

**CORAM:** **Hon'ble Shri Sunil Kumar Sinha &**  
**Hon'ble Shri Radhe Shyam Sharma, J J.**

**APPELLANT**                      Awadh    Ram    S/o    Babudas  
Satnami, Aged about 40 years,  
R/o Village Dayalpur, P.S. Lalpur,  
District Bilaspur, M.P. (Now C.G.)

**RESPONDENT**                      The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**APPELLANT** Bhanu S/o Kejaha Satnami, Aged about 25 years, R/o Village Dayalpur, P.S. Lalpur, District Bilaspur, M.P. (Now C.G.)

**RESPONDENT** The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**APPELLANT** Bhagbali S/o Khilawan Satnami,  
Aged about 20 years, R/o Village  
Dayalpur, P.S. Lalpur, District  
Bilaspur, M.P. (Now C.G.)

**RESPONDENT** The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,

District Bilaspur

**Criminal Appeal No. 1420 of 1997**

**APPELLANT**

Ramsahayak (wrongly mentioned as Ramsahay) S/o Motiram Satnami, Aged about 22 years, R/o Village Dayalpur, P.S. Lalpur, District Bilaspur, M.P. (Now C.G.)

***Versus***

**RESPONDENT**

The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**Criminal Appeal No. 1421 of 1997**

**APPELLANT**

Khilawan S/o Dukalu Satnami, Aged about 55 years, R/o Village Dayalpur, P.S. Lalpur, District Bilaspur, M.P. (Now C.G.)

***Versus***

**RESPONDENT**

The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**Criminal Appeal No. 1422 of 1997**

**APPELLANT**

Satprasad S/o Babudas Satnami, Aged about 35 years, R/o Village Dayalpur, P.S. Lalpur, District Bilaspur, M.P. (Now C.G.)

***Versus***

**RESPONDENT**

The State of Madhya Pradesh

Cr.Appls No. 1416; 1417; 1419; 1420; 1421; 1422; 1423; 1424; 1425 & 1426 of 1997

(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**Criminal Appeal No. 1423 of 1997**

**APPELLANT**

Phoolchand S/o Motiram  
Satnami, Aged about 35 years,  
R/o Village Dayalpur, P.S. Lalpur,  
District Bilaspur, M.P. (Now C.G.)

***Versus***

**RESPONDENT**

The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**Criminal Appeal No. 1424 of 1997**

**APPELLANT**

Satrughan S/o Kejaha Satnami,  
Aged about 20 years, R/o Village  
Dayalpur, P.S. Lalpur, District  
Bilaspur, M.P. (Now C.G.)

***Versus***

**RESPONDENT**

The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**Criminal Appeal No. 1425 of 1997**

**APPELLANT**

Lakhan S/o Kejaha Satnami, Aged  
about 18 years, R/o Village  
Dayalpur, P.S. Lalpur, District  
Bilaspur, M.P. (Now C.G.)

***Versus***

**RESPONDENT**

The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**And**

**Criminal Appeal No. 1426 of 1997****APPELLANT**

Bhagrai S/o Khilawan Satnami,  
Aged about 28 years, R/o Village  
Dayalpur, P.S. Lalpur, District  
Bilaspur, M.P. (Now C.G.)

***Versus***

**RESPONDENT**

The State of Madhya Pradesh  
(Now The State of Chhattisgarh)  
Through Police Station- Lalpur,  
District Bilaspur

**(Criminal Appeals under Section 374 (2) of The Code of Criminal Procedure, 1973)****Appearance:**

Mr. Abhay Tiwari and Mrs. Savita Tiwari, Advocates for  
the appellants.

Mr. Sudhir Bajpai, Dy. Govt. Advocate for the State.

**JUDGMENT**  
**(22.08.2013)**

Following judgment of the Court was delivered by  
**Sunil Kumar Sinha, J.**

**(1)** These appeals are directed against the judgment dated  
5<sup>th</sup> of June, 1997 passed in Sessions Trial No. 375/92 by the  
Fourth Additional Sessions Judge, Bilaspur. By the

impugned judgment, the appellants were convicted and sentenced in the following manner with a direction to run the sentences concurrently:-

<b><u>Conviction</u></b>	<b><u>Sentence</u></b>
u/Ss 302/149 IPC (in 4 counts)	Life imprisonment and fine of Rs.5,000/-
u/Ss 307/149 IPC (in 2 counts)	R.I. for 7 years and fine of Rs.3,000/- with default sentence of S.I. for 1 year
u/Ss 324/149 IPC (in 3 counts)	R.I. for 3 years and fine of Rs.2,000/- with default sentence of S.I. for 6 months
u/Ss 323/149 IPC (in 2 counts)	R.I. for 1 year and fine of Rs.1,000/- with default sentence of S.I. for 3 months

**(2)** The facts, briefly stated, are as under:-

2.1 Eleven (11) accused persons (A-1 to A-11) were tried for the offences punishable u/Ss 302/149 (in 4 counts), 307/149 (in 2 counts), 324/149 (in 3 counts) & 323/149 IPC (in 2 counts). The allegations are that on 8.6.1992 at about 11.45 a.m., they formed an unlawful assembly and in furtherance of the common object of the said assembly committed murder of 4 deceased persons namely- Adhindas, Fatte, Rameshwar and Mohani, attempted to the lives of Padum (PW-15) & Dilip Kumar (PW-8), caused hurt by dangerous weapons to Satrugan (PW-14), Mani Ram (PW-4) & Roopchand (PW-25) and caused simple hurt to Moolchandra (PW-6) & Resham (PW-7).

2.2 Village- Dayalpur and Bandhwa are adjacently situated. There was *parti-bandi* in these villages. One party was belonging to Kejaha Satnami and the other party was belonging to Adhindas. On 8.6.1992 at about 9.30 a.m., Kejaha Satnami, father of Satrugan (A-9) and Lakhan (A-10), was murdered and an offence was registered. An other offence for committing mischief by fire was also registered. For investigation of the said offences, a police party, comprising S.I., Sanjay Tiwari (PW-21 – S.H.O.), A.S.I., Chotelal Pandey (PW-20) and Constable, Virendra Kumar (PW-24), had reached to village Dayalpur and investigation was being conducted. The police party was interrogating the deceased and injured persons of this case by camping near *Jaitkham*.

2.3 The allegations are that the accused persons, who were belonging to the party of deceased- Kejaha, gathered near his dead body, put *Tika* on their forehead by blood of deceased- Kejaha and sworn that they shall take revenge (*saying that “खून का बदला खून से ही लेंगे ”*) and shall commit murder of the persons belonging to the party of Adhindas (deceased person). At about 11.45 a.m., the accused persons (A-1 to A-11), all of a sudden, appeared near *Jaitkham* and attacked over the complainant party who were present with the police. The accused persons were armed with *lathi* and *tabbal* etc. They surrounded the persons of the complainant party and started assaulting them. Four (4) persons of the complainant party namely- Adhindas, Fatte, Rameshwar and Mohani sustained multiple serious injuries and succumbed to those injuries. Other persons present there namely - Padum (PW-15), Dilip Kumar (PW-8), Satrugan (PW-14), Mani Ram (PW-4),

Roopchand (PW-25), Moolchandra (PW-6) and Resham (PW-7) also sustained multiple injuries. When the incident was going on, S.I., Sanjay Tiwari (PW-21) and two other police officers, A.S.I., Chotelal Pandey (PW-20), and Constable, Virendra Kumar (PW-24) tried to intervene, but the accused persons did not hear them. The persons of police party fired many rounds in the air from their services revolver to stop the accused persons and to prevent the incident, but the accused persons attacked over the police party also. They assaulted A.S.I., Chotelal Pandey (PW-20) by *tabbal* who had sustained injury. Constable, Virendra Kumar (PW-24) had also sustained injuries. They also attacked over S.I., Sanjay Tiwari (PW-21) and somehow their lives were saved. For attempting to the lives of above police personnels, a separate offence u/Ss 148, 307/149 and 333/149 IPC was also registered against the accused persons which became the subject matter of Sessions Trial No. 49/93 in which they were convicted by the Sessions Court.

2.4 S.I., Sanjay Tiwari (PW-21) immediately recorded *Dehatinalishi* (Ex.-P/52), based on which, First Information Report (F.I.R. – Ex.-P/51) was registered. Notices (Ex.-P/24, P/26, P/28 & P/30) to the *Panchas* were issued and inquest(s) (Ex.-P/25, P/27, P/29 & P/31) were prepared and the dead bodies were sent for post-mortem. The postmortem examinations were conducted by Dr. N.S. Chandel (PW-2). He noticed following injuries on the dead bodies of the deceased persons:-

#### 2.4.1 **Deceased- Mohani:**

(i) Incised wound of 6 x 3 cm x bone deep on the right

- scapular region, scapula was broken into 3 pieces;
- (ii) Contusion of 10 x 4 cm on the lower right portion of the back;
  - (iii) Incised wound of 6 x 3 cm x bone deep on the occipital region having fracture of underlying bone;
  - (iv) Lacerated wound of 3.5 x 2 cm x bone deep on the right parietal region;
  - (v) Lacerated wound of 10 x 3 cm x bone deep on the right occipito-parietal region, underlying occipital bone was broken into several pieces, brain matter had come out; &
  - (vi) Multiple wounds of teeth-bite (5 in number) on the upper portion of left forearm.

On internal examination, it was found that there were multiple fractures over occipital and parietal bones. Brain membrane has ruptured; brain matter has come out, many blood clots were present on right and left occipital region. According to him injury no. (i) & (iii) were caused by sharp edged weapons and other injuries were caused by hard and rough weapons and teeth-bite. The injuries were ante-mortem and sufficient to cause death in ordinary course of nature. The cause of death was injuries to the skull and brain and the death was homicidal in nature. His postmortem report is Ex.-P/6.

#### 2.4.2 **Deceased- Rameshwar :**

- (i) Lacerated wound of 6 x 4 cm x bone deep on the left occipital region;
- (ii) Incised wound of 5 x 3 cm x bone deep on the right parietal region, underlying bone was broken into many pieces, the brain matter



has come out;

- (iii) Lacerated wound of 3 x 2 x 2 cm on the left parietal region;
- (iv) Lobe of right ear-pinna was completely cut;
- (v) There was swelling of 10 x 8 cm around the right eye, the eye was blackish;
- (vi) Abrasion of 6 x 5 cm on the right portion of back; &
- (vii) Abrasion of 10 x 1 cm on the right thigh.

On internal examination, it was found that blood clots were present on right parietal and occipital regions; there were multiple fractures on right parietal and occipital bones; some pieces of bones have pierced into brain tissue; right parietal and occipital lobes of the brain were ruptured. All the injuries were ante-mortem. Injury no. (i), (iii), (iv), (v), (vi) & (vii) were caused by hard and rough object and injury no. (ii) was caused by sharp edged weapon. The cause of death was injury to the skull and brain and death was homicidal in nature. His postmortem report is Ex.-P/7.

#### 2.4.3 **Deceased- Adhindas :**

- (i) Swelling of 6 x 4 cm on the right portion of forehead, right eye blackish;
- (ii) Swelling of 8 x 3 cm on the right forearm;
- (iii) Swelling of 5.5 x 2 cm on the left forearm;
- (iv) Swelling of 12 x 2 cm on the lower portion of right leg;
- (v) Swelling of 16 x 2 cm on the right portion of chest;

- (vi) Swelling on the right portion of chest at the position of 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> ribs, on pressing it was appearing with the ribs were broken;
- (vii) Lacerated wound of 5 x 2 x 2 cm near left eye-brow;
- (viii) Left ear-pinna was torn; &
- (ix) Lacerated wound of 4 x 2 x 2 cm on the left occipital region.

On internal examination, blood clots were found on left temporal parietal and occipital regions, brain membrane was reddish, blood clots were found over the brain membrane; there were fractures over 3<sup>rd</sup> & 6<sup>th</sup> ribs; a piece of rib has broken and pierced into left lung; thoracic cavity was full of blood; trachea was also full of blood. All the injuries were ante-mortem caused by hard and rough object. They were sufficient to cause death in ordinary course of nature. The cause of death was injuries to the brain and lung and the death was homicidal in nature. His postmortem report is Ex.-P/8.

#### 2.4.4 **Deceased- Fatte :**

- (i) Swelling over the right forearm. It was appearing that there were fractures over the bones;
- (ii) Abrasion of 12 x 2 cm on the left portion of back;
- (iii) Left ear-pinna was torn, the ear passage was full of blood;
- (iv) Incised wound of 4.5 x 3 cm x bone deep on the occipital region, there was fracture on the underlying bone; &

- (v) Incised wounds of 8 x 3 cm x bone deep on the left parietal region, there was fracture on the underlying bone.

On internal examination, it was found that there was sub-dural haemorrhage in the cerebral region; there were fractures over the right parietal and occipital bones; the injuries were ante-mortem; injury no. (i), (ii) & (iii) were caused by hard and blunt object and injury no. (iv) & (v) were caused by sharp edged object. These injuries were sufficient to cause death in ordinary course of nature. The cause of death was injury to the skull and brain and the death was homicidal in nature. His postmortem report is Ex.-P/9.

2.5 Injured persons were also sent for their medical examinations. Following are the injuries sustained by the injured persons:-

2.5.1 **Injured- Dilip (PW-8):**

- (I) Incised wound of 11 x 3 x 3 cm over back part of right shoulder joint, margins clean cut and regular.

The above injury was caused by hard and sharp cutting object. His MLC report is Ex.-P/5. He was advised for X-ray examination. On X-ray examination, it was found that there was corresponding fracture on acromian process. His X-ray report is Ex.-P/61. He was admitted in the hospital from 9.6.1992 and was discharged on 21.6.1992. Discharge ticket is Ex.-P/63.

2.5.2 **Injured- Padum (PW-15):**

- (i) Incised wound of 5 x ½ x ½ cm on temporo-parietal area;
- (ii) Swelling and tenderness over left forearm;

- (iii) Pain, swelling and tenderness over right forearm;
- (iv) Abrasion over right side of elbow; &
- (v) Abrasions over both sides of right knee.

On X-ray examination, it was found that there was a fracture over his left ulna. X-ray report is Ex.-P/62.

#### 2.5.3 **Injured- Satrugan (PW-14):**

- (i) Incised wound of 15 x 5 x 5 cm on the left portion of back and back portion of left forearm, margins regular, red in colour.

It was simple injury caused by sharp edged weapon. His MLC report is Ex.-P/1.

#### 2.5.4 **Injured- Mani Ram (PW-4):**

- (i) Incised wound of 5 x 8 x 8 cm (bone deep) on the left portion of skull, margins regular, red in colour;
- (ii) Abrasion of 3 x 1 cm on the left patella, red in colour;
- (iii) Incised wound of 1 x 5 x 5 cm on the upper portion of left leg, red in colour; &
- (iv) Abrasion of .8 x .8 cm on the middle of the nose, red in colour.

Injury no. (i) & (iii) were caused by sharp edged weapon and injury no. (ii) and (iv) were caused by hard and rough object. All the injuries were simple injuries. His MLC report is Ex.-P/2.

#### 2.5.5 **Injured- Roopchand (PW-25):**

- (i) Incised wound on the back portion of left shoulder joint, margins regular, red in colour;

blood was coming out.

The injury was caused by sharp edged weapon. X-ray examination was advised. Cut injuries were found over superior aspect of left shoulder and articular surface of head of humerus. He was admitted in the hospital from 9.6.1992 to 21.7.1992. Surgery was performed. Discharge ticket is Ex.-P/64 and bed-head-ticket is Ex.-P/65.

**2.5.6 Injured- Moolchandra (PW-6):**

- (I) Lacerated wound of 3 x .8 x .5 cm on the left portion of skull, margins regular, red in colour.

It was simple injury caused by hard and rough object. His MLC report is Ex.-P/3.

**2.5.7 Injured- Resham(PW-7):**

- (i) Two bruises of 7 x 2.7 cm and 5 x 2.5 cm on the back portion of right side of chest; &
- (ii) Abrasion of 3.5 x 2 cm on the back portion of right forearm, red in colour.

Both injuries were simple injuries caused by hard and rough object. His MLC report is Ex.-P/4.

2.6 The case of the prosecution was based on 16 eye-witnesses, including the above injured witnesses as also the police personnels who were also injured. The learned Sessions Judge relied on the testimonies of these witnesses and held that it was proved beyond all reasonable doubts that the accused persons had formed an unlawful assembly and had committed the above offences in furtherance of the common objects of the said assembly. The accused persons, thus, were

convicted and sentenced as above.

**(3)** Accused- Babudas (A-3) had also filed a separate appeal. However, he died during the pendency of the appeal, therefore, his appeal has abated. Thus, the remaining 10 accused persons are before us.

**(4)** Mr. Abhay Tiwari, learned counsel appearing on behalf of the appellants, has argued that formation of an unlawful assembly and the appellants being members thereof was not proved; common object(s) were also not proved; the witnesses were not reliable; and the appellants have been falsely implicated. Alternatively, he argued that it was a case of free-fight. Complainant party was aggressor and the accused persons inflicted injuries in right of private defence.

**(5)** On the other hand, Mr. Sudhir Bajpai, learned Dy. Govt. Advocate appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court.

**(6)** We have heard counsel for the parties.

**(7)** Let us firstly remind the principles relating to “Unlawful Assembly” & “Common Object(s)”.

**(8)** What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained

along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. The two ingredients of Section 149 are **(i)** commission of offence by members of unlawful assembly; and **(ii)** such offence must be in prosecution of common object of that assembly, or must be such as members of that assembly knew it to be likely to be committed. For determining common object the conduct of each member of unlawful assembly before and at the time of attack is relevant consideration; object of unlawful assembly is a question of fact which has to be determined keeping in

view nature of assembly, arms carried by members, and behaviour of members at or near scene of incident. The common object does not require a prior concert and a common meeting of minds before attack. It is enough if each member has same object and all act in assembly to achieve that object. Common object has to be ascertained from acts and language of members and from consideration of all surrounding circumstances. For determination of the common object, conduct of each member of unlawful assembly, before and at the time of attack and motive of crime are some of the relevant considerations. The time of forming unlawful intent is not material because it is possible that an assembly, which is lawful to begin with, subsequently becomes unlawful. Lastly, it is not even expected of prosecution to assign particular or independent roles played by each accused once it is proved they were members of unlawful assembly and had assaulted deceased resulting in death (**Vide: Masalti -Vs- State of U.P., AIR 1965 SC 202; Pandurang Chandrakant Mhatre and Others -Vs- State of Maharashtra, (2009) 10 SCC 773; Sikandar Singh & Ors. -Vs- State of Bihar, 2010 AIR SCW 4426 and Dharnidhar -Vs- State of Uttar Pradesh and Others & other connected appeals, (2010) 7 SCC 759.**)

**(9)** Now we shall examine the case of the appellants.



**(10)** The first set of evidence was of injured eye-witnesses namely- Padum (PW-15), Dilip Kumar (PW-8), Satrugan (PW-14), Mani Ram (PW-4), Roopchand (PW-25), Moolchandra (PW-6) and Resham (PW-7).

**(11)** Padum (PW-15) deposed that “Accused- Awadh Ram (A-1) had committed mischief by fire in the *Pairawat* (paddy-straw) of deceased- Fatte. A report was lodged in police station Lalpur. On this report, the police party had visited their village. On the date of the present incident, the police party including *Thanedar* Tiwari (PW-21) had called them near *Jaithkam*. Rameshwar, Fatte, Mohani & Adhindas (4 deceased persons), Bawachha, Roopchand (PW-25), Dilip (PW-8), Mani Ram (PW-4), Yashkumar, he himself and many other (about 16 persons) were present there. At that time, Awadh Ram (A-1) and Satprasad (A-7) came there. Satprasad (A-7) was holding a *tabbal* and Awadh Ram (A-1) was holding a *lathi*. They attacked over them. Other accused persons belonging to their party namely- Khilawan (A-6), Phoolchand (A-8), Ramsahayak (A-5), Bhanu (A-2), Babudas (A-3), Bhagrai (A-11), Bhagbali (A-4), Lakhan (A-10) and Satrugan (A-9) also came there with *lathi*. Firstly Awadh Ram (A-1) assaulted Moolchandra (PW-6) by *lathi*. Moolchandra fell down. Thereafter Awadh Ram (A-1) assaulted his father, Mohani (deceased), by *lathi*. Satprasad (A-7) assaulted him

by *tabbal* and Bhanu (A-2) assaulted him by *lathi*. His father fell down receiving their injuries. Then Satrugan (A-9), Khilawan (A-6), Bhanu (A-2) and other accused persons attacked over Fatte (deceased). He also fell down on account of assault. Rameshwar (deceased) was also attacked by Phoolchand (A-8), Ramsahayak (A-5), Babudas (A-3), Satrugan (A-9) etc. by *lathi*. He had also fell down after receiving the injuries. Adhindas (deceased) was also assaulted by Babudas (A-3), Satprasad (A-7), Khilawan (A-6), Ramsahayak (A-5) by *lathi* and *tabbal*. He also fell down on account of injuries sustained by him. After assaulting the above deceased persons, the accused persons had assaulted him and they had also assaulted Dilip (PW-8), Roopchand (PW-25) and Adhindas (deceased). While the accused persons were assaulting them, the police officers present there, fired in the air. Mohani, Adhindas, Rameshwar and Fatte (4 deceased persons) had died instantaneously. When he wanted to run away, he was stopped by the police officers". Padum (PW-15) was formally cross-examined by the defence. Only 1 question was asked to him which he (Padum) admitted that on the same day Kejaha was also murdered and he was an accused in the said case.

**(12)** The evidence of Padum (PW-15) was duly corroborated by the evidence of other injured witnesses namely- Dilip

Kumar (PW-8), Satrugan (PW-14), Mani Ram (PW-4), Roopchand (PW-25), Moolchandra (PW-6) and Resham (PW-7), who deposed in similar fashion. Nothing material could be elicited in the cross examinations of these witnesses, on which, either their testimonies may be discarded or it may be said that they were falsely implicating the accused persons in the said incident. These witnesses were injured witnesses, therefore, their presence at the place of occurrence cannot be doubted. They have given details regarding manner of assault given to the deceased and injured persons. They have also taken specific names of the accused persons, who, in fact, had assaulted them as also the deceased persons. Thus their evidence assume importance (**Vide: Balraje Alias Trimbak -Vs- State of Maharashtra, (2010) 6 SCC 673 and Abdul Sayeed -Vs- State of Madhya Pradesh & other connected matters, (2010) 10 SCC 259**). Mr. Tiwari also could not point out any infirmity in the evidence of these witnesses.

**(13)** Their evidence was further corroborated by the postmortem reports of 4 deceased persons as also MLC reports of these witnesses and the evidence of Dr. Anil Kumar Gupta (PW-1) and Dr. N.S. Chandel (PW-2) who found above injuries of their persons as also on the dead bodies of the deceased persons.

**(14)** Not only this, their evidence was also corroborated by

the evidence of 3 police officers, which was the second set of eye-witnesses, which we shall now discuss.

**(15)** S.I., Sanjay Tiwari (PW-21) has deposed that on the fateful day, he was present in the village for investigation of the mischief case. He was told that persons belonging to complainant party of this case have committed murder of Kejaha Satnami in village Bandhwa. He sent Constable-Rampratap to village Bandhwa. Along with the remaining staffs, he came to village Dayalpur. Bhanu (A-2) S/o Kejaha met him near *Jaitkham*. Bhanu (A-2) lodged a report of death of his father which he recorded in *Dehatinalishi*. Then, he went to the house of Adhindas and Melaram, where he met Adhindas, Moolchandra, Fatte, Rameshwar, Mohani, Roopchand, Dilip etc. He called them near *Jaitkham* for interrogation. When he was interrogating them, accused persons namely- Awadh Ram (A-1) and Satprasad (A-7) came there from the front side and other accused persons namely- Bhanu (A-2), Ramsahayak (A-5), Babudas (A-3), Satrugan (A-9), Phoolchand (A-8), Bhagrai (A-11), Bhagbali (A-4) etc. came from other side. They were armed with *lathi* and *tabbal*. They attacked over Moolchandra (PW-6) etc. When he tried to intervene, they also attacked over police party. The police persons accompanying him sustained injuries. After attack over the above persons when they were trying to assault

Ramadhar, he and A.S.I. Pandey fired 2 rounds in the air from their service revolver. When the accused persons did not stop, they again fired 2 rounds in the air.

**(16)** Similar is the evidence of A.S.I., Chotelal Pandey (PW-20) and Constable, Virendra Kumar (PW-24).

**(17)** These police witnesses were also put to cross-examination by the defence, but nothing material could be brought in their cross-examinations. We note that for the injuries sustained by the police persons a separate offence was registered against the accused persons which became the subject matter of Sessions Trial No. 49/93 in which also the accused persons were convicted by the Sessions Court.

**(18)** The 3<sup>rd</sup> set of evidence was of the eye-witnesses who did not receive any injury and witnessed the incident from a very short distance. They were Champa Bai (PW-10), Ramadhar Chakradhari (PW-5), Lilva (PW-9) and Santram Kotwar (PW-12).

**(19)** Champa Bai (PW-10) deposed that "On the fateful day, she was sitting near the place of incident. Adhindas, Fatte, Rameshwar and Mohani (4 deceased persons) were present there. The accused persons had attacked over them by *lathi* and *tabbal*. Accused- Awadh Ram (A-1) and Satprasad (A-7) had open the assault and thereafter other accused had also assaulted. Police personnels were also present there. They

were also assaulted by the accused persons. She had seen the incident from a very short distance”. Champa Bai (PW-10) is wife of Moolchandra (PW-6). In cross-examination, she admitted that Moolchandra (PW-6) was an accused in case of murder of Kejaha Satnami. Her evidence was corroborated by the evidence of Ramadhar Chakradhari (PW-5), Lilva (PW-9) and Santram Kotwar (PW-12).

**(20)** In appreciation of the entire evidence on record, we find that there was a *parti-bandi* in these villages (village-Dayalpur and Bandhwa). The accused persons were members of the party belonging to Kejaha Satnami (who had earlier died) and the deceased(s) and injured persons were members of the party belonging to Adhindas (deceased). In the morning at about 9.30 a.m. Kejaha Satnami was murdered and in retaliation thereof, the accused persons attacked over the deceased(s) and injured persons at about 11.45 a.m. when they were called for interrogation by the police near *Jaitkham* of village Dayalpur. Accused persons were armed with *lathi* and *tabbal*. They were 11 in number. They, all of a sudden, reached to the place of occurrence and attacked over the persons of deceased(s) party by the above deadly weapons and 4 persons belonging to deceased(s) party were murdered and 7 persons were injured. The witnesses have taken the names of all the accused persons. When the

police party tried to intervene, the accused persons had attacked over the members of the police party, who also sustained injuries. The police party had to fire many rounds in the air, but even after that the accused persons did not stop the assault and caused above injuries to the injured and the deceased persons. The above conduct of the accused persons would show that they were the members of unlawful assembly and they had committed murdered of 4 deceased persons and caused injuries to 7 injured persons in furtherance of the common object(s) of the said assembly.

**(21)** Mr. Tiwari has argued that it was a case of free-fight. The above argument cannot be accepted in view of the fact that none of the accused persons sustained any injury in the said incident. It was tried to canvass that as the complainant party of this case had attacked over Kejaha Satnami (deceased), the accused party had also attacked over them in right of private defence. The above argument, in light of the prevailing circumstances, cannot be accepted because both the incidents took place at two different places and there was a long time gap. The first incident took place in village Bandhwa at about 9.30 a.m., whereas, the present incident took place in village Dayalpur at about 11.45 a.m. It appears that after the first incident, the accused persons, with a view to take revenge, formed an unlawful assembly, armed

themselves with deadly weapons and thereafter attacked over the persons belonging to the deceased(s) party in a planned manner which was in furtherance of their common object(s).

**(22)** We are of the view that the learned Sessions Judge was fully justified in convicting the accused persons under the aforementioned Sections of IPC.

**(23)** For the foregoing reasons, we do not find any substance in these appeals. The appeals are liable to be dismissed and are hereby dismissed.

**JUDGE**

**JUDGE**



**HEADLINE**

Principles relating to formation of Unlawful Assembly  
and Common Object - Discussed.

विधिविरुद्ध जमाव एवं सामान्य उद्देश्य से संबंधित सिद्धान्त - विवेचित ।

(R.K. Vatti)  
Private Secretary

Cr.Appls No. 1416; 1417; 1419; 1420; 1421; 1422; 1423; 1424; 1425 & 1426 of 1997

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CORAM:**                **Hon'ble Shri Sunil Kumar Sinha &**  
                                 **Hon'ble Shri Radhe Shyam Sharma, J J.**

**Criminal Appeal No. 1416 of 1997**

Awadh Ram

Vs.

The State of Madhya Pradesh  
(Now The State of Chhattisgarh)

**&**

(Connected Cr.Appls. No. 1417; 1419; 1420; 1421; 1422;  
1423; 1424; 1425 & 1426 of 1997)

**JUDGMENT**

For consideration

**Judge**

/08 /2013

**HON'BLE SHRI JUSTICE RADHE SHYAM SHARMA**

**Judge**

/08/2013

Post for Judgment :     /08/2013

Cr.Appls No. 1416; 1417; 1419; 1420; 1421; 1422; 1423; 1424; 1425 & 1426 of 1997

**Judge**

/08/2013