

(2010) 09 CHH CK 0013

Chhattisgarh High Court

Case No: Criminal Appeal No. 454 of 2003

Tukesh Singh and Others

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision: Sept. 10, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 300, 302

Citation: (2011) 1 Crimes 751

Hon'ble Judges: R.N. Chandrakar, J; Dharendra Mishra, J

Bench: Full Bench

Advocate: Surendra Singh with Mr. Neeraj Mehta, s Nos. 1 to 3 and 7 to 9 Mr. Azad Siddique For the Appellant No. 4, Mr. U.K.S. Chandel with Mr. Vinay Dubey, No. 6, for the Appellant; B.P. Sharma For the Respondent No. 5 and Shri U.N.S. Deo and Shri Ashish Shukla, Govt. Advocates., for the Respondent

Final Decision: Dismissed

Judgement

Dhirendra Mishra, J.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 28-2-2003 passed in ST. No. 229/2001 whereby learned 5th Additional Sessions Judge, Bilaspur, has convicted the appellants under Sections 147, 148, 307/149 and 302/149 of the IPC and sentenced them to undergo R.I. for 6 months and to pay a fine of Rs. 100/-, in default of payment of fine to further undergo additional RI of 5 days; to undergo R.I. for one year and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo additional R.I. of one year; to undergo R.I. for 10 years and to pay a fine of Rs. 5,000/-, in default of payment of fine to further undergo additional R.I. for 6 months, and to undergo imprisonment for life & to pay a fine of Rs. 1 0,000/-, in default of payment of fine to further undergo additional R. I. for 6 months to each of the appellants. Sentences have been directed to run consecutively.

PROSECUTION CASE

2. Case of the prosecution, in brief, is that Kashiram Rathore, resident of Masturi had borrowed a loan from Ganpat Singh. As he could not repay the loan, he had given his shop situated at bus stand Masturi and the land adjacent to it to Ganpat Singh. Ganpat Singh gave the shop to his relative Rajendra Singh and opened medical store through him. When Prashant Medical Store started doing successful business, Rajendra Singh purchased the shop and the adjacent vacant land from Kashiram Rathore and got a sale deed executed. On account of this animosity, the accused persons with a common object armed with deadly weapons rod, sword, knife, club went to the disputed shop located at bus stand attacked the complainant party and murdered Manrakhan and Narayan Singh and attempted on the lives of injured Virendra Singh (PW-3), Shivraj Singh (PW-1), Judawan Singh (PW-4), Vishveshar Singh Thakur (PW-5) and Rakesh Singh Thakur (PW-8). Report of the incident was lodged on 24-3-2001 at 20.05 hours by Rakesh Singh Thakur against the appellants vide Ex.-P/9.

3. Inquest over dead bodies of Narayan Singh and Manrakhan Singh was prepared vide Ex.P/10 and Ex.-P/11 respectively on 25-3-2001. Merg intimation regarding the death of Manrakhan Singh and Narayan Singh was given from the S.P. Hospital, which was registered in city Kotwali, Bilaspur Vide Ex.-P/28 & Ex.-P/29 respectively on 24-3-2001 at 19.00 hours and the, same was registered in Police Station Masturi on 26-3-2001 vide Ex.-P/26 and Ex.-P/27 respectively. The dead bodies were sent for autopsy to S.P. Hospital, Bilaspur where Dr. BR. Hotchandani (PW-10) conducted the postmortem on 25-3-2001 and submitted his reports vide Ex.-P/19 and Ex.-P/20 respectively.

4. Injured persons namely, Virendra Singh, Shivraj Singh, Visheshwar Singh and Judawan Singh were sent for medical examination to Dharam Hospital, Bilaspur where they were examined by Dr. R.K. Shukla & Dr. K.K. Jaiswal on 24-3-2001 & 25-3-2001 vide injury reports Ex.-P/4, Ex.- P/5, Ex.-P/7 & Ex.-P/8 respectively.

5. Weapons of offence sword like weapon from appellant Tukesh Singh; sword like weapon also on being produced by Baba @ Rajesh; a dagger like weapon (like sword) stained with blood from Mangal Das; sword like weapon from Basant Singh; one blood stained club from Pappu Singh; a wooden plank from Anil Singh and one iron rod from Vishnu Singh were seized on 25-3-2001 vide Ex.-P/12 to Ex-P/18, respectively.

6. Weapons seized from the accused persons were sent for examination to S.P. Hospital, Bilaspur for opinion vide Ex.-P/21 and Dr. B.R. Hotchandani vide his report dated 8-6-2001 opined that the injuries present over deceased persons Narayan Singh and Manrakhan Singh could be caused by these weapons, however, for confirmation of presence of human blood, he advised chemical examination.

7. Injured Rakesh Singh was sent for medical examination to Dharam Hospital, Bilaspur where he was examined by Dr. L.C. Madariya (PW-16) and his injury report is Ex.-P/25.
8. Blood stained and plain soil was seized from the spot near Prashant Medical Store on 24-3-2001 vide Ex.-P/25-A. Blood soaked Gancha was also taken into possession from the spot vide Ex.-P/26; Blood stained wearing apparels of deceased person Narayan Singh and Manrakhan Singh were taken into possession vide Ex.-P/31 and Ex.-P/32 respectively.
9. After completing usual investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class Bilaspur, who in turn committed the case to the Court of Sessions Judge, Bilaspur and the same was received on transfer for trial by the teamed Additional Sessions Judge.
10. Learned Additional Sessions Judge framed the charges under Sections 147, 148, 307/149 and 302/149 of the IPC against the appellants who abjured their guilt.
11. The prosecution examined 18 witnesses in all. Thereafter statements of the accused persons were recorded in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication.
12. Appellant Tukesh Singh took a defence plea that the medical store and the adjacent land is their property and even today they are in possession. They had given the property to them (complainants), however, they were not returning the property and falsely implicated them on account of animosity.
13. Appellant Pappu Singh also took a defence plea that Narayan, Manrakhan, Visheshwar Singh, Rajendra Singh, Sukhnandan and 10-15 other persons armed with sword, battleaxe, club came there abusing filthily and assaulted him by sword, as a result he sustained injuries above his eye and became unconscious.
14. Appellant Mangal Das also took a defence plea that Narayan, Rajendra Singh, Sukhnandan Singh, Visheshwar Singh, Judawan and 10-15 others came there armed with weapons and filthily abused and attacked them as a result he sustained injuries on his chest and he became unconscious.
15. Appellant Basant Singh took a defence plea that on the date of the incident he along with Pappu, Vishnu and Mangal were playing carom when the deceased persons and injured persons accompanied with 10-15 others came there armed with weapons, filthily abused and attacked them. He sustained injury by battleaxe on his head. He also intervened and became unconscious. Report was also lodged by them in Masturi Police Station.
16. Appellant Tamesh Singh and Ramesh took a defence plea that they had gone by road to "Vindhyavasini Devi" on 22-3-2001. Ramesh all of a sudden fell sick near Pratappur and, he was admitted in the Government Hospital, Pratappur on

23-3-2001. They proceeded by car to "Vindhyavasini Devil" on 25-3-2001 and returned from there after some days to Masturi where they were falsely implicated in the above case. They also examined Dr. Subhadra Paikra in their defence.

17. The trial Court after hearing learned counsel for the respective parties, convicted and sentenced the appellants as mentioned in para-1 of the judgment.

Finding of the trial Court

18. The trial Court, on the basis of evidence of Dr. B.R. Hotchandani (PW-10) and postmortem reports of Manrakhan and Narayan Singh (Ex.-P/19 & Ex.-P/20), held that Narayan Singh and Manrakhan Singh were murdered on 24-3-2001.

19. Learned counsel for the appellants did not dispute that Manrakhan Singh and Narayan Singh died homicidal death. Even otherwise from perusal of the postmortem reports of Ex.-P/19 & Ex.-P/20 of deceased Manrakhan & Narayan Singh and the evidence of Dr. Hotchandani, their homicidal death is established.

Injuries sustained by Manrakhan Singh

One incised wound of size 3" x W x brain deep over left fronto temporal area of skull.

Two dark colour bruises on right and left leg of irregular shape were present. The doctor opined that Manrakhan died as a result of shock due to injury over head and brain. Death is homicidal in nature.

Injuries sustained by Narayan Singh

Horizontally placed incised wound over upper part of neck just below chin extended to about 3" left to midline to about 4" right to mid line at the level of thyroid cartilage of size 7" x 3 1/2" x 3" beyond trachea. Cut trachea is visible. At the same level muscles, artillery and nerves were also cut. Thyroid cartilage was also cut. Clotted blood was present.

Incised wound of size 2 Vi" x 1" x muscle deep over left forearm just below elbow. Clotted blood present.

Depressed fracture on left fronto parieto temporal area of size 5 1/2" x 1", bone beneath fractured, intra cerebral haematoma present. Clotted blood over nostrils present.

Vertical bruises over right umbilicus of size 8"x 1". One bruise of size 14" x 1" on the left side of umbilicus extending up to chest, 3 bruises on the right side of chest of size 4" x 4 1/2" x 3 1/2". One bruise below left armpit on chest of size 8" x 1".

One bruise of size 5 1/2" x 1/2" near right knee.

He further opined that the deceased died as a result of shock due to injury over neck and head.

20. On the basis of evidence of Dr. R.K. Shukla (PW-2), who examined injured Virendra Singh and Shivraj Singh, Dr. K.K. Jaiswal (PW-7), who examined Visheshwar Singh and Judawan Singh and Dr. L.C. Madariya (PW-16), who examined injured Rakesh Singh on 24-3-2001 and proved their injury reports, it has been held that they sustained injuries in the same incident on 24-3-2001.

21. On the basis of evidence of injured eyewitnesses and PW-11 Rajendra Singh Thakur, it has been held that there was some dispute between the appellants and the complainant party with respect to purchase of medical store from Kashiram Rathore. There was a meeting between them in the presence of Ganpat Singh Thakur, father of appellant Tamesh, Ramesh and Tukesh Singh and in the said meeting, it was decided that 3 decimal land adjacent to the shop shall be purchased by Ganpat Singh from Kashiram and 2-3 days after 16-3-2001 Kashiram executed a registered sale deed in favour of Ganpat Singh. In the night of 23-3-2001 at about 11 pm, some persons knocked the door of Rajendra Singh and tried to bring him out from his house. However, on persuasion of Manrakhan Singh, they went back.

22. On the date of the incident the deceased and the injured persons & others reached Prashant Medical Store between 12 to 1.45 pm on being called by Rajendra Singh. Thereafter Rajendra, Sukhnandan and Kanhaiya went to the Police Station Masturi to lodge the report regarding the incident of night and only 8-10 minutes thereafter the accused persons armed with deadly weapons attacked the complainant party and caused the death of two persons and injured 5 others. It has been held that all the accused persons were aggressive from the previous night and they were aggressor. The version of the defence witness Dr. Smt. Subhadra Paikra that appellant Ramesh was admitted on 23-3-2001 in the hospital vide Ex.-D/8 has been disbelieved on the ground that the name of the patient is entered in the OPD register and bed head ticket and discharge ticket has not been produced and proved and there is overwriting in the document of Ex/ D/9.

23. Shri Surendra Singh, learned Senior Advocate with Shri Neeraj Mehta, advocate appearing on behalf of appellants Nos. 1 to 3 and 7 to 9 argued that from the evidence adduced by the prosecution, it would be evident that Narayan Singh, Manrakhan Singh and Shivraj were first taken to Masturi Hospital and from there they were shifted to Bilaspur hospital whereas other injured witnesses remained at Masturi bus stand. However, no FIR was registered, in the police station situated just at a distance of 2-3 furlong from the place of incident. Two constables came to the spot and met injured Virendra, Judawan, Visheshwar and Rakesh and shifted them to the hospital at Masturi which is adjacent to the police station where they stayed for some time. Even then the report was not lodged. The above two constables have also not been examined. Rakesh (PW-8), complainant, met me Superintendent of Police in the hospital and intimated him about the incident. Thereafter, he lodged the report at 8.05 pm. |

24. Only one incised wound and two small bruises on the leg have been noticed on the person of Manrakhin Singh and there is no injury caused by lath on head nor any incised injury on the back. The defence of the appellants is that the opposite party assaulted them and thereafter a general Marpeet occurred in which the deceased party sustained injuries. On the basis of report of the accused persons, a counter case has been registered against the opposite party as the accused persons have also sustained injuries. Only injured eyewitnesses namely, Shivraj Singh, Virendra Singh, Judawan Singh, Visheshwar Singh and Rakesh Singh have supported the prosecution case and independent witnesses namely, Dilip Singh (PW-13), Shiv Kumar Dubey (PW-14) and Ishwari (PW-15) have supported the defence of the appellants.

It was argued that in the case of group rivalry and enmities, it is a general tendency to rope in as many persons as possible as having participated in the assault. In such a situation, it is expected from the Court to be very cautious and sift the evidence with care. Where on close scrutiny of the evidence reasonable doubt arises with regard to the participation of any accused, he should be given benefit of doubt. Reliance is placed in the matters of Eknath Ganpat Aher and others v. State of Maharashtra & Others (2010) 6 SSC 519 and [Budhwa alias Ramcharan and Others Vs. State of Madhya Pradesh](#), .

It was further argued that in a melee involving large number of persons, the important question to be considered is whether all persons whose names are mentioned could be held to be members of the unlawful assembly? In such situation, the participation one of the short tests to fix the presence of members of the un-lawful assembly. Though the scope of Section 149 is very wide, but when one comes to the participation and presence in the unlawful assembly to be fixed on that basis, the part played by everyone of them assumes importance and in that context, the medical evidence has also to be considered. Reliance is placed in the matter of Govindappa and others v. State of Karnataka, 1994 Supp (3) SCC 357 .

To fix the liability of an accused as being a member of the unlawful assembly, atleast 2-3 or more witnesses should give consistent account of incident.

In the instant case, there is inordinate delay of more than 6 hours in registration of crime. The police constables had reached on the place of the incident and met eyewitnesses, however, no attempt was made to lodge FIR. The police station was very close from the spot. The injuries sustained by Judawan Singh, Visheshwar and Rakesh were simple and, therefore, delay in lodging the report is to deliberate as to the members and identity of the members to be implicated in the case, Thus delay in lodging FIR is fatal to the prosecution. Reliance is placed in the matter of Mahtab Singh & Anr. v. State of U.P. AIR 2009 SCW 3067

The prosecution witnesses have alleged that Ramesh Singh assaulted Manrakhin Singh with lathi on his head, however, neither in the FIR nor in their case diary

statements the said fact is mentioned and this story was developed during trial. The version is also not corroborated from the medical evidence as injury on the head of the deceased was caused by sharp edged weapon. Similarly, the allegation against Baba @ Rajesh is that he attacked Manrakhan on his back with sword whereas, no corresponding injury was found on the deceased's back.

It was finally argued that 3 independent witnesses have consistently stated from the stage of investigation that the incident was one of free fight and in such circumstances, there is no scope of applicability of Section 149 or Section 34 of the IPC.

Lastly, it was argued that sentences have been directed to run consecutively, however, taking into consideration that all the injuries were caused in the same incident, the sentences should have been directed to run concurrently.

25. Shri Azad Sidique, learned counsel appearing on behalf of appellant No. 4 Anil Singh advancing similar augments also argued that PW-1 Shivraj Singh, PW-5 Visheshwar Singh and PW-8 Rakesh Singh have not stated about the presence of this appellant at the place of incident. PW-3 Virendra Singh has deposed that he was assaulted by Anil Singh by iron rod on his back whereas PW-4 Judawan Singh has also stated that Anil was also holding iron rod whereas, as per the seizure memo of Ex.-P/17 one wooden plank has been seized from this appellant. As per medico legal injury report of Virendra Singh, he suffered incised injury on his back caused by sharp edged weapon. Thus, the version of Virendra Singh and Judawan Singh stands contradicted from the medical evidence as well as seizure of weapon.

26. Shri B.P. Sharma, learned counsel appearing on behalf of appellant No. 5 Vishnu Singh argued that Vishnu, Basant Pappu and Mangal were playing carom at the time of the incident when the opposite party mercilessly beat them and the appellant became unconscious. This specific defence plea has been taken in their examination u/s 313 of the Cr.P.C, however, this has not been considered by the trial Court. The appellants have been falsely implicated on the basis of report which has been lodged with an inordinate and unexplained delay after deliberation, though complainant Rakesh Singh (PW-8) has named this appellant in the FIR, however, in his Court evidence, he has not named this appellant. Even Shivraj Singh (PW-1) has not named Vishnu Singh in his Court evidence, though in the FIR, it is alleged that this appellant and another assaulted Shivraj Singh by danda and sword. Shri Sharma reiterated the arguments advanced by Shri Surendra Singh, learned Senior Advocate that from material available on record, it is evident that it is a case of free fight between the two groups and on the basis of report of the accused party, a counter case has been registered against some of the members of the complainant party, as the accused persons also sustained injuries and, therefore, their conviction with the aid of Section 149 or 34 of the IPC was uncalled for.

27. On the other hand, Shri U.N.S. Deo and Shri Ashish Shukla, learned Govt. Advocates appearing for the State argued that the background in which the incident occurred is reflected from the evidence of injured eyewitnesses Shivraj Singh, Virendra Singh, Judawan Singh and Visheshwar Singh as also from the evidence of complainant Rakesh and Rajendra Singh. Rajendra Singh had taken a premises belonging to Kashiram Rathore on rent and he was running his medical store from the tenanted premises and he was residing in the same premises. Later on, he purchased the premises from him against the wishes of Ganpat Singh and his sons Tukesh Singh, Tamesh Singh and Ramesh Singh. Kashiram Rathore borrowed some loan from Ganpat Singh which he had failed to repay. Ganpat Singh wanted to purchase that shop in lieu of the loan from said Kashiram Rathore. Appellant Tamesh Singh called Rajendra Singh and conveyed his displeasure about the transaction and demanded money advanced to Kashiram Rathore. After this, a Panchayat was convened. He called Narayan, Sukhnandan, Judawan and Shivraj Singh and they all went with Kashiram Rathore to the house of Ganpat Singh and as per the compromise, Kashiram transferred 3 decimal land to Ganpat Singh, however, in the night of 23-3-2001 Baba @ Rajesh Singh, Basant, Pappu accompanied by 6-7 other persons came to the house of Rajendra, filthily abused him and attempted to drag him out on the pretext that appellant Tamesh is calling. However, they were persuaded to go back by his father-in-law. They again returned and slammed his door and roof by filthily abusing them. In this background, Rajendra called his relatives in his house in the following morning and it was decided to report the event of night to the police. While Rajendra Singh, Sukhnandan and Kanhaiya were in the police station, all the accused persons armed with deadly weapons attacked Prashant Medical Store where relatives of Rajendra Singh had gathered on account of the incident of previous night and caused the death of Manrakhan and Narayan and attempted on the lives of 5 others. The presence of the appellants on the place of incident is proved from the evidence of injured eyewitnesses as also from the first information report lodged on the same day in which the presence of all the accused persons at the time of incident has been duly mentioned.

The incident occurred in a broad day light in a crowded place. The trial Court on the basis of evidence of eyewitnesses has arrived at a conclusion that the appellants were in aggressive mood from the previous day of the incident as they did not approve the conduct of complainant party of purchasing the property of Kashiram Rathore who owed "some loan to them. They took it as a challenge to their supremacy in the village and they expressed their annoyance. The complainant party got frightened and they went to the house of Ganpat Singh with Kashiram Rathore and Kashiram transferred another 3 decimal plot to Ganpat Singh, however, the anger of the accused party did not subside. They tried to terrorize Rajendra Singh in the night of 23rd March, 2001 and on account of the incident, Rajendra called his relatives residing nearby. They together went to Police Station to report

about the incident of previous night and while Rajendra and 2 others were in the police station, all the accused persons armed with deadly weapons attacked Prashant Medical Store in a broad day light, much emphasis has been placed on delayed report, however, looking to the reign of terror, let loose by the accused persons and grievous injuries sustained by 7 persons, priority for the complainant was to provide immediate medical assistance to the injured persons who were urgently shifted from Masturi to Bilaspur.

It was also argued that injured eyewitness Shivraj (PW-1) has stated about the presence of Tukesh, Tamesh, Ramesh and Babla on the place of the incident. He has described the actual part played by these accused persons. Similarly, injured witness Virendra has also deposed about the presence of all the accused persons namely, Tamesh, Tukesh, Babla, Mangal, Pappu, Anil, Vishnu, Basant and Ramesh and also attributed overt acts to appellants Tamesh, Tukesh, Mangal, Pappu, Anil. His version is substantially corroborated from the evidence of injured witness Judawan (PW-4), who has deposed about the presence of all the appellants except Basant Singh, as also from the evidence of Rakesh Singh, who has stated about the presence of all the accused persons at the time of incident on the spot.

28. We have heard learned counsel for the parties. We have perused the record of the trial Court and carefully examined the impugned judgment.

29. The appellants have mainly challenged the finding of the trial Court on the following grounds:

There is unexplained delay in lodging the report. The incident occurred at 2.30 in the afternoon on 24-3-2001 whereas report has been lodged by Rakesh at 20.05 hours in Police Station Masturi.

30. It is true that report has been lodged after more than 5 1/2 hours of the incident by PW-8 Rakesh Singh. It is also true that there is evidence available on record that injured persons were first taken to Masturi hospital which is adjacent to the Police Station and thereafter they were shifted to main hospital, Bilaspur. From the evidence, it is also found that two police constables came to the spot and took injured Virendra, Judawan, Visheshwar and Rakesh to the hospital at Masturi and from there they were shifted to main hospital Bilaspur. Report has been lodged by PW-8 Rakesh Singh Thakur. From his evidence, we find that he also sustained injuries in the same incident. The police took him and Virendra firstly to Masturi hospital, he was given first aid and thereafter referred to the District Hospital, Bilaspur. He returned from Bilaspur at 8 p.m. and lodged the report. At the time of lodging the report, he was accompanied by Judawan and Rajendra Singh. He narrated the incident to the Superintendent of Police, Bilaspur and thereafter he returned to Masturi with S.P. and lodged the report. From the evidence of this witness, we find that when he was brought to Masturi hospital in injured condition, Marayan and Manrakhan were leaving Masturi Hospital for further treatment to

Bilaspur and after some time, the complainant and Vimedra were also shifted to Bilaspur for treatment. He sustained simple injuries and he was not admitted in the hospital.

31. From perusal of the record, we find that Narayan Singh and Manrakhan Singh were referred to main hospital, Bilaspur. The hospital vide its communication of Ex-P/1 informed the S.O., City Kotwali that Narayan Singh was brought dead on 24-3-2001 whereas Manrakhan expired in the hospital at 4.25 p.m. (Ex- P/1 & Ex.-P/3). Virendra Singh (PW-3) had also received as many as 9 grievous injuries on various parts of the body including bridge of nose, left occipital region, scapular region and he was rushed to the hospital with complainant for further treatment. Shivraj Singh and Visheshwar Singh had also sustained grievous injuries in the same incident and they were all rushed to the hospital.

32. In *Mahtab Singh & Anr. (Supra)*, a written report of the incident was lodged by eyewitness after 45 minutes of the incident in the police station which was hardly one furlong from the place of occurrence, whereas the first version of the incident could have been reported at the police station within five minutes of its occurrence and because of this delay, truthfulness of the prosecution case was suspected

33. In [Raghubir Singh Vs. State of Haryana](#), , the Hon'ble Supreme Court, while considering the ground of delay in filing first information report, held in paragraph-11 thus:

With regard to the delay in filing the FIR, both the Courts have found that there was no delay in filing the FIR. The trial Court found that the rushing of the victim to the Hospital to save his life instead of first going to the police station was a satisfactory explanation for the delay in making the complaint. The view was affirmed by the High Court and we find no reason to interfere with the same.

34. Similar view has been taken by the Hon'ble Supreme Court in the matter of [State of Himachal Pradesh Vs. Rakesh Kumar](#), .

35. In the present case, the complainant was taken by the police to Masturi hospital and thereafter he was taken to District Hospital, Bilaspur along with grievously injured witness Virendra Singh who needed immediate medical assistance. Other 2 injured persons Narayan and Manrakhan were also shifted to District Hospital in their presence and who subsequently expired. In these circumstances, registration of crime on the report of complainant Rakesh, injured eyewitness, after return from the District Hospital Bilaspur at 8 pm cannot be suspected on the ground of delay.

Whether the trial Court was justified in holding all the accused persons members of unlawful assembly and convicting them under Sections 147, 148, 307 and 302 with the aid of Section 149 of the IPC?

36. It has been vehemently argued by learned counsel for the appellants that all the family members of Ganpat Singh and other innocent persons have been roped in by

the complainant in his report which has been lodged with an unexplained delay of more than 5V2 hours. Relying upon the various judgments of the Supreme Court it has been argued that free fight took place between the complainant and the accused party on account of group rivalry and previous enmity. On report of the accused persons offence has also been registered against the complainant party and in the same incident, some of the accused persons also sustained injuries. In these circumstances, a duty was cast upon the trial Court to sift the evidence with caution.

37. PW-11 Rajendra Singh runs a medical store in the shop where the incident took place. He has deposed that on 16-3-2001 appellant Tamesh Singh called him in his office and asked him to return the loan which he had advanced to Kashiram from whom Rajendra Singh purchased the shop to which he replied that he should settle this matter with Kashiram and he has nothing to do with the same. Thereafter he called his brother Narayan, Sukhnandan, Judawan and Shiv Singh and all of them went to Ganpat Singh, wither of Tamesh. They arrived at a compromise according to which Kashiram was to sell his 3 decimal of land to Ganpat Singh and he transferred that land to him. However, despite this above compromise, Baba Singh, Basant Singh, Pappu and 6-7 other persons came to his house to the previous night and called him on the pretext that Tamesh is calling him. When he expressed his inability, they filthily abused him-and vandalized his house. After the incident, he went to village Uchcha Bhatti at 4 a.m. and apprised about the incident to his father who came to Masturi with Sukhnandan Singh to settle the matter with accused party. He also informed about the night incident to his other relatives and called them. They decided to lodge report about the night's incident. He went to lodge report at 1.30 in the afternoon and the present incident took place while they were still present in the police station. I

38. Narendra Mishra (PW-17), I.O., has also deposed that a written report - was lodged regarding the disputed between the accused persons and Rajendra Singh, however, offence was not registered.

39. The above version of this witness is also corroborated from the evidence of Shivraj Singh (PW-1), Virendra Singh (P W-3), Judawan Singh (PW-4) and Rakesh Singh (PW-8), as all of them have deposed that Rajendra, Sukhnandan and Kanhaiya had gone to the police station to lodge report regarding previous night's incident and only 8-10 minutes 1 thereafter the accused persons came to the spot armed with deadly weapons.

40. From the evidence available on record, it appears that Rajendra Singh and Ganpat Singh and his sons are relatives. The above dispute arose between; them as Rajendra Singh purchased the premises from which he was running his medical store from its owner Kashiram Rathore, who had borrowed some loan from the accused persons. By purchasing the above property, Rajendra Singh invited displeasure of the accused persons. Rajendra Singh called other family members

and approached appellant Tamesh and his father. A compromise was arrived at and as per the compromise, Kashiram sold his 3 decimal of land to them, however, grudge persisted and the incident occurred firstly in the intervening night of 23rd/24th March, 2001 and thereafter in the afternoon of 24th March, 2001.

41. In the matter of Eknath Ganpat Aher and others (Supra), there was a dispute between the complainant and the deceased party with respect to the title of the disputed property and the civil suits instituted by both the parties in respect of title and possession of the aforesaid land were pending. In this background, the complainant party went to the disputed land to remove tomato plants and grass for cleaning the lands when a mob of about 75-100 persons came from the top of north side hill situated adjacent to the land and started pelting stones. They beat the complainant party by deadly weapons and caused grievous injuries to several persons. In all 38 persons were put to prosecution and 35 of them were convicted. On appeal, the High Court acquitted 21 accused persons and maintained conviction of remaining 14 persons. Allowing the appeal of the convicted appellants, the Hon'ble Supreme Court held that in a case of group rivalries, there is a tendency to rope in as many persons as possible as having participated in assault. In such situations, the Courts should be very cautious and sift evidence with care. Where on scrutiny of evidence, a reasonable doubt arises as regards participation of any of those who had been roped in, benefit of doubt should be extended to them.

42. In Budhwa alias Ramcharan & others (supra), a group of more than 15 persons encircled the victim and simultaneously attacked with Tabbal and lathi without any resistance or intervention. However, the deceased sustained 2 incised wounds on the scalp and 5 other minor injuries on his person. Considering the nature of injuries sustained by the deceased, the assertion of the concerted attack with lathis and tabbals by several assailants numbering over 15 was doubted and it has been held that the presence of more than 7 persons on the spot was doubtful.

43. In Govindappa & others (supra), it has been held that in a melee involving a large number of persons the important question to be considered is whether all persons whose names are mentioned could be held to be members of the unlawful assembly? A note of caution has been issued in order to avoid the danger of convicting innocent, wayfarers and sightseers that in a case of this nature, the participation is one of the sure tests to fix the presence of members of the unlawful assembly.

44. In Anumula Papodu alias Thimmaiah and others v. Public Prosecutor, High Court of [Anumula Papodu alias Thimmaiah and others Vs. Public Prosecutor, High Court of Andh. Pra., Hyderabad](#), the Supreme Court, while dealing with Sections 300 and 149 of the IPC, held that where all the 9 accused persons armed with deadly weapons emerged in a body and all of them participated in the occurrence; two deceased receiving fatal injuries and nine prosecution witnesses receiving simple and grievous injuries at the same time and place; only conclusion possible is of

unlawful assembly and common object to commit murder and grievous hurt.

45. In [Sheo Prasad Bhor @ Sri Prasad Vs. State of Assam](#), it has been held that "When charge u/s 149 IPC is there, it is not necessary that each one should be assigned independent part played in the beating. If it is found that one of them was a member of the unlawful assembly and that unlawful assembly assaulted the deceased which ultimately caused the death of the deceased, then all who were members of the unlawful assembly can be held liable.

46. Similar view has been taken in the case of [Chandra Bihari Gautam and Others Vs. State of Bihar](#).

47. In [Yunis @ Kariya etc. Vs. State of Madhya Pradesh](#), it has been held that where the accused persons armed with deadly weapons surrounded deceased and inflicted injuries resulting into his death; incident took place in broad day light in a market place; presence of eyewitnesses on spot is natural and there is no material discrepancy in the medical evidence and the evidence of eyewitnesses; conviction has been upheld. It has been also held that presence of accused as part of unlawful assembly is sufficient for conviction even in the absence of any overt act attributed to him.

48. In the light of the above principles of law laid down by the Supreme Court, if we examine the evidence available on record in the present case, we find that PW-1 Shivraj Singh is the father of Rajendra Singh in whose medical store the incident occurred. This witness has deposed that Tukesh, Tamesh, Ramesh and Babla were present at the time of the incident. He did not recognize other accused persons. He is not able to say whether others were present at the time of the incident or not. His son Rajendra came to his house at about 8 am on the date of the incident and narrated about the incident of night when some persons had abused him and tried to drag him after entering into the house. He accompanied Rajendra and came to Masturi with his grandson Rakesh on motor-cycle. He also deposed that when the matter has already been settled in the Panchayat, there is no question of any quarrel. On that day his brother Narayan and son Virendra were also called to Masturi and they decided to give information regarding the incident of night to the police whereupon Rajendra, Sukhnandan and Kanhaiya went to lodge the report. At that time, after their departure to police station, 9-10 persons came running and filthily abusing. Tamesh Singh assaulted his son Narayan by sword. His brother Tukesh also assaulted him by sword on his hand and rest of the persons encircled him and assaulted him. On hearing his shoots, his son Virendra ran to intervene when he was also attacked by battleaxe and lathi, as a result he sustained various injuries on his person. When Visheshwar and Menrakhan tried to intervene, Ramesh Singh assaulted Manrakhan by club on his head and Babla assaulted him by sword on his back. Ramesh also assaulted him by lathi on his wrist. He also assaulted on his head and he became unconscious. Manrakhan and Narayan were taken to the hospital, however, they died on the way.

49. Dr. R.K. Shukla (PW-2) examined this witness and proved his injury report of Ex.-P/5. The injuries have been described in para-14 of the judgment.

50. PW-3 Virendra Singh is also an injured eyewitness. He also sustained 9 incised injuries on his face, scalp, left palm, back and shoulder as described in para-13 of the judgment. This witness has also deposed that on the date and time of the incident he had gone to Masturi on being called by his younger brother Rajendra Singh, as some persons had entered in his house and quarrelled with him. While they were sitting in the counter of medical store with father Shivraj Singh, brother Narayan, Sukhnandan, Rakesh and Likhan, the accused persons 9-10 in number armed with deadly weapons sword, battleaxe, rod, lathi reached there and attacked Narayan Singh. When he rushed to save Narayan, he was also attacked by Mangal, Pappu, Anil, Tamesh and Tukesh. He has stated about the involvement of Ramesh and Baba. He was taken to the hospital at Masturi and thereafter he was immediately rushed to Bilaspur where his father was also admitted. He learnt in the hospital at Bilaspur that Narayan and Manrakhan have died. In cross-examination, this witness has admitted that a criminal case with respect to the same incident is pending against them. Insignificant and immaterial infirmities in the shape of omissions and contradictions have been pointed out in his diary statement of Ex.-D/4 in cross-examination.

51. PW-4 Judawan Singh has deposed that Rajendra had taken a medical shop on hire from Kashi Rathore. Subsequently, he purchased the shop from him. Kashi Rathore had taken some loan from Ganpat Singh. Ganpat Singh wanted to purchase the medical store and, therefore, he raised a dispute as to why Rajendra Singh purchased the shop. They had gone to Ganpat Singh for settling the above dispute on 16-3-2001. In that meeting Ganpat Singh and his son Ramesh were present and the dispute was settled as Kashi Rathore sold 3 decimal of his land through a registered sale deed executed after 2-3 days of the meeting. He was called by Rajendra on telephone on 24-3-2001 as some persons came to the house on the previous night and tried to drag him out of his house to take him to Tamesh and Tukesh. He reached Masturi at about 1.45 p.m.. at that time, Shivraj, Likhan, Rakesh and Manrakhan were sitting in the medical store. Narayan Singh and Rajendra Singh came after their arrival. Rajendra and 2 others went to lodge report regarding the incident of previous night. After 8-10 minutes of their departure, 8-10 persons attacked the medical store. The attackers were Ramesh Singh, Tamesh Singh, Tukesh Singh, Baba @ Rajesh Singh, Vishnu Singh, Anil Singh, Mandal Das & Pappu Singh. They were armed with deadly weapons. He has given account of assault by each of the accused person to the injured and the deceased persons. Tukesh Singh attacked him by sword on his head which he defended by his lathi. Thereafter some persons assaulted him by lathi from the back side. He brought Manrakhan inside the medical shop. The attackers also broke the glass of the medical shop. This witness also sustained injuries in the same incident. He was examined by Dr. K.K. Jaiswal (PW-7) on 25-3-2001 who has proved his injury report of Ex.-P/8.

52. PW-5 Visheshwar Singh is also an injured eyewitness. He was also examined by Dr. K.K. Jaiswal (PW-7) on 25-3-2001 and he has proved his injury report of Ex.-P/7. He sustained one incised injury on the left forearm of size 5 cm x 0.5 cm caused by some light sharp cutting object. This witness has deposed that on the date and time of the incident, they were sitting in the medical shop of Rajendra at Masturi with Shivraj Singh, Narayan Singh, Manrakhan Singh, Judawan Singh, Virendra Singh, Rakesh Singh & Likhan Singh when 9-10 persons came out from motor garage of Tamesh Singh armed with deadly weapons sword, battleaxe, club, rod etc and attacked them. Tamesh and Tukesh first attacked Narayan Singh with sword and battleaxe and thereafter Ramesh Singh and Baba attacked Manrakhan Singh with sword and lathi. They also started assaulting Virendra Singh. At that time Pappu, Anil and Mangal Das were also assaulting him. When they tried to intervene and prayed Tamesh to spare them, Tamesh assaulted him with sword on his left wrist and Ramesh assaulted him with club on his left hand. They somehow brought Manrakhan inside the medical shop. The accused persons broke the glasses of the medical shop.

53. PW-8 Rakesh Singh Thakur has lodged the complaint naming all the 9 accused persons as attackers on the date of the incident at 8.05 pm. He has deposed that on the date and time of the incident when they were sitting in the medical shop of Rajendra Singh, the accused persons 9-10 in number armed with dead weapons came from the office of Ramesh Travels and assaulted Narayan Singh, who was returning from the betel shop. Tamesh and Tukesh attacked him with sword as a result he sustained injury on neck. When Virendra Singh went to save him, Mangal Das, Pappu, Tamesh & Tukesh attacked him with sword, as a result he sustained injuries. Manrakhan Singh was also attacked by Ramesh and Baba @ Rajesh by sword and lathi. Baba attacked with sword and Ramesh attacked with lathi. Thereafter, Basant, Ramesh and Baba Singh attacked Shivraj Singh. When he went to save him, Baba, Basant and Tamesh Singh attacked him, as a result he sustained injuries on head, back and shoulder. This witness has sustained simple injuries and he was not admitted in the hospital. He has also deposed that he did not lodge report immediately as he was mentally disturbed.

54. The trial Court after elaborately discussing the evidence of these witnesses, who are injured eyewitnesses, has held that the presence of all the accused persons on the place of the incident is conclusively established. On the date and time of the incident, they were members of unlawful assembly, the common object of which was to beat the injured and the deceased persons and to cause them injuries and in furtherance of the aforesaid common object, they indulged in rioting being armed with deadly weapons like sword, battleaxe, rod and club and committed murders of Narayan Singh and Manrakhan Singh and attempted to commit murder of Shivraj, Virendra, Visheshwar and Judawan Singh by causing them grievous injuries from deadly weapons.

55. Learned counsel for the appellants vehemently argued that the prosecution witnesses Dilip Singh (PW-13), Shiv Kumar Dubey (PW-14) and Ishwari (PW-15) have deposed before the Court that the complainant party 22-25 in number armed with deadly weapons reached the place where Mangal Das, Basant, Vishnu were, playing carom and at that juncture quarrel started between both the parties and in the melee, they could not witness as to who was assaulting whom. Even in their diary statements (Ex.-P/22, Ex.-P/23 & Ex.-P/24) they have given similar version. In such circumstances, in a case of sudden and mutual quarrel, there is no scope of applicability of Section 149 and each accused is liable for his individual act.

56. We have perused the Court statements of the above witnesses as well as their diary statements recorded by the police. These witnesses have resiled from their earlier statements given by them before the police. They have been confronted with their earlier statements in which they have stated that Tukesh Singh and his 7-8 boys armed with rod and club came out of motor garage and went in front of the medical store where 8-10 persons were sitting, who stood up on seeing these persons and thereafter Marpeet commenced between the two parties and they have denied having given such statements to the police.

57. It is true that Station House Officer Narendra Mishra has admitted in para- 32 of his cross-examination that on the report of the accused persons with regard to the same incident, a counter case was registered against Rajendra Singh, Shivnandan Singh, Visheshwar Singh, Judawan Singh, kanhaiya Singh, Rakesh Singh, Likhan Singh and Kishore and charge-sheet was also filed against them. Appellants Pappu, Mangal Das and Basant Singh have also taken a defence plea that while they were playing carom, the complainant party came there armed with weapons, filthily abused and attacked them as a result they sustained injuries and became unconscious. However, there is no evidence available on record that the accused persons sustained any grievous injuries whereas from the evidence it is manifestly clear that the attitude of the accused party was aggressive from the previous night. There is reliable, evidence that they all came together armed with deadly weapons and attacked the complainant party in their medical store and committed the offence. The place of the incident is medical store, as is evident from the Evidence of eyewitnesses as well as seizure of blood-stained soil and bloodstained gamcha from the spot near medical shop.

58. The trial Court on the basis of above evidence has arrived at a conclusion that the accused party was aggressor. The aforesaid finding is based on the evidence available on record,

59. We are unable to accept the arguments advanced by the learned counsel for the appellants that innocent persons have been roped in by the complainant party due to group rivalry. We have already held in foregoing paragraphs that a dispute arose when Rajendra Singh purchased the premises of Prashant Medical Store from its owner. Ganpat Singh and his sons expressed their displeasure and annoyance and

they asked him to repay the loan advanced by then to said Kashi Rathore. The complainant party was ready and willing to settle, their dispute by compromise, and as a result of compromise Kashiram Rathore transferred his 3 decimal land to the accused party. The accused persons being not satisfied with the same, terrorized Rajendra Singh by sending few persons to his house in the odd hours in the night on the pretext that Tamesh is calling him arid when he expressed his inability, they vandalized his house. On the next afternoon when Rajendra Singh went to lodge report about the incident to the police and the deceased and the injured persons were present in the shop, the accused party attacked the shop and committed the offence.

60. On due appraisal of the evidence available on record, we find substance in the argument of learned counsel for the State that it is riot a case of free fight due to group rivalry between the complainant party and the accused party, The accused party did not approve the conduct of Rajendra Singh of purchasing the property of Kashiram Rathore, who owed some loan to them. They called him and expressed their annoyance, though the complainant party approached the accused persons and their father Ganpat Singh with an intention to resolve the dispute, and Kashiram Rathore sold his another property in lieu of the loan borrowed by him from Ganpat Singh, however, this did not satisfy the accused party and they took it as a challenge to their supremacy in the village and attacked the complainant party,

61. Shri Azad Siddique, learned counsel for appellant-Anil Singh, has further argued that 3 eyewitnesses Shivraj Singh, Visheshwar Singh and Rakesh have not stated about the presence of appellant Anil Singh whereas Virendra and Judawan have stated that he was holding iron rod whereas only wooden plank has been seized from him vide Ex.-P/17. The version of Virendra is not corroborated from his medico legal injury report as he suffered only incited injury on his back caused by sharp edged weapon.

62. Similarly, it has been argued by Shri B.P. Sharma, learned counsel for appellant Vishnu Singh that complainant Rakesh has not named Vishnu Singh in his Court evidence though his name appears in the FIR lodged by him.

63. The presence of this accused at the time and place of the incident is established from the evidence of injured eyewitnesses Virendra Singh and Judawan Singh as also from his defence plea that he also sustained injuries in the same incident. The version of the above witnesses is duly corroborated from the first information report. There is specific evidence against him regarding his participation in the crime. In these circumstances, we are of the opinion that conviction of appellant Anil Singh and Vishnu Singh with the aid of Section 149 IPC is just and proper, as the evidence of injured eyewitnesses, which is otherwise found to be reliable, cannot be rejected only on the ground that there is discrepancy in description of injury present over the person of the deceased/injured and the weapon of offence seized from these appellants.

64. The version of prosecution witnesses Virendra and Judawan with respect to assault by appellant Anil Singh has also been questioned on the ground that they have alleged that Anil Singh assaulted Virendra by iron rod on his back and the same is not corroborated from the medical evidence as he suffered only incised injury on his back.

65. After due appreciation of the evidence of injured eyewitnesses Virendra and Judawan Singh, we are of the opinion that their evidence is credible and trustworthy and their evidence cannot be discarded only on the ground that medical opinion is pointing to alternative possibility regarding the injuries sustained by Virendra. We are fortified in our view by the decision of the Supreme Court in the matters of D. Sailu v. State of Andhra Pradesh (2007) 14 SCC 397 ; [Thaman Kumar Vs. State of Union Territory of Chandigarh](#), and [Ramanand Yadav Vs. Prabhu Nath Jha and Others](#) .

66. It was also argued that all the witnesses were close relatives and as such, highly interested witnesses whereas, independent witnesses Oilip Singh (PW-13), Shiv Kumar Dubey (PW-14) and Ishwari (PW-15) have supported the defence plea and, therefore, conviction on the basis of evidence of inimical eyewitnesses is improper can also not be accepted, as it is settled law that where eyewitnesses sustained injuries in the same incident, their testimony cannot be rejected only on the ground that they were inimical to the accused persons. Appellant Ramesh Singh has also taken a plea of alibi and examined defence witness Dr. Smt. Subhadra Paikra to establish that on the date of the incident, she had treated Ramesh, Son of Ganpat Singh for diarrhea and fever and prescribed him medicines through prescription of Ex.-D/8. She has also deposed that the patient was admitted on 23-3-2001 and was discharged on 24-3-2001 and his name is mentioned in OPO register (Ex.-0/9) at S. No. 2293.

67. The trial Court after dealing with the evidence of this witness and the documents proved by her in detail has rejected the defence on the ground that there is overwriting in the document of Ex.-0/9 and original records have not been produced and further on the ground that if Ramesh was treated as indoor patient after admitting him in Community Health Centre, Pratappur, in that case, his name would not be entered into OPD register of Ex.-0/9.

68. Lastly, teamed counsel appearing on behalf of the appellants argued that the trial Court was not justified in ordering sentence to run consecutively as all the injuries were caused in the course of same incident, therefore, sentences should be made concurrent.

69. However, considering overall circumstances in which offence was committed and two persons were brutally murdered and attempt on the lives of 5 others was made in a broad day light in the middle of town in crowded place. we are of the opinion that learned trial Court had rightly directed the sentences to run

consecutively and no interference is called for.

70. We are in agreement with the reasoning assigned by learned trial Court for rejecting the defence of alibi of appellant Ramesh.

71. On the basis of aforesaid discussion, we are of the opinion that the trial Court on due appraisal of the evidence available on record has convicted and sentenced the appellants by the impugned judgment.

72. In the result, we do not find any substance in this appeal, the same deserves to be and is accordingly dismissed. Appellant Ramesh Singh is on bail. His bail bonds are cancelled and he is directed to surrender before the trial Court to serve the sentences imposed upon him.