AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1304 of 2021

1. Kamlesh Jangde, S/o Phool Kumar, aged about 30 Years
2. Dharamdas @ Motu Jangde, S/o Shekhuram Jangde, aged about 40 Years
3. Permanand @ Pappu Banjare, S/o Phool Das Banjare, aged about 26 Years
4. Narad Jangde, S/o Late Bhondu Jangde, aged about 30 Years
5. Mukesh Kumar Banjare @ Muswa, S/o Dharam Das Banjare, aged about 28 Years

   All are R/o - Village - Mokhla, Police Station - Arang, District - Raipur Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh through Station House Officer, Police Station - Arang, District - Raipur Chhattisgarh.

---- Respondent

For Appellants No.1, 2 & 3 - Ms. Sharmila Singhai, Sr. Adv. Along with Shri Sanjay Agrawal, Advocate
For Appellant No.4 Narad - Ms. Vikeshvari, Advocate
For Appellant No.5 Mukesh - Shri M.P.S. Bhatia, Advocate
For the State/Respondent - Mr. Akhilesh Kumar, Govt. Advocate

---

CRA No. 1239 of 2021

1. Sevaram Jangde S/o Ramanand Jangde, aged about 36 Years, R/o Village Mokhla, P.S. Arang, District Raipur Chhattisgarh.
2. Ramanand Jangde S/o Late Parasram Jangde, aged about 65 Years, R/o Village Mokhla, P.S. Arang, District Raipur Chhattisgarh.

---- Appellants

Versus

State of Chhattisgarh through The District Magistrate, District : Raipur, Chhattisgarh.

---- Respondent

For the Appellants - Ms. Sharmila Singhai, Sr. Adv. Along with Shri Sanjay Agrawal, Advocate

For the State/Respondent - Mr. Akhilesh Kumar, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Smt. Justice Rajani Dubey

Judgment on Board

Per Goutam Bhaduri, J.

09/07/2024

Heard.

1. Since both the appeals are arising out of the common impugned judgment passed by the trial Court, they are being heard and decided together by this common judgment.

2. The appeals are against the judgment of conviction and order of sentence dated 30.09.2021 passed by the Additional Sessions Judge, Raipur, District Raipur, (C.G.) in Sessions Trial No. 137/2019 whereby the appellants have been convicted under Sections 302/149, 307/149, 341 & 148 of the Indian Penal Code (IPC) and sentenced them to undergo R.I. for life Imprisonment, R.I. for 5 years, R.I. for 01 month and R.I. for 1 year, respectively and to pay fine amount of Rs. 500/- in respect of each of the offence with default stipulations.

3. The case of the prosecution, in brief, is that on 05.04.2019 at 05:30 O'clock the complainant Bisahu Ram Chandrakar (PW-1) made a report that while he was coming back from his agriculture field, when he reached near the pond Parsahi of his village, he saw his brother Chintamani Chandrakar (since deceased), nephew Manish Kumar Chandrakar (injured) and

Naresh Chandrakar were being assaulted by namely; Sevaram Jangde (A-1), Kamlesh Jangde (A-2), Dharamdas @ Motu Jangde (A-3), Permanand @ Pappu Banjare (A-4), Narad Jangde (A-5), Ramanand Jangde (A-6) and Mukesh Kumar Banjare @ Muswa (A-7) were assaulting his brother and nephews. Subsequently, when the passerby reached them they fled away. By such assault Chintamani sustained injury on his head and he was unconscious. Nephew Manish was also injured. Chintamani Chandrakar was taken to the hospital wherein he was declared dead. Subsequently, his nephew Naresh Kumar Chandrakar (PW-3) disclosed that some dispute took place over monetary matter in factory of injured Manish Kumar Chandrakar (PW-2) and while they were returning to their home, all the accused/appellants armed with deadly weapons assaulted them. On the basis of the report and the happening of the incident case was registered under Sections 302, 307, 147 & 148 of the Indian Penal Code (IPC). The inquest report was prepared and Manish was also subjected to MLC. After recording the statements and evidence, on the basis of the memorandum, the arms were recovered, thereafter the charge-sheet was filed under Sections 302, 307, 341, 147, 148 of the Indian Penal Code (IPC) and 25 and 27 of Arms Act.

4. During the course of trial, the appellants abjured their guilt and claimed to be tried. The prosecution examined as many as 13 witnesses and exhibited 48 documents, apart from that the FSL reports were also put on record. The learned Sessions Judge, after evaluating all the material evidence & statements acquitted

the accused Sevaram Jangde (A-1) and Ramanand Jangde (A-6) from the offence under Sections 25 & 27 of the Arms Act, however, all the accused have been convicted as mentioned in para 2 of this judgment. Hence, this appeal.

5. In order to facilitate and to avoid the confusion all the appellants have been named as; Sevaram Jangde (A-1), Kamlesh Jangde (A-2), Dharamdas @ Motu Jangde (A-3), Permanand @ Pappu Banjare (A-4), Narad Jangde (A-5), Ramanand Jangde (A-6) and Mukesh Kumar Banjare @ Muswa (A-7).

6. (a) Ms. Sharmila Singhai, learned Senior Advocate assisted by Mr. Sanjay Agrawal, Advocate and Ms. Archi Agrawal, Advocate on behalf of A-1 to A-4 and A-6, would submit that the instant case is an outcome of a false accusations. It is stated all the so called eye-witnesses namely Bisahu Ram Chandrakar (PW-1), Manish Kumar Chandrakar (PW-2), Naresh Kumar Chandrakar (PW-3), Saurabh Kumar Chandrakar (PW-4) & Umang Kumar Vaishnav (PW-5), are relatives of the deceased Chintamani and Umang Kumar Vaishnav (PW-5) is also a friend of Saurabh Kumar Chandrakar (PW-4), who is the relative of the deceased. Learned counsel would submit that the scooty of A/1, was recovered at the factory site and according to the statement under Section 313 Cr.P.C., the defence would disclose that A/1 while went to the factory of Naresh Kumar Chandrakar (PW-3), he was kept in captivity and it was at the instance of one Neelkamal, who was also sighted witness, he

was allowed to be freed. Subsequently, the deceased along with the injured witness, met with a road accident while they were coming and suffered injuries.

(b) Learned senior counsel would further submit that significantly, injuries were found only on the left side of the body which could not have been inflicted when a person is attacked by 7 accused. Therefore, the very nature of the injuries, as stated by the Doctor, could have been caused by a fall on the ground. According to her, because of the old animosity, the appellants have been inculpated. It is further submitted that no independent witnesses were examined and reliance is placed on ***2022 SCC OnLine SC 1440 (Md. Jabbar Ali and others vs. State of Assam with Md. Ajmot Ali vs. State of Assam)*** to submit that the so called eye-witness being relative their testimonies have to be scrutinized with greater care and circumspection. Further reliance is placed on the law laid down by the Supreme Court in the matter of ***Manikandan Vs. State By Inspector of Police {AIR 2024 Supreme Court 1801}*** and ***Bhupatbhai Bachubhai Chavda and Another Vs. State of Gujarat {AIR 2024 Supreme Court 1805}*** to disregard the statement of the interested witness. It is stated that the witnesses have given a divergent opinion about the presence of all the accused which shows that they were not consistent in their statement.

(c) Learned counsel would further submit that the injury caused to Naresh Chandrakar was not fatal and when there is an

inconsistent statement which do not match with the statements marked as Ex. D-1 to Ex. D-5 of the eye-witnesses, the benefit should have been leaned in favour of the appellant/accused. Accordingly, interference is warranted by this court.

7. (A) Shri M.P.S. Bhatia, learned counsel appearing on behalf of Mukesh Kumar Banjare (A/7) would submit that A-7 has neither been named in the FIR nor in the merg which was lodged by Bisahu Ram Chandrakar (PW-1). He would submit that even in the inquest report his presence was eliminated. It is further submitted the statement Ex.D-1 which is a statement under Section 161 of CrPC, does not prove the presence of this appellant. Consequently, when the eye-witnesses have not named this appellant the same should have been leaned in his favour.

(B) Learned counsel would further submit that the seizure from A/7 was a club and the statement of the doctor would show that it did not contain any blood and the FSL report also does not support. He would further submit that in the postmortem report, there is no injury caused by a wooden club, as all the incised wounds were present and only a lacerated wound was present on the right big toe, which could not have been caused by the club. Therefore, he has been falsely implicated and accordingly the benefit of doubt should have been leaned in his favour.

8. Ms. Vikeshvari, learned counsel for the appellant Narad Jangde (A/5) would submit that the seizure from this appellant vide Ex.

P-28 is also a wooden club whereas in the FSL, no blood was found and according to the Doctor, no injury caused by a wooden club was found in the postmortem report. Therefore, they were not the aggressors but only innocent villagers who were present at the spot, and their names have been falsely implicated.

9. (I) *Per contra,* learned counsel for the State would submit that according to the statements of the eye-witnesses, all the accused have been named. He would further submit that the *mens rea* was also existing, as the dispute started for not payment of money for the bricks which were taken by A-1 and the other circumstance that a complaint was made by the deceased against A-1 as he was a Sarpanch. Therefore, in order to avenge, the appellant along with the others launched an attack with deadly weapons on the deceased and his sons, who were also badly injured. He would further submit that the postmortem report and the report of injury too support the same. He would further submit that it is not expected that the witnesses would disclose all the facts at the time, but the same has not been done.

(II) Learned State counsel further placed reliance in ***AIR 2023 Supreme Court 1736 (Balu Sudam Khalde vs. State of Maharashtra)*** and would submit that the statement of the injured witness cannot be discarded easily and when the A-1 develops a story that he was locked inside the factory and was allowed to fled away with the help of one Neelkamal, the non-

examination of Neelkamal would also be fatal. Consequently, it is submitted that the judgment of conviction and the order of sentence of the Sessions Court is well merited which do not call for an interference.

10. We have heard learned counsel for the parties at length and perused the evidence.

11. The first witness cited and examined by the prosecution is Bisahu Ram Chandrakar (PW-1). We went through his statement and cross-examination. According to him on 05th of April, 2019 at about 05.00 pm when he went to the agricultural field and was returning home near the village he saw scuffle and quarreling was going on in between Chintamani (the deceased), Narendra Chandrakar (the injured) and Manish Chandrakar (another injured) and the accused. He saw that his brother Chintamani fell down on the ground and Narendra Chandrakar, one of the injured was trying to save him. He further stated that A/2 and A/5 were holding the hands of Narendra Chandrakar and were pushing. Rest of the appellants i.e. A/1, A/6, A/4, A/3 and A/7 were assaulting Chintamani Chandrakar. About the weapon, A/1 was holding a sword; A/6 was holding a knife; A/3 was holding an axe; and A/4 & A/7 were was holding wooden clubs. He stated that all the accused/appellants were assaulting the deceased. Thereafter, when the villagers were going on the road, the accused saw them and fled away.

12. The background of the dispute has been further stated that before such incident, A/1 had gone to the factory of Manish Kumar Chandrakar (PW-2) where some dispute took place over the

payment of money. A/1 was the sarpanch of Village Mokhla and Manish Kumar Chandrakar (PW-2), who owns a brick klin, had supplied certain bricks to A/1 but he had not paid the amount. Thereafter, the report merg (Ex. P/1) wherein all the accused have been named except A-7. Likewise, in the FIR Ex. P/2 the similar persons have been named. In the inquest report Ex. P/4 also all the accused have been named except A/7. Though it has been stated that the injuries were sustained due to accident and they referred to Ex. P/6 the map to show that parts were recovered from the place of incident do not have much bearing as per the statement of Manish Kumar Chandrakar (PW-2) he was following his father (deceased), the moment his father reached to the spot, his motorcycle was intercepted and was pushed wherein he fell down.

13. Manish Kumar Chandrakar (PW-2) stated that he runs a fly ash bricks plant at village Mokhla and he called A/1 for his dues for the reason that the bricks were obtained 8 months back. Thereafter, after 15-20 minutes A/1 came to the factory and entered into a scuffle with Manish Kumar Chandrakar (PW-2). Thereafter, he went away. While they were returning home in the evening he saw that accused persons were waiting with arms. According to him A/1 was holding a sword, A/6 was holding a knife, A/3 was holding an axe, A/2, A/4, A/5 & A/7 were holding clubs. The moment his father reached near them he was pushed and fell down. This witness further states that he was also scared and stood on the side of the road. Thereafter, A/1 gave two assaults on the head of his father which was stopped by his father

by hand. At that time A/7 gave an assault by way of wooden club on his head whereby he fell down on the ground. Thereafter, A/1 & A/6 started assaulting by sword and the knife and they were shouting that they will kill him. When this witness reached to his father, A/4 gave a blow on his head by wooden club and A/1 also tried to assault by sword which he stopped. At that time brother of this witness namely; Naresh Kumar Chandrakar (PW-3) came to save and he was also assaulted. A/2 & A/5 assaulted him by club. Thereafter, he also reached to the hospital and was also treated and the father was also taken to the hospital but he was declared dead. In his statement under Section 161 Cr.P.C. (Ex. D/2) he has named all the accused.

14. The eye witness & injured Manish Kumar Chandrakar (PW-2) was admitted to the hospital. His MLC Ex. P/29 shows that he has a lacerated wound on his right occipital left forearm and contusion on the right hand. Dr. B.K. Chandravanshi was examined as PW-8. He stated that initially on being examined superficially the injuries appeared to be simple in nature, however, a query made by the police vide Ex. P/30, he opined that the head injury if could not have been treated it could have caused death. This witness Manish Kumar Chandrakar (PW-2) has named all the appellants/accused persons. In the cross-examination of this witness it was recorded as dying declaration, he was confronted with that as to certain names were omitted. In explanation to it he stated that the narration has not been made but when the suggestion was given, he affirmed the fact that he has seen the incident.

15. The another eye witness Naresh Kumar Chandrakar (PW-3), who is the son of the deceased, stated that he went to his college as he is a Teacher. He came back about 4.00 pm on the date of incident and went towards the plant. Thereafter, while he was going back along with the deceased and the injured, they were intercepted and A/4 & A/7 pushed his brother Manish Kumar Chandrakar (PW-2), whereby he fell down. While he alighted from his motorcycle A/1 & A/6 started assaulting his father Chintamani. His father sustained injury on his head and fell down. When Manish Kumar Chandrakar (PW-2) tried to save his father, then A/4 started assaulting. He further stated that he was requesting all the accused persons not to assault but they continued with the assault and eventually his father died.

16. The another eye witness Saurabh Kumar Chandrakar (PW-4), who is the nephew of the deceased, also narrated the same incident and stated that he along with Umang Kumar Vaishnav (PW-5), the another eye witness, when were following the other family members while going home, the moment they reached near Mokhla Pull there A/1, A/2, A/3, A/4, A/6 & A/7 & others stopped them and started assaulting by sword, axe and club.

17. Umang Kumar Vaishnav (PW-5), the another eye witness, narrated the similar fact and stated that A/1 was assaulting by sword A/7 was assaulting by axe. He also affirmed the fact that he has seen the incident.

18. All the eye witnesses i.e. Bisahu Ram Chandrakar (PW-1), Manish Kumar Chandrakar (PW-2), Naresh Kumar Chandrakar

(PW-3), Saurabh Kumar Chandrakar (PW-4) & Umang Kumar Vaishnav (PW-5) are relatives of the deceased Chintamani and Manish Kumar Chandrakar (PW-2) was an injured witness.

19. The proposition which has been laid down by the Supreme Court in the matter of ***Md. Jabbar Ali and Others Vs. State of Assam {2022 SCC OnLine SC 1440}*** stated that it is the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. The Court in para 55 & 56 has held has under:-

> 55. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of Gangadhar Behera v. State of Orissa (2002) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.
>
> 56. In Raju alias Balachandran v. State of Tamil Nadu (2012) 12 SCC 701, this Court observed:
>
> > "29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying

> a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh [(1953) 2 SCC 36: AIR 1953 SC 364] and pithily reiterated in Sarwan Singh [(1976) 4 SCC 369] in the following words: (Sarwan Singh case [(1976) 4 SCC 369, p. 376, para 10)
>
> > "10. … The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

20. Similar view has been reiterated by the Supreme Court in the matter of ***Manikandan Vs. State By Inspector of Police {AIR 2024 Supreme Court 1801}*** and ***Bhupatbhai Bachubhai Chavda and Another Vs. State of Gujarat {AIR 2024 Supreme Court 1805} .***

21. Applying the above principles laid down by the Supreme Court we went through the statement of the witnesses meticulously, the submission of the appellant that the deceased sustained injury out of an accident is not supported by the postmortem report which is Ex. P/31. According to the Dr.Girdhar Mirdha (PW-9), who conducted the postmortem, the following injuries were sustained by the deceased:-

- An incised wound in the size of 3 cm x 0.5 cm lower end of pinna (Left).
- An incised wound in the size of 1 x 0.5 cm left tragus.
- An incised wound in the size of 3 x 0.5 cm bone deep behind left ear.
- An incise wound in the size of 2 x ½ cm bone deep below first wound behind left ear.
- An incised wound in the size of 7 x 1 cm

bone deep behind upper end of left pinna.

- An incised wound in the size of 6 x 2 cm bone deep on occipital bone of skull (left).
- An incised wound in the size of 6 x 2 cm into bone deep right parietal bone.
- A contusion in the size of 5 x 3 cm superficial on left lower chest.
- A lacerated wound involving right big toe anterio lateral aspect in the size of 2 & ½ inch x 1 inch.

22. The death was due to cardio respiratory arrest due to excessive cranial hemorrhage resulting from multiple injuries on head. The aforesaid injuries when are examined would show that they were caused by the weapon which was seized from the appellants as from A/1 sword was recovered on his memorandum statement Ex. P/14 and the seizure was made by Ex. P/21. From A/2 a wooden club was recovered on his memorandum statement Ex. P/15 and the seizure was made by Ex. P/22. From A/3 an iron axe was recovered on the basis of his memorandum statement Ex. P/16 and the seizure was made by Ex. P/23. A/4 a wooden club was recovered on his memorandum statement vide Ex. P/17 and seizure was made by Ex. P/24. From A/5 a wooden club was seized on his memorandum statement vide Ex. P/18 and seizure was made by Ex. P/25. From A/6 a knife was recovered on his memorandum statement Ex. P/19 and the seizure was made by Ex. P/26 and from A/7 a wooden club was recovered on his memorandum statement vide Ex. P/20 and the seizure was made by Ex. P/27. According to the Dr.Girdhar Mirdha (PW-9), the injuries could have been caused by such weapons. Though the suggestion was given that the injuries could have been caused by fall on

the ground but the statement of the witnesses remains unrebutted in the cross-examination and for all the purpose the submission which has been made before this Court, we do not find such suggestion in the cross-examination. According to the appellant when A/1 was locked inside the factory of the deceased with the aid of Neelkamal he fled away, however, Neelkamal was not called by the appellants in their defence to prove the plea of elibi.

23. The Supreme Court in the matter of ***Balu Sudam Khalde and another Vs. State of Maharashtra {AIR 2023 Supreme Court 1736: AIROnline 2023 SC 229}*** has discussed the value to be given to the injured witnesses. Wherein at para 26 the Court has laid down the following principles:-

> 26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:
> (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
> (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
> (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
> (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
> (e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or

> embellishment should be discarded from the evidence of injured, but not the whole evidence.
> (f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

24. In such event applying the aforesaid principle the evidence of the injured Manish Kumar Chandrakar (PW-2) do not appear to be of the nature which can be disregarded. The documents Ex. P/34 & P/35 have been filed to show that Manish Kumar Chandrakar (PW-2) got treatment and therefore, it was proved that he was present on the spot. No doubt, therefore, can be attached to the statement of the injured witness on account of any embellishment and the nature of statement in natural conduct or minor contradiction do not give any benefit to accused.

25. Further statement of the relative cannot be discarded for the reason that few of the accused/appellants have not been named simultaneously by the eye witnesses. Bisahu Ram Chandrakar (PW-1) on the other hand has named all the appellants. Manish Kumar Chandrakar (PW-2) and Naresh Kumar Chandrakar (PW-3) have also named all the accused. On the whole the statement of the eye witnesses and the injured cannot be discarded on account of certain discrepancies.

26. In ***Karan Singh Vs. State of U.P., (2022) 6 SCC 52*** the Supreme Court further reiterated that discrepancies or improvements which do not materially affect the case of prosecution and are significant cannot be made the basis for

doubting the case of prosecution. Paras 40 & 41 are relevant and quoted below:

> 40. "In ***Kuriya v. State of Rajasthan, (2012) 10 SCC 433***, this Court held : (SCC pp.447-48, Paras 30-32) :
>
> > "30. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even in law render credential to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in *Kathi Bharat Vajsur v. State of Gujarat, (2012) 5 SCC 724; Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457; Gura Singh v. State of Rajasthan (2001) 2 SCC 205 and Sukhchain Singh v. State of Haryana (2002) 5 SCC 100*.

31. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when exaggeration fundamentally changes the nature of the case, the Court has to consider whether the witness was stating the truth or not. [*Ref. Sunil Kumar v. State (NCT of Delhi)] 2003 11 SCC 367*.

32. These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 persons can hardly be expected to state a minute by minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with the medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to *Ashok Kumar v. State of Haryana 2010 12 SCC 350 and Shivlal v. State of Chhattisgarh 2011 9 SCC 561"*

41. In *Shyamal Ghosh v. State of W.B., 2012 7 SCC 646* this Court held : (SCC pp. 666-67, paras 46 & 49)

"46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused.…

> Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

27. The Supreme Court in ***Daya Kishan v. State of Haryana, (2010) 5 SCC 81*** has held as under:

> 27. There are two essential ingredients of Section 149 viz. (1) commission of an offence by any member of an unlawful assembly, and (2) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Once the court finds that these two ingredients are fulfilled, every person, who at the time of committing that offence was a member of the assembly has to be held guilty of that offence. After such a finding, it would not be open to the court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members did which of the offensive acts. Whenever a court convicts any person of an offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but that in pursuance of such common object the offence was committed. There is no manner of doubt that before recording the conviction under Section 149 IPC, the essential ingredients of Section 149 IPC must be established.

28. Further in ***Vinubhai Ranchhodbhai Patel v. Ravibhai Dudabhai Patel (2018) 7 SCC 743***, the Supreme Court has held as under :

24. To understand the true scope and amplitude of Section 149 IPC it is necessary to examine the scheme of Chapter VIII (Sections 141 to 160) IPC which is titled “Of the offences against the public tranquility”. Sections 141 to 158 deal with offences committed collectively by a group of 5 or more individuals.

25. Section 141 IPC declares an assembly of five or more persons to be an “unlawful assembly” if the common object of such assembly is to achieve any one of the five objects enumerated in the said section. One of the enumerated objects is to commit any offence. “The words falling under Section 141, clause third “or other offence” cannot be restricted to mean only minor offences of trespass or mischief. These words cover all offences falling under any of the provisions of the Penal Code or any other law.” The mere assembly of 5 or more persons with such legally impermissible object itself constitutes the offence of unlawful assembly punishable under Section 143 IPC. It is not necessary that any overt act is required to be committed by such an assembly to be punished under Section 143.

26. If force or violence is used by an unlawful assembly or any member thereof in prosecution of the common objective of such assembly, every member of such assembly is declared under Section 146 to be guilty of the offence of rioting punishable with two years’ imprisonment under Section 147. To constitute the offence of rioting under Section 146, the use of force or violence need not necessarily result in the achievement of the common object. In other words, the employment of force or violence need not result in the commission of a crime or the achievement of any one of the five enumerated common objects under Section 141.

27. Section 148 declares that rioting armed with deadly weapons is a

distinct offence punishable with the longer period of imprisonment (three years). There is a distinction between the offences under Sections 146 and 148. To constitute an offence under Section 146, the members of the "unlawful assembly" need not carry weapons. But to constitute an offence under Section 148, a person must be a member of an unlawful assembly, such assembly is also guilty of the offence of rioting under Section 146 and the person charged with an offence under Section 148 must also be armed with a deadly weapon.

28. Section 149 propounds a vicarious liability in two contingencies by declaring that (i) if a member of an unlawful assembly commits an offence in prosecution of the common object of that assembly, then every member of such unlawful assembly is guilty of the offence committed by the other members of the unlawful assembly, and (ii) even in cases where all the members of the unlawful assembly do not share the same common object to commit a particular offence, if they had the knowledge of the fact that some of the other members of the assembly are likely to commit that particular offence in prosecution of the common object.

29. The scope of Section 149 IPC was enunciated by this Court in Masalti: (AIR p. 211, para 17)

> "17. … 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. It is in that context that the observations made by this

> Court in Baladin assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of he unlawful assembly."

30. It can be seen from the above, Sections 141, 146 and 148 create distinct offences. Section 149 only creates a vicarious liability. However, Sections 146, 148 and 149 contain certain legislative declarations based on the doctrine of vicarious liability. The doctrine is well known in civil law especially in the branch of torts, but is applied very sparingly in criminal law only when there is a clear legislative command. To be liable for punishment under any one of the provisions, the fundamental requirement is the existence of an unlawful assembly as defined under Section 141 made punishable under Section 143 IPC.

31. The concept of an unlawful assembly as can be seen from Section 141 has two elements:

(i) The assembly should consist of

at least five persons; and

(ii) They should have a common object to commit an offence or achieve any one of the objects enumerated therein.

32. For recording a conclusion, that a person is (i) guilty of any one of the offences under Sections 143, 146 or 148 or (ii) vicariously liable under Section 149 for some other offence, it must first be proved that such person is a member of an "unlawful assembly" consisting of not less than five persons irrespective of the fact whether the identity of each one of the 5 persons is proved or not. If that fact is proved, the next step of inquiry is whether the common object of the unlawful assembly is one of the 5 enumerated objects specified under Section 141 IPC.

33. The common object of assembly is normally to be gathered from the circumstances of each case such as the time and place of the gathering of the assembly, the conduct of the gathering as distinguished from the conduct of the individual members are indicative of the common object of the gathering. Assessing the common object of an assembly only on the basis of the overt acts committed by such individual members of the assembly, in our opinion is impermissible. For example, if more than five people gather together and attack another person with deadly weapons eventually resulting in the death of the victim, it is wrong to conclude that one or some of the members of such assembly did not share the common object with those who had inflicted the fatal injuries (as proved by medical evidence); merely on the ground that the injuries inflicted by such members are relatively less serious and non-fatal.

34. For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence

> in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed.
>
> 35. The identification of the common object essentially requires an assessment of the state of mind of the members of the unlawful assembly. Proof of such mental condition is normally established by inferential logic. If a large number of people gather at a public place at the dead of night armed with deadly weapons like axes and firearms and attack another person or group of persons, any member of the attacking group would have to be a moron in intelligence if he did not know murder would be a likely consequence."

29. Applying the aforesaid position of law and the evidence which is available on record, it shows that on dispute when money was demanded by Manish Kumar Chandrakar (PW-2) from A/1 for supply of brick way back of 8 months, A/1 got agitated and scuffle took place. At that time A/1 left his scooty in the factory premises wherein he went and thereafter came out. However, while the injured and deceased were returning home from their factory all the accused persons were standing and waiting armed with the deadly weapons. Therefore, the intention that they wanted to commit offence in furtherance of common object has clearly been established. The nature of evidence led by the eye witnesses and the injured would show that all the

accused contributed to such incident which led to death of one and injury to the others. Nothing has been elicited in the cross-examination to disbelieve the same. Therefore, in our considered opinion the finding of the learned Sessions Judge cannot be faulted as all the accused in connivance of the common object committed the crime. Consequently, the conviction under Section 302/149 IPC cannot be faulted.

30. Now next coming to the question whether the conviction under Section 307 of the IPC can be justified. The learned counsel for all the accused/appellants have submitted that since the injuries which were inflicted to victim Manish Chandrakar were not grievous rather it was simple in nature, therefore, the conviction under Section 307 IPC for attempting murder cannot be justified.

31. It is a settled proposition of law that nature of injuries is not a deciding factor for convicting some one under Section 307 IPC rather the deciding factor is intention of the accused coupled with overt act. The Supreme Court in the matter of ***Sagayam v. State of Karnataka*, (2000) 4 SCC 454** has held thus in para 6 :-

> **6.** To justify conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act foreboding death. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended

> and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation. There are different stages in a crime. First, the intention to commit it; second, the preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt fails, the crime is not complete but the law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission.

32. Therefore, in the present circumstances, it is clear that several persons have attacked the victim with deadly weapons and one victim has even been killed. It has also shown in evidence that when the other villagers were coming, seeing them the accused persons fled away from the spot, so because of some people were reaching to the spot all the accused fled away.

33. It is also pertinent to mention that though single injury has been caused but the same has been caused on the head of the victim injured. It is a settled law that the intention has to be gathered from circumstances and all the circumstances precisely indicates about the intention of the accused and same is coupled with overt act in furtherance of such intention. Therefore, the trial Court has rightly convicted the accused under Section 307/149 of the IPC.

34. The trial Court has also convicted the accused under Section 341 of the IPC for forcefully restraining the motorcycle of Manish Chandrakar and Chintamani Chandrakar.

35. The Supreme Court in the matter of ***Keki Hormusji Gharda v. Mehervan Rustom Irani*, (2009) 6 SCC 475** has held thus in para 12, 13 & 14:-

> **12.** "Wrongful restraint" has been defined under Section 339 IPC in the following words:
>
> > "339. *Wrongful restraint*.—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.
> >
> > *Exception*.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section."
> >
> > The essential ingredients of the aforementioned provision are:
> >
> > (*1*) Accused obstructs voluntarily;
> >
> > (*2*) The victim is prevented from proceeding in any direction;
> >
> > (*3*) Such victim has every right to proceed in that direction.
>
> **13.** Section 341 IPC provides that:
>
> > "341. *Punishment for wrongful restraint*.—Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both."
>
> **14.** The word "voluntary" is significant. It connotes that obstruction should be direct. The obstructions must be a restriction on the normal movement of a person. It should be a physical one. They should have common intention to cause obstruction.

36. Since it is very much clear from the perusal of evidence on

record especially the statement of the injured witness who categorically stated that the accused persons have stopped their motorcycle, the conviction under Section 341 of the IPC cannot be doubted. Thus, the impugned judgment of conviction and order is sentence is well merited, which do not call for any interference of this Court.

37. Accordingly, both the appeals are dismissed.

SD/- SD/-

(Goutam Bhaduri)
Judge

(Rajani Dubey)
Judge

ASHU

Head note

CRA No. 1304 of 2021

&

CRA No. 1239 of 2021

Nature of injury is not deciding factor for conviction under Section 307 of the IPC rather what has to be seen in intention of accused coupled with overt act.

उपहति की प्रकृति भारतीय दंड संहिता के धारा 307 के तहत दोषसिद्धि निर्धारित करने का कारक नही है, उपहित के साथ अभियुक्त के आशय को भी देखा जाना चाहिये।