



2025:CGHC:5480-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1703 of 2019**

1 - Dashrath Bharti S/o Late Shri Sadai Bharti Aged About 65 Years R/o Village - Pathra, Police Station Purani Bhilai , District Durg Chhattisgarh....(In Jail), District : Durg, Chhattisgarh

--- appellant

**versus**

1 - State Of Chhattisgarh Through The Aarakshi Kendra , Purani Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

--- Respondent

**CRA No. 1646 of 2019**

1 - Karan Bharti S/o Shri Dashrath Bharti Aged About 28 Years R/o Village Pathrra, Police Station Purani Bhilai, District Durg, Chhattisgarh., District : Durg, Chhattisgarh

---Appellant

**Versus**

1 - State Of Chhattisgarh Through The Aarakshi Kendra, Purani Bhilai, District Durg, Chhattisgarh. Crime No. 165/2016, Police Station Purani Bhilai, District Durg, Chhattisgarh., District : Durg, Chhattisgarh

--- Respondent(s)

**CRA No. 1648 of 2019**

1 - Komal Bharti S/o Shri Dashrath Bharti Aged About 29 Years R/o Village Pathra, Police Station Purani Bhilai, District Durg, Chhattisgarh., District : Durg, Chhattisgarh

**---appellant**

**Versus**

1 - State Of Chhattisgarh Through The Aarakshi Kendra, Purani Bhilai, District Durg, Chhattisgarh. Crime No. 165/2016, Police Station Aarkshi Kendra, Purani Bhilai, District Durg, Chhattisgarh., District : Durg, Chhattisgarh

**--- Respondent(s)**

**CRA No. 452 of 2020**

1 - Bakhari S/o Shri Sadai Bharti, Aged About 60 Years R/o Village Patharra, Police Station Purani Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

2 - Nahus S/o Bhakhari Bharti, Aged About 36 Years R/o Village Patharra, Police Station Purani Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

3 - Sanjay S/o Bakhari Bharti, Aged About 35 Years R/o Village Patharra, Police Station Purani Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

**---appellant**

**Versus**

1 - State Of Chhattisgarh Through District Magistrate, Durg, District Durg Chhattisgarh, District : Durg, Chhattisgarh

**--- Respondent(s)**

**CRA No. 1729 of 2019**

**1** - Panchu Ram Tandan S/o Kishan Lal Tandan Aged About 36 Years R/o Village Patharra, P.S. Purani Bhiali, District Durg Chhattisgarh., District : Durg, Chhattisgarh

**2** - Amit Kumar Tandan S/o Jagat Pal Tandan Aged About 32 Years R/o Village Patharra, P.S. Purani Bhilai , District Durg Chhattisgarh., District : Durg, Chhattisgarh

**3** - Meghnath Tandan S/o Kishan Lal Tandan Aged About 42 Years R/o Village Patharra, P.S. Purani Bhilai , District Durg Chhattisgarh., District : Durg, Chhattisgarh

**4** - Avinash Tandan S/o Ishwari Prasad Tandan Aged About 23 Years R/o Village Patharra, P.S. Purani Bhilai , District Durg Chhattisgarh., District : Durg, Chhattisgarh

**5** - Manish Tandan S/o Meghnath Tandan Aged About 20 Years R/o Village Patharra, P.S. Purani Bhilai , District Durg Chhattisgarh., District : Durg, Chhattisgarh

**6** - Amol Das @ Amul Das S/o Shyam Lal Tandan Aged About 21 Years R/o Village Patharra, P.S. Purani Bhilai , District Durg Chhattisgarh.....(In Jail), District : Durg, Chhattisgarh

**---Appellants**

**Versus**

**1** - State Of Chhattisgarh Through The Station House Officer Police Station Purani Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

**--- Respondent(s)**

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For appellants : Ms. Swati Verma, Advocate along with Mr. Virendra Verma, Advocate and Ms. Laxmin Todey, Advocate for the respective appellants.

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For Respondent(s) : Mr. S.S. Baghel, Govt. Advocate for the State  
Mr. Jitendra Gupta, Advocate for the objector.

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**Hon'ble Shri Ramesh Sinha, Chief Justice**  
**Hon'ble Shri Ravindra Kumar Agrawal, Judge**  
**Order on Board**

**Per Ravindra Kumar Agrawal, J.**

**30.01.2025**

1. All these appeals are arising out of the same Crime No., same Sessions Trial and common judgment, therefore, all these appeals are being heard and decided together.
2. All these appeals are arising out of the common judgment dated 05.10.2019 passed by learned 6<sup>th</sup> Addl. Sessions Judge, Durg,(C.G.) in Sessions Case No. 175/2016 whereby the accused persons have been convicted for the offence under Sections 148, 302/149 of I.P.C. and sentenced them for R.I. for two years with fine of Rs. 500 and in default of payment of fine, further R.I. for three months and R.I. for life with fine of Rs. 2000/- in default of payment of fine, further R.I. for 1 year respectively to each of the accused persons/ appellants.
3. The brief facts of the case are that on 31.03.2016 at about 8.30 PM, the PW/1 Jagannath Bharti was coming from primary school, Patharra after fetching water along with his friend Akshaya Kumar @ Raju and when they reached to the house of the Jagannath (PW/1), he asked his friend Akshaya Kumar @ Raju to fetch water from the tape and on that issue his friend has made certain comments upon Jagannath which was heard by the wife of the appellant Komal. She under impression that they made filthy comment upon her, she come to the house of Jagannath and Akshaya Kumar @ Raju and started altercation with them. She was being convinced that they have not made any comment upon her. She returned to her house and informed it to her father in law Dashrath Bharti and husband Komal. On that issue, the accused persons came to the house of Jagannath and raised quarrel, as to

why they have made comment upon their daughter in law. At that time, the accused Sanjay, Karan and Nahush have committed Marpeet with Lallu @ Deepak Bharti (PW/6) for which he lodged report in the Police Station against them. When the accused persons came to know that the complainant party has lodged report against them, they formed an unlawful assembly and attacked with Lathi, Danda and Pharsa and attacked the house of the deceased Ganesh Bharti. By the attack all the accused persons, the witnesses (PW/1) Jagannath Bharti, (PW/2) Vishal Bharti, (PW/5) Dhaneshwar Bharti, (PW/4) Tete @ Sangeet and Rahul Bharti and also the deceased Ganesh Bharti started running from their houses to save themselves from the accused persons. Except the deceased Ganesh Bharti, all the witnesses jumped the boundary wall of the school and ran towards field but the deceased Ganesh Bharti could not jump the boundary wall and then the accused persons assaulted him by Lathi, Danda and Pharsa.

After about one hour, when the complainant party came back to their house, they could not find the deceased in the house and when they searched him, they found the deceased Ganesh Bharti who was lying dead in the injured condition behind the toilet of the school and having numerous injuries on his body. He was being immediately taken to Chandulal Chandrakar Hospital, where he was declared brought dead.

PW/1 Jagannath gave merg intimation to the Police on 01.04.2016 at 4.05 am. In the merg intimation, the complainant have named Dashrath Bharti, Komal Bharti, Nahush Bharti, Karan Bharti, Panchu Tandon, Sanjay Bharti, Amul Tandon, Bonago @ Vinay Tandon, Avinash Tandon, Meghnath Tandon, Manish Tandon, Bakhari as the assistants. The inquest of the dead body of the deceased (Ex-P/3) was prepared by the Police in presence of the witnesses. The FIR (Ex-P/4) was registered against the above said accused persons for the offence under Sections 147, 148, 149 and 302 of IPC. Spot map (Ex-P/5) was prepared by the Police and PW/6 was prepared

by the Patwari. Blood stained and plain soil has been seized vide seizure memo (Ex-P/7). The pant, jacket, underwear, baniyan and two shocks of the deceased has been seized vide seizure memo (Ex-P/8). The dead body was sent for its post mortem to Govt. Hospital, Supela, Bhilai where a team of doctors consists of two doctors (PW/14) Dr. A. K. Nagdeo and Dr. P. Akhtar, conducted the post mortem. During the post martem, the doctor has found the following injuries on the body of the decease.

- Lacerated wound present left side of occipital reason extending to parietal reason, 11.0X 3 cm bone deep.
- Lacerated wound on occipital reason just above the bone no. 1 5X3 cm bone deep
- Lacerated wound left side temporal reason extending from tragus of ear oblicly across temporal reason and then extending to occipital reason 8X 2 cm bone deep. Depressed fracture below the wound on temporal reason 7X 3 cm.
- 3 contusions on left side of scapular reason 7 x 3 cm, 5x3 cm, 7X2 cm respectively with lakisha blue skin discolouration.
- Two contusions on right scapular reason 6X 3 cm and 6x 3 cm, with lakisha blue skin
- Two contusions on right side of shoulder 5X2 cm, 4x3 cm blakish in color
- Two contusion on right side of maxillary reason extending up to right eye 5X3 cm each with black skin, Sub conjunctival Hemorrhage in right eye.
- Lacerated wound on left side of forehead extending up to eyebro 5X1.5X ½ cm
- Lacerated wound on left side on lower limb at mid sim 2X1/2X1/2 cm on internal examination sub skull of hematoma on left hemisphere of skull. Fracture of left temporal bone extending to parietal bone, extra hematoma on left tempo parietal reason 10X10 inch, subdual hematoma on left temporal parietal reason extending to occipital reason 14x 10 inch

The doctors has opined that **cause of death is shock due to head injury and it is probably homicidal in nature**. The post mortem report is **Ex-P/41**.

4. The accused persons have been arrested on 01.04.2016, 02.04.2016, 03.04.2016, 29.04.2016, 30.04.2016 respectively. The memorandum statement of the accused persons have been recorded and based on it, various seizures have been made upon them, whose details are given hereinbelow:-

S.No	Name	Memorandum	Seizure
1	Amit Tandon	Ex-P/24	(Ex-P/10) Danda
2	Bakhari Lal Bharati	Ex-P/25	(Ex-P/9) Danda
3	Vinay Tandon	Ex-P/26	(Ex-P/12) Bamboo club
4	Meghnath Tandon	Ex-P/27	(Ex-P/11) Base ball bat
5	Avinash Tandon	Ex-P/28	(Ex-P/15) Bamboo club
6	Panchu Ram Tandon	Ex-P/29	(Ex-P/14) Bamboo club
7	Manish Tandon	Ex-P/30	(Ex-P/13) Bamboo club
8	Amol Das Tandon	Ex-P/31	(Ex-P/21) Bamboo club
9	Komal Singh	Ex-P/32	(Ex-P/20) Bamboo club
10	Sanjay Bharti	Ex-P/33	(Ex-P/19) Bamboo club
11	Dashrath Lal Bharti	Ex-P/34	(Ex-P/17) Bamboo club
12	Tumman Lal Tandon	Ex-P/35	(Ex-P/18) Bamboo club
13	Karan Bharati	Ex-P/36	(Ex-P/16) Bamboo club
14	Nahush Bharati	Ex-P/37	(Ex-P/22) Farsa

5. The seized weapon of offence Pharsa was sent for its query report to the doctor from where the query report (Ex-P/42) was received and according to the query report, the injuries found on the body of the victim could have been caused by said Pharsa and death may occur. For confirmation of the blood, it was referred for chemical examination to FSL. The seized base ball bat was also sent for its query report to doctor from which its query report (Ex-P/43) was received and it was opined that from the said weapon, the injuries found on the body of the deceased could have been caused and death may occur and for confirmation of blood stains, the same was also

sent for its chemical examination. The seized weapon of offence i.e. Pharsa and base ball bat, blood stained and plain soil, cloths of the deceased were sent for its chemical examination to State FSL, Raipur from where report (Ex-P/80) was received and according to the FSL report, blood has been found on all the sent articles except the plain soil. Human blood was found on blood stained soil (Article-A), Baniyan of the deceased (Article-C) and Mobile seized from the spot (Article-D), underwear of the deceased (Article-E), Farsa seized from the appellant Nahush (Article-F) and base ball bat seized from the appellant Meghnath (Article-G). The underwear of the deceased was found to be stained with B-group of blood and the blood group could not be determined on the other articles for the reason that either the blood found on it are disintegrated or their result were inconclusive.

- 6.** The statement under Section 161 of Cr.P.C. of the witnesses have been recorded and after completion of usual investigation, charge-sheet was filed against 14 accused persons before the Judicial Magistrate, First Class, Bhilai-3 for the offence under Section 302, 449, 147, 148, 149 of IPC and Section 25 and 27 of Arms Act. The case was committed to the Court of learned Sessions Judge, Durg from where the same has been transferred to the learned trial Court for its trial.
- 7.** The learned trial Court has framed charges against the appellants/ accused persons for the offence under Sections 147, 148, 149, 449 and 302 read with Section 34 of IPC. The accused persons denied the charge and claimed trial.
- 8.** In order to establish the charge against the appellants the prosecution has examined as many as 16 witnesses statement under Section 313 of Cr.P.C of the appellants were also recorded in which they denied circumstances appears against them, plead innocence and have submitted that they have been falsely implicated in the offence and they are innocent.



- 9.** Four defence witnesses (DW/1) Tukalu Ram, (DW/2) Hemant Deshlahre, (DW/3) Komal and (DW/4) Rajkumar have been examined by the defence.
- 10.** After appreciation of oral as well as documentary evidence produced by the prosecution, the trial Court has acquitted the appellants/ accused persons from the offence under Section 449/149 of IPC, however, the accused persons have been convicted for the offence under sections 148 and 302/149 of IPC and sentenced them as mentioned in opening paragraph of this judgment, Hence, this appeal. It is also observed by the learned trial Court while convicting the accused persons and sentencing them that since the accused persons have been convicted and sentenced for the offence under Section 148 of IPC, they have not been separately convicted for the offence under Section 147 of IPC.
- 11.** Mr. Virendra Verma and Ms. Swati Verma, learned Counsel for the appellants appearing in CRA No. 1729/2019 and CRA No. 452/2020 would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omission and contradictions in the evidence of prosecution witnesses. There is no eye witness to the incident that these accused persons have assaulted the deceased or participated in any part of the incident. The incident was occurred at about 11 pm in the night. It was the dense dark and no one can identify in the situation and only because of the reason that the present appellants are relatives of the other accused persons, their name has also been included as the accused persons. Except their name in the FIR, no any specific role described by the witnesses that they have also committed the offence. He would further submit that the participation of the present appellants in unlawful assembly or even any unlawful assembly there is under shadow of doubt as the persons of the vicinity were regularly visited here and there. He would further submit that the incident was started on a trivial issue that too under misconception that

the daughter in law of the accused persons were commented by the complainant party and there was no pre meditation. In absence of any specific role of the present appellants merely their presence in the group of persons, they cannot be hold liable in the offence of murder with the add of Section 149 of IPC. Though, Bamboo clubs are said to have been seized from them, but the same was not sent for FSL report for confirmation of any blood stain on it to connect it with the offence in question. Therefore, there is lack of cogent and clinching evidence against the appellants and they are entitled for acquittal.

- 12.** Ms. Laxmin Tondey, learned counsel appearing for the appellants in CRA No. 1703/2019, 1646/2019, 1648/2019 would submit that except the memorandum statement and seizure of bamboo clubs, no other clinching evidence available against the appellants in the case. There is no FSL report that any blood stain have been found on the bamboo club seized from the appellants. Except the base ball bat, no other bamboo clubs have been sent for its FSL examination and thus, the prosecution itself considers that the said bamboo clubs were not the weapon of offence. Though, the names of the appellants had come in the FIR, but that itself not sufficient to hold guilty of the appellants for the alleged commission of offence without there being any description of their role in the unlawful assembly with the common object to commit murder of the deceased. She would further submit that, as per the allegation, the accused persons have not targeted any particular person to commit his murder and only to asked the deceased party as to why they have lodged the report against the complainant party, the family members had gone to the house of the deceased, in between that, there may some sort of altercation or scuffling but it could not be the murderous assault made by the accused persons to the deceased. There is no eye witness to the incident that the present appellants have also assaulted the deceased by any dangerous weapon or by the Danda. She would also

submit that there was no source of sufficient light to identify the accused persons as to who assaulted whom and by which weapon. Therefore, in absence of any sufficient evidence, the accused persons cannot be convicted for the capital offence and they are also entitled for their acquittal.

- 13.** Per contra, Mr. S.S. Baghel, learned Govt. Advocate for the State, as well as Mr. Jitendra Gupta, learned counsel for the objector vehemently opposes the submission made by learned counsel for the respective appellants and has submitted that but for minor omission and contradictions, the evidence of prosecution witnesses are fully reliable. All the accused persons have participated in unlawful assembly with the common object to commit murder of the deceased as well as the other relatives and attacked on the house of the deceased armed with deadly weapon like Farsa, base ball bat and danda in their hands. When the deceased as well as other witnesses saw them, they started running from their house to save their lives and except the deceased Ganesh, all other persons have jumped the boundary wall of the school by which they could save themselves from the accused persons but unfortunately, the deceased could not jump the wall and he came under the target of the accused persons who was brutally assaulted by them. The witnesses have duly identified the accused persons when they came to the house of the deceased and during the altercation there. In the FIR, the accused persons have been named and there is no necessity to describe their specific role as to who assaulted on which part of the body of the deceased, but it is sufficient that they were present in unlawful assembly armed with weapon and attacked on the house of the deceased and chased the deceased as well as other persons of his family and ultimately, the deceased was being assaulted by them and ran away from there. They would further submit that it is not that the other accused persons were simply standing there, but they participated on their common object by attacking the house of the deceased armed with Danda, Farsa and base ball

bat. That too at the time of 11 pm in the night, which clearly shows their common object to commit the murder of deceased as well as his other family members. The number and nature of injuries have been found on the body of the deceased, the FSL report by which presence of blood has been proved on the farsa and base ball bat have further supported the allegation against the accused persons. The eye witness to the incident (PW/1) Jagannath Bharti, (PW/2) Vishal Bharti, (PW/5) Dhaneshwar Bharti, (PW/4) Tete @ Sangeet have duly supported the prosecution's case and proved the involvement of the accused persons in the offence in question. It is not the case that the incident was occurred on heat of passion or without any pre meditation rather it is a case where the accused persons under their plan to commit murder, armed with weapon and attacked the house of the deceased. Therefore, there is overwhelming evidence available against the accused persons in the case which makes them liable to convict under the alleged offence which the learned trial Court has rightly appreciated and convicted and sentenced them. The appeal filed by the appellants have no merits and are liable to be dismissed.

- 14.** We have heard the learned counsel for the parties and perused the evidence available on record with utmost circumspection.
- 15.** So far as the homicidal death of the deceased is concerned, the witnesses to the inquest (PW/1) Jagannath, (PW/2) Vishal, (PW/3) Santulal, (PW/4) Sangeet @ Tete, (PW/5) Dhaneswar and stated in their evidence that the inquest (Ex-P/3) was prepared in their presence. They saw the dead body of the deceased and injuries on it. They have further stated that after about one hour of the incident when they came back to their house, they could not found the deceased there and started searching him and on being his search, his dead body was found near toilet of the school. He was lying there in injured condition and pooled with blood. (PW/1) has given the merg intimation to the Police about the death of the deceased Ganesh Bharti.

16. The Homicidal death of the deceased has been further proved by Dr. A. K. Nagdeo (PW/14) who conducted the post mortem of the dead body of the deceased. He stated in his evidence that he along with Dr. P. Akhtar have conducted the post mortem of the dead body of the deceased on 01.04.2016. While conducting the most portem, they found numerous injuries on his body which is described in earlier part of this judgment and gave their post mortem report in Ex-P/41A in which they opined that the cause of death is shock due to head injury it is probably homicidal in nature. They also examined the weapon of offence i.e. farsa and base ball bat and gave their query report (Ex-P/42, Ex-P/43 and Ex-P/44) by which they opined that the injuries found on the body of the deceased could have been caused by the said weapon of offence and death may occurred. From the cross-examination of PW/14, Dr. A.K. Nagdeo, the defence could not extracted any material which makes the evidence of this witness doubtful. Though, he admitted in his evidence that the danda has not been sent to him for its query report. Further this witness has been cross-examined about the timing of the death of the deceased before the post mortem examination, but he explained every question asked by the defence in his cross-examination about the timing of the death of the deceased as well as the condition of the dead body. In his further cross-examination, he further stuck in saying that the death of the deceased is homicidal in nature. Although, he has written that probably it is homicidal in nature. The head injuries of the deceased was grievous in nature and other injuries on the body was the minor injuries. The learned trial Court after appreciating the evidence of the doctor as well as the witnesses to the inquest and further considering the other surrounding circumstances come into conclusion that the death of the deceased was homicidal in nature which is neither perverse nor contrary to the record and we are also in the agreement with the finding recorded by the learned trial Court that the deceased died due to homicidal death.

17. So far as, the involvement of the appellants in the offence in question are concerned and whether they formed the unlawful assembly to commit murder of the deceased having armed with deadly weapon, we again examined the evidence available on the record.
18. The case of the prosecution is based on the eye witness account which are the (PW-1) Jagannath, (PW-2) Vishal, (PW/4) Sangeet @ Tete, (PW/5) Dhaneshwar Bharti, (PW/8) Ashique Joshi and (PW/6) Santram.
19. (PW/1) Jagannath Bharti, who is the first informant also has stated in his evidence that he is well acquainted with all the accused persons as they are the resident of same village. The deceased Ganesh Bharti was his maternal uncle. On 31.03.2016 at about 8-8.30 pm when he was fetching water near bore well of govt. school, he asked his friend Akshay to tape the water from bore for his bath, then his friend made comment on him. The wife of Komal namely Nisha was standing in front of her house and after hearing the chatting between Jagannath and Akshaya, she came under impression that these two persons are making vulgur comment on her. Thereafter, Nisha came to his house having danda in her hand and started quarreling with them. They convinced her that they were not talking about her, thereafter she returned back to her house. After some time Nisha along with her father in law Dashrath, Komal, Nahush, Sanjay, Bhakhari, Tumman, Amul, Manish, Avinash, Meghnath, Amit and Panchu came to his house with hurling abuse and started quarreling with them as to why they made comment upon their daughter in law. At that time, Karan, Nahush and Sanjay committed Marpeet with Lallu @ Deepak. The said incident of marpeet with Lallu was reported to the Police by them. After some time all the accused persons again came to their house armed with danda and farsa and base ball bat by saying that they have lodged report against them. After seeing them in furious state, they started running from their house to save themselves from them. They were ahead of their maternal uncle because of the reason that he could not

run so fast. The accused persons get him surrounded and started assaulting him which were seen by them and thereafter, they fled away after jumping across the boundary wall. After about 1 hour, when they returned back to the house, they could not find their maternal uncle in the house and they again went to the place where the accused persons were assaulting the deceased. They found the deceased lying there and pooled with blood in injured condition. He along with Daneshwar, Sangeet @ Tete, Vishal, Santram and Bhagat took him to Chandulal Chandrakar Hospital where the doctor has declared him dead. He lodged the merged intimation (Ex-P/1) and thereafter, Police proceedings were started. In cross-examination, he admitted that at about 8-8.30 pm, the first incident occurred and thereafter, they were pacified and went to their respective houses. The incident of earlier marriage with Lallu was reported by him to the Police. He further stated that after lodging of the report by Lallu, he has not met him and he did not know as to where he has gone. He further admitted that prior to the incident, he was having cordial relations with the accused persons. He denied that the source of light was not there near his house. Even from the elaborate cross-examination of this witness, the defence could not bring any material which makes the evidence of this witness doubtful. He explained each and every detail of the incident which has been asked by the defence and remained firm in saying that he is one of the victims of the offence and witnessed the incident. Though, minor discrepancies have come in his cross-examination but they are very trivial in nature and do not affect the merits of the case. This witness is found reliable for consideration of the allegation against the accused persons.

- 20.** The other eye witness Vishal Bharti has stated in his evidence that on the date of the incident, there was a quarrel between Nisha and his family members on the issue that Nisha apprehends that Jagannath and Akshaya have made comments upon her and after convincing her, she went back to her house.

She informed about the incident to her family members and thereafter, all the accused persons, armed with Lathi and hurling abuses, came to their house and at that time, the accused Karana, Nahus have committed marpeet with Lallu, which has been reported by Lallu to the Police Station. When Lallu returned back from the Police Station to the village, and lodging of the report by Lallu against the accused persons came into their knowledge, they attacked their houses, armed with Danda, Farsa and Base ball bat. At that time, they were standing out side of their house and waiting for Lallu and as and when, the accused persons attack their house, they started running from there to save themselves. Ganesh Bharti was not able to run so fast and the accused persons caught him and started assaulting him. They had seen the assault made upon Ganesh Bharti by the accused persons and after running a considerable distance, they hide themselves for about one hour in the filed. After about one hour, they have returned back to their house and they have not found Ganesh Bharti there and started searching him. When they again went to the place where Ganesh was assaulted by the accused persons, they saw his dead body was lying there, pooled with blood. He along with Jagannath, Dhaneshwar, Tete and Santram took the deceased Ganesh Bharti to the Police Station from where they were sent to the Chandulal Hospital where the Ganesh Bharti was declared dead. They lodged the report and Police proceeding were started. In his cross-examination, he has also described the each and every detail of incident, identification of the accused persons and their involvement in unlawful assembly, armed with danda, base ball bat and farsa. Though, he has admitted that at the initial point of quarrel between Jagannath, Akshay and Nisha, the other accused persons were not present, at the time of assault upon Lallu by Sanjay, Karan and Nahus, the other accused persons have not assaulted Lallu but in the third incident which were occurred on 11 pm, the presence of the present accused persons have been proved by this



witness. Even if on the first and second incident, the present appellants were not present or they have not assaulted any other witnesses in the second incident, the presence of some accused persons were there though they have not assaulted Lallu but in the third incident all of them have actively participated in the incident, having armed with danda, farsa and base ball bat. Even on an elaborate and detail cross-examination from this witness, he remained firm in saying that all the accused persons were participating unlawful assembly with danda, farsa and attacked on the house of the deceased and assaulted him by the said weapons by which he died and he along with other witnesses ran away from the place to save their lives. But they have seen the incident of marpeet by the accused persons.

- 21.** PW/4 Sangeet @ Tete, who is another eye witness has stated in his evidence that on 31/03/2016 at about 11 pm, there was a dispute between Jagannath and one of Komal namely Ranu and she apprehended that Jagannath was making comment upon her. She informed her father in law about the comment made by Jagannath, thereafter, accused Dashrath, Sanjay, Karan came to the house of the deceased and raised quarrel and in between that, they assaulted Lallu. He had gone to the Police Station, Bhilai-3 for lodging of the report with respect to assault made upon him. When he came back to the village after lodging of the report, the accused persons Karan, Komal, Sanjay Bakhari, Tumman, Meghnath, Panchu, Manish, Amit Avinash, Nahush, Dashrath and Amul came to the house of the deceased armed with danda, lathi and farsa and started quarreling him. When they came to the house of the Ganesh, he along with Ganesh, Vishal, Jagannath, Dhaneshwar, Ashish and Rahul started running from the house of Ganesh towards school. They were ahead from Ganesh and Ganesh came in target of accused persons and they started assaulting him which has been witnessed by him. When the accused persons chased them to assault, they ran towards field and hide themselves. After about 1 hour, when they came

back to their house, they did not find Ganesh in the house and when they went to the place where Ganesh was being assaulted by the accused persons, they saw that Ganesh was lying dead there, pooled with blood having injuries on his head. Thereafter, he along with Vikky, Santram and Jagannath took him to Chandulal Chandrakar Hospital where he was declared dead, thereafter, the Police proceeding was started. The Police has seized the base ball bat, bamboo clubs and farsa, cloths of the deceased etc. and he witnessed in all the seizures (Ex-P/7 to P/22). He is also the witness of inquest (Ex-P/23). When leading question was asked from this witness, he proved that the bamboo clubs have been seized from the respective appellants in his presence. Base ball bat has been seized from the appellant Meghnath and farsa has been seized from the appellant Nahush. He was also being elaborately cross-examined by the defence in each and every aspect of the case but he also stuck in the truthfulness of the incident of assault made by the accused persons upon the deceased Ganesh and they witnessed the incident. He also remained firm in seizures of danda, base ball bat and farsa from the respective appellants.

But for minor omission and contradictions, this witness has remained firm in the material part of the incident. Nothing in his cross-examination to disbelieve his evidence that he either not seen the incident or interested with the complainant party in implicating the accused persons. He also has given the minute details of the incident which has been asked by the defence in his cross-examination. The presence of this witness can be relied upon against the appellants for their conviction. The other witnesses to the incident is PW/5 Dhaneshwar , who too has been stated the details of the incident and involvement of the accused persons in the offence in question. He too have stated the manner in which the accused persons have attacked upon the deceased and the witnesses. He also stated in his evidence that the initial incident was occurred in between Jagannath, Akshaya and wife of

Komal, she went under impression that the witnesses have made comment upon her which she made complaint to her father in law and then the accused persons came to the house of the deceased and raised quarrel. When they convinced her and then she went back to her house. At that time, Sanjay, Karan and Nahush assaulting Deepak which has been reported by him to the Police Station. When the accused persons came to know that Deepak has lodged complaint against them, they formed unlawful assembly armed with danda, Base ball bat and farsa and attacked upon the house of the deceased where the witnesses were present. After seeing their furious state and attack upon the house of the deceased, they started running from there to save themselves from the accused persons. He further stated that the accused persons namely Dashrath, Komal, Karan, Bakhari, Nahush, Sanjay, Avinash, Amit, Vinay, Panchu, Meghnath, Manish, Tumman and Amol armed with danda and farsa and attacked their house, then he along with Rahul, Tete @ Sangeet, Vishal, Jagannath, Battu @ Ashu and Ganesh started running from the house. They were just ahead from Ganesh and they started assaulting Ganesh which were witnessed by them and to save their own lives, they jumped across the boundary wall and get themselves hide in the field. They hide themselves for about one hour and thereafter, returned back to their house. When they could not found Ganesh, they started searching him. When they had gone to the place where, he was being assaulted by the accused persons, they saw his dead body pooled with blood. They took him to the Police Station- Bhilai 3 from where he was being sent to Chandulal Chandrakar Hospital, where he was declared dead. In the cross-examination, he too has remained firm and describe the every details of the incident and denied their defence as the accused persons were not involved in the present incident or they have not participated in the assault made upon the deceased Ganesh Bharti. This witness has also been detailed cross-examined by the defence and he too has stuck in his

evidence by saying that the accused persons have assaulted the deceased and he witnessed the incident. Though, certain minor discrepancies were asked by the defence in his cross-examination but considering the manner of assault and involvement of the number of accused persons in the offence in question and also their previous and subsequent conduct, the discrepancies are very trivial in nature which does not affect the credibility of this witness as well as the merits of the case. The evidence of this witness can also be considered as the eye witness to the incident.

- 22.** PW/6 Deepak Bharti @ Lallu is the person with whom the first incident of marpeet was occurred. He stated in his evidence that he knew the accused persons on the date of incident, his younger brother Akshaya and his friend Jagannath had gone to fetch water to the bore well of the school and when they coming back, he also had gone there to call his brother Akshaya. At that time, Karan, Nahush and Sanjay have committed marpeet with danda which was reported by him to the police Station. He was being medically examined by the doctor and when after lodging the report, when he was returning back to his village, on the way near Nawa Talab of Village- Patharra, Nahush, Karan, Sanjay, Komal, Bakhari, Dashrath and other persons were challenging the persons, abusing them by saying that whoever met them, they will kill them. This witness along with his companion hide themselves from them and came back to his house. In the next morning, he came to know that Ganesh was being murdered by the accused persons. In cross-examination, he admitted that the appellants were not named any particular person to whom they were intended to kill. He further admitted that he came to know about the incident of murder of the deceased Ganesh from the villagers but he denied that since, the accused persons have assaulted him, he is giving false evidence against them. He further admitted that he lodged report against Karan, Nahush and Sanjay. In his cross-examination he remained firm in the quarrel took place with him by the appellants on the

issue of fetching water. He also proved the report lodged by him which is Ex-P/23 with respect to the assault made upon him by Karan, Nahush and Sanjay. From the evidence of this witness, it is further corroborated that the accused persons were intended to kill the person who met him and they were in furious state of mind in unlawful assembly.

- 23.** PW/7, Rajendra Jangde is the person who accompanied the witness Deepak @ Lallu when he had gone to lodge the report to Police Station with respect to assault made by the accused Karan, Sanjay and Nahush. He too have stated that when they have returned back to their village near Nawa Talab, they saw the accused persons Komal, Karan, Dashrath, Meghnath, Vinay, Amol, Panchu, Nahush, Sanjay and Avinash in hiding themselves in the field. Nahush has made lathi blow upon him by which he fell down from the Motor cycle and received head injury. They separately flew from the place on different directions. On the next day, he came to know that Ganesh was being murdered by the accused persons. This witness has proved the memorandum statement of the appellants (Ex-P/24) to (Ex-P/37). When the leading question was being asked from this witness, he proved the recording of memorandum statement of the accused persons. In cross-examination, he admitted that since the accused persons are belonging to the same village, therefore, he knew them by their names and faces. He admitted that on the date of incident, there were 3 different incidents and investigation of all the three cases were going on together. This witness has mainly cross-examined by the defence on the point of relationship between the parties and previous dispute between them but he denied that he has given false evidence against the accused persons. He admitted that after seizure of the weapon of offence from the accused persons, the seizure memo was prepared and his signature was also obtained in it. He is the witness of the incident of assault made upon Deepak. He stated that Manish and Panchu were not assaulted the injured Deepak. He too have received injuries and

has admitted in Mekahara Hospital, Raipur for about three days and he could discharge only on 02.04.2016. He has proved the memorandum and seizure of the weapon of offence from the accused persons.

- 24.** PW/8 Ashiq Joshi who is another eye witness to the incident has stated in his evidence that he knew the accused persons. At the time of incident, he along with Rajendra were standing near Neem tree. At that time, some altercation took place between Jagannath and Akshaya and wife of Komal namely Nisha. Nisha apprehends that Jagannath and Akshaya are abusing her and at that time, Nahush, Karan and Sanjay came there, armed with danda and assaulted Lallu @ Deepak which was reported by him to the P.S. Bhilai-3. When they were returning from the police station and reached near Nawa Talab, they were being assaulted by Nahush, Karan, Komal, Meghnath, Amit, Sanjay, Manish, Amol, Panchu, Dashrath, Bakhari and Avinash by danda and they assaulted the injured Rajendra. By the assault made by the accused persons, Rajendra fell down from the motor cycle and received head injury. He ran away towards field to save himself and had gone to the house of Ganesh and informed the incident to him. At the same moment, all the accused persons came there armed with rod, farsa, base ball bat and danda and chased them, then he along with Ganesh, Vicky, Jagannath, Dhaneshwar, Rahul, Tete @ Sangeet fled away from the place. They could have entered in the school premises, however, Ganesh remained on there back side, he was being detained by the accused persons and then he was being assaulted by them. He saw the incident, that the accused persons were assaulting the deceased Ganesh and they along with other victims jumped across the boundary wall of the school and ran towards field. After about 1 hour, when they came back to their houses, they did not found Ganesh there and when they were in searching of Ganesh, his dead body was found near the school pooled with blood. Daneshwar and Vicky taken him to Chandulal Chandrakar Hospital and in the next morning,

he came to know that Ganesh has died. In cross-examination, he stated that at the time of incident, all of them have run together, he did not see as to who was ahead and who was on back while they were running from the place. The height of the boundary wall of the school is about 6-8 feet. He admitted that Ganesh could not jump the boundary wall of the school. He admitted that the incident with Ganesh was before crossing the boundary wall. He voluntarily stated that the incident was occurred in the school ground. He admitted that he stated in chief examination that the accused persons have assaulted the deceased as to who are other persons assaulted the deceased and except the present accused persons, no other person have assaulted the deceased. They hide themselves in the filed for about one hour. He disclosed to the Police about the weapons which the accused persons were carrying. He further admitted that when they were returned back to their houses, they firstly asked for Ganesh as to where he is. He strongly denied that he could not see the incident. The defence has also cross-examined him on the point of his previous conduct and antecedents and also the antecedents of the other persons. He admitted that when the Lallu was being assaulted by the accused persons, they have lodged report against this witness that he has assaulted the injured Lallu. They were not having any animosity with Tumman, Amol or Ganesh. The incident of Nawa Tawal was occurred at about 9-10 pm whereas the present incident was occurred at about 11-12 pm. But for minor omission or contradictions which are trivial in nature, this witness has also remained firm about the incident of assault made upon the deceased Ganesh by the accused persons and he also disclosed the entire manner in which the incident occurred and the deceased Ganesh was being assaulted by the accused persons.

- 25.** PW/9 Bhagat Banjare who is the brother in law of the deceased Ganesh, stated in his evidence that on the date of incident at about 6-7 pm, some

altercation took place between Jagannath, Akshaya and Nisha. On that issue, the brother in law of Nisha namely Karan, Nahush have assaulted Lallu by danda which was reported by him to the Police Station. When he was sleeping in the house of Vishal, at about 1 am in the night, Vishal and others woke him up and asked about Vishal and when he shown his ignorance, they disclosed that Ganesh was being assaulted by the accused persons and they could save themselves from them but Ganesh could not flee from the place. Thereafter, when they were in search of Ganesh, his dead body was found near the school, pooled with blood. Though, this witness has also been detailed cross-examined but he is not the eye witness of the incident and he was being informed by the other persons about the incident.

- 26.** PW/10 Kailash Kumar Sahu is the Patwari, who prepared the spot map (Ex-P/6), has stated in his cross-examination that he did not measure the height of the boundary wall of the school but it may be about 10-11 fit. Certain discrepancies have been asked from this witness with respect to the location of boundary wall, bore well and school drawn in the map, but it could not be benefited to the accused persons and this witness has proved the spot map (Ex-P/6).
- 27.** PW/11 Manjeet Paswan who is the constable, has taken the seized articles to the State FSL, Raipur and obtained acknowledgment from there. He proved that he has taken the articles in the sealed condition to the State FSL Raipur, deposited it in the State FSL Raipur without there being any tempering with the articles and after obtaining it acknowledgment given to the concerned Police Authority.
- 28.** PW/15 Kaushal Kishore Vashnik, who is the investigating officer has duly proved the process of investigation and the manner in which he conducted the investigation, he too have elaborately cross-examined by the defence and but for minor omission and contradictions, nothing could be found in his



cross-examination which makes the entire process of investigation doubtful or evidence of eye witness and other witnesses can be doubted.

- 29.** PW/16 Santram Madhukar is the another eye witness, stated in his evidence that on 31.03.2016 at about 7 pm, Jagannath and Akshaya were coming from school side after fetching water. The wife of Komal apprehend that Jagannath and Akshaya were abusing her then she called her father in law and brother in law namely Karan, Nahush and Sanjay. On that issue, some altercation took place between them and Karan, Sanjay and Nahush have assaulted Lallu and Lallu has lodged report at P.S. Bhilai-3 and he too has accompanied with him to police station. When the accused persons came into knowledge that Lallu had gone to Police Station for lodging the report, they formed an unlawful assembly, armed with danda, rod, farsa and had gone to Nawa Talab Patharra. When Lallu, Rajendra, Battu and Chhotu coming back after lodging of the report at about 11 pm, near Nawa Talab, Rajendra and Chhotu were being assaulted by the accused persons. Battu fled away from the place after seeing assault and had gone to the house of Ganesh Bharti. Battu has also informed him that the accused persons were assaulting Rajendra and Chhotu. At that time, Dashrath, Komal, Nahush, Bakhari, Sanjay, Amit, Avinash, Bogo, Amol came there, armed with danda and farsa and attacked the house of the deceased Ganesh. To save themselves, he along with Vicky, Jagannath, Gappu, Tete, Rahul, Battu started running from the place towards school side. While they were running, Ganesh was left behind them. The accused persons caught hold the deceased Ganesh and assaulted by danda, farsa and base ball bat. After seeing his assault, he jumped and others have also jumped across and went towards filed. After about 1 hour, when they came back to the house of Ganesh, they did not found him there and started searching. They found the deceased Ganesh near school, pooled with blood. They took him to the Chandulal Chandrakar Hospital where he was declared brought dead. In his

cross-examination, he admitted that when the first incident between Akshaya and wife of Komal was occurred near bore well, he was not there but he denied that the quarrel between Akshaya and wife of Komal is not connected with the murder of Ganesh. He stated that he did not know the one or two accused persons by their names. He denied the suggestions given by the defence that he has not stated in his Police statement that who are the accused persons, who have assaulted the deceased Ganesh by which weapon he also denied that he did not disclose the fact in his Police statement. He further stated that after 2-4 days of the incident, the police has recorded the statement. He further stated that he disclosed the manner of incident his police statement and if it is not there in his police statement (Ex-D/6), he could not tell the reason. From perusal of the Ex-D/6, it appears that he disclosed about the incident in the manner in which it has been occurred.

The defence had tried to contradict with his police statement (Ex-D/6) that he has not disclosed the incident in the police statement but as stated earlier the substantive description of the incident have been given by this witness in his police statement (Ex-D/6). He has been substantively given the details of the incident in it. His police statement (Ex-D/6) was recorded on 04.04.2016 and his deposition before the Court is recorded on 20.03.2019, hence being such time gap, it would be quite possible that one cannot give the exact version in his deposition with that of his 161 Cr.P.C. statement. He also remained firm in the material piece of evidence that he is the eye witness to the incident of assault made upon the deceased Ganesh by the accused persons.

- 30.** The defence has also examined 4 defence witnesses (DW/1) Tkalu Ram Deshlahre who is the witness to the effect that the accused Panchu was not present in the village and had gone to Village Gadhamod in engagement function of the son of his brother in law. He has made oral evidence that the

accused Panchu had gone to his house. But no any cogent evidence have been produced by him like photographs or any other audio, video clipping so that the presence of accused Panchu at Village Gadhamod, Ghorari, Dist- Mahasamund is proved. The distance between Supkona and Gadhamod is about 50-60 km and the evidence of this witness is not sufficient to prove the plea of alibi that the accused Panchu was not present in the village at the relevant point of time.

- 31.** DW/2 is also the witness to the effect that the accused Manish was in his house on 31.03.2016 from the morning up till the night. In his cross-examination, he too have not filed any document that accused Manish is working in his shop. He has not obtained any call detail report of the mobile phone of the Manish. This witness is the relative of the accused Manish and thus, it is not sufficient to prove his plea of alibi, likewise (DW/3) Komal, who is the brother of deceased Ganesh Bharti who is the witnessed that the accused Karan was with him and they had gone to Nagarnar in his truck. He further stated that he left Bhilai on 26.03.2016 and left the Village- Nagarnar on 04.04.2016. He too have not filed any document with respect to any Bilti or any receipt that he unloaded the goods at Nagarnar which he could prove in support of his evidence. Therefore, his evidence is also superficial in nature which cannot give any benefit to him.
- 32.** DW/4, Rajkumar has stated that on the date of incident, he was in his house and he came to know about the incident in the next morning. He did not know any noise of any quarrel. He is the neighbour of the deceased Ganesh. He admitted in his cross-examination that if any incident is occurred near school, the noise of any incident could not come to his house. From the defence witnesses, no benefit can be extended to the accused persons against the firm eye witnesses who duly proved the involvement of the accused persons in the offence in question.

**33.** In the matter of **Manjunath and Ors. Vs. State of Karnataka reported in 2023 SCC Online SC 1421**, the Hon'ble Supreme Court speaks about the quality of eye witness and defined the sterling quality/ sterling witness. In Para 22 and 23, the Hon'ble Supreme Court has held that :-

"22. For an eye-witness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value. The principle has been discussed in **Rai Sandeep @ Deepu alias Deepu v. State (NCT of Delhi)** 35 as follows-

"22. In our considered opinion, the "sterling witness should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end. namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of

the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(emphasis supplied)

This was quoted with profit by this Court in *Ganesan v State*. Recently, this principle was further reiterated in *Naresh @ Nehru v State of Haryana*.

23. As the above discussion would show vis-à-vis the delineation on the qualities of a sterling witness, none of the witnesses of the prosecution would qualify per this standard. Numerous contradictions and inconsistencies have borne from record, rendering such witnesses to be unreliable and undependable so as to place reliance on the same to hold the accused persons guilty of having committed an offence."

- 34.** The Hon'ble Supreme Court in the matter of **Lakshman Singh Vs.. State of Bihar, reported in 2021 (9) SCC 199**, has observed in Para 12 to 17 of its judgment that:-

"12. Now so far as the conviction of the accused under Section 147 IPC is concerned, the presence of all the accused persons at the time of incident and their active participation has been established and proved by the prosecution by examining the aforesaid witnesses who are the independent witnesses and injured witnesses also. The accused persons belong to another village. They formed an unlawful assembly in prosecution of common object, i.e., "to snatch the voters list and to cast bogus voting". It has been established and proved that they used the force and, in the incident, PW5, PWB, PW10 & PW12 sustained injuries. All the accused persons-appellants were having lathis. Section 147 IPC is a punishable section for "rioting".

13. The offence of "rioting" is defined in Section 146 IPC. which reads as under:

**"146. Rioting** - Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."

14. On a fair reading of the definition of "rioting" as per Section 146 IPC, for the offence of "rioting", there has to be,

(i) an unlawful assembly of 5 or more persons as defined in Section 141 IPC, i.e., an assembly of 5 or more persons and such assembly was unlawful;

(ii) the unlawful assembly must use force or violence. Force is defined in Section 349 IPC; and

(iii) the force or violence used by an unlawful assembly or by any member thereof must be in prosecution of the common object of such assembly in which case every member of such assembly is guilty of the offence of rioting.

15. "Force" is defined under Section 349 IPC. As per Section 349 IPC, "force" means "A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other....."

16. As observed hereinabove, all the accused persons were the members of the unlawful assembly and the common intention was "to snatch the voters slips and to cast bogus voting". They used force and violence also, as observed hereinabove. It is the case on behalf of the accused that there is no specific role attributed to them for the offence of rioting under Section 147 IPC. However, as observed hereinabove and as held by this Court in the case of Abdul Sayeed (supra), where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him. In the present case, the incident too concluded within few minutes and therefore it is natural that exact version of incident revealing every minute detail, i.e., meticulous exactitude of individual acts cannot be given by eyewitnesses. Even otherwise, as held by this Court in the case of Mahadev Sharma (supra), every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. In paragraph 7, it is observed and held as under:

7. Section 146 then defines the offence of rioting. This offence is said to be committed when the unlawful assembly or any member thereof in prosecution of the common object of such assembly uses force or violence. It may be noticed here that every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. There is thus vicarious responsibility when force or violence is used in prosecution of the common object of the unlawful assembly."

17. Thus, once the unlawful assembly is established in prosecution of the common object, i.e., in the present case, "to snatch the voters list and to cast bogus voting", each member of the unlawful assembly is guilty of the

offence of rioting. The use of the force, even though it be the slightest possible character by any one member of the assembly. once established as unlawful constitutes rioting. It is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly. As rightly submitted by the learned counsel appearing on behalf of the State, some may encourage by words, others by signs while others may actually cause hurt and yet all the members of the unlawful assembly would be equally guilty of rioting. In the present case, all the accused herein are found to be the members of the unlawful assembly in prosecution of the common object, i.e., "to snatch the voters list and to cast bogus voting" and PW5, PW8, PW10 & PW12 sustained injuries caused by members of the unlawful assembly, the appellants accused are rightly convicted under Section 147 IPC for the offence of rioting.

- 35.** The Hon'ble Supreme Court has also observed the scope of Section 149 of I.P.C. in the matter of **State of M.P. Vs. Kallu, 2020 (16) SCC 375 in Para 8 and 9**, the Hon'ble Supreme Court has held as under:-

"8. Since the instant case depends upon the extent and application of the principle of vicarious liability under Section 149 of the IPC, at the outset, we may consider the leading case of *Masalti vs. State of U.P.* The submission of the appellants therein was that mere presence in an assembly would not make a person member of an unlawful assembly unless it was shown that he had done something or omitted to do something which would make him a member of unlawful assembly. Reliance was placed by said appellants on the earlier judgment of this Court in *Baladin vs. State of Uttar Pradesh*. The issue was dealt with as under-

"17..... The observation of which Mr. Sawhney relies, prima facie, does seem to support his contention, but, with respect, we ought to add that the said observation cannot be read as laying down a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of such an unlawful assembly. In appreciating the effect of the relevant observation on which Mr. Sawhney has built his argument, we must bear in mind the facts which were found in that case. It appears that in the case of *Baladin*<sup>2</sup>, the members of the family of the appellants and other residents of the village had assembled together, some of them shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that

kind would not necessarily show that he was a member of an unlawful assembly. 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, I.P.C. 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. It is in that context that the observations made by this Court in the case of 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 the unlawful assembly. Therefore, we are satisfied that the observations made in the case of Baladin must be read in the context of the special facts of that case and cannot be treated as laying down an unqualified proposition of law such as Mr. Sawhney suggests."

9. After considering the cases on the point including Masalti, the order of acquittal passed by the High Court was set aside by this Court in State of



Maharashtra vs. Ramlal Devappa Rathod. Relevant paragraphs of the decision are:-

"22. We may at this stage consider the law of vicarious liability as stipulated in Section 149 IPC. The key expressions in Section 149 IPC are:

(a) if an offence is committed by any member of an unlawful assembly;

(b) in prosecution of common object of that assembly;

(c) which the members of that assembly knew to be likely to be committed in prosecution of that object;

(d) every person who is a member of the same assembly is guilty of the offence.

This section makes both the categories of persons, those who committed the offence as also those who were members of the same assembly liable for the offences under Section 149 IPC, if other requirements of the section are satisfied. That is to say, if an offence is committed by any person of an unlawful assembly, which the members of that assembly knew to be likely to be committed, every member of that assembly is guilty of the offence. The law is clear that membership of unlawful assembly is sufficient to hold such members vicariously liable.

23. It would be useful to refer to certain decisions of this Court. In State of U.P. v. Kishanpal it was observed: (SCC p. 93, para 47)

"47.... It is well settled that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words, mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew were likely to be committed."

Further, in Amerika Rai v. State of Bihar<sup>5</sup> it was observed as under: (SCC p. 682, para 13)

"13. The law of vicarious liability under Section 149 IPC is crystal clear that even the presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly." 24. The liability of those members of the unlawful assembly"

24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly.. Existence of common object can be ascertained from

the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons."

- 36.** In the matter of Surendra Vs. State of U.P. reported in (2012) 4 SCC 776, the Hon'ble Supreme Court has held in Para-13 that:-

"13. The legal position is well established that inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result. We are satisfied that the prosecution, from the entirety of the evidence, has been able to establish that all the members of the unlawful assembly acted in furtherance of the common object to cause the death of Ramchandra Singh."

- 37.** From the evidence of the eye witnesses (PW/1) Jagannath Bharti, (PW/2) Vishal Bharti, (PW/5) Dhaneshwar Bharti, (PW/4) Tete @ Sangeet, it is quite vivid that when some altercation took place between Jagannath, Akshaya and Nisha, on the same issue, the accused Nahush, Sanjay and Karan assaulted Lallu. The police report has been lodged by Lallu and when they were coming back after lodging of the report, Rajendra and Chhotu were being assaulted by the accused persons near Nawa Talab, at that time, the accused persons were armed and they were in unlawful assembly by exhorting that whoever met him, they will kill them. In that furious State of their mind, all of them attacked the house of the deceased Ganesh where other victims and eye witnesses are there. After seeing them, Ganesh Bharti and other eye witnesses started running from there to save themselves and except Ganesh all other witnesses were succeeded and jumping across the boundary wall of the school and save themselves but Ganesh could not jumped across the boundary wall and he was being assaulted by the

accused persons. Right from the incident of about 7 pm up to 11 pm, it is clear that the accused persons were intended to commit the offence and they armed with weapon like farsa, danda and base ball bat and ultimately, attacked the house of the deceased Ganesh. It cannot be said that the incident was occurred in heat of passion and sudden provocation.

- 38.** The another argument raised by the learned counsel for the appellants are that the number of injuries and number of accused persons are not corroborated with each other, as the number of accused persons are more than the injuries found on the body of the deceased, therefore, the entire case of the prosecution is doubtful, that all the accused persons have assaulted the deceased.
- 39.** In the matter of **Leela Ram (dead) through Duli Chand Vs. State of Haryana (1999) 9 SCC 525**, the Hon'ble Supreme Court has held that in Para 9 as under :-

"9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony. In para 10 of the Report, this Court observed: (SCC pp. 514-15)

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the

evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

- 40.** From the aforesaid discussions and consideration of the evidence available on record, it is found that there are overwhelming evidence available on record against the accused persons that they formed unlawful assembly, armed with deadly weapon like farsa, lathi and base ball bat, attacked upon the house of the deceased Ganesh and chased him along with other eye witnesses. They intended to commit murder of the deceased as well as other persons and it is only the deceased who could not flee from the place and come into clutches of the accused persons who ultimately assaulted by them and has died. From the entire evidence as well as post mortem report of the deceased and FSL report, the involvement of the appellant in the offence in question has duly been proved. Their active participation in unlawful assembly has also been described by the eye witnesses and this Court is not in hesitation to affirm the finding recorded by the learned trial Court with respect to conviction and sentence of the accused persons for the offence of commission of murder of the deceased Ganesh Bharti.
- 41.** We, therefore, affirm the conviction and sentence passed by learned trial Court against the accused persons and therefore, all these appeals filed by the accused persons are hereby **dismissed**.

42. The accused persons/ appellants shall undergo the entire sentence awarded by the learned trial Court.
43. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
44. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-  
**(Ravindra Kumar Agrawal)**  
Judge

Sd/-  
**(Ramesh Sinha)**  
Chief Justice

**Headnote**

The inference of common object has to be drawn from various factors such as weapon used, their movement, the act of violence and the result, and the person who were the members of such unlawful assembly, all of them are vicariously liable for the act of such unlawful assembly irrespective of their individual act.

Trivial discrepancies would not made the evidence of eye witness unbelievable as mathematical niceties cannot be expected from a witness after lapse of some time of the incident.