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Case :- GOVERNMENT APPEAL No. - 8287 of 2009

Appellant :- State of U.P.

Respondent :- Kalwa @ Ashish And Others

Counsel for Appellant :- G.A.

Counsel for Respondent :- Anjani Kumar Dubey

Hon'ble Siddharth,J.

Hon'ble Mohd. Azhar Husain Idrisi,J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Ms. Manju Thakur, learned AGA-Ist for State- appellant, Sri Abhishek Kumar Srivastava, learned counsel for the respondents and perused the material on record.

2. This government appeal has been preferred by State-appellant against the judgement and order of acquittal of the accused-respondents dated 30.6.2009 passed by Sessions Judge, Kannauj, in Sessions Trial No.211 of 1999 (State of Uttar Pradesh Vs. Kaluwa @ Ashish and others), arising out of Case Crime No.512 of 1999, under Sections 148, 307/149 IPC, Police Station Kannauj, District Kannauj.

3. FIR dated 7.7.1999 was lodged by Draupadi, w/o Baijnath Mishra, at Police Station Kannauj, District Kannauj, alleging that on 7.7.1999 she was returning to her house from market alongwith her son, Alok Mishra and grand-son, Somant Mishra, when the accused-respondents, who are residents of her locality, were standing armed with knives and country-made pistols in their hands. At about 09:45 P.M., on seeing her son, Alok Mishra, respondent, Kaluwa, exhorted to kill him and respondent, Pawan, fired on him from country-made pistol. After he fell down, all the respondents caused injuries to him by knives. The informant and her grand-son raised alarm, but because of terror of the respondents, people of the locality ran away. Shop keepers pull

down their shutters and ran away. Seeing two policemen coming, the respondents ran towards their houses. The policemen could not apprehend any of them. Policemen directed her to go to the police station and lodge FIR and they took her son, Alok, to the hospital. The respondents had committed offence only to grab her house. On oral information given by Draupadi, PW-1, Case Crime No.512 of 1999, under Sections 147, 148, 149, 307 IPC was registered against the respondents and charge-sheet was, accordingly, submitted against them and another co-accused, Ramesh Pandey, who died during trial.

4. The respondents denied the charges and sought trial.

5. Before the trial court, prosecution produced PW-1, Draupadi; PW-2, Somant Mishra; PW-3, Alok Mishra; PW-4, Dr. Amit Kanaujia; PW-5, Sub Inspector, Ishwar Datt Sharma; PW-6, Asha Kumari and PW-7, Sub Inspector, Rajendra Singh to prove charges against the respondents. Apart from the above witnesses, Sub Inspector, Radheram Pal, was produced as CW-1 also before the trial court.

6. Statements of the respondents were recorded under Section 313 Cr.P.C., wherein they denied the allegations made against them.

7. Both the parties filed their documentary evidence.

8. The trial court has acquitted the respondents holding that prosecution has failed to prove its case beyond reasonable doubt and hence above noted appeal has been preferred by the State against the judgement and order of acquittal of the trial court.

9. PW-1, Draupadi, stated before the trial court that on the date of incident, all the respondents alongwith Ramesh Pandey (since deceased) were standing

together. Respondents, Pawan and Kaluwa, were having country-made pistols and the others had knife (*Chhuri*) in their hands. Respondent, Pawan, fired on Alok and he made three fires and two hit her son. He suffered five arm injuries and fell down. After her son fell down, the respondents caused him further injuries by knives. Suddenly police came on the spot and respondents ran towards their houses. Police took her son to Vinod Dixit Hospital and she was directed by policemen to go to the police station for lodging the FIR. The respondents had illegally encroached upon her house. Hence they tried to kill her son. She stated in her cross-examination that towards the west of her house, there was vacant land, whereon the accused, Ramesh (since deceased), constructed a three storey house 15-16 years ago, when her husband, Baijnath, was alive. In 1982, her husband made a report against Ramesh Chandra, Mahesh Chandra, Ravindra Kumar and Madan Kumar for beating his sons, but the case ended in acquittal on 29.3.1985. She denied that her another son, Ashwani Kumar Mishra, made a complaint against Om Singh, Ramesh, Mahesh and Ravindra and the case ended in acquittal on 4.4.1987. She stated that her husband used to publish a newspaper and he died 8-9 years ago. Thereafter her injured son, Alok, is doing the aforesaid business. She stated that at the time of incident, there was electricity and generator was not being used. The injured was 8-10 steps ahead from her grand son while her grand-son was for about 4-6 steps ahead from her. She heard sound of three firings by Pawan. She had also informed the police that respondent, Kaluwa, had country-made pistol in his hand and he made first firing. Ramesh and Sudhir were having *Chhuri* and rest of them were having *Chaku*. In her further cross-examination, she stated that she saw *Chhuri*, *Katar*, and *Chaku*. One of the accused was having *Katar*. *Chaku* was of the size of palm of hand. *Chhuri* was smaller than *Katar*. *Katar* was in the hand of Ramesh. Vinod, Vidur, Manish and Sushil were having *Chaku*. She had

informed accordingly to the police. Three fires were made on Alok, but she cannot tell which fire made by whom hit him. Two fires were made from close range and there was no distance in between. Thereafter *Chaku, Chhuri and Katar* were pierced on the body of injured. She admitted that she did not mentioned in the report that bullet hit the injured and she cannot tell why mention of *Katar, Chhuri and Chaku* was not made in the FIR. She raised alarm at the time of incident, but none of the shop keepers came because of terror of accused. She stated that she had informed the Investigating Officer that the accused persons had *Chaku and Katar* also apart from *Chhuri* and if he did not mentioned the same in the report she cannot tell the reason. She denied that she gave statement to the Investigating Officer that all the accused caused injuries to the Alok from *Chhuri*.

10. PW-2 stated that accused, Pawan and Kallu, had country-made pistols and others had *Chhuri* in their hands. Kallu exhorted and then Pawan and Kallu fired on his father, which hit him and he fell down. Thereafter, Sushil, Kallu, Vidur, Manish and Ramesh caused him injuries by knife. Electoric bulbs were lighting the place at that time. Policemen suddenly came and chased the accused persons, but in vain. They took his father to Vinod Dixit Hospital and his grand-mother, PW-1, went to the police station to lodge the FIR. In his cross-examination, he admitted that his grand-father, Baijnath, instituted a suit against Ramesh since he had constructed three storey house over the land of his grand-father. The land on the gate of Asgar Ali and Mohammad Ali belongs to his father and hence wood shop has been made thereon. He denied that the aforesaid land belongs to Asgar Ali and Mohammad Ali and they had given the land to Nagar Palika for construction of park. PW-2 also assigned the role of making firing on the injured to Kaluwa and Pawan. The firing was made from a distance of one hand from the front. His father tried to run towards the

shop of Naresh, when he was apprehended by all the seven accused. Manish, Vinod and Vidur caught hold him from the waist, thereafter, Pawan and Kallu fired on him. After he fell down, Ramesh and Sushil caused him injuries by *Katar* on his cheek and head. Both the accused caused two injuries by *Katar*. Thereafter Manish, Vidur and Vinod pierced *Chhuri* in his stomach. He suffered five injuries by knife. His grand-mother raised alarm. After 10-15 minutes, police came and took his father to the hospital. Thereafter his grand-mother went to the police station to lodge the FIR. He stated that he informed the police, but if police has not mentioned that two accused were having *Katar* he cannot tell the reason. Clothes of his father got holes where the fire arm injures were caused. The accused persons constructed three storey house on their land. He denied that the accused, Ramesh, had purchased the land and thereafter constructed house thereon. He admitted that case is pending in court against Ramesh Pandey.

11. PW-3, Alok Mishra, sole injured witness, stated before the trial court that on the fateful day, when he reached the place of incident alongwith PW-1 and PW-2, all the accused persons met him in the way. They had *Chaku, Chhuri and Katte*, in their hands. Accused, Kaluwa, exhorted that let us kill Alok today and then Pawan fired on him with intention to kill. Thereafter Kaluwa fired on him. Both fires caused him injuries on his left arm and left side chest and he fell down and the other accused, Manish, Vinod, Vidur and Sushil caused him injuries by *Chaku* and he suffered injuries by *Chaku and Chhuri*. His mother and son cried for help but because of fear of the accused, no one came. Only policemen came. Accused persons have grabbed his house and hence this incident took place. Earlier also, accused, Ramesh, had made attempt on the life of his father and the case in this regard is pending. At the time of incident, there was sufficient light from the electronic bulbs. He gave the blood stained

clothes to the police, which was sealed. Accused, Ramesh Pandey, had constructed three storey house in 1988 attached to western wall of his house. He had old *Gomati* on the place near the gate of Asgar Ali and Mohammad Ali and there is dispute of ownership regarding the aforesaid land. The land belongs to him and not the Nagar Palika. After he fell down, the police jeep came, but from which direction he cannot remember. Rajendra Yadav and another constable were in the jeep, who took him in the jeep. He was admitted in Hallet Hospital, Kanpur, for 8-10 days. He had informed Investigating Officer that three fires were made on him and thereafter *Chhuri and Chaku* were pierced in his body. On the place of incident, he was surrounded by the accused persons from all the sides and his mother and son were behind him. Pawan fired on him first from the distance 2-3 steps, which hit his chest. The second fire was made by Kaluwa, which hit his arm from 2-3 steps and thereafter he fell down. Thereafter Kaluwa made another fire, which did not hit him. The third fire hit the pocket of his shirt. *Chaku and Chhuri* were used for causing injuries like sword, but they were pierced in his body. Vinod, Manish and Ramesh had *Chhuri* and others also had *Chhuris*. All accused caused one injury each by *Chaku and Chhuri*. His statement was not recorded, when he was admitted in the hospital at Kanpur for 8-10 days. When he was admitted in Vinod Dixit hospital, his statement was recorded by the police. He has litigation with Ramesh because of three storey house made by him. The house belongs to him and not to Ramesh Pandey.

12. PW-4, Dr. Amit Kannaujia, found following injuries on the body of the injured:-

(i) Incised wound 6.5 cm. X 0.6 cm. x scalp deep in left parital region 6 cm. above to upper lobe of left ear. K.U.O.;

(ii) Incised wound 7 cm. X 0.5 cm. x bone deep present on parital bone under.K.U.O.;

(iii) Incised wound 3.5 cm. X 1 cm. bone deep present on right maxillary prominence under K.U.O.;

(iv) Incised wound 2 cm. X 0.5 cm. x depth under K.U.O. present on right side abdomen 11 cm. above to umbilicus at 10 O' clock position K.U.O.;

(v) Incised wound 3 cm. X 0.5 cm. Muscle deep present on present on right palm between base of middle ring finger.

(vi) Two lacerated wounds 1.5 cm. X 0.5 cm. (size same) X dept K.U.O. present on lateral aspect of left arm in area surrounding by gun powder area size 10 cm. X 8 cm. 7 cm. above to the elbow. K.U.O.

(vii) Three lacerated wounds 0.5 cm. X 0.2 cm. (3 lacerated wounds size same) X depth unknown present on left side chest in area of 6 X 6.5 cm. 3.5 cm. medial to left nipple.K.U.O.

(viii) Incised would 2 X 1 cm. x depth unknown (bleeding continue) present on left side scapular region 0.3 cm. above & medial to axilla. K.U.O.

PW-4 opined the injury no.5 was simple in nature. Injury Nos. 1, 2, 3, 4 and 8 were caused by sharp edged weapon and injury nos. 6 & 7 were caused by fire arm. All the injuries were fresh. He opined that injuries suffered by the injured could have been caused on 7.7.1999 at about 09:45 p.m. In his cross-examination, PW-4 stated that he did not found any pierced wound on the person of the injured. He further admitted that if the *Chaku, Chhuri and Katar*, are pierced, then pierced wound can be caused. He found all the wounds to be incised, which could have been caused by *Farsa* and *Talwar*. Injury no.6 were two different wounds caused by different fire arms. On all the edges of

the wounds, he found gun powder, but no blackening charring and tattooing were found. These fires could have been caused from the distance of more than 5-6 feet. Injury No.7 were three lacerated wounds. All the three wounds would have been caused by three different fire arms. No gun powder was found around them. All the fires could have been caused from quite long distance. None of the fire arm injuries were caused from touching distance of the body. They could have been caused by five different arms.

13. PW-5 proved that he is Investigating Officer of this case and when the case was registered, he was present at the police station. He did not find any blood and empty cartridges on the place of occurrence.

14. PW-6 proved that he investigated the case and submitted charge-sheet against the accused persons.

15. PW-7 stated that on the date of incident, he was posted at Chowki Kalan. When he heard the sound of firing and cry for help, he alongwith Jagat Singh ran towards Ram Narayan *Chauraha*. From the torch in his hand, he saw Alok Mishra lying on the road. Accused persons were present there alongwith crowd. Ashish, Kallu and Pawan were having country-made pistols and rest were having *Chaku and Chhuri*. Accused, Vinod, was holding Alok Mishra down and remaining accused were standing. When he challenged the accused persons, they ran away. They took Alok Mishra to Vinod Dixit Hospital in a rickshaw. There is land dispute between accused and injured side. In cross-examination, he admitted that no firing was made by Ashish and Pawan before him. He could not apprehend any of the accused because he was on legs and he did not have any jeep.

16. CW-1, Radheram Pal, proved that he had gone to the house of accused, Ramesh Pandey and found that he had died on 01.12.2007 because of illness. He proved the certificate of death of deceased before the trial court.

17. Statements of the respondents were recorded under Section 313 Cr.P.C., wherein they denied the allegations and stated that the prosecution case is based on misunderstanding. Respondent, Kalua @ Ashish Pandey, stated that he has old enmity with Baijnath, with whom civil litigation is pending. The informant and the witnesses are the wife and son of the Baijnath. Hence they have falsely implicated him. Respondents, Vidur and Vinod, stated that they are brothers-in-law of accused, Ramesh Pandey and have been implicated in this case because of their relationship with Ramesh Pandey. Respondent, Sushil, stated that he is son of accused, Ramesh Pandey and hence he has been falsely implicated in this case. Respondent, Manish, stated that he is nephew of accused, Ramesh Pandey and hence he has been implicated in this case

18. Learned counsel for the State-appellant has stated that it is case where motive of the crime and also the injuries suffered by the injured were fully proved by the prosecution, yet the trial court has acquitted all the accused of all the charges in most illegal and blatant manner. She has further submitted that the injured suffered eight injuries on his person, but the trial court has taken a very technical view on the manner of causing the injuries and the weapons allegedly used in causing the same and acquitted all the accused. The findings recorded by the trial court are absolutely perverse and deserve to be set aside by this Court. This appeal deserves to be allowed and all the respondents deserve to be punished.

19. Learned counsel for the respondents has submitted that the findings recorded by the trial court are based on evidence on record and do not suffer from any legal infirmity. The judgement of acquittal of the trial court is in accordance with law and deserves to be confirmed.

20. After hearing the rival contentions, this Court finds that in this case, there was oral evidence of the witnesses and also the statement of injured, eye witness. Both have been discarded by the trial court by disbelieving the prosecution case. The Apex Court in the case of ***Balu Sudam Khalde and Another Vs. State of Maharashtra, passed in Criminal Appeal No.1910 of 2010*** has laid down some guidelines for appreciation of oral evidence and appreciation of evidence of injured witness, which are as follows:-

“25. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

“I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical

error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person. XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.” [See [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat](#) 1983 Cri LJ 1096 : (AIR 1983 SC 753) Leela Ram v. State of Haryana AIR 1995 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)]

26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

21. After considering the aforesaid principles laid down by the Apex Court, we find that PW-1 and PW-2, who are eye witnesses, have proved the incident as it took place. Both have stated that firing was made on the injured, Alok. While

PW-1 stated that three fires were made, but she cannot tell, which fire was made by whom which hit injured, Alok. PW-2 stated that Pawan and Kaluwa fired on his father, which hit him and he fell down. The injured witness, PW-3, has stated that Kaluwa exhorted, then Pawan fired on him. Thereafter Kaluwa also fired on him. There is no contradiction in the statements of PW-1, PW-2 and PW-3. PW-1 was admittedly behind PW-2 and PW-3 was 8-10 steps ahead from both of them. PW-2 was only 4-6 steps ahead from PW-1. Therefore PW-2 and PW-3 clearly named the assailants, who caused fire arm injuries to injured, PW-3. PW-1 being more than 20 steps behind could not see, who made firing on PW-1 and she has clearly stated this fact in her statement. The role of firing has been assigned to respondents, Pawan and Kaluwa, by PW-2, while PW-3 has also implicated respondents, Pawan and Kaluwa for making firing on him. PW-3 has assigned the role of exhortation to Kaluwa. Therefore it is clear that with regard to the role of firing assigned to accused, Pawan and Kaluwa, there is no contradiction.

22. Now coming to the role of accused, Ramesh, Vinod, Vidur, Munish and Sushil, who were assigned the role of causing injury by *Katar, Chaku and Chhuri*, this Court finds that the trial court has disbelieved their entire role, only on the ground that the aforesaid weapons cannot cause the injuries, which appear to have been caused by some other weapons since injured has not suffered piercing injuries, which could have been caused by *Chhuri and Chaku*. *Chaku, Chhuri and Katar* can easily cause incised wounds, which have been suffered by the injured. All the three weapons, namely *Chaku, Chhuri and Katar*, are incised weapons and the injured has suffered incised wounds. PW-4, doctor, has stated that piercing weapons could have been used by the accused, if piercing incised wounds are suffered by the injured. Therefore the finding of the trial court that weapons assigned to the accused

do not corroborate with the injuries suffered by the injured is patently perverse and illegal.

23. We also find that PW-4 has not given any opinion that any of the injuries suffered by the injured are grievous in nature except injury no.5. All the other injuries were found to have been caused by dangerous weapons, but it was not found to be grievous by the doctor. Even gun shot injuries were superficial and had not caused any internal damage to the body of the injured. We further find that the motive of commission of crime has been assigned by PW-1, PW-2 and PW-3 mainly to accused, Ramesh, who has died during the pendency of trial. Accused, Kaluwa @ Ashish Pandey, respondent no.1; Pawan, respondent no.2 and Sushil, respondent no.3, are sons of deceased accused, Ramesh Pandey. Prosecution has not assigned any motive to crime to respondent nos. 4, 5 and 6, namely, Vidur, Vinod and Munish. They have stated in their statements under Section 313 Cr.P.C. that Vinod and Vidur are brother-in-laws of accused, Ramesh. They have been falsely implicated in this case. Respondent no.6, Munish, has claimed that he is nephew of accused, Ramesh and he has been implicated.

24. We find that all the respondents are sons and close relatives of accused, Ramesh and hence it cannot be said that they had no motive or role in the commission of alleged offence Ramesh Pandey, the main accused, has died during trial but his sons, namely, Kaluwa @ Ashish, Pawan and Sushil are respondent nos. 1, 2 & 3 in this case. Respondent nos. 4, 5 & 6 are also close relatives of deceased accused, Ramesh Pandey. The role of causing firm arm injury has been assigned only to Kaluwa and Pawan. Apart from two multiple gun shot injuries, there are six incised wounds inflicted on the injured. It cannot be said that the six incised wounds were caused by one or two persons. The implication of four persons, namely, Sushil, Vidur, Vinod and

Munish for causing aforesaid injuries by *Chhuri, Chaku and Katar* does not seem to be improbable.

25. All the accused voluntarily caused hurt by dangerous weapons to the injured, PW-3. The statement of the injured witness has wrongly been disbelieved by the trial court. The trial court has discarded his evidence for insufficient reasons. There is no contradiction, exaggeration and embellishment in the statement of PW-3 read with statement of PW-1 and PW-2. Therefore we are inclined to accept evidence of PW-3 and also evidence of PW-1 and PW-2 as credible and inspiring confidence of the court. Prosecution has succeeded in proving the prosecution case beyond reasonable doubt. Trial court's findings otherwise were perverse and are hereby set aside.

26. Keeping in view the nature of the injuries suffered by the injured, PW-3, all the respondents are liable to be punished under Section 324 read with Section 149 IPC apart from punishment under Section 147 and 148 IPC.

27. The judgement and order of the trial court is set aside.

28. All the respondents are found guilty of commission of offences under Sections 147, 148 IPC and Section 324 read with Section 149 IPC. Keeping in view the time lag of about 26 years and the age of the respondents around 60 years and above, they are directed to be punished with punishment of payment of fine of Rs.10,000/- each under Section 147 IPC; fine of Rs.10,000/- each under Section 148 IPC and fine of Rs.20,000/- (Twenty Thousand) each under Section 324/149 IPC. On failure of deposit the fine, the respondents shall undergo simple imprisonment of three months each.

29. Fine shall be paid to PW-3, injured, Alok Mishra, or to his legal heirs, as the case may be.

30. The government appeal is **allowed**.

31. Let the record of the trial court be returned and this judgement to be notified to the trial court, within two week.

32. All the respondents are directed to make payment of fine imposed by the order to PW-3, or his legal heirs as the case may be and in case of default surrender before the trial court and undergo the sentence awarded by this Court.

Order Date :- 28.4.2025

Ruchi Agrahari

(Mohd. Azhar Husain Idrisi,J.) (Siddharth, J.)