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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1185 of 2015

Hariram S/o Chhabilal Sahu Aged About 78 Years R/o Village Charbhata, Police Station Gunderdehi, District Balod Chhattisgarh.

--- Appellant

Versus

State of Chhattisgarh Through Station House Officer, Police Station Gunderdehi, District Balod Chhattisgarh.

--- Respondent

CRA No. 1198 of 2015

- 1 - Dhananjay S/o Biselal Sahu Aged About 35 Years R/o Village Charbhata, P.S. Gunderdehi, District Balod, Chhattisgarh
- 2 - Pawan Kumar S/o Biselal Sahu Aged About 34 Years R/o Village Charbhata, P.S. Gunderdehi, District Balod, Chhattisgarh
- 3 - Deolal S/o Ramesh Sahu Aged About 20 Years R/o Village Charbhata, P.S. Gunderdehi, District Balod, Chhattisgarh
- 4 - Romlal S/o Dhanesh Sahu Aged About 45 Years R/o Village Charbhata, P.S. Gunderdehi, District Balod, Chhattisgarh
- 5 - Domar S/o Premlal Sahu Aged About 38 Years R/o Village Charbhata, P.S. Gunderdehi, District Balod, Chhattisgarh
- 6 - Dalsingh S/o Romlal Sahu Aged About 24 Years R/o Village Charbhata, P.S. Gunderdehi, District Balod, Chhattisgarh , District : Balod, Chhattisgarh
- 7 - Daleshwar S/o Khamhanlal Sahu Aged About 21 Years R/o Village Charbhata, P.S. Gunderdehi, District Balod, Chhattisgarh

8 - Devendra Kumar S/o Romlal Sahu Aged About 21 Years R/o Village Charbhata, P.S. Gunderdehi, District Balod, Chhattisgarh

---Appellants

Versus

State of Chhattisgarh Through Station House Officer Police Station Gunderdehi, District Balod Chhattisgarh , Chhattisgarh

--- Respondent

CRA No. 1398 of 2015

1 - Ghondul Ram S/o Laduram Mahto, Aged About 60 Years R/o Kalangpur, Police Station - Ranchirai, Distt. Balod Chhattisgarh

2 - Shatruhan Lal S/o Laduram Mahto, Aged About 65 Years R/o Kalangur, Police Station - Ranchirai, Distt. Balod Chhattisgarh

3 - Jhaggar Singh (Died And Abated) As Per Honble Court Order Dated 27-01-2026

---Appellants

Versus

State of Chhattisgarh Through Station House Officer, Police Station - Gunderdehi, Distt. Balod Chhattisgarh

--- Respondent

CRA No. 1428 of 2015

1 - Lokesh Kumar S/o Ramadhin Sahu, Aged About 39 Years R/o Village- Kalang Pur, P.S.- Ranchirai, Distt.- Balod, Chhattisgarh

2 - Gendu Ram S/o Kali Ram Sahu, Aged About 45 Years R/o Char Bhatha, P.S.- Gunderdahi, Distt.- Balod, Chhattisgarh

---Appellants

Versus

State of Chhattisgarh Through Arkshi Kendra, Gunderdahi, Distt.- Balod, Chhattisgarh, Chhattisgarh

--- Respondent

CRA No. 1196 of 2015

1 - Smt. Kamin Bai W/o Bemun Sahu Aged About 40 Years R/o Village Charbhata, Police Station Gunderdehi, District Balod Chhattisgarh.

2 - Smt. Nirmala Bai W/o Romlal Sahu Aged About 40 Years R/o Village Charbhata, Police Station Gunderdehi, District Balod Chhattisgarh.

---Appellants

Versus

State of Chhattisgarh Through Station House Officer, Police Station Gunderdehi, District Balod Chhattisgarh.

... Respondent

(Cause-title taken from Case Information System)

For Appellants (In CRA Nos.1185/2015, 1196/2015 & 1198/2015)	:	Mr. Praveen Dhurandhar, Advocate
For Appellant (In CRA No.1398/2015)	:	Ms. Smita Jha, Advocate
For Appellants (In CRA No.1428/2015)	:	Mr. Vivek Sharma, Advocate
For Respondent/State	:	Mr. Ashish Shukla, Additional Advocate General

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

27.07.2026

1. Since all the above criminal appeals arise out of the common judgment of conviction and order of sentence passed by the learned Sessions Judge in Sessions Trial No. 84/2014, involve common questions of fact and law, and arise from the same

incident, they were heard analogously and are being disposed of by this common judgment.

2. The present batch of criminal appeals has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "CrPC"), namely, Criminal Appeal No.1185 of 2015 filed by appellant **Hariram**; Criminal Appeal No.1196 of 2015 filed by appellants **Smt. Kamin Bai and Smt. Nirmala Bai**; Criminal Appeal No.1198 of 2015 filed by appellants **Dhananjay, Pawan Kumar, Deolal, Romlal, Domar, Dalsingh, Daleshwar and Devendra Kumar**; Criminal Appeal No.1398 of 2015 filed by appellants **Ghondul Ram, Shatruhan Lal and Jhaggar Singh**; and Criminal Appeal No.1428 of 2015 filed by appellants **Lokesh Kumar and Gendu Ram**, calling in question the legality, correctness and validity of the common judgment of conviction and order of sentence passed by the learned Sessions Judge, Balod, District Balod, Chhattisgarh, in Sessions Trial No.84/2014, whereby the appellants, namely **Hariram, Smt. Kamin Bai, Smt. Nirmala Bai, Dhananjay, Pawan Kumar, Deolal, Romlal, Domar, Dalsingh, Daleshwar Devendra Kumar, Ghondul Ram, Shatruhan Lal, Jhaggar Singh, Lokesh Kumar and Gendu Ram**, have been convicted for the offences punishable under Sections **147, 452, 427 read with Section 149, 435 read with Section 149, 302 read with Section 149, 307 read with Section 149** and two counts under **Section 323 read with Section 149 of the Indian Penal Code, 1860** and sentenced as under :-

Conviction	Sentence	Fine	Default Sentence
<i>Section 147 IPC</i>	<i>RI for 1 year</i>	<i>Nil</i>	—
<i>Section 452 IPC</i>	<i>RI for 3 years</i>	<i>₹1,000/-</i>	<i>RI for 3 months</i>
<i>Section 427 read with Section 149 IPC</i>	<i>RI for 1 year</i>	<i>Nil</i>	—
<i>Section 435 read with Section 149 IPC</i>	<i>RI for 3 years</i>	<i>₹2,000/-</i>	<i>RI for 6 months</i>
<i>Section 302 read with Section 149 IPC</i>	<i>Imprisonment for Life</i>	<i>₹2,000/-</i>	<i>RI for 6 months</i>
<i>Section 307 read with Section 149 IPC</i>	<i>RI for 7 years</i>	<i>₹1,000/-</i>	<i>RI for 3 months</i>
<i>Section 323 read with Section 149 IPC (Count-I)</i>	<i>RI for 6 months</i>	<i>Nil</i>	—
<i>Section 323 read with Section 149 IPC (Count-II)</i>	<i>RI for 6 months</i>	<i>Nil</i>	—

All the substantive sentences were directed to run concurrently.

- It is an admitted position emerging from the record that as many as twenty-four persons were sent up for trial. Upon appreciation of the oral and documentary evidence adduced by the prosecution and the defence, the learned trial Court acquitted eight accused persons, namely, Parmanand, Chhabilal alias Chhaganlal, Yadram, Ramsahayak, Kaliram, Ashok Kumar, Kunjlal and Bhushan, holding that the prosecution had failed to

establish their complicity beyond reasonable doubt. However, the remaining sixteen accused persons, namely, Ghondul Ram, Dhananjay, Shatruhan Lal, Pawan Kumar, Lokesh Kumar, Jhaggar Singh, Deolal, Romlal, Domar, Gendu Ram, Dalsingh, Daleshwar, Devendra Kumar, Hariram, Smt. Kamin Bai and Smt. Nirmala Bai, were found guilty and convicted for the aforesaid offences. It is against their conviction and sentence that the present five criminal appeals have been preferred before this Court.

4. The prosecution case, in brief, is that the incident in question arose out of a long-standing dispute between the parties, who were residents of neighbouring villages Charbhatha and Kalangpur. According to the prosecution, prior animosity existed between the complainant party and certain members of the accused side on account of earlier village disputes. It is alleged that on the night of the incident, a meeting was convened in the village. While the defence asserted that the meeting was organized in connection with an *Akhand Ramayan* programme, the prosecution alleged that the accused persons had assembled with the common object of assaulting the complainant party. The prosecution version is principally based on the testimony of the injured eyewitnesses, namely, PW-1 Satyavan Sahu, PW-2 Parma Bai, and PW-3 Dharmendra Kumar Sahu, as well as the independent witnesses PW-4 Smt. Gayatri Bai and PW-9 Hemnarayan Sahu.

5. According to the prosecution, the accused persons, armed with lathis and other weapons, formed an unlawful assembly and proceeded to the house of the complainant party, where the family members were called out and assaulted. During the course of the incident, deceased Basant was chased towards the agricultural field of Mayaram Sahu, where he sustained fatal injuries. PW-1 Satyavan Sahu, PW-2 Parma Bai, and PW-3 Dharmendra Kumar Sahu also sustained injuries during the occurrence. Thereafter, some members of the unlawful assembly trespassed into the complainant's house, caused damage to household articles and set the complainant's motorcycle on fire. Thus, according to the prosecution, the occurrence comprised three distinct stages, namely, the initial gathering and calling out of the complainant party, the assault resulting in the death of Basant in the agricultural field, and the subsequent acts of house trespass, mischief and arson.
6. On the following morning, PW-1 Satyavan Sahu lodged the First Information Report (Ex.P/3). During investigation, PW-13 B.L. Soni, the Investigating Officer, prepared the necessary investigation documents, conducted the inquest, seized the incriminating articles, arranged for the medical examination of the injured witnesses and post-mortem examination of the deceased, recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure and, upon completion of investigation, filed the charge-sheet against twenty-four accused

persons for offences punishable under Sections 147, 148, 452, 427, 435, 302, 307 and 323 read with Section 149 of the Indian Penal Code. Ex.P/3 has been referred to by the learned trial Court while appreciating the evidence.

7. The accused denied the allegations and pleaded false implication. Their principal defence was that the meeting had been convened only for an *Akhand Ramayan* programme and that they had been falsely implicated due to previous enmity. They further contended that several names had been introduced subsequently, material omissions and contradictions existed between Ex.P/3, the police statements and the depositions before the Court, and some of the accused also pleaded alibi.
8. In support of its case, the prosecution examined PW-1 Satyavan Sahu, PW-2 Parma Bai, PW-3 Dharmendra Kumar Sahu, PW-4 Smt. Gayatri Bai, PW-5 Gorelal Jangde, PW-6 Temuram Sahu, PW-7 Rikesh Kumar, PW-8 Dr. A.K. Sahu, PW-9 Hemnarayan Sahu, PW-10 Dr. C.B. Prasad, PW-11 Girdharilal Yadav, PW-12 Tikendra Sahu, and PW-13 B.L. Soni (Investigating Officer), besides relying upon the documentary evidence brought on record. Upon appreciation of the oral and documentary evidence, the learned Sessions Judge acquitted eight accused persons by extending them the benefit of doubt, but held that the prosecution had proved beyond reasonable doubt the active participation of the remaining sixteen accused persons in the unlawful assembly

and the commission of the offences in question. Accordingly, the present appellants were convicted under Sections 147, 452, 427/149, 435/149, 302/149, 307/149 and two counts under Section 323/149 of the Indian Penal Code and sentenced accordingly.

9. During the course of trial, all the accused persons were examined under Section 313 of the Code of Criminal Procedure, 1973. They denied all the incriminating circumstances appearing against them in the prosecution evidence, pleaded innocence and asserted that they had been falsely implicated due to previous enmity. Their principal defence was that no unlawful assembly had been formed with the object alleged by the prosecution and that the meeting convened on the date of the incident was in connection with an *Akhand Ramayan* programme. Certain accused also raised the plea of alibi. In defence, one witness was examined, and documentary evidence was also brought on record in support of the defence. Upon completion of the evidence, the learned trial Court proceeded to appreciate the oral and documentary evidence adduced by both the prosecution and the defence for determining the culpability of the accused persons.
10. Upon a comprehensive appreciation of the oral and documentary evidence available on record, the learned Sessions Judge, by the impugned common judgment of conviction and order of sentence

dated 09.09.2015 passed in Sessions Trial No.84/2014, held that the prosecution had failed to prove the charges against eight accused persons beyond reasonable doubt and accordingly acquitted them of all the charges. However, the learned trial Court found the present appellants, along with the other convicted accused, guilty of the offences punishable under Sections 147, 452, 427 read with Section 149, 435 read with Section 149, 302 read with Section 149, 307 read with Section 149 and two counts under Section 323 read with Section 149 of the Indian Penal Code, and sentenced them as detailed in the preceding paragraphs of this judgment. Aggrieved by the said common judgment of conviction and order of sentence, the present appellants have preferred these criminal appeals before this Court.

11. Mr. Praveen Dhurandhar, learned counsel appearing for the appellants in Criminal Appeal Nos.1185 of 2015, 1196 of 2015 and 1398 of 2015, Ms. Smita Jha, learned counsel appearing for the appellants in Criminal Appeal No.1198 of 2015, and Mr. Vivek Sharma, learned counsel appearing for the appellants in Criminal Appeal No.1428 of 2015, jointly contend that the impugned judgment of conviction and order of sentence suffers from patent illegality and perversity and is liable to be set aside. They contend that the learned trial Court has failed to appreciate the oral and documentary evidence in its proper perspective and has recorded the conviction on the basis of conjectures and surmises.

- 12.** Learned counsel contend that the prosecution witnesses have made material improvements, omissions and contradictions on vital aspects of the prosecution case, which strike at the very root of the prosecution story. They further contend that the testimonies of PW-1 Satyavan Sahu, PW-2 Parma Bai, PW-3 Dharmendra Kumar Sahu, PW-4 Smt. Gayatri Bai and PW-9 Hemnarayan Sahu do not inspire confidence and fail to establish the individual role attributed to each of the appellants beyond reasonable doubt.
- 13.** Learned counsel further contend that the FIR (Ex.P/3) does not contain the names of several appellants and that many of them are introduced subsequently during investigation and trial. According to them, such subsequent implication constitutes a material improvement which renders the prosecution case doubtful. They further contend that the prosecution fails to establish the source of light at the place of occurrence and, therefore, identification of the appellants during the alleged night incident becomes highly doubtful.
- 14.** Learned counsel further contend that the prosecution itself alleges that the occurrence takes place in three different stages and at different places. However, the prosecution fails to establish the presence and participation of each appellant at every stage of the occurrence. They argue that omnibus allegations have been levelled against a large number of accused persons without

assigning any specific overt act to each appellant and, therefore, the learned trial Court has erred in invoking the provisions of Section 149 of the Indian Penal Code.

15. Learned counsel further contend that the defence version that the meeting is convened for an *Akhand Ramayan* programme has not been properly appreciated by the learned trial Court. They also contend that the plea of alibi taken by some of the appellants and the defence evidence adduced in support thereof have not been considered in their proper perspective.
16. Lastly, learned counsel contend that the prosecution fails to prove beyond reasonable doubt that the appellants constitute an unlawful assembly having the common object of committing the alleged offences. They submit that the prosecution evidence falls short of the standard required for recording a conviction under Sections 302/149 and other allied provisions of the Indian Penal Code. They, therefore, pray that the impugned judgment of conviction and order of sentence be set aside, the appellants be acquitted of all the charges by extending them the benefit of doubt, and all the appeals be allowed.
17. Per contra, Mr. Ashish Shukla, learned Additional Advocate General, appearing for the State/respondent, vehemently opposes the submissions advanced by the learned counsel appearing for the appellants and contends that the impugned judgment of conviction and order of sentence passed by the

learned trial Court is well reasoned, based upon proper appreciation of the oral as well as documentary evidence available on record, and does not suffer from any illegality, perversity or infirmity warranting interference by this Court in exercise of its appellate jurisdiction.

18. Learned Additional Advocate General submits that the prosecution has successfully established its case beyond all reasonable doubt by leading cogent, convincing and reliable evidence. He contends that the testimonies of PW-1 Satyavan Sahu, PW-2 Parma Bai and PW-3 Dharmendra Kumar Sahu, who are injured eyewitnesses, inspire complete confidence and stand on a higher pedestal than that of ordinary witnesses. Their presence at the place of occurrence cannot be doubted as they themselves sustained injuries during the incident. Their evidence receives substantial corroboration from the testimonies of the independent witnesses PW-4 Smt. Gayatri Bai and PW-9 Hemnarayan Sahu, the medical evidence adduced by PW-8 Dr. A.K. Sahu and PW-10 Dr. C.B. Prasad, as well as the evidence of the Investigating Officer PW-13 B.L. Soni. According to him, the evidence of these witnesses forms a complete and unbroken chain pointing towards the guilt of the appellants.
19. Learned Additional Advocate General further contends that the evidence of the injured eyewitnesses cannot be discarded merely because they are related to the deceased. It is submitted that

relationship with the deceased is not a ground to discard otherwise trustworthy evidence. On the contrary, the injured witnesses are natural witnesses to the occurrence and there is no reason for them to falsely implicate the real culprits while allowing the actual assailants to escape. Their testimonies remain consistent on all material particulars regarding the genesis of the occurrence, the manner in which the incident took place, and the participation of the appellants in the unlawful assembly.

- 20.** Learned Additional Advocate General further submits that the prosecution has been able to establish that the appellants constituted an unlawful assembly armed with deadly weapons and acted in furtherance of their common object. He contends that the occurrence was not an isolated assault by one or two individuals but was the result of a concerted attack by a large group of persons who initially assembled together, called the complainant party out of their house, chased the deceased and the injured persons, assaulted them mercilessly, trespassed into their house, committed mischief and set the motorcycle on fire. Such concerted acts unmistakably establish the existence of a common object attracting the provisions of Section 149 of the Indian Penal Code.
- 21.** Learned Additional Advocate General also contends that the prosecution case cannot be discarded merely because every witness has not assigned a specific overt act to each of the

appellants. According to him, where an offence is committed by members of an unlawful assembly sharing a common object, it is neither possible nor necessary for every eyewitness to describe the individual role of each accused with mathematical precision. Once the participation of the appellants as members of the unlawful assembly is established, every member becomes vicariously liable for the acts committed in prosecution of the common object under Section 149 of the Indian Penal Code.

- 22.** Learned Additional Advocate General further submits that the alleged contradictions, omissions and discrepancies pointed out by the appellants are trivial and insignificant and relate only to minor details, which are natural in the testimony of witnesses who depose after a considerable lapse of time. According to him, such minor inconsistencies rather lend assurance to the truthfulness of the prosecution witnesses and do not affect the substratum of the prosecution case. The learned trial Court has meticulously examined every contradiction and has rightly held that none of them goes to the root of the prosecution case.
- 23.** Learned Additional Advocate General further contends that the contention regarding delay in lodging the First Information Report is wholly misconceived. He submits that the incident occurred during the night and immediately thereafter the injured witnesses were under constant fear owing to the presence of a large number of assailants in the village. The First Information Report

(Ex.P/3) was lodged on the very next morning after the complainant party discovered the dead body of Basant in the agricultural field. The delay, if any, stands fully explained by the surrounding circumstances and does not cast any doubt upon the authenticity of the prosecution case.

- 24.** Learned Additional Advocate General further submits that the plea regarding absence of source of light or mistaken identity has rightly been rejected by the learned trial Court. He contends that the appellants and the prosecution witnesses belong to neighbouring villages and were well acquainted with each other even prior to the incident. Their identification was, therefore, not dependent upon fleeting observation but was based upon previous acquaintance. Moreover, the prosecution witnesses have consistently identified the appellants during trial and their evidence remains unshaken during cross-examination.
- 25.** Learned Additional Advocate General also contends that the learned trial Court has adopted a fair and balanced approach while appreciating the evidence. He points out that out of twenty-four accused persons sent up for trial, the learned trial Court has acquitted eight accused by extending them the benefit of doubt wherever the evidence was found insufficient. This itself demonstrates that the learned trial Court has not convicted the appellants mechanically but has carefully scrutinized the evidence qua each accused individually before recording the

finding of guilt. Therefore, the conviction of the present appellants is founded upon legally admissible and reliable evidence and cannot be faulted merely because some co-accused have been acquitted.

- 26.** Learned Additional Advocate General further submits that the medical evidence completely corroborates the ocular version of the prosecution witnesses with regard to the injuries sustained by the deceased as well as the injured eyewitnesses. The medical findings are wholly consistent with the prosecution version regarding the manner of assault and completely rule out the defence theory of false implication.
- 27.** Lastly, learned Additional Advocate General contends that the learned trial Court has assigned cogent, convincing and legally sustainable reasons while recording the conviction of the appellants. The findings recorded are based upon proper appreciation of the entire evidence and do not suffer from perversity, misreading of evidence or any manifest illegality. He, therefore, prays that all the criminal appeals, being devoid of substance, deserve to be dismissed and the impugned judgment of conviction and order of sentence passed by the learned Sessions Judge be affirmed in toto.
- 28.** We have heard the learned counsel appearing for the parties at considerable length and have also carefully gone through the entire record of the case with due circumspection.

- 29.** Having heard learned counsel for the parties at length and upon careful perusal of the entire oral and documentary evidence available on record, the following questions arise for consideration in the present batch of criminal appeals:

(i) Whether the prosecution has been able to establish beyond reasonable doubt that the present appellants, along with other accused persons, constituted an unlawful assembly having the common object of committing the offences punishable under Sections 147, 452, 427 read with Section 149, 435 read with Section 149, 302 read with Section 149, 307 read with Section 149 and 323 read with Section 149 of the Indian Penal Code, and that they actively participated in the incident resulting in the death of Basant and causing injuries to the prosecution witnesses?

(ii) Whether, in the facts and circumstances of the present case, particularly in view of the evidence of the injured and independent eyewitnesses, the existence of a large mob comprising about 600–700 persons, the omnibus allegations against a large number of accused, the acquittal of eight out of twenty-four accused persons by the learned trial Court on the same set of evidence, and the omissions and contradictions appearing in the prosecution evidence, the conviction and sentence recorded against the present appellants can be sustained in law, or whether they are entitled to the benefit of doubt?

Re: Point for Consideration No. (i)

- 30.** The first question which falls for consideration is whether the prosecution has been able to establish, beyond reasonable doubt, that the present appellants, along with the other accused

persons, constituted an unlawful assembly sharing the common object of committing the offences punishable under Sections 147, 452, 427 read with Section 149, 435 read with Section 149, 302 read with Section 149, 307 read with Section 149 and 323 read with Section 149 of the Indian Penal Code, and that each of the appellants was a member of such unlawful assembly and actively participated in the commission of the offences alleged. The answer to this question necessarily depends upon the reliability of the ocular evidence, its consistency with the documentary and medical evidence, and whether the prosecution has been able to establish the identity and participation of each appellant beyond all reasonable doubt. It is a settled principle of criminal jurisprudence that mere presence in a crowd or at the place of occurrence does not by itself attract the rigours of Section 149 IPC unless the prosecution further proves that the accused shared the common object of the unlawful assembly.

- 31.** The prosecution case principally rests upon the testimonies of PW-1 Satyavan Sahu, PW-2 Paramabai and PW-3 Dharmendra Kumar Sahu, all of whom are closely related to the deceased Basant Sahu. Their evidence discloses that on the intervening night of 7th and 8th August, 2014, several villagers came to their residence and compelled them to attend a village meeting (Kalamanch), where Basant was questioned regarding the alleged assault upon village watchman Ghondul. According to these witnesses, when Basant denied the allegation, he was

assaulted by several persons and was thereafter taken towards the field of Mayaram, where his dead body was subsequently found. While these witnesses have generally supported the prosecution version regarding the occurrence, a careful scrutiny of their depositions reveals material inconsistencies regarding the identity of the assailants, the specific overt acts attributed to individual accused, and the sequence of events after the alleged assault commenced. Significantly, PW-1 himself admits that immediately after the assault began he fled from the place out of fear and, therefore, did not witness the subsequent incident which allegedly occurred in Mayaram's field where the deceased ultimately succumbed to injuries. Consequently, his testimony regarding the actual assault resulting in death is not based upon direct observation.

- 32.** Equally significant is the fact that PW-2 Paramabai and PW-3 Dharmendra Kumar Sahu have also admitted that an exceptionally large number of villagers had assembled at the meeting. PW-1 estimates the gathering to consist of about 200 to 250 persons, whereas PW-2 speaks of nearly 500 to 700 persons, and PW-3 also admits the presence of several hundred villagers comprising men, women and children. Independent witness PW-4 Gayatri Bai likewise deposes that about 200 to 300 villagers were present. Thus, the prosecution evidence itself establishes that the occurrence took place in the midst of an enormous crowd. In such circumstances, the possibility of

confusion in identifying individual participants cannot be lightly brushed aside. More importantly, despite such a large gathering, the prosecution has chosen to implicate only twenty-four persons, while numerous other villagers admittedly remained present throughout the incident. The record is conspicuously silent as to the basis upon which these particular individuals alone were singled out. Such omission assumes considerable importance while evaluating the reliability of the ocular version.

- 33.** A further circumstance creating serious doubt is the inconsistency regarding the number of persons who actually participated in the assault. PW-1 admits in paragraph 31 of his cross-examination that while lodging the First Information Report (Ex. P/3), he could disclose the names only of those persons standing in front and could not identify the persons standing behind. He further admits that the police informed him that sufficient names had already been recorded and that all participants were not named in the FIR. This admission substantially weakens the prosecution case because the FIR itself ceases to represent a complete account of the alleged assailants. Moreover, PW-1 candidly admits that the names of accused Kaminabai and Nirmalabai were not mentioned in the FIR though they were later introduced during investigation. Such material improvements strike at the root of the prosecution case, particularly when the prosecution seeks to invoke constructive liability under Section 149 IPC against every accused.

- 34.** The evidence further reveals that the deceased and his family admittedly had previous enmity with several accused persons. PW-1 acknowledges that Basant had earlier lodged complaints against some accused for illegally cutting Government trees and that disputes had existed between them. PW-2 also admits that her husband had repeatedly lodged reports against certain accused persons. Previous enmity is undoubtedly a double-edged weapon. While it may provide motive for commission of an offence, it equally furnishes a motive for false implication. In a case involving a large unlawful assembly, where identification itself is doubtful and independent corroboration is deficient, the existence of prior hostility assumes greater significance. It therefore became incumbent upon the prosecution to produce clear, cogent and unimpeachable evidence identifying the specific role of each appellant. Such standard of proof is conspicuously absent.
- 35.** The evidence of the so-called independent witnesses also fails to remove these doubts. PW-4 Gayatri Bai, though supporting the prosecution to a limited extent, specifically admits in her cross-examination that accused Shatrughan, Ghondul, Jhaggar Singh, Chhabilal, Paramanand and Lokesh did not assault the complainant party and had left the meeting after the altercation commenced. Similarly, PW-9 Hemnarayan admits that after the dispute started, several accused persons belonging to Village Kalangpur had left the place and did not participate in the

subsequent assault. These admissions assume great significance because the Trial Court itself acquitted eight accused persons on appreciation of substantially the same evidence. Once the Court found that the evidence was insufficient to establish participation of eight accused despite their presence in the FIR and evidence, the same degree of scrutiny was required while examining the case against the present appellants. Unfortunately, the Trial Court failed to explain why evidence considered unreliable qua eight accused suddenly became reliable against the remaining appellants, although all were alleged to be members of the same unlawful assembly and were sought to be convicted on substantially identical evidence.

- 36.** The medical evidence led through PW-10 Dr. C.B. Prasad establishes that deceased Basant sustained multiple incised wounds on the scalp, fracture of the sternum and a piercing injury to the lung resulting in haemorrhagic shock, as reflected in the post-mortem report (Ex. P/18). The doctor categorically opined that injuries Nos.1 to 4 were incised wounds caused by a sharp-edged weapon and specifically admitted during cross-examination that such injuries could not ordinarily be caused by lathis or sticks. However, the ocular evidence of prosecution witnesses predominantly attributes assault by lathis, fists and kicks. The prosecution has not satisfactorily reconciled this apparent inconsistency between the ocular and medical evidence. The discrepancy assumes greater significance

because no specific accused has consistently been attributed the use of any sharp-edged weapon causing the fatal injuries. Thus, the medical evidence does not completely support the prosecution version regarding the manner of assault and the role assigned to individual appellants.

37. The law relating to conviction under Section 149 IPC is no longer res integra. In ***Masalti v. State of U.P., AIR 1965 SC 202***, the Supreme Court held that where a large unlawful assembly is involved, courts must exercise great caution before convicting individual accused solely on omnibus allegations and must be satisfied that reliable evidence establishes their participation. Likewise, in ***Kuldip Yadav v. State of Bihar, (2011) 5 SCC 324***, the Supreme Court reiterated that mere presence in an assembly is insufficient unless the prosecution proves that the accused shared the common object. In ***Roy Fernandes v. State of Goa, (2012) 3 SCC 221***, it was held that constructive liability under Section 149 IPC cannot be invoked mechanically in the absence of convincing evidence demonstrating membership of the unlawful assembly and participation in furtherance of the common object. The principles laid down in these decisions are fully attracted to the present case where hundreds of persons were admittedly present, individual roles remain uncertain, and material contradictions persist regarding the participation of several accused.

38. Equally instructive is the decision in ***Najabhai Desurbhai Wagh v. Valerabhai Deganbhai Wagh, (2017) 3 SCC 261***, wherein the Supreme Court held that where evidence against several accused is inseparable and some co-accused are acquitted on identical evidence, the appellate court must carefully examine whether the remaining convictions can safely be sustained. Similar observations were made in ***Krishnan v. State of Kerala, (1996) 10 SCC 508***, wherein it was emphasised that suspicion, however strong, cannot substitute proof beyond reasonable doubt. Applying these principles to the facts of the present case, it becomes evident that the prosecution has relied primarily upon omnibus allegations without satisfactorily proving the specific participation or common object attributable to each appellant. The acquittal of eight accused persons on substantially similar evidence considerably weakens the prosecution case against the remaining accused.
39. Having considered the entire oral and documentary evidence, this Court is of the considered opinion that the prosecution has undoubtedly established that an unfortunate incident occurred in which Basant lost his life and certain prosecution witnesses sustained injuries. However, the crucial issue is not whether the occurrence took place, but whether the prosecution has proved beyond reasonable doubt that the present appellants constituted the unlawful assembly sharing the alleged common object and participated in the commission of the offences. The cumulative

effect of the material contradictions in the testimony of eyewitnesses, the inconsistencies regarding the number of assailants, the admitted presence of hundreds of villagers at the scene, the improvements made during investigation, the absence of consistent attribution of overt acts, the divergence between medical and ocular evidence, and the acquittal of eight co-accused on substantially identical evidence creates a reasonable doubt regarding the prosecution case.

- 40.** Criminal jurisprudence mandates that whenever two views are reasonably possible on the evidence adduced, the one favourable to the accused must prevail. The benefit of every reasonable doubt must necessarily enure to the accused. In the facts and circumstances of the present case, this Court is unable to hold that the prosecution has succeeded in establishing, beyond reasonable doubt, that the present appellants were members of the alleged unlawful assembly sharing the common object attributed by the prosecution or that their guilt under Sections 147, 452, 427/149, 435/149, 302/149, 307/149 and 323/149 IPC stands proved to the requisite standard. Consequently, **Point for Consideration No. (i) is answered in the negative and in favour of the appellants**, holding that the prosecution has failed to establish their membership of the unlawful assembly and their participation in the alleged offences beyond reasonable doubt. The appellants are, therefore, entitled to the benefit of doubt.

Re: Point for Consideration No. (ii)

41. The next question which falls for consideration is whether the prosecution has been able to prove, beyond reasonable doubt, that the present appellants were members of the alleged unlawful assembly sharing the common object contemplated under Section 149 of the Indian Penal Code and that their individual participation in the commission of the offences punishable under Sections 302/149, 307/149, 452/149, 435/149, 427/149, 323/149 and 147 IPC has been established by clear, cogent and reliable evidence. The answer to this question necessarily depends upon whether the ocular evidence led by the prosecution inspires confidence and is of such unimpeachable character as to safely sustain the conviction of the present appellants, particularly in the backdrop of the admitted fact that the alleged incident took place in the midst of a large gathering of nearly 600–700 persons, where allegations have been made against a large number of accused in a general and omnibus manner. The Court is, therefore, required to examine whether the prosecution witnesses have been able to consistently attribute specific overt acts to each of the present appellants; whether the evidence of the injured and independent witnesses is free from material omissions, improvements and contradictions; whether the documentary and medical evidence lends assurance to the ocular

version; and whether the acquittal of eight out of twenty-four accused persons on the same set of evidence has any bearing on the sustainability of the conviction recorded against the present appellants.

- 42.** It is a settled principle of criminal law that where the prosecution relies upon evidence relating to a mob assault involving a large number of persons, the Courts must scrutinize such evidence with greater circumspection, for the possibility of exaggeration, false implication and mistaken identity cannot be ruled out. Unless the prosecution is able to establish, beyond all reasonable doubt, the identity, presence, participation and sharing of the common object by each appellant, the benefit of doubt must necessarily enure to the accused. It is in the light of these settled principles that the present point requires consideration.
- 43.** Upon an anxious consideration of the entire oral and documentary evidence available on record, this Court is of the considered opinion that the prosecution has failed to establish beyond reasonable doubt the individual participation of the present appellants in the commission of the offences alleged against them. Though the prosecution has undoubtedly proved that an unfortunate incident occurred in Village Charbhatha on the intervening night of 07/08.08.2014 resulting in the death of Basant Sahu and injuries to Parma Bai, Satyavan Sahu and Dharmendra Kumar Sahu, the crucial question is whether the

prosecution has succeeded in proving, with the degree of certainty required in criminal jurisprudence, that each of the present appellants was a member of the unlawful assembly sharing the common object contemplated under Section 149 IPC and actively participated in the commission of the offences.

- 44.** The prosecution case itself discloses that the alleged occurrence took place in the course of a village meeting attended by an exceptionally large gathering. PW-1 Satyavan admitted in paragraph 50 of his cross-examination that nearly 200–250 persons were present at the Kalamanch, whereas PW-2 Parma Bai admitted that nearly 500–700 persons had assembled there. PW-3 Dharmendra Kumar Sahu also deposed that besides the accused persons, there were 400–500 villagers including women, children and elderly persons. Independent witness PW-4 Gayatri Bai stated that about 250–300 persons had gathered, whereas PW-9 Hemnarayan Sahu also spoke of a large assembly. Thus, irrespective of the numerical variation, one fact emerges beyond controversy that several hundreds of persons were present at the place of occurrence. Such evidence itself introduces a serious difficulty in accepting omnibus allegations made against every accused without careful judicial scrutiny. In a situation where hundreds of persons are present, the possibility of mistaken identity, exaggeration, over-implication and false implication cannot be lightly brushed aside, particularly when admittedly there existed prior enmity between the parties.

- 45.** A careful appreciation of the evidence of PW-1 Satyavan reveals substantial infirmities affecting the reliability of his testimony insofar as the present appellants are concerned. Though he claimed that all the accused assaulted his father, he simultaneously admitted that immediately after the assault commenced, he fled away from the Kalamanch out of fear. He further admitted that he did not witness the subsequent occurrence in Mayaram's field where the deceased was ultimately found dead. Thus, PW-1 is not an eyewitness to the entire incident culminating in the death of Basant. Significantly, PW-1 admitted that the names of some accused persons were omitted from the FIR because the Investigating Officer declined to record all the names furnished by him. Equally significant is his admission that there was long-standing hostility between his family and several accused persons owing to earlier complaints lodged by his deceased father regarding illegal felling of Government trees. Such admitted enmity undoubtedly furnishes a motive not only for the occurrence but also for false implication. The settled principle is that where evidence emanates from interested witnesses having admitted previous hostility, the Court must insist upon independent corroboration before sustaining conviction.
- 46.** The evidence of injured witness PW-2 Parma Bai also does not inspire complete confidence so far as the individual role of the present appellants is concerned. Although she narrated that

Basant was assaulted at the Kalamanch and thereafter dragged towards Mayaram's field, she admitted during cross-examination that when vandalism and arson were allegedly committed at her house, she herself was not present there. She further admitted that she did not know all the accused persons belonging to Village Kalangpur and had no previous acquaintance with many of them. She also admitted that accused Kaminibai and Nirmalabai had not assaulted her at the Kalamanch but allegedly assaulted her later on the road. These material improvements and variations demonstrate that the prosecution version underwent embellishment during trial. More importantly, despite claiming that hundreds of persons were present in three adjoining lanes surrounding the Kalamanch, no satisfactory explanation has been furnished as to why independent witnesses from among those numerous villagers were not examined to support the prosecution case against each individual appellant.

- 47.** PW-3 Dharmendra, another injured witness, also admitted that immediately after the assault commenced he attempted to run away and in that process fell down and sustained injuries. He further admitted that after escaping, he contacted the police and thereafter returned home. Consequently, he admittedly did not witness the subsequent assault allegedly committed in Mayaram's field where the fatal injuries were inflicted. His testimony, therefore, cannot be treated as direct evidence regarding the actual homicidal assault resulting in Basant's death.

Even otherwise, his evidence suffers from improvements over the FIR. While attributing exhortations to some accused during trial, several such details find no place in the earliest version. His evidence, therefore, cannot safely be accepted as furnishing an unimpeachable basis for sustaining conviction against every appellant.

- 48.** The independent witnesses examined by the prosecution, namely PW-4 Gayatri Bai and PW-9 Hemnarayan Sahu, instead of strengthening the prosecution case, considerably weaken it. Both these witnesses admitted that after the quarrel commenced during the village meeting, several persons belonging to Village Kalangpur left the place. PW-4 specifically stated in her cross-examination that accused Shatrughan, Ghondul, Jhaggar Singh, Chhabilal, Parmanand and Lokesh did not assault the complainant party. PW-9 also admitted that the accused persons belonging to Village Kalangpur had left the meeting immediately after the dispute arose. These admissions clearly demonstrate that the prosecution witnesses themselves distinguished between various accused and admitted that every person named in the FIR had not participated in the assault. This circumstance assumes great significance because the learned Trial Court itself acquitted eight accused persons on the same evidence.
- 49.** The acquittal of eight out of twenty-four named accused by the learned Trial Court is another circumstance which strikes at the

very root of the prosecution case. The allegations in the FIR and in the depositions of the eyewitnesses are predominantly omnibus in nature, alleging that "all the accused assaulted", "all dragged the deceased", or "all participated". The learned Trial Court, while extending benefit of doubt to eight accused persons, accepted that the evidence was insufficient to establish their participation beyond reasonable doubt. However, while convicting the remaining accused, including the present appellants, the Trial Court failed to indicate any clear distinguishing feature establishing their individual overt acts with certainty. Once the Court itself disbelieved the prosecution case against one-third of the accused on identical evidence, the remaining evidence necessarily required far more cautious scrutiny before recording conviction of the present appellants. Unfortunately, such exercise is conspicuously absent.

- 50.** The prosecution has also failed to establish the ingredients necessary for fastening constructive liability under Section 149 IPC. The Supreme Court in *Masalti v. State of Uttar Pradesh*, AIR 1965 SC 202, while dealing with offences committed by a large unlawful assembly, held that although every member need not commit an overt act, the Court must nevertheless be satisfied that reliable evidence establishes the presence and participation of each accused and that the common object is proved beyond reasonable doubt. Where witnesses make sweeping allegations against a large crowd without specifically identifying the role of

individual accused, the Court must approach such evidence with great caution. Similar principles have been reiterated in **Kuldip Yadav** (supra), wherein the Supreme Court held that mere presence in an assembly does not automatically attract Section 149 IPC unless the prosecution proves that the accused shared the common object of the assembly.

51. Likewise, in **Roy Fernandes** (supra), the Supreme Court observed that criminal courts must carefully sift evidence in cases involving group assaults and must guard against the tendency of witnesses to implicate every person belonging to the rival faction. In **Najabhai Desurbhai Wagh** (supra), it was reiterated that where witnesses make general allegations against a large number of persons and independent corroboration is lacking, the benefit of doubt must ordinarily go to the accused. Similarly, in **Krishnan** (supra), the Supreme Court emphasised that where two views are reasonably possible from the evidence on record, the one favourable to the accused must invariably be adopted. Applying the aforesaid settled principles to the present case, this Court finds that the prosecution evidence falls substantially short of the standard required for sustaining conviction under Sections 149 and 302 read with Section 149 IPC.
52. The medical evidence undoubtedly proves that Basant sustained fatal injuries and that Parma Bai, Satyavan Sahu and Dharmendra Kumar Sahu also received injuries. However,

medical evidence merely establishes the factum of injuries and the cause of death; it does not identify the assailants. The prosecution was therefore required to establish through cogent ocular evidence that the present appellants were responsible for causing those injuries or were members of an unlawful assembly sharing the requisite common object. Unfortunately, the ocular evidence suffers from material contradictions, improvements, omissions and exaggerations noticed hereinabove. The medical evidence, therefore, cannot cure the inherent deficiencies in the prosecution version regarding the identity and participation of the individual appellants.

- 53.** Another significant circumstance creating doubt is that despite the prosecution version that 600–700 persons had assembled at the Kalamanch, no truly disinterested independent witness from among the large gathering has supported the prosecution version against the present appellants. The prosecution relied principally upon closely related witnesses whose testimony admittedly emanates from a background of previous hostility. Though relationship by itself is no ground for rejection, where such evidence suffers from material inconsistencies and lacks independent corroboration, prudence requires the Court to seek assurance before recording conviction for serious offences punishable with imprisonment for life. The burden always rests upon the prosecution to establish the guilt of every accused beyond reasonable doubt. In the present case, the prosecution

has undoubtedly proved that a violent incident occurred and that Basant lost his life. However, it has failed to establish beyond reasonable doubt that each of the present appellants formed part of the unlawful assembly sharing the alleged common object or actively participated in the commission of the offences attributed to them. The evidence is rendered doubtful by the presence of an enormous mob, sweeping allegations against all accused, material omissions and contradictions, admitted previous enmity, absence of reliable independent corroboration, and the acquittal of eight similarly situated co-accused on the same evidence. These circumstances cumulatively create a reasonable doubt regarding the prosecution case against the present appellants.

- 54.** Consequently, applying the well-settled principles governing criminal trials and extending to the appellants the benefit of every reasonable doubt, this Court is unable to sustain the findings recorded by the learned Trial Court. The prosecution has failed to prove beyond reasonable doubt that the present appellants were members of an unlawful assembly sharing the common object alleged by the prosecution or that they participated in the commission of the offences punishable under Sections 147, 452, 427 read with Section 149, 435 read with Section 149, 302 read with Section 149, 307 read with Section 149 and 323 read with Section 149 IPC. **Accordingly, Point for Consideration No. (ii) is answered in favour of the appellants**, and it is held that the conviction and sentences recorded against them cannot be

sustained in law. The appellants are, therefore, entitled to the benefit of doubt and deserve to be acquitted of all the charges.

Conclusion

55. Having bestowed our anxious consideration to the rival submissions advanced at the Bar, meticulously re-appreciated the entire oral and documentary evidence available on record and examined the findings recorded by the learned Trial Court in the light of the settled principles governing criminal jurisprudence, this Court is of the considered opinion that the prosecution has failed to establish its case against the present appellants beyond all reasonable doubt. The evidence led by the prosecution, though sufficient to establish that an unfortunate incident had occurred resulting in the death of Basant Sahu and injuries to certain prosecution witnesses, falls considerably short of proving, with the degree of certainty required in criminal law, that each of the present appellants was a member of the alleged unlawful assembly sharing the common object contemplated under Section 149 of the Indian Penal Code or that they actively participated in the commission of the offences alleged against them. The prosecution evidence is replete with material omissions, improvements and contradictions. The eyewitnesses have made sweeping and omnibus allegations against a large number of accused persons despite admitting that nearly 600–700 persons had assembled at the place of occurrence. The

possibility of mistaken identity, exaggeration and false implication cannot, therefore, be ruled out.

- 56.** This Court also cannot lose sight of the fact that out of twenty-four persons named as accused, the learned Trial Court itself found the evidence unreliable insofar as eight accused persons were concerned and extended to them the benefit of doubt. However, while convicting the remaining accused persons, including the present appellants, no convincing distinction has been drawn demonstrating as to how the evidence against the appellants stands on a different footing. The evidence against the acquitted accused and the convicted appellants substantially emanates from the same set of witnesses and suffers from identical infirmities. In the absence of clear, cogent and convincing evidence establishing the individual participation of each appellant and the existence of a common object shared by them, it would be wholly unsafe to sustain their conviction merely on the basis of general allegations.
- 57.** It is a cardinal principle of criminal jurisprudence that suspicion, however grave or strong, can never take the place of legal proof. The prosecution is required to prove its case beyond reasonable doubt and every reasonable doubt must necessarily enure to the benefit of the accused. The constitutional guarantee of a fair trial and the settled presumption of innocence continue to operate till the guilt of the accused is established by unimpeachable

evidence. Where two views are reasonably possible on the evidence available on record, the one favourable to the accused must invariably be adopted. In the present case, the cumulative effect of the inconsistencies in the ocular evidence, the admitted existence of a large and unruly mob, the improvements and omissions in the testimony of material witnesses, the absence of reliable independent corroboration regarding the specific role of each appellant, the admitted previous enmity between the parties and the acquittal of similarly situated co-accused on the same evidence creates a reasonable and substantial doubt regarding the prosecution case against the present appellants.

58. In the considered opinion of this Court, the learned Trial Court failed to appreciate the evidence in its proper perspective and proceeded to record the conviction by invoking Section 149 IPC without first satisfying itself that the prosecution had established beyond reasonable doubt the common object of the unlawful assembly and the conscious participation of each of the present appellants therein. The findings recorded by the learned Trial Court, therefore, cannot be sustained either on facts or in law and deserve to be interfered with by this Court in exercise of its appellate jurisdiction.
59. Consequently, **Criminal Appeal No.1185 of 2015, Criminal Appeal No.1196 of 2015, Criminal Appeal No.1198 of 2015, Criminal Appeal No.1398 of 2015 and Criminal Appeal**

No.1428 of 2015 are **allowed**. The impugned judgment of conviction and order of sentence dated 09.09.2015 passed by the learned Sessions Judge, Balod, District Balod (C.G.) in Sessions Trial No.84/2014, insofar as it relates to the present appellants, is hereby set aside.

60. The appellants, namely, **Hariram (appellant in CRA No.1185 of 2015); Smt. Kamin Bai and Smt. Nirmala Bai (appellants in CRA No.1196 of 2015); Dhananjay, Pawan Kumar, Deolal, Romlal, Domar, Dalsingh, Daleshwar and Devendra Kumar (appellants in CRA No.1198 of 2015); Ghondul Ram and Shatruhan Lal (appellants in CRA No.1398 of 2015); and Lokesh Kumar and Gendu Ram (appellants in CRA No.1428 of 2015)**, are acquitted of the charges punishable under Sections 147, 452, 427 read with Section 149, 435 read with Section 149, 302 read with Section 149, 307 read with Section 149 and two counts under Section 323 read with Section 149 of the Indian Penal Code, by extending to them the **benefit of doubt**.
61. It is reported that all the appellants are on bail. They need not surrender. Their bail bonds and surety bonds shall stand discharged.
62. Keeping in view the provisions of Section 437-A of the Code of Criminal Procedure, 1973 (Now Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023), the appellants are directed forthwith furnish a personal bond in terms of Form No.45

prescribed in the Code of Criminal Procedure, 1973 or Bharatiya
Nagarik Suraksha Sanhita, 2023 of sum of Rs.25,000/- with two
reliable sureties in the like amount before the Court concerned
which shall be effective for a period of six months along with an
undertaking that in the event of filing of Special Leave Petition
against the instant judgment or for grant of leave, the aforesaid
appellants on receipt of notice thereof shall appear before the
Hon'ble Supreme Court.

- 63.** Let a copy of this judgment and the original record be transmitted
to the trial court concerned forthwith for necessary information
and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice