
(2006) ILR (MP) 1343 : (2000) 3 MPHT 78

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Death Reference No. 1 of 2000

State of M.P.

APPELLANT

Vs

Shriram and Others

RESPONDENT

Date of Decision: March 30, 2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 19 Rule 2, Order 39 Rule 1, Order 39 Rule 2#Criminal Procedure Code, 1973 (CrPC) â€” Section 154, 161, 366#Madhya Pradesh Land Revenue Code, 1959 â€” Section 178#Penal Code, 1860 (IPC) â€” Section 147, 148, 149, 201, 302

Citation: (2006) ILR (MP) 1343 : (2000) 3 MPHT 78

Hon'ble Judges: R.S. Garg, J; R.B. Dixit, J

Bench: Division Bench

Advocate: K.B. Chaturvedi, for the Appellant; J.P. Gupta, S.K. Gupta and V.K. Saxena, for the Respondent

Judgement

R.S. Garg, J.

This Judgment shall dispose of Death Reference No. 1/2000 (State of M.P. v. Shriram and Ors.), Criminal Appeal No.

1/2000 (Bharat Singh v. State of M.P.), Criminal Appeal No. 652/99 (Shriram Singh v. State of M.P.), Criminal Appeal No. 5/2000 (Janak Singh

and Ors. v. State of M.P.) and Criminal Appeal No. 10/2000 (Sewaram v. State of M.P.).

2. Before coming to the facts of the present matter, it is necessary to refer to certain factual backgrounds so that unnecessary repetitions and

confusions are avoided.

3. One Kanchan Singh held agricultural lands in his Bhumiswami rights. Said Kanchan Singh had two daughters namely, Somabai and Budhabai.

Said Somabai is married to accused Badansingh and has three sons, namely, Sewaram, Suresh and Mahesh. All the three sons of said Somabai

have been made accused in the present case. Budhabai the other daughter of Kanchan Singh married one Achhelal. From the wedlock, she was

blessed with Shankar Singh, Wakeel Singh, Vishambhar Singh and Kalyan Singh. Said Shankar has two sons, namely, Ramprakash and Harveer

Singh. On the fateful day, in the unfortunate incident Wakeel Singh and Vishambhar Singh died of gun shot injuries. Ramprakash has been

examined as P.W. 2, Harveer Singh has been examined as P.W. 3, and Kalyan Singh has been examined as P.W. 4. From the records, it appears

that Bachchu Singh, Chhaviram and Daroo Singh are brothers. Bachchu Singh has two sons Jabarsingh and Janak Singh. Both of these persons

have been joined as accused in the present matter. Three sons of Jabar Singh, namely, Kiledar Singh, Bahadur Singh and Surendra Singh have also

been joined as accused in the present matter. Chhaviram's son Barelal is also an accused. Shriram Singh, Preetam Singh and Bharat Singh have

also been made accused in the present matter. In all thirteen accused persons have faced the trial. It is not in dispute before me that after death of

Kanchan Singh, Budhabai and Somabai were recorded as joint owners and Bhumiswamis in the revenue records vide order dated 20-9-83.

Somabai applied for partition u/s 178 of M.P. Land Revenue Code and could obtain an ex parte order in her favour on 5-12-83. After the said

order, a partition Parcha was prepared and certain lands were allotted in share of said Somabai. After learning about the said ex parte order,

Budhabai filed an appeal to the S.D.M. who after setting aside the ex parte order passed by Naib Tahsildar remitted the matter to the Naib

Tahsildar for its disposal in accordance with law. It is not in dispute that on the date of the incident the partition proceedings were pending in the

Court of Naib Tahsildar. During pendency of the said proceedings, under Ex. D-22 said Somabai under a registered deed dated 4-6-93,

registered on 5-6-93, sold Sy. No. 331 admeasuring 0.261 Rakwa, Sy. No. 334 admeasuring 0.292 Rakwa and Sy. No. 337 admeasuring 0.428

Rakwa to Preetam Singh, Mahaveer Singh, Bharat Singh and Jabar Singh. In the sale deed, it was mentioned that the possession of the property

as held by the seller was delivered to the said purchasers.

4. It would be useful to note that Daroo Singh apart from having Shriram Singh, Preetam Singh and Bharat Singh as his sons has two more sons,

namely, Hira Singh and Mahaveer Singh. From the Document Ex. D-22, it would appear that Preetam Singh, Mahaveer Singh and Bharat Singh,

the three sons of Daroo Singh had purchased half of the property; while accused Jabar Singh s/o Bachchu Singh had purchased the balance half of

the above referred survey numbers.

5. It is not in dispute before us that Budhabai wife of Achhelal and daughter of Kanchan Singh filed Civil Suit No. 14-A/93 in the Court of IVth

Addl. District Judge, Bhind against the said purchasers Preetam Singh, Mahaveer Singh, Bharat Singh and Jabar Singh. Somabai and State of

M.P. were also joined as parties. In the suit, it was contended that the order passed by Naib Tahsildar relating to partition was set aside by the

appellate Court and as there was no partition of the family properties, said Somabai had no right, title or authority to transfer the properties. In the

suit, it was also contended that Sy. Nos. 331, 334 and 337 were in exclusive possession of Budhabai and her family, therefore, the defendants had

no authority to enter upon the land or dispossess the said plaintiff Budhabai. It is undisputed that the defendants taking an exception to the suit

pleadings inter alia pleaded that said Kanchan Singh, during his life time, had partitioned the lands and in the said partition Sy. Nos. 331, 334 and

337 came in the share of Somabai and since the time of the partition she was in actual physical possession of the property. It was contended that

as Somabai was in actual physical possession of the property as the owner and Bhumiswami, she was entitled to alienate the property, and was

competent to deliver actual physical possession of the property to the purchasers that is defendant Nos. 1 to 4 of the suit. In the suit an application

under Order 39 Rules 1-2 CPC was filed by Budhabai seeking ad-interim injunction against Somabai and the four purchasers. In the suit, an

application under Order 19 Rule 2 CPC was filed by the defendants which was allowed by the learned IVth Addl. District Judge and Budhabai

and Shankar Singh were cross-examined. In the cross-examination said Budhabai and Shankar Singh admitted that deceased Kanchan Singh

during his life time had partitioned the properties and had given separate properties to each of his daughter. The learned IVth Addl. District Judge

after hearing the parties and taking into consideration the documentary evidence and other evidence available on the record came to the conclusion

that a tubewell exists on Sy. No. 335 and the lands in dispute that is Sy. Nos. 331, 334 and 337 were in close vicinity of Sy. No. 335, and the

said lands were being irrigated from the tubewell standing on Sy. No. 335; said Budhabai was in actual physical possession of said Sy. Nos. 331,

334 and 337. While granting the application of plaintiff Budhabai, it directed under its order dated 24-1-94 that the defendants stand restrained

from interfering with the possession of plaintiff Budhabai. The said order is available on the record as Ex. D-25. It is also not in dispute that

Preetam Singh, Mahaveer Singh, Bharat Singh and Jabar Singh being dis-satisfied and aggrieved of the order passed by the learned trial Court

took up the matter to the High Court in Misc. Appeal No. 59/94. The appeal came up for hearing before the High Court on 23-2-94 that is almost

after about one month of the injunction order passed by the trial Court. The High Court on 23-2-94 issued notices to the respondents to show

cause against admission. After hearing counsel for the appellants on IA No. 1/94, instead of staying the operation of the injunction order, the Court

directed that the parties shall maintain status quo with respect to the disputed Khasra Nos. 331, 334 and 337 of Village, Baghedi until further

orders.

6. This is the background which led to the murder of Wakeel Singh and Vishambhar Singh and injuries to Ramprakash and Harveer Singh. On 22-

2-96 Babu Singh s/o Bharat Singh r/o Village Baghedi gave an information at Police Station, Pawai that firing was going on between Shriram

Gurjar and other party Shankar Singh. The information was recorded at Sanha No. 549. After receiving the information at 11.30 a.m. A.S.I.

Saligram Sharma alongwith Head Constable Banke Singh and others proceeded to the scene of occurrence. The departure from the police station

was recorded in Sanha No. 550. After reaching the spot, Ramprakash Singh (P.W. 2) gave the information to said Saligram Sharma which was

registered as Dehati Nalish at Ex. P-5. Said Ramprakash (P.W. 2) informed the police officer that from his house when he reached on Tivaria, he

found Wakeel Singh and Vishambhar Singh sitting there. He saw that in his field known as ""15 no."" (at some places referred as 15 Bigha field),

accused Sewaram and Shriram Singh came armed with guns, and the accused Preetam Singh started cutting mustard crop. His uncle Vishambhar

Singh and Wakeel Singh asked them not to cut the crops on which accused Shriram Singh and Sewaram started firing from their guns. At the same

time Kilua @ Kiledar Singh armed with a gun, and the other accused persons viz; Bharat Singh, Barelal, Janak Singh, Bahadur Singh, Surendra

Singh, Mahesh, Suresh, Badan Singh, Jabar Singh and Preetam Singh, armed with Farsa, Barchha and Lathis came to the spot. All such persons

surrounded P.W. 2 Ramprakash, Wakeel Singh and Vishambhar Singh. Shriram Singh, Sewaram and Kilua started firing the gun. The shots fired

by Shriram Singh, Sewaram Singh and Kilua hit Wakeel Singh and Vishambhar Singh, on which said two persons fell. One bullet hit P.W. 2

Ramprakash on the left arm; while the other one hit him on the left leg. The other pellets hit the witness on chest and abdominal region. On the

alarms raised by P.W. 2 Ramprakash, Kalyan, Naresh, Omvir and others came to the spot; seeing the oncoming persons, the accused left the

spot. He also reported that his uncle Vishambhar Singh and Wakeel Singh died on the spot and he himself was injured. After receiving Dehati

Nalish Ex. P-5, said Saligram Sharma registered a case at Crime No. 0/96 relating to offences punishable under Sections 147, 148, 307/149 and 302/149, IPC.

7. After receiving the first information report, said Saligram referred P.W. 2 Ramprakash and P.W. 3 Harveer Singh for their medical examination

and medical assistance under Exs. P-1-A and P-2-A. Thereafter he prepared the Panchayatnama of the dead bodies of deceased Wakeel Singh

and Vishambhar Singh. In presence of Panch witnesses summoned on the spot under Ex. P-6, Panchanamas of the dead bodies of Vishambhar

Singh and Wakeel Singh were prepared under Exs. P-7 and P-8 respectively. In presence of the witnesses, he prepared the spot map Ex. P-12.

Thereafter under Exs. P-13 and P-14, the dead bodies were sent to the District Hospital, Bhind. Said Saligram Sharma seized the plain and

stained earth from near the body of Wakeel Singh and Vishambhar Singh under Exs. P-15 and P-16. Under Ex. P-17, he recovered six fired

cartridges of 12 bore gun, three brass empties of the bullets, three Tiklis, one Ballam and other articles. On 23-2-96, said Saligram Sharma

recorded the statements of Kalyan Singh and Babu Singh. On 24-2-96, he recorded the statements of Naresh Singh, Ummed Singh, Ajjudi Singh

and Shankar Singh. On 1-3-96, under Ex. P-18, he arrested accused Janak Singh, and under Ex. P-19 he arrested accused Bahadur Singh. On

2-3-96, memorandums of accused Janak Singh and Bahadur Singh were prepared under Exs. P- 20 and P-21 respectively. Under Exs. P-22 and

P-23 a Lathi from Janak Singh and yet another Lathi from Bahadur Singh were recovered. It appears that thereafter the investigation was handed

over to P.W. 11 Ramprakash Sengar. Said Ramprakash Sengar took up the investigation and arrested accused Bharat Singh, Mahesh Singh,

Jabar Singh and Badan Singh under Exs. P-28 to P-31 respectively. Memorandums of accused Bharat Singh, Mahesh Singh, Jabar Singh and

Badan Singh were recorded under Exs. P-32, P-33, P-34 and P-35. On these memorandums said Ramprakash Sengar went to the respective

places and could recover a Lathi from Bharat Singh, yet another Lathi from Mahesh, one Lathi from Jabar Singh, and yet another Lathi from

Badan Singh under Ex. P-36. On 30-3-96, on the information given by accused Suresh Singh, memorandum under Ex. P-37 was prepared and in

presence of the witnesses, a Lathi was recovered from Suresh Singh under Ex. P-38.

8. On the information of Kiledar Singh relating to the gun, memorandum under Ex. P-39 was prepared, but the gun could not be recovered.

Memorandum of Surendra Singh was prepared under Ex. P-40 and a Lathi was recovered from him under Ex. P-41; similarly on memorandum

Ex. P-42 of accused Preetam Singh, a Lathi was recovered from him under Ex. P-43.

9. Accused Shriram Singh was arrested on 5-10-96 at sub-jail, Bhind where he was already lodged in connection with some other offence. The

arrest memo is available on the record as Ex. P-44. On the information of said Shriram Singh, memorandum under Ex. P-9 was prepared and the

gun was recovered from the house of the accused under Ex. P-10. On 26-9-96 under Ex. P-45 and on 18-10-96 under Ex. P-46 accused Barelal

and Sewaram were arrested. On 23-5-96 he recorded the statements of witnesses Amar Singh, Rambharose and Hargyan Singh. On 11-4-96 he

recorded statements of Ramprakash Singh and Harveer Singh, and on 6-10-96, he recorded statements of Kalyan Singh and Pan Singh. On

completion of the investigation, being armed with the first information report, the medical report, autopsy report, seizure memos and the statements

of the witnesses, the police filed the challan against the thirteen accused persons. During the trial, the accused started asserting that Somabai was in

possession of the property; they had sown the crop; they were in possession of the property; and in fact the complainant side was the aggressor,

and as the complainant party was firing indiscreetly, the shots fired from their own guns had hit their own persons. They also submitted that

accused Bahadur Singh, Janak Singh and Kok Singh had also suffered injuries and as no explanation was coming forth from the side of

complainant party explaining the injuries found on the persons of the accused, they were entitled to be acquitted. Accused Shriram also took the

defence that his mauser gun was deposited with D.W. 1 Sanjay Sharma for its repair and as between 18 to 23rd February, 96 he had gone to see

his nephew at Chhapiheda, he has been wrongly implicated. Said Kartal Singh and Sanjay Sharma have been examined as D.W. 4 and D.W. 1

respectively. Accused Sewaram in his defence examined D.W. 2 Ramsingh, husband of the sister of Sewaram, and D.W. 3 Naresh Singh who

contended before the trial Court that accused Sewaram on the date of the incident was in Village, Shyampura. Kartal Singh D.W. 4 also stated

before the Court that between 18th to 23rd February, 96, accused Shriram and Preetam Singh had come to him at Village, Chhapikheda. D.W. 5

Jaldhari Singh, father-in-law of accused Suresh stated before the Court that his son-in-law accused Suresh on the date of the incident was at

Village Sukand. D.W. 6 Viswanath stated that accused Surendra Singh had gone to Bhopal on 22-2-96. D.W. 13 Pooranlal a person who came

from Bhopal stated before the Court that accused Surendra and some others were staying in the lodge on the date of the incident. D.W. 7

Raghuveer Singh and D.W. 9 Nathu Singh asserted in the defence of accused Kiledar Singh that on the date of the incident he was at Village

Bahera. D.W. 8 Ramswaroop and D.W. 12 Kalyan Singh stated before the Court that accused Barelal on the date of the incident was in Village,

Arjunpura. D.W. 10 J.P. Sharma a Principal of the private school stated that accused Bharat Singh was present on his duty as a Teacher on the

date of the incident. D.W. 11 Purshottam Saxena the Clerk of the Court was examined to prove the defence of the accused that Dehati Nalish was

a forged, concocted piece of evidence, stated before the Court that the intimation of the first information report was received by him on 26-2-96.

10. The prosecution in support of its case had examined as many as eleven witnesses.

P.W. 1 Dr. Rakesh Sharma had examined Ramprakash

(P.W. 2) and Harveer (P.W. 3) and also performed the autopsy on the body of deceased Vishambhar and Wakeel Singh. He also testified that

accused Bahadur, Janak Singh and Kok Singh had marks of the injuries on their persons.

P.W. 2 Ramprakash Singh, P.W. 3 Harveer Singh and

P.W. 4 Kalyan Singh supported the prosecution allegations and stated before the trial Court that accused Shriram Singh, Sewaram Singh and

Kiledar Singh fired from their gun; while accused Preetam caused injuries to deceased Wakeel Singh by means of a Farsa and accused Barelal

caused an injury to deceased Wakeel Singh by means of Barchha. P.W. 5 Pan Singh was examined to prove Exs. P-9 and P-10, but he was

declared hostile. P.W. 6 Saligram Sharma A.S.I. stated before the Court that he made the investigation in part. P.W. 7 constable Rakesh Solanki

informed the Court in his statements that clothes of the deceased persons were seized in his presence at the hospital. P.W. 8 Ramsanehi though

was declared hostile, but in answers to the leading questions, supported the prosecution. P.W. 9 Babu Singh who gave the information under Ex.

P-11 and is also a witness to Exs. P-12, P-15 and P-16 and P-17 was declared hostile in part as he was making certain statements contrary to his

case diary statements. P.W. 10. Jitwar Singh proved the arrest of Mahesh Singh, Bharat Singh, Jabar Singh, Badan Singh and Janak Singh. He

also proved the memorandums prepared under the informations of these witnesses and also proved the recoveries made from them. P.W. 11

Ramprakash Sengar stated before the Court that he continued with the investigation after it was handed over to him.

11. The learned trial Court, after hearing the parties, held that the prosecution was successful in bringing home the guilt. Holding present to be a

rare case of rarest class, it awarded capital punishment to Shriram Singh and Sewaram Singh for committing brutal and gruesome murder of

Wakeel Singh and Vishambhar Singh. Accused Shriram Singh and Sewaram Singh were also convicted u/s 148 were awarded three years R.I.

and pay fine of Rs. 500/-; in default of payment of fine three months R.I. was awarded. Accused Shriram Singh and Sewaram Singh were also

convicted u/s 307/149, IPC and they were awarded life imprisonment for commission of the said offence and were also imposed a fine of Rs.

1,000/-; in default of payment of fine, each is required to undergo R.I. for six months. Accused Shriram Singh was also convicted u/s 201 and was

sentenced to undergo R.I. for three years and pay fine of Rs. 500/-; in default of payment of fine he is required to undergo three months R.I..

Remaining accused viz., Janak Singh, Bahadur Singh, Bharat Singh, Mahesh Singh, Badan Singh, Jabar Singh, Preetam Singh, Kiledar Singh,

Suresh Singh, Surendra Singh and Barelal were convicted u/s 302/149, IPC for each murder of Vishambhar Singh and Wakeel Singh and were

sentenced to life imprisonment under each count. Fine of Rs. 1,000/-under each count was also imposed; in default of payment of fine each

accused is required to undergo R.I. for six months. The above referred eleven accused persons were also convicted u/s 307/149, IPC and are

sentenced to life imprisonment and pay fine of Rs. 1,000/-; in default of payment of fine each defaulting accused has to undergo R.I. for six months.

All the sentences awarded to the eleven persons are to run concurrently. All the thirteen accused persons have also been convicted u/s 148, IPC

and have been sentenced to undergo R.I. for three months and pay fine of Rs. 500/- each; in default of payment of fine each defaulting accused has

to undergo R.I. for three months.

12. The learned trial Judge in view of the capital punishment awarded to two of the accused has made the reference u/s 366 of the Code of

Criminal Procedure. Accused Shriram Singh has filed Criminal Appeal No. 652/99. He is represented by Senior Counsel Shri J.P. Gupta.

Accused Bharat Singh has filed Criminal Appeal No. 1/2000. He is represented by counsel Shri S.K. Gupta. Accused Janak Singh, Bahadur

Singh, Jabar Singh, Kiledar Singh, Surendra Singh, Barelal and Preetam Singh have filed Criminal Appeal No. 5/2000. They are represented by

Senior Counsel Shri J.P. Gupta. Sewaram, Badan Singh, Suresh Singh and Mahesh Singh have filed Criminal Appeal No. 10/2000 and are

represented by their counsel Shri V.K. Saxena.

13. Shri J.P. Gupta, learned Senior Counsel, Shri V.K. Saxena and Shri S.K. Gupta, learned counsel appearing for the accused persons submitted

that the injuries found on the persons of the accused have not been explained by the prosecution witnesses and it is proved on the record that on

the report of the accused, a Sanha report was registered and no investigation was made into the allegations made by the accused, each of the

accused is entitled to be acquitted. It is also submitted that Somabai was in possession of the property and as she delivered the actual physical

possession of the property to the purchasers, and as the complainant party was the aggressor, and if the accused persons in right of their defence

of person and property had caused some injuries to the complainant party, it cannot be held that they had exceeded the right of defence, therefore,

also each of the accused is entitled to be acquitted. It is also submitted that the complainant party was armed with fire arms and as they were firing

indiscreetly, the shots fired by them had hit their own people; the accused persons cannot be held guilty. It is also contended that Ex. P-5 Dehati

Nalish cannot be taken to be the first information report because the information was already received at Police Station, Pawai under Ex. P-11,

and as the police authority proceeded to investigate into the matter, Ex. P-11 alone can be considered as a first information report. It is further

submitted that Ex. P-11 was lodged by an eye-witness and as the said eye-witness did not give the details of the incident, it must be presumed that

Ex. P-5 is a forged and concocted piece of document. It was next contended that the learned Court below did not properly appreciate the defence

of the accused persons that they were not present on the spot, and that gun of accused Shriram was given for repair and if the defence of the

accused persons is taken in their true perspective, each of the accused is entitled to be acquitted. It is also submitted that except one injury found

on the person of Wakeel Singh which is an incised injury, the injuries caused to the deceased and witnesses were result of shooting from fire arms;

the persons who were not armed with guns could not be convicted. It is also submitted that the crop cut by Preetam Singh was not seized from the

spot, therefore, it must be held that Preetam Singh was not present on the spot, and the accused persons were not cutting the crop. It was also

submitted that in the case diary statements the accused persons asserted that all the thirteen persons took part in the said incident and caused

injuries to almost every victim, but during the course of the trial as the witnesses have changed their stand and started asserting only against Shriram

Singh, Sewaram, Preetam Singh, Barelal and Kiledar and did not speak even a single word against the remaining eight, it must be held that the

prosecution witnesses are not reliable. It was also contended that the prosecution agency did not make proper and fair investigation and as it had

shown its leaning towards the complainant, the accused persons are entitled to be acquitted. It was next submitted that in Ex. P-5, there is no

mention that Sewaram had used his gun, therefore, the prosecution witnesses must be dis-believed. Regarding the capital punishment, it was

contended that present is not a case falling within the class of rare of the rarest; the Court below was unjustified in awarding capital punishment to

accused Shriram Singh and Sewaram Singh.

14. Shri K.B. Chaturvedi, learned counsel for State submitted that the Court below has taken into consideration every argument raised in defence

of the accused, and as the Court below has relied upon the eye-witnesses and the injured eye-witnesses, there is no scope for any interference. It

is also submitted by him that recovery of 6/12 bore fired cartridges and three empties of bullets would clearly show that the accused persons fired

indiscreetly. It is also submitted by him that the plea of alibi raised by the accused persons is false, and as the same has failed, the Court below was

not unjustified in convicting the accused persons. Referring to the order passed by the learned IVth Addl. District Judge, Bhind, it was contended

that the High Court in its discretion did not stay the operation of the injunction order, but simply asked the parties to maintain the status quo,

therefore, it must be held that on the date of the order passed by the High Court the complainant side was in possession. It is also submitted that

each person has been rightly convicted because from the evidence available on the record, it would clearly appear that each accused was member

of unlawful assembly; was armed with some weapon whether a Lathi, Farsa, Barchha or a Gun, and as each of the accused entered in the field,

each must be knowing that what offence could be committed or what was likely to be committed. Referring to the defence of accused Shriram, it is

submitted that said document is forged and the facts are clearly proved that accused Shriram had fired from his gun. Regarding the investigation, it

was contended by him that the police agency made the investigation in accordance with law and did not give any unfair march to the complainant

side over the defence of the accused persons. For the capital punishment, it was submitted by him that the manner in which at least nine or more

shots were fired from three guns which led to death of two and injuries to other two, would clearly show that the accused persons meant some real

business on the spot and infact had come on the spot with an intention to commit murder. He also submitted that the witnesses did not change their

version, but were speaking the truth before the Court. Referring to Exs. P-5 and P-11, it is contended by the learned State counsel that a cryptic

information to the police authorities would not meet the requirements of a first information report, therefore, the trial Court was justified in

accepting the Ex. P-5 as Dehati Nalish/First Information Report. He has also argued that the prosecution has proved its case beyond shadow of

doubt what of to a reasonable certainty. According to him, the Court below was justified in convicting each of the accused and awarding the

sentences as awarded by it.

15. We have heard the parties at length and have perused the original records.

16. P. W. 2 Ram Prakash Singh has stated that on the fateful day at about 10.00 A.M. Preetam Singh came on the spot and started cutting the

crop. According to him Preetam Singh was accompanied with Sewaram Singh, Shriram Singh and Kiledar Singh and each of them was armed with

a gun. He was also accompanied by Janaklal, Jabar Singh, Barelal, Bharat Singh, Bahadur Singh, Surendra Singh, Suresh, Mahesh and Badan

Singh. His uncle Vishambhar Singh and Wakeel Singh asked the accused persons, on which a shot was fired on Wakeel Singh which hit him on his

chest. Sevaram fired from his 12 bore gun which hit Wakeel Singh on the left side of the chest. At the same time, Preetam Singh gave a farsa blow

on the head of Wakeel Singh. Borelal hit Wakeel Singh on the lower region of chest by means of a Barcha. Shriram Singh fired from his mouzar

gun which hit Vishambar Singh on the left side of his chest. Shriram yet fired another shot which hit Vishambhar Singh on his left hand. When this

witness wanted to intervene, Sevaram Singh fired from his 12 bore gun which hit him below the neck and above the right side of the chest. Second

fire hit him near umbilical region, went through and through from the right side. The third fire hit him on the left leg. The fourth fire hit him on the left

arm and the fifth shot hit him on the right thigh. According to the witness, after seeing the ghastly incident and suffering the injuries he raised alarms,

on which, his uncle Kalyan Singh came on the spot. It is also submitted by him that Kalyan Singh, Naresh, Umedh Singh, Khalifa alias Ajjudi and

his brother Arveer came on the spot. Naresh after coming on the spot fired his gun, therefore, the accused persons started fleeing away. The

witness further says that on arrival of others, Kilva alias Kiledar fired from his gun, which hit Arveer on his left shoulder. In Paragraph 8 he has

stated that when the guns were being fired the other accused persons had surrounded them.

17. P.W. 3 Harveer Singh who is also an injured person has stated that after hearing the alarms when he came out of his house, he saw that 14-15

persons were going toward the field No. 15 and those persons were shouting that they would kill. Seeing them, he alongwith Kalyan Singh, Naresh

Singh and Umedh Singh went towards the field. On way, Ajjudi alias Khalifa also joined them. He has stated that Shriram Singh fired from his

Mouzar gun on his uncle Vishambhar Singh, Sevaram Singh fired from his 12 bore double barrel gun on Wakeel Sing. Preetam Singh had hit

Wakeel Singh, by means of a Farsa. Barelal hit Wakeel Singh on his chest and abdominal region and Sevaram caused injuries by means of gun fire

to Ram Prakash Singh. When he and his uncle Kalyan Singh asked Sevaram and Shriram, as to what were they doing, Kiledar Singh fired 3-4

shots from his gun. The shot fired by Kiledar Singh hit him on his right shoulder. On Naresh"s shooting two air fire, accused persons fled away. In

Paragraph 7 he has given the names of the miscreants as Shriram Singh, Preetam Singh, Bharat Singh, Barelal, Jabar Singh, Janak Singh, Kilva

alias Kiledar Singh, Bahadur Singh, Surendra Singh, Sevaram, Suresh, Mahesh and Badan Singh.

18. P.W. 8 Kalyan Singh is yet another eye witness who has stated that after seeing 14-15 persons going towards the field, he alongwith Umedh,

Naresh and Harveer went towards the field, and on way Ajjudi alias Khalifa also joined them. After reaching the field/tubewell, he saw that

Shriram Singh and Sevaram were shooting Vishambhar Singh and Wakeel Singh. Shriram Singh and Sevaram Singh also fired on Ram Prakash

Singh. According to the witness, Kiledar Singh fired at him but the shot hit Harveer Singh. Preetam Singh gave a Farsa blow on the head of

Wakeel Singh. On Naresh"s shooting two air fire, accused persons fled away from the spot. According to him the miscreants who came to the

field were present in the Court. Sevaram, Shriram Singh and Kiledar Singh were armed with gun. Preetam Singh was armed with a Farsa while

Barelal was armed with a Ballam and the rest of the accused were armed with lathies. From the statement of these witnesses it would prima facie

appear that Shriram Singh, Sevaram Singh, Preetam Singh, Barelal and Kiledar Singh had taken active part in the incident, wherein two persons

lost their life and P.W. 2 Ram Prakash and P.W. 3 Harveer have suffered serious injuries.

19. To P.W. 1 and other witnesses the relations between the parties and the property dispute was suggested, which was not denied by them.

Regarding the said relation and the property dispute, we have already referred above.

20. According to the accused persons they were in actual physical possession of the property and as the complainant party entered in their field to

dispossess them, in exercise of right of defence they caused injuries to the complainant side. Though, it was suggested to the witnesses and

submitted in the Court that the complainant party was firing indiscreetly and those fires hit their own people therefore, also the accused cannot be

held liable. It was suggested during the course of the argument that as the injuries found on the person of some of the accused persons have not

been explained by the prosecution witnesses, it must be held that the prosecution witnesses were aggressors and were trying to suppress the

genesis of the offence.

21. For proper appreciation of this argument, it would be necessary to refer to the property dispute. In Paragraphs 3, 4 and 5 we have already

referred to the property dispute. The property originally belonged to Kanchan Singh, which according to the material available on the record was

partitioned by him amongst his two daughters. Somabai made an application to the revenue authorities for effecting partition. The application was

allowed ex parte, but the said ex parte order was later on set aside by the Sub-Divisional Officer and the matter was remitted to the Tehsildar for

deciding the application in accordance with law. During the pendency of the said application, Somabai, on 4-6-93/5-6-93 sold survey Nos. 331,

334 and 337 to Preetam Singh, Mahaveer Singh, Bharat Singh and Jabar Singh. Budha Bai grand-mother of P.W. 2 Ram Prakash, P.W. 3

Harveer and mother of deceased Wakeel Singh and Vishambhar Singh had filed Civil Suit No. 14-A/93 in the Court of 4th Addl. District Judge,

Bhind against the purchasers from Somabai. In the said suit, she had filed an application under Order 39 Rules 1-2 C.P.C.. The suit and the

application were contested but the learned 4th Addl. District Judge, Bhind recorded a finding in favour of Budha Bai and restrained the purchasers

from interfering with the possession of plaintiff Budha Bai. The said order dated 24-1-1994 is available on the record as Ex. D-25. Being

aggrieved by the said order Preetam Singh, Mahavir Singh, Bharat Singh and Jabar Singh filed Misc. Appeal No. 59/94 before the High Court.

On 23-2-94, i.e., almost about one month of the injunction order, the High Court directed the parties to maintain the status quo.

22. Learned counsel for the appellants submitted that the facts would clearly show that possession of the property was given to Somabai by her

father and while alienating the property under the sale deed she delivered actual physical possession of the property to the purchasers. The further

submission is that as the purchasers who are arrayed as accused were in actual physical possession, therefore, they were entitled to exercise right

of private defence.

23. Learned counsel for the State on the other hand contended that the facts would clearly show that Budha Bai and her family were in exclusive

possession of the property and being the law abiding citizens, instead of taking the law in their own hands, Budha Bai had gone to the Court and

obtained an injunction against the purchasers. The submission is that the High Court simply directed the parties to maintain status quo as it obtained

on 23-2-94 therefore, it cannot be held that the injunction order issued on 24-1-94 remained in abeyance between 24-1-94 to 23-2-94.

24. The facts as narrated above would clearly show that the property in dispute is survey Nos. 331, 334 and 337. Budha Bai had filed a suit and

injunction was granted in her favour on 24-1-94 and the defendants of the suit were restrained from interfering with her possession. The High

Court did not stay the operation of the injunction order but simply directed that the parties shall maintain the status quo. The said order was passed

on 23-2-94. The High Court did not say that status quo ante or as it was on the date of the suit or as it was on 24-1-94, i.e., the date of the trial

Court's order be maintained. It cannot be disputed that after 24-1-94, the defendants of the suit/accused persons could not enter upon the land in

dispute because of the injunction. If that was so, it has to be held that on 23-2-94 the accused persons were not in possession. As they could not

enter upon the land, assuming that they entered upon the land between 24-1-94 and 23-2-94 or subsequent to 23-2-94 the things would not

become legal nor such an entry in the field would amount to actual, physical possession, in fact such an entry would be considered an act of

trespass and nothing beyond that. It is not the case of the accused that subsequent to 23-2-94 they obtained actual, physical possession of the

property, therefore, they were in possession on 22-2-96. When the High Court had directed the parties to maintain the status quo, it is always

expected of the parties that they would maintain the status quo regarding possession as it obtained on the date of the order passed by the High

Court. Such an order of status quo passed by the High Court would not mean that the possession would stand restored back nor would it give an

authority to such person to enter in the field or the property relating to which injunction was already granted against them. Though, it was

repeatedly suggested to the witnesses that the accused persons were in possession of the property, but we are unable to hold that the accused

persons were in possession of the property. Once it is held that the accused persons were not in possession of the property and it is further held

that the complainant party was in possession of the property on the date of the incident, then no law would permit the accused persons to enter

upon the field and harvest the crops. This act of the accused persons was absolutely illegal and unjustified.

25. Learned counsel for the appellants placing its strong reliance on the judgment in the matter of *Munshi Ram and Ors. v. Delhi Administration*

(AIR 1968 SC 702) has contended that where the property in dispute was in possession of the accused, such a person would be entitled to right

of defence. It was contended that even a trespasser, in settled possession of the property cannot be evicted by use of force. In the opinion of this

Court this argument would not be available to the appellants because they were not in possession of the property. Once it is held that the

appellants were not in possession of the property, then obviously they would be deemed to be aggressors and the law would clearly say that an

aggressor would have no right of defence. In the matter of Dular Mahto and Others Vs. State of Bihar, the Supreme Court has clearly observed

that an aggressor would have no right of defence.

26. So far as question of non-explanation of injuries are concerned, the same should not detain this Court even for a while because the simple

injuries available on the person of the accused if are not explained, the same is not going to affect the credibility of the prosecution case. In the

matter of Kasam Abdulla Hafiz Vs. State of Maharashtra, the Supreme Court has observed that where the accused had sustained injuries on his

person and the same are not explained then the principle that non-explanation of injury on the person of the accused would be fatal to the

prosecution case would apply only when the injuries could be of such nature which the prosecution witnesses could not but notice the same. In the

present case, accused Bahadur suffered four injuries, Janak Singh suffered four injuries and accused Koke Singh suffered three injuries. The

certificates are available on the record as Ex. D-4-C, Ex. D-5-C and Ex. D-6-C. It is not even the defence case that these three persons were

owners of the property or were in possession of the property or had something to do with the property. According to Ex. D-22 the property was

sold in favour of Preetam Singh, Mahavir Singh, Bharat Singh and Jabar Singh. The five accused persons who have taken active part in the incident

namely; Sevaram, Shriram, Kiledar, Preetam Singh and Barelal have not suffered even a single scratch. In a case like present where the persons

who caused injuries to the prosecution witnesses had not suffered even a single injury would be required to inform the Court that apprehending

some danger to their life or to life of their kith and kins, they were required to open attack on the prosecution witnesses. True it is that Kiledar

Singh and Bahadur Singh are sons of Jabar Singh, but that in itself would not be sufficient to prove that the accused persons apprehended such

imminent danger that they were required to open the fire, that too repeatedly and cause gun injury and other injuries. The facts show that two of the

persons died on the spot while the other two suffered number of the injuries.

27. Looking to the facts and circumstances of the case, we are unable to hold that non-explanation of the injuries on the person of some of the

accused would provide any defence in favour of the accused persons. We are also unable to hold that the complainant party was the aggressor

and as the complainant party had caused injuries to some of the accused persons the other accused had to open the fire.

28. At this juncture, it would also be necessary to refer to the defence of some of the accused persons wherein they have taken the defence of alibi

and the defence of non-availability of the gun. According to the defence of Shriram Singh, his gun was given for repairs therefore, the gun was not

available with him. According to defence of Sevaram Singh, on the date of the incident he was in village Shyampura. Shriram Singh and Preetam

Singh have also taken the defence that they had gone to Chhapiheda. Accused Kiledar Singh has taken the defence that he was in the village

Bahera while accused Barelal has taken the defence that he was in village Arjunpura. If these accused persons who have allegedly taken active

part in the incident have taken the defence that they were not present on the spot, then it cannot be argued that they in exercise of the right of

defence of person and property could use force to an extent of killing the other side. We do not propose to say that if the plea of alibi has failed the

accused must be convicted but what we propose to emphasise is that the plea of alibi and plea of right of defence are mutually destructive, an

accused cannot be permitted to say that he was not available on the spot and at the same time in exercise of right of defence had caused injuries to

the complainant party. The question whether the alibi is proved or not would be considered later on but the facts remain that these two defences

which are mutually destructive have been raised by the defence. It is trite law that even if the defence of alibi fails, then too, prosecution is not

relieved of its burden to prove its case against the accused to a reasonable certainty. A reasonable certainty would mean to such an extent where a

judicial mind would accept the proof and would record a finding.

29. At this stage, before proceeding further we would consider the defence of the accused persons in relation to alibi and non-availability of the

gun. D.W. 1 Sanjay Sharma, Proprietor of M/s. Sharma Brothers (Fire Arms) Dealer, Bhind has stated that 315 bore rifle belonging to Shriram

Singh was deposited with him for its repairs. He has produced Ex. D-7 to prove that the gun was deposited on 15-2-96 and returned on 26-9-96.

A perusal of the entry contained in Ex. D-7 would show that the gun was deposited on 15-2-96 and was returned back on 26-9-96. The portion

marked D to D relating to the date of the return, contains an apparent over writing in the column of month. Though, apparently it would appear that

the gun was returned back on 26-9-96 but a bare perusal of the entry would show that the gun was returned back to Shriram Singh much prior to

the date of the incident. In any case the entry relating to the return of the gun does not inspire confidence. After going through the statements of

Sanjay Sharma and on perusal of Ex. D-7, we are unable to hold that between 15-2-96 to 26-9-96 the gun remained in deposit with said Sanjay

Sharma.

30. D.W. 2 Rai Singh brother-in-law of accused Sevaram and D.W. 4 Naresh Singh have suggested that Sevaram had purchased certain land in

village Shyampura and on the date of the incident, said Sevaram was at village Shyampura. This evidence prima facie does not inspire confidence.

These witnesses for the first time have been examined in the Court on 28-4-99. Between 26-6-96 to 28-4-99, they never made any complaint to

the Courts or to the police authorities that Sevaram Singh was falsely implicated and his presence was wrongly shown on the spot, while in fact he

was not on the spot on the date of the incident. These two witnesses Rai Singh and Naresh Singh are real brothers and Rai Singh is the husband of

sister of Sevaram. These persons could not even give the proper reasons for remembering the particular date. After going through their statements we are

unable to rely upon them that on the date of the incident accused Sevaram was present in village Shyampur.

31. D.W. 4 Kartar Singh is relation of accused Shriram Singh and Preetam Singh. Shriram Singh and Preetam Singh are real brothers. According

to Kartar Singh, between 18th Feb. to 23rd Feb. he was unwell and accused Shriram Singh and Preetam Singh had come to his house at village

Chhapiheda. According to the witness, he was unwell between 14th Feb. to 22nd Feb. and Preetam Singh and Shriram Singh left Chhapiheda on

23rd Feb. 1996. In support of the contention, the witness has not filed his medical report, medical certificate or even the medical prescriptions.

The witness was working as a Garden Inspector and on the date of the incident he was posted at Chhapiheda. If he was Government

servant/servant of the local body and had taken leave because he was unwell, then atleast he could file a copy of his leave application or a

certificate of his employer that being unwell he did not come on duty between 14th Feb. to 22nd Feb. The statements of Kartar Singh do not

inspire confidence.

32. D.W. 5 Jaldhari Singh is father-in-law of accused Suresh. He has simply said that on the date of the incident accused Suresh was with him at

village Sukand, how could he remember the particular date or what persuaded him to remember that the accused was at his house on the date of

the incident, has not been shown by him. His defence also appears to be concocted.

33. D.W. 6 Vishwanath Singh and D.W. 13 Pooran Lal have been examined by the defence to prove the defence of alibi raised by the accused

Surendra. D.W. 13 had come from Bhopal. According to him he was holding the office of Manager of Muktha Lodge, Ghodha Nikas Mandir,

Tamlee Road, Bhopal. According to him on 22-1-96 Padam Singh, Hari Singh, Matadeen, Kaushlendra, Inderveer, Vishwanath Singh, Ram

Singh, Vinod Singh and Surendra Singh had stayed in his lodge. In the cross-examination the witness has clearly stated that on 22-1-99, he was

not the manager of the lodge. He admitted that he was illiterate and was unable to say what was written in the said entry. A person who did not

make the entry nor was able to prove the entry regarding stay of Surendra Singh in the lodge, would not be proper witness to prove that the

accused Surendra Singh was at Bhopal on the date of the incident. D.W. 6 Vishwanath Singh had stated that alongwith accused Surendra Singh he

had gone to Bhopal for their selection in CISF. If this was a correct fact, then the witness Vishwanath Singh or accused Surendra Singh could

atleast file their interview called in support of their defence. They did not say that they were in possession of the interview calls. Assuming for a

moment that they had lost their interview calls, then also they could call somebody from the department to show and prove that they did appear in

the interview. Defence of these two witnesses does not inspire confidence. The defence is rejected.

34. D.W. 7 Raghuveer and D.W. 9 Nathu Singh have simply stated that prior to the date of the incident for a period of about 1-2 months, accused

Kiledar Singh was in village Bahera. Cross-examination of these witnesses would clearly show that the witnesses are brought up simply to say that

the accused was at village Bahera. D.W. 7 Raghuveer Singh simply said that for 1-2 months prior to the date of the incident the accused was

residing in village Bahera. While D.W. 9 Nathu Singh has casually said that accused for last 3-4 years, prior to the date of the incident, was

residing in village Bahera. The defence raised by Kiledar Singh that on the date of the incident he was at village Bahera is unreliable.

35. D.W. 8 Ramswaroop and D.W. 12 Kalyan Singh have casually asserted that on the date of the incident, accused was at village Arjunpura. He

also tried to assert that on 22-2-96 Surendra Singh had gone to Bhopal for seeing the interview of CISA. This statement of D.W. 8

Ramswaroop runs contrary to the statement of Vishwanath Singh who had stated that he alongwith Surendra Singh had gone for interview, though

he submitted that he had filed an affidavit in relation to Surendra Singh and also sent letters to the higher authorities. According to him, he received

the information about the incident on 23-2-96 but did not make any complaint about the false implication for atleast 15-20 days. In the cross-

examination he started asserting that he had gone to Bhopal with Surendra Singh but realising that he was likely to be confronted, he stated that he

had gone upto Gwalior only and not beyond that. He also admitted that he had no personal knowledge as to where Surendra Singh had stayed,

and he was making the statement on the information supplied to him by his brother Surendra Singh. At this stage, the fact cannot be lost sight of

that Arjunpura is hardly at a distance of 15 kms. from village Baghade where the incident took place. The distance can be covered in a short time

and even if accused Barelal was arrested at Arjunpura, the same is not going to provide any defence in favour of accused Barelal.

36. D.W. 12 Kalyan Singh had casually stated that on 22-2-96 accused Barelal was present in village Arjunpura. On one side he was unable to

give the date of birth of his children and the date of his marriage but he wants the Court to believe that he was certain and positive that on 22-2-96

accused Barelal was present at village Arjunpura. For the reasons stated above, we are unable to rely upon D.W. 8 Ram Swaroop and D.W. 1.2

Kalyan Singh.

37. D.W. 10 J.P. Sharma is the Principal of Nevari School. According to him Bharat Singh was present on his duty between 1st Feb. to 22nd

Feb. In support of his statement, he had produced Ex. D-18 containing the signatures of accused Bharat Singh. Village Baghade is only at a

distance of 4 kms. from village Nevari. According to the witness a man can cover the distance from village Baghade to village Nevari within half an

hour or 45 minutes. He has also admitted that the school was a private one. He has further admitted that the teachers do not come to the school at

the fixed time but they come according to their convenience. His statements do not inspire confidence. The defence of alibi raised by Bharat Singh

deserves to and is accordingly rejected.

38. D.W. 11 Purshottam Saxena, a clerk of the office of the District and Sessions Judge, Bhind has been examined to prove that the report dated

22-2-96 was received in his office on 26-2-96 and he had placed the said report before the then Magistrate. The witness was unable to produce

the copy of the first information report received by him. He however, was unable to show to the Court as to how many holidays intervened

between 22-2-96 to 26-2-96. His defence is simply in relation to the late receipt of the first information report. It is not the positive law that if the

report of the incident is not sent to the concerned magistrate either on the same day or immediately thereafter, then the prosecution case would

suffer a set back or a dent. It would always depend upon the facts and circumstances of the case as to whether non-submission of the report

would provide a defence in favour of the accused or not. True it is that a Sanha report was registered on the information of the accused and no

investigation was made into the allegations made by the accused but that in itself would not make the prosecution case unreliable.

39. Learned counsel for the appellants submitted that the prosecution was unfair as it did not make investigation in accordance with law and the

defence put forth by the accused. The submission in fact is that because of the lapses committed by the investigation agency and for its acts and

omissions, the prosecution must fail. The law nowhere says that if the investigation agency did not investigate the matter in accordance with the

procedure, rules or law, then the witnesses who are otherwise reliable must be disbelieved. If it appears to the Court that the investigating agency

was trying to give unfair march to the prosecution witnesses, then alone the Court in the facts and circumstances of the case may hold that the

prosecution evidence should not be relied upon. In the present case, the investigation was made by two persons. The material investigation was

made by P.W. 6 Salikgram Singh and thereafter the investigation was conducted by P.W. 11 Ram Prakash Sengar. After going through their

statements we are unable to hold that these persons conducted the investigation in an unfair manner. In the foregoing paragraphs, we have already

recorded the part played by P.W. 6 Salikgram and P.W. 11 Ram Prakash Sengar in relation to the investigation made by them.

40. In the matter of Sunil Kumar and Ors. v. State of Madhya Pradesh 1997 (1) JLJ 192 the Supreme Court has observed that for the inactions

and the lapses committed by the prosecution, the prosecution case cannot be thrown out.

41. Submission of the learned counsel for the appellants that Rojnamcha Sanha Ex. P-11 is required to be considered as first information report

and not the Ex. P-5 Dehati Nalish recorded on the spot. In support of the contention learned counsel has relied upon the judgment of Sunil Kumar

(supra). In the said matter, the Supreme Court observed that when an information regarding killing of one and dismembering of another was

received by the police and police started investigation thereon, the said information would become the first information. In the said matter the

witness who lodged the F.I.R. met with injured persons, learnt about the details of the incident and lodged the first information report on phone.

The Supreme Court observed that such information required the police agency to start investigation, such information would be deemed to be a

first information report u/s 154 Cr.P.C. Placing reliance upon the judgment of the Supreme Court in the matter of Ram Kumar Pandey Vs. State of

Madhya Pradesh, learned counsel for the appellants contended that though Ex. D-5 is not the first information report but it could only be used as a

previous statement and could be used to corroborate/contradict the maker of it.

42. On the other hand learned counsel for the State placing its reliance upon the judgment of this Court in the matter of State of M.P. v. Ramesh

and Ors. 1999 (II) MPJR 497 submitted that a cryptic information which simply informed the police agency about the incident without giving any

further details would not be a F.I.R. and when the detailed report is lodged the same would be treated as the first information report. Submission

of the learned counsel for the State is that a cryptic information which does not say anything about the details of the offence would not be a First

Information Report. After giving our thoughtful consideration to the cases referred by the parties, we are of the opinion that the question is not res

Integra. In the matter of Ram Singh v. State of Gujarat, reported in 1994 S.C. 2042 the Supreme Court has observed that where a telephone

message of the cognizable offence was cryptic in nature and the officer-in-charge proceeded to the place of occurrence on the basis of such

information to find out the details of the nature of the offence itself, then it cannot be said that the information which had been received by him on

telephone shall be deemed to a F.I.R.. In the matter of State of M.P. v. Ramesh (supra), the Division Bench has held that a wireless message from

another police station cannot be treated as a F.I.R.. In the matter of Ramesh (supra) Rojnamcha report was recorded on a wireless message which

informed the police that some quarrel had taken place between the parties resulting in murder. The message further directed to summon the officer-

in-charge of the police station on the spot.

43. In view of the above referred judgments, if Ex. P-11 is seen, it simply says that one Baburam informed at the police station that gun firing was

going on between the party of Ram Singh on one side and other party of Shanker Singh. Ex. P-11 did not say anything beyond this. It did not say

that who was the aggressor, who was the injured or who died, how the incident started or what was the genesis. Ex. P-11 simply required the

S.H.O. to proceed on the spot to inquire about the incident and its details. Sanha No. 550 records that after recording the Sanha No. 549 A.S.I.,

S.R. Sharma alongwith two Head Constables proceeded towards the scene of occurrence. Taking into consideration the legal provisions and the

judgments referred above, we are unable to hold Ex. P-11 could be deemed to be the F.I.R.. Ex. P-5 is the Dehati Nalish which was recorded on

the spot at 12.30 noon. The information was supplied by Ram Prakash Gurjar who had suffered injuries on the spot. The details as given in Ex. P-

5 do provide the grounds to take cognizance of the offence and proceed further with the investigation. This report clearly stated that the accused

persons armed with gun, lathi, Ballam, Barcha, Farsa opened the assault on the first informant and others. We are of the positive opinion that Ex.

P-5 alone can be taken as the F.I.R. When somebody gives a cryptic information to the police about some happening without details of the facts

and material particulars, then such an information shorn of facts cannot be treated as the first information report.

44. We are unable to hold that Ex. P-5 is a concocted piece of evidence.

45. So far as the submission of the learned counsel for the appellants that the complainant side had changed its stands in relation to number of the

accused persons, would certainly have an important bearing in the matter. From the first information report and the other statements, it would

clearly appear that the prosecution witnesses firstly asserted that all the accused persons came on the spot and opened the attack on the deceased

and the prosecution witnesses. There are as many as 13 accused persons. During the course of the trial the prosecution witnesses started asserting

that accused Shriram Singh, Sevaram Singh, Barelal Singh, Kiledar Singh and Preetam Singh had caused injuries to the deceased and the

witnesses. None of the prosecution witnesses have said that apart from these five persons any other accused even touched the deceased or the

witnesses. In the statements of P.W. 2 Ramprakash Singh, P.W. 3 Harveer Singh and P.W. 4 Kalyan Singh, it has clearly come that these five

persons had taken active part in the incident and the others did not do anything. The witnesses did not say that these persons exhorted or did

anything on the spot. True it is that each of the witness asserted that all the 13 accused persons went to the fields and in their presence the accused

armed with the guns opened fire. On this evidence, it cannot be assumed that each of the accused who initially associated the other five had a

common object to cause injuries or to cause death of the witnesses and the deceased. From the statements, it would clearly appear that the other

eight persons were simply present on the spot. The possibility that these eight persons realising the gravity of the situation disassociated themselves

from the other five cannot be absolutely ruled out. The witnesses do not say that these eight persons had surrounded them very closely. According

to the witnesses, these persons were standing at a distance. From the statements of the witnesses, it does not appear that these eight persons

shared any common object of causing any injury to the witnesses or cause death of the deceased. Simple presence of certain persons on the spot

who have disassociated themselves would not make them liable with the help and assistance of Section 149, IPC. The evidence available on the

record does not positively prove that accused Janak Singh, Bahadur Singh, Bharat Singh, Mahesh Singh, Badan Singh, Jabar Singh, Suresh Singh

and Surendra Singh shared any common object or in furtherance of the common object came on the spot, formed an unlawful assembly the

common object of which was to cause injuries to Ram Prakash Singh and Harveer Singh or cause death of Wakeel Singh and Vishambhar Singh.

In absence of precise, positive and perfect allegations against these three, we are unable to hold that the Court below was justified in convicting

these persons. Even if the matter is taken from another angle as to what was the common object of the unlawful assembly, it would only appear

that these eight persons had joined the other five to see that the possession of the property could be taken and the complainant party was

dispossessed. After reaching the spot when these persons disassociated from the other five after seeing the situation and the surcharge atmosphere

and the gravity of the situation, it cannot be held that they were members of the unlawful assembly, the common object of which was to commit

murder of two and cause injuries to some. A member of unlawful assembly can only be convicted if an offence is committed by the unlawful

assembly of which such a person was a member or such a member of the unlawful assembly knew that an offence as committed would be

committed or was likely to be committed by the unlawful assembly. The conviction of above referred eight persons deserves to and is accordingly

set aside.

46. The submission of the learned counsel for the appellants that Babu Singh who gave the Rojnamcha information was an eye witness and as he

did not give the detailed information to the police it would speak bad against the prosecution. Babu Singh has been examined as P.W. 9.

According to him, when he was going towards his field, he saw accused Sevaram, Suresh, Mahesh and Badan Singh and also heard the sound of

firing on which he immediately went to the police station. In the cross-examination though he suggested that he had seen the incident and informed

the police that he has seen the incident but this statement of P.W. 9 Babu Singh cannot be relied upon because neither in his police statement

recorded u/s 161 nor in the Rojnamcha report he had stated that he had seen the entire incident. From the statements of P.W. 9 Babu Singh it

would clearly appear that after seeing certain persons on the field and after hearing the shooting sound he immediately went to the police station

and reported the matter to the police. He gave a cryptic report to the police and did not give the complete details. We are unable to hold that Babu

Singh was an eye witness of the incident and was in a position to give the complete details of the incident.

47. The submission of the learned counsel for the appellants that in the first information report Ex. P-5 it is not mentioned that Sevaram had used

his gun therefore, he deserves to be acquitted, deserves outright rejection because in Ex. P-5 it is clearly mentioned that accused Shriram Singh,

Sevaram Singh and Kiledar had opened fire. The exhibit P-5 further records that because of the shots fired from the gun of Sevaram and others

Wakeel Singh and Vishambhar Singh suffered injuries and fell on the ground.

48. It was also contended by the learned counsel for the appellants that as Ex. P-5 does not show presence of Harveer Singh on spot, the said

witness Harveer Singh deserves to be disbelieved. In the opinion of this Court, the said argument would not be available to the defence in view of

the facts and circumstances of the case. Ex. P-5 was lodged by Ramprakash. Said Ramprakash had seen the incident wherein two of his uncle

died and he himself had suffered number of injuries. According to P.W. 1 Dr. Rakesh Sharma, said Ramprakash had suffered as many as 18

injuries and all were caused by the fire arms. It is not expected of a person who had seen the ghastly incident and had suffered as many as 18

injuries to remember every detail and give a pictorial description of the incident. Presence of Harveer Singh cannot be disbelieved in view of the

fire arm injuries suffered by him. Even otherwise P.W. 3 Harveer Singh is a reliable witness and is supported by P.W. 2 Ramprakash Singh and

P.W. 4 Kalyan Singh

49. The submission of the learned counsel for the appellants that as the cut crop was not seized, it would show that the genesis of the incident was

not as was being suggested by the prosecution witnesses. In the opinion of this Court, this argument would not cut much ice in favour of the

accused. In a case where two persons had died on the spot and two had suffered injuries by fire arms, it is not expected of the prosecution agency

that it would spend day's time in making inconsequential seizure. It was expected of the police authorities that immediately after obtaining the

report they would shift the injured to the hospital so that their lives could be saved. For this lapse on part of the prosecution, we are unable to hold

anything in favour of the defence. The further submission that all the injuries found on the person of the deceased and the witnesses were caused by

the fire arm accused Barelal and Preetam Singh deserve to be acquitted. A perusal of the medical report of Wakeel Singh would show that he had

suffered an incised wound/injury of 10 cm. x 1/2 cm. Scalp deep on his left parietal area. This injury undisputedly could not be caused by the fire

arm. The nature of the injuries found on person of Wakeel Singh would clearly show that accused Preetam Singh and Barelal had also taken part in

the incident.

50. The submission of the learned counsel for the appellants that all the injuries were caused by 12 bore guns therefore, accused Shriram Singh

cannot be convicted, cannot be accepted. From the medical report of Harveer Singh, it would appear that a bullet had passed through and through

his shoulder. On opening the body of Vishambhar Singh the said doctor recovered head of the bullet from the para-vertebral region of deceased.

On opening of the body of deceased Wakeel Singh, the doctor P.W. 1 Rakesh Sharma could recover the head of the bullet from the lungs of the

deceased. The recovery of the bullets from the body of the deceased persons would clearly show that not only 12 bore guns but even the bullets

were also fired from a rifle.

51. The arguments of the defence that the complainant side was armed with fire arms and fired indiscreetly, therefore, the shot fired by them had hit

their own people is a fanciful argument. The argument loses sight of the fact that on one side none of the prosecution witnesses have suffered a

single pellet or bullet injury while on the other side two persons from the side of the complainants lost their lives, the third one suffered as many as

18 pellet injuries and the fourth one also suffered the pellet injuries. If the complainant side was firing indiscreetly then atleast one pellet entry could

be found on the person of any of the accused. From the statements of P.W. 6 Saligram Sharma, A.S.I., it would appear that under Ex. P-17, he

had recovered six fired cartridges of 12 bore gun and three empty bullets. This fact would clearly show that atleast nine times or more, the gun

were fired. If the defence of the accused is taken to be correct, then atleast out of nine shots some would have hit some accused somewhere. The

absence of fire arm injuries on the person of the accused would clearly show that the suggestion made by them that the complainant party was

firing indiscreetly is patently wrong. Accused Bahadur Singh had an injury of 4 cm. x 1/2 cm., scalp deep on the parietal region. This injury would

ordinarily be not visible as the area is covered by the hair. The other two injuries are the bruises, Janak Singh also had a lacerated wound of 3 cm.

x 1 cm., scalp deep on the left parietal region. He had yet another lacerated wound on the left elbow and had some scratches on the fingers and a

lacerated wound of 2 cm. x 1/4 cm., obliquely placed on the right parietal region. Accused Koke Singh had a lacerated wound of 1 cm. x 1/2 cm.

skin deep on the right occipital region and had some scratch marks. These injuries were simple in nature and could be caused either in a scuffle or

because of a fall. It has not been suggested to the prosecution witnesses that either the deceased or the eye witnesses or the persons who came on

the spot had caused these injuries to these persons. It has come in the evidence of the witnesses that Naresh Singh came on the spot after the

deceased had fallen down and shot two fires in air. It has not been suggested to anybody that either Naresh Singh or others had opened indiscreet

fire and caused injuries to their own party man.

52. After giving our anxious consideration to the arguments and going through the entire record, we are of the opinion that the prosecution has

proved its case beyond shadow of doubt against the accused Preetam Singh, Kiledar, Shriram Singh, Sevaram Singh and Barelal. The prosecution

has also proved that each of these five persons had formed an unlawful assembly; atleast three members of the unlawful assembly were armed with

fire arms and each of the person knew that there was a likelihood of using the fire arms. Each of the five accused went on the spot and they in fact

meant business. In furtherance of the common object accused Preetam Singh started cutting crop and on deceased Wakeel Singh and Vishambhar

Singh asking them to not to do so, accused Shriram Singh, Sevaram Singh opened fire, Preetam Singh and Barelal caused injuries to the deceased

and, Kiledar after arrival of the interveners again opened fire. The prosecution has also proved that the members of the assembly knew that they

were likely to cause death and were likely to cause grievous injuries. The Court below was certainly justified in convicting accused Preetam Singh,

Kiledar, Shriram Singh, Sevaram Singh and Barelal under Sections 307/149 and 302/149, IPC. The trial Court was also justified in convicting

accused Shriram Singh u/s 201, IPC and was also justified in convicting the other eight persons. The conviction recorded and the sentence award

to accused Janak Singh, Bahadur Singh, Bharat Singh, Mahesh Singh, Badan Singh, Jabar Singh and Suresh Singh and Surendra Singh deserve to

and are accordingly set aside. They are said to be in jail, they be immediately released, if not required in connection of any other offences.

53. The question for consideration still is whether the Court below was justified in awarding capital punishment to accused Shriram Singh and

Sevaram Singh. Learned counsel for the appellants submitted that present is not a case where the capital punishment should have been awarded to

these two accused persons because they were in possession and to protect their possession they had caused certain injuries. It was submitted that

present is not a rare of the rarest case where the capital punishment should have been awarded to the appellants. On the other hand, learned

counsel for the State submits that the manner in which number of the persons armed with guns and other weapons entered in the field contrary to

the order of injunction and opened indiscreet fire and fired repeatedly and caused number of two persons and also caused injuries to, two more

persons, the present would be a rare of the rarest case where the trial Court justifiably awarded the death sentence.

54. Having given our thoughtful consideration to the arguments raised by the parties and taking into consideration the facts and circumstances

specially the facts that Somabai had sold the property to some of the accused and the accused had obtained an order of status quo in their favour

had entered into the land and protecting their alleged title opened fire, we consider present to be not a rare of the rarest case worth awarding

capital punishment to accused Shriram Singh and Sevaram Singh. Though the conviction of these two accused persons is maintained but they are

awarded life imprisonment u/s 302/149, IPC. The conviction and sentence of all the other three accused namely, Barelal, Preetam Singh and

Kiledar Singh u/s 302/149, IPC are maintained. Similarly conviction and sentences awarded to accused Shriram Singh and Sevaram Singh under

Sections 148 and 307/149, IPC are also maintained. Similarly conviction and sentences awarded to accused Shriram u/s 201, IPC are also

confirmed. The conviction and sentences of accused Preetam, Kiledar and Barelal u/s 302/149, IPC, u/s 307/149 and also u/s 148, IPC are

maintained. The substantive jail sentences awarded to each of the accused shall run concurrently. The period for which each of the accused

remained in jail shall be given as a set off to them.

55. To the extent indicated above, the appeal is allowed.