastava, Ms. Yashika Varshney, Ms. Palak Mathur, Mrs. Priyanka Shrivastava.

*Advs. for the Respondent:*

Praneet Pranav, D.A.G., Vinayak Sharma, Ms. Kritika Yadav, Ravinder Kumar Yadav, P. Amrut.

**Judgment / Order of the Supreme Court****Judgment**

**Abhay S. Oka, J.**

**FACTUAL ASPECTS**

1. These appeals take exception to the judgment dated 10<sup>th</sup> September 2010 of the High Court of Chhattisgarh. A total of nine accused were prosecuted for the offences punishable under Sections 147, 148, 307, read with Section 149 and Section 302, read with Section 149 of the Indian Penal Code, 1860 (for short, 'the IPC'). The Trial Court convicted them under the aforesaid sections. For the offences punishable under Section 302 read with Section 149 of the IPC, the sentence of life imprisonment was imposed. The present appellants are accused nos.1 to 8. They and accused no.9 (Ramesh Singh) had preferred an appeal before the High Court. By the impugned judgment, the High Court confirmed the judgment of the Sessions Court.
2. One Kashiram Rathore, a resident of a place called Masturi, had borrowed a certain amount from one Ganpat Singh. As he could not repay the loan, he gave his shop and the land adjacent to it to Ganpat Singh, who, in turn, gave the shop to his relative Rajendra Singh (PW-11) and opened a medical store through him. After commencing business, PW-11 purchased the shop and the adjacent vacant land from Kashiram by way of a Sale Deed.
3. The case of the prosecution is that on 23<sup>rd</sup> March 2001, the accused, with a common object, armed with deadly weapons like sword, rod, knife, poleaxe, club, etc. went to the disputed shop and murdered Manrakhan Singh and Narayan Singh and attempted to kill PW-1 (Shivraj Singh), PW-3 (Virendra Singh), PW-4 (Judawan Singh), PW-5 (Visheshwar Singh Thakur) and PW-8 (Rakesh Singh Thakur). These are the injured eyewitnesses. The First Information Report

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(FIR) was registered at the instance of PW-8. The Police claimed that recovery of a sword was made from the 1<sup>st</sup> appellant (Tukesh Singh—accused no.1). Another sword was allegedly recovered at the instance of the 3<sup>rd</sup> appellant (Baba alias Rajesh Singh—accused no.3). A dagger like weapon stained with blood was allegedly recovered at the instance of accused no.7 (Mangal Das). A sword was allegedly recovered from the 2<sup>nd</sup> appellant (Basant Singh—accused no.2). A bloodstained club was allegedly recovered at the instance of the 4<sup>th</sup> appellant (Pappu Singh—accused no.6). A wooden plank was recovered at the instance of accused no.4 (Anil Singh) and one rod at the instance of accused no.5 (Vishnu Singh).

**SUBMISSIONS**

4. The learned senior counsel appearing for the appellants has taken us through the notes of evidence and other documents on record. The learned senior counsel submitted that there was a counter case in which prosecution witnesses and others were shown as accused. Tukesh Singh (Appellant) had filed the FIR Crime Number – 49 of 2001 on 24.03.2001 at 03:00 PM. The counter case (Criminal Case No.79 of 2001) registered based on the said FIR ought to have been tried with the case subject matter of these appeals. Therefore, prejudice has been caused to the appellants/accused. He relied upon the following decisions of this Court in support of his contention: ***Sudhir & Ors. v. State of M.P.***,<sup>1</sup> ***Kuldip Yadav & Ors. v. State of Bihar***<sup>2</sup> and ***Nand Lal & Ors. v. State of Chhattisgarh***.<sup>3</sup> He submitted that the accused also sustained injuries which were not explained by the prosecution. He pointed out that the complainant's party was the aggressor as seen from the evidence. Moreover, there was a delay of five and a half hours in lodging the FIR. There were two Police Constables who arrived at the spot immediately after the incident. Moreover, the Police Station was between two to three furlongs away. There was a delay in recording the statements of PW-4 (Judawan Singh) and PW-11 (Rajendra Singh). He pointed out that PW-13 (Dilip Singh), PW-14 (Shiv Kumar Dubey) and PW-15 (Ishwari Srivas) were independent witnesses who did not support the prosecution.

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1 (2001) 2 SCC 688

2 (2011) 5 SCC 324

3 (2023) 10 SCC 470

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5. He submitted that the account given by the eyewitnesses PW-1, PW-3, PW-4, PW-5 and PW-8 of the incident differs in material particulars. He submitted that omnibus statements made by the witnesses regarding the involvement of the accused are not sufficient to bring home the prosecution's case. He pointed out that the eyewitnesses are related to each other and the deceased. Hence, they were interested witnesses. But, three independent eye-witnesses have not supported the prosecution. He pointed out that the depositions of the prosecution witnesses indicated that there were large number of independent witnesses present, as the incident happened in the market area. The learned senior counsel submitted that the evidence of the defence witness Dr Smt Subhadra Painkra (DW-1) established that accused no.9 (Ramesh Singh) was an injured patient in the hospital from 23<sup>rd</sup> March 2001 to 24<sup>th</sup> March 2001. She stated that even accused no.8 (Tamesh Singh) accompanied accused no.9 (Ramesh Singh) in the hospital.
6. The learned senior counsel, therefore, submitted that the prosecution's case has not been established, and even assuming that it is established, looking to the prosecution's evidence, the case will fall in one of the exceptions to Section 300 of the IPC. Therefore, at the highest, the offence under the second part of Section 304 of the IPC will be attracted. Considering the sentence undergone, the appellants/accused should be let off on the punishment undergone. He pointed out that the appellants have undergone sentences between 9 and 14 years until this Court released them on bail.
7. The learned Deputy Advocate General appearing for the respondent-State of Chhattisgarh has supported the impugned judgments. He submitted that the injuries sustained by the four accused persons were very minor. He pointed out that there was no evidence on record to show that the complainant's side was the aggressor and that any of them had assaulted the accused. He submitted that no prejudice has been caused to the accused on the ground that the trial of the cross case was conducted separately. He urged that the testimony of injured witnesses has been rightly believed by both the Courts. He submitted that minor contradictions and omissions brought to light in the cross-examination of the eyewitnesses are not sufficient to discard their testimony. He would, therefore, submit that no case is made out for interference with the concurrent findings recorded by both the Courts.

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8. Firstly, we will deal with the evidence of injured witnesses. PW-1 (Shivraj Singh) is the father of PW-11 (Rajendra Singh). Deceased Narayan Singh was the elder son of PW1. The deceased Manrakhan Singh was the father-in-law of PW-11 (Rajendra Singh). PW-1 stated that the incident happened on 24<sup>th</sup> March 2001, which was a Saturday. He stated that he was not aware of the events of the previous day. He stated that he knew accused no.1 (Tukesh Singh), accused no.8 (Tamesh Singh), accused no.9 (Ramesh Singh), and accused no.3 (Baba alias Rajesh Singh). He stated that these accused were present at the time of the incident. He stated that he did not know the rest of the accused. He stated that he does not know whether the rest of the accused were involved in the incident. He stated that at 8 a.m. on 24<sup>th</sup> March 2001, PW-11 (Rajendra Singh) told him about the incident that nine to ten boys intruded into his house next to the medical shop. They started abusing PW-11 (Rajendra Singh). At that time, deceased Manrakhan Singh intervened and tried to restrain the boys. However, he was told to go out of the shop. Thereafter, PW-1 accompanied PW-11 to lodge a complaint at the Police Station and first reached the medical shop. He stated that at that time, deceased Manrakhan Singh was in the medical shop of PW-11 (Rajendra Singh). PW-1 asked his sons to go to the police station to lodge a complaint regarding the incident of the previous night. Accordingly, PW-11, one Sukhnandan Singh and Kanhaiya Singh, left for the police station. At that time, the other deceased, Narayan Singh, was coming towards the shop. Nine to ten persons came running and abused Narayan Singh. Accused no.8 (Tamesh Singh) assaulted deceased Narayan Singh with a sword and a lathi. Accused no.1 (Tukesh Singh) assaulted deceased Narayan Singh by causing injury to his hands with an axe. When the PW-1 sought help, PW-3 (Virendra Singh), his son, went to the shop when nine to ten boys started assaulting him with axes, swords and lathis. The witness stated that accused no.9 (Ramesh Singh) assaulted him on his right wrist and shoulder with a lathi. He stated that he was not in his senses. Therefore, he did not tell that the accused assaulted PW-8 (Rakesh Singh). In the cross-examination, many material omissions have been brought on record. The same are as follows:

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- (i) The witness accepted that though accused no.9 (Ramesh Singh) had assaulted on the head of deceased Manrakhan Singh with a lathi, it is not so mentioned in his Police statement;
  - (ii) He accepted that though he had told the Police that accused no.3 (Baba) had assaulted deceased Manrakhan Singh, it was not found in the Police statement; and
  - (iii) Even the case that accused no.9 (Ramesh Singh) assaulted him on the wrist, near the shoulder and head with a lathi was not mentioned in the Police report.
9. PW-1 stated that while recording his statement, he had told the Police that he would identify some of the accused. However, the Police did not get the identification done. There is something very crucial. As he stated, he knew only four of the accused, he was not called upon to identify any of the accused present in the Court, and therefore, he did not depose that the accused present in the Court were the same accused he had seen committing the offence.
10. Now, we turn to the evidence of PW-3 (Virendra Singh), a son of PW-1 (Shivraj Singh). The witness stated that he knew accused no.1 (Tukesh Singh), accused no.2 (Basant Singh), accused no.4 (Anil Singh), accused no.6 (Pappu Singh) and accused no.7 (Mangal Das). He said that apart from accused nos.1, 2, 4, 6 and 7, others were not known to him. He stated that he knew the rest of the accused by their faces. In paragraphs nos.4 to 7 of his deposition, PW-3 (Virendra Singh) stated thus:

**“4. In the medical store of Masturi my father Shivraj Singh, brother Narayan Singh, Sukhnandan Singh, niece Rakesh Singh, relative Lakan Singh were also present. We were sitting in the shop itself, near the counter and were talking. At that time, all of a sudden, 9-10 persons armed with weapons like sword, poleaxe, rod & lathi came from the road side, saying attack-attack and directly assaulted Narayan Singh. Tamesh Singh and Tukesh Singh assaulted him with sword and when Narayan Singh shrieked, I ran to save him. Mangaldas, Pappu, Anil, Tamesh & Tukesh started assaulting me.**

**5. Mangaldas assaulted my nose with poleaxe, Tamesh & Tukesh assaulted my head with sword, Anil assaulted**

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my back with rod, Pappu assaulted with sword, which hurt near left eyebrow and face below the eye (left eye). At the very moment, Manrakhan Singh rushed to save me, and then Ramesh Singh assaulted his head with lathi, with him his companion Baba also assaulted with sword. Vishnu & Basant assaulted with sword. Vishnu & Basant assaulted my father with sword and lathi. Ramesh also assaulted him with lathi. At that time, Vishveshwar Singh & Judawan Singh, were trying to save, then they were also assaulted by Tukesh Singh, Tamesh Singh & their companions. They also assaulted Rakesh Singh.

6. Amongst accused, pointing towards Baba, the witness states that he was also one of the assailants, but I do not know his name. I was blood smeared. The blood was oozing out, around my eye also, therefore, I could not see further. After committing maarpeet, the accused went away.

7. I received injuries on my head at three places. Nose was cut. I was assaulted with rod on my back. I also received a sword injury on my left hand's little finger."

In the evidence of PW-3 (Virendra Singh), the following significant omissions were brought on record:

- (i) Accused no.1 (Tukesh Singh) and accused no.8 (Tamesh Singh) assaulted on the neck of his brother and when he raised his voice and rushed to save him, accused no.7 (Mangal Das) with a poleaxe, accused no.6 (Pappu Singh) with a sword and accused no.4 (Anil Singh) assaulted him with a rod. The blow by accused no.6 (Pappu Singh) hit his left eyebrow and below the left eye. Accused no.1 (Tukesh Singh) and accused no.8 (Tamesh Singh) assaulted him on the head with a sword. Accused no.9 (Ramesh Singh) assaulted the deceased Manrakhan Singh with a lathi. The witness stated that he is unable to assign reasons why these facts have not been recorded in the statement recorded by the Police;
- (ii) Accused no.7 (Mangal Das) was holding a poleaxe, and accused no.6 (Pappu Singh) was holding a sword in his hand. The witness accepted that this does not find a place in his Police statement;

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- (iii) Accused no.6 (Pappu Singh) was holding a rod and a club in his hands. Even this is not mentioned in his Police statement; and
- (iv) Accused no.6 (Pappu Singh) assaulted him with an iron rod.

In his examination in chief, PW3 merely states without ascribing any specific roles, that:

“Out of the accused persons, I know Mangal Das, Pappu, Anil, Tukesh & Basant. I know rest of the accused persons by their faces. Amongst accused, Ramesh Singh and Tamesh Singh are not present in the Court today.”

He was not called upon to identify any of the accused present in the Court, and therefore, he did not depose that the accused present in the Court were the same accused he had seen committing the offence.

11. PW-3 (Virendra Singh) stated that in the afternoon of 24<sup>th</sup> March 2001, his father PW-1 (Shivraj Singh), brother deceased Narayan Singh, PW-8 (Rakesh Singh) and their relative Lakan Singh were present in the medical shop. At that time, nine to ten persons armed with weapons like sword, poleaxe, rod and lathi came from the roadside and, while calling upon everyone to attack, assaulted the deceased Narayan Singh. Accused no.1 (Tukesh Singh) and accused no.8 (Tamesh Singh) assaulted deceased Narayan Singh with a sword. When the witness ran to save him, accused nos.1, 4, 6, 7 and 8 started assaulting him. Accused no.7 (Mangaldas) assaulted him on the nose with a poleaxe. Accused nos. 1 and 8 assaulted him on the head with a sword. He has ascribed a role to accused no.4 (Anil Singh) and accused no.6 (Pappu Singh) in the assault on him. Thereafter, the witness stated that accused no.9 (Ramesh Singh) assaulted deceased Manrakhan Singh on the head with a lathi. Accused no.3 (Baba alias Rajesh Singh) assaulted deceased Manrakhan Singh with a sword. Even accused no.2 (Basant Singh) and accused no.5 (Vishnu Singh) assaulted deceased Manrakhan Singh with a sword. The witness stated that both of them assaulted his father with a sword and a lathi. It is pertinent to note that even if, according to the case of the witness, he knew the accused, it was important for him to state that the accused present in the Court were the same accused whom the witness in his examination-in-chief had ascribed roles. However, he did not identify the accused in the Court, as in the examination-in-chief, he was not called upon to do so.

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12. Even in his evidence, there are omissions which read thus:

- (i) Though he knew accused no.1 (Tukesh Singh) and accused no.4 (Anil Singh), he did not disclose their names in his Police statement;
  - (ii) The fact that accused no.1 (Tukesh Singh) and accused no.8 (Tamesh Singh) assaulted the head of the deceased and accused no.4 (Anil Singh) assaulted with a rod on his back, has not been mentioned in his Police statement; and
  - (iii) Accused no.2 (Basant Singh) and accused no.5 (Vishnu Singh) assaulted PW-1 (Shivraj Singh) with a sword and a lathi. This fact was not stated in his police statement.

In the cross-examination, the witness admitted that on 28<sup>th</sup> March 2001, he did not give his complete statement. He admitted that he was unable to tell after how many days that he had given his remaining statement. Therefore, it is not clear when his further statement was recorded. That is not brought on record by the prosecution.

13. Now, we come to the evidence of PW-4 (Judawan Singh). He stated that PW-11 (Rajendra Singh) called him around 11 p.m. on 24<sup>th</sup> March 2001. Somebody knocked on the door and tried to take him out. In paragraph 7, the witness stated thus:

"7. ....

Firstly, accused Tukesh Singh and Tamesh Singh assaulted Narayan Singh, again said, assaulted with sword, the said assault hit the neck of Narayan Singh, at that time when Manrakhan Singh, who was sitting there i.e. near the shop, ran towards that side to save, accused Ramesh Singh assaulted him with *lathi* on his head and thereafter, from his back Baba Singh assaulted on occipital region of head. Virendra Singh rushed to save him, then Tamesh, Tukesh Singh, Pappu, Mangaldas & Anil started assaulting him with sword and rod.”

His statement was belatedly recorded on 14<sup>th</sup> April 2001, i.e. twenty-one days after the incident. Even this witness did not identify any accused in the Court by ascribing them a specific role. He merely stated that he knew all the accused present in the Court, and he named two of them. Even in the cross-examination of PW-4 (Judawan Singh), vital omissions have been brought on record.

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14. The following significant omissions were brought on record in his cross-examination:
  - (i) Accused no.9 (Ramesh Singh) assaulted on the head of deceased Manrakhan Singh with a lathi;
  - (ii) Accused no.9 (Ramesh Singh) was holding a sword in one hand and a poleaxe in another; and
  - (iii) Accused no.1 (Tukesh Singh) assaulted him on the head.
15. Now, we turn to the evidence of PW-5 (Visheshwar Singh Thakur). He described the incident of 24<sup>th</sup> March 2001. He stated that the prosecution witnesses and others were sitting in the medical store of PW-11 (Rajendra Singh). At that time, nine to ten persons armed with weapons like sword, poleaxe, lathi, rod, etc., came running from the side of the motorcycle garage of accused no.8 (Tamesh Singh). Accused no.1 (Tukesh Singh) and accused no.8 (Tamesh Singh) assaulted deceased Narayan Singh with a sword and a poleaxe. Even accused no.9 (Ramesh Singh) and accused no.3 (Baba alias Rajesh Singh) assaulted the deceased Manrakhan Singh with a sword and a lathi.
16. In the cross-examination, he admitted that his statement was belatedly recorded on 14<sup>th</sup> April 2001. The omissions brought on record in his cross-examination are as follows:
  - (i) Accused no.1 (Tukesh Singh) and accused no.8 (Tamesh Singh) started assaulting PW-3 (Virendra Singh);
  - (ii) Accused no.1 (Tukesh Singh) and accused no.8 (Tamesh Singh) assaulted deceased Narayan Singh with a sword and poleaxe;
  - (iii) Accused no.9 (Ramesh Singh) and accused no.3 (Baba alias Rajesh Singh) assaulted deceased Manrakhan Singh with a sword and lathi; and
  - (iv) Accused no.6 (Pappu Singh), accused no.4 (Anil Singh) and accused no.7 (Mangal Das) assaulted PW-3 (Virendra Singh).Again, to this witness, the accused were not shown in the Court for establishing their identity. PW-4 also stated that he knows all the accused present in the Court and names two of them.
17. In the cross-examination, he stated that his statement was recorded on 14<sup>th</sup> April 2001. There is a delay of twenty days in recording his

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statement, though he was available. In the cross-examination, the witness admitted that in the assault on deceased Manrakhan Singh, only accused no.3 (Baba alias Rajesh Singh) and accused no.9 (Ramesh Singh) were the participants.

18. Then, we come to the evidence of PW-8 (Rakesh Singh Thakur). His version in the examination-in-chief reads thus:

**“5.** At about 12.30 in the noon, Narayan Singh came from Jalso. At about 1.45 p.m., Virendra Singh, Visheshwar Singh and his elder brother also came to the shop from Korba. After some time Rajendra Singh along with Kanhaiya Singh also came to medical store from Jalso.

**6.** On the direction of elders, Sukhnandan Singh, Rajendra Singh & Kanhaiya went to Police Station Masturi to lodge report regarding the incident occurred in the previous night. 2-3 minutes thereafter 9-10 persons armed with sword, polcaxe, lathi etc. came from the side of Ramesh Travels' office and attacked on the persons sitting there, saying 'attack-attack'.

**7.** On this accused Tamesh Singh & Tukesh Singh assaulted my elder maternal uncle Narayan Singh, who was returning after consuming betel, with the sword as a result he sustained injuries on his neck. Virendra Singh when tried to save him, Mangaldas, Pappu, Tamesh, Tukesh assaulted him with sword, lathi etc., as a result he sustained injuries over his head and his lips & nose were cut. Ramesh and Baba alias Rajesh started assaulting Manrakhan Singh, father-in-law of Rajendra Singh, with sword & lathi. Baba assaulted with sword and Ramesh assaulted with lathi.

**8.** Thereafter, Basant & Baba Singh assaulted my maternal grandfather Shivraj Singh and when I came out to save them, Baba, Basant & Tamesh Singh attacked on me, they assaulted me with sword and lathi as a result I sustained injuries over my head, back & shoulder.”

Even in the case of this witness, he has not identified the accused in the Court in his examination-in-chief. In the cross-examination, the witness merely stated that he knows accused no.8 (Tamesh Singh)

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and accused no.9 (Ramesh Singh), who were present in the Court and the other accused. However, he did not individually identify the accused. PW-8 (Rakesh Singh Thakur) lodged the Police report at about 8 p.m.

19. The following significant omissions were brought on record in his cross-examination:
  - (i) He had told the names of three accused on the night of 23<sup>rd</sup> March 2001;
  - (ii) Accused no.1 (Tukesh Singh) and accused no.8 (Tamesh Singh) assaulted PW-3 (Virendra Singh); and
  - (iii) Accused no.8 (Tamesh Singh) assaulted PW-1 (Shivraj Singh).
20. As regards the PW-11 (Rajendra Singh), he is not an eyewitness. He only described the incident which occurred on 23<sup>rd</sup> March 2001. The evidence of this witness is not material. He is examined basically to prove what transpired on 16<sup>th</sup> March 2001 and 23<sup>rd</sup> March 2001. Again, he has not identified the accused in the Court.
21. In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade. If it is not held and if the evidence of the eyewitness is recorded after a few years, the identification of such an accused by the eyewitness in the Court becomes vulnerable. Identification of the accused sitting in the Court by the eyewitness is of utmost importance. For example, if an eyewitness states in his deposition that "he had seen A, B and C killing X and he knew A, B and C". Such a statement in the examination-in-chief is not sufficient to link the same to the accused. The eyewitness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition. If an eyewitness states that "he had seen one accused assaulting the deceased with a sword, another accused assaulting the deceased with a stick and another accused holding the deceased to enable other accused to assault the deceased." In such a case, the eyewitness must identify the accused in the open

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Court who, according to him, had assaulted the accused with a stick, who had assaulted the deceased with a sword and who was holding the deceased. Unless the eyewitnesses identify the accused present in the Court, it cannot be said that, based on the testimony of the eyewitnesses, the guilt of the accused has been proved.

22. In the present case, in case of two eyewitnesses, in the cross-examination, it is brought on record that the accused persons named by them were sitting in the Court. However, they did not identify a particular accused by ascribing him a role. None of the eyewitnesses has specifically identified any of the accused in the Court.
23. In this case, the failure of the eyewitnesses to identify the accused in the court as the accused they had seen committing the crime is fatal to the prosecution's case. There are material omissions brought on record in the cross-examination of the eyewitnesses. They are so relevant that the same constitute contradictions in view of the explanation to Section 162 of the Code of Criminal Procedure, 1973. The appellants/accused, before they were enlarged on bail, had undergone a minimum of nine to ten years of actual sentence. They have been on bail for about twelve years.
24. Considering the discussion made above, it is not possible to come to a conclusion that the guilt of the appellants/accused is proved beyond a reasonable doubt. As stated earlier, the versions of the eyewitnesses differ.
25. We are, therefore, of the considered opinion that guilt of the accused has not been proved beyond a reasonable doubt.
26. Hence, the impugned judgment and order dated 10<sup>th</sup> September 2010 passed by the High Court of Chhattisgarh at Bilaspur is, hereby, quashed and set aside and the appellants/accused are acquitted of the offences alleged against them. As the appellants/accused are on bail, their bail bonds stand cancelled. The appeals are, accordingly, allowed.

*Result of the case:* Appeals allowed.

<sup>†</sup>Headnotes prepared by: Nidhi Jain