NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 388 of 2001

1. Neeraj Mali alias Golu S/o Shankar Mali, aged about 21 years.
2. Raja Dubey alias Praveen S/o Narottam, aged 21 years.
3. Sanjai Pandey alias Sanjoo S/o Ramesh Chandra Pandey, aged about 18 years.
4. Shankar Mali S/o late Chhedi Mali aged about 40 years.

---- Appellants

Versus

State of Chhattisgarh Through P.S. Civil Lines, Distt. Bilaspur (C.G.)

---- Respondent

For Appellants	:	Shri S. P. Singh, Sr. Advocate along with Mr. Arun Kochar and Mr. Pushpendra Singh Baghel, Advocates.
For Respondent/ State:		Shri Vinod Deshmukh, Dy. Govt. Advocate

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V J U D G E M E N T

Passed On : 09.07.2015

The instant appeal has been preferred by the Appellants challenging the judgment of conviction and order of sentence dated 18.04.2001 passed by the first Additional Sessions Judge, Bilaspur in Sessions Trial No.91/2000. Appellants 1 to 3, i.e. Neeraj Mali, Raja Dubey and Sanjai Pandey have been convicted under Section 302 IPC to imprisonment for life with fine of Rs.5,000, in default of payment of fine to further undergo imprisonment for one year, they have further been convicted under Section 148 IPC to two years rigorous imprisonment. Appellant No.4 Shankar Mali has been convicted under Section 212 of IPC and sentenced to

undergo rigorous imprisonment for four years with fine of Rs.5,000, in default of fine, to undergo further imprisonment for a period of six months.

2. The Prosecution story in brief is that on 06.09.1999 deceased Dalbeer Singh along with PW-1 Shankar Singh had gone to the Civil Court, Bilaspur for appearance in a case. At around 1 p.m. when the deceased along with PW-1 came out of the Court premises and reached the main road on a motorcycle, in front of the district Court, it is said that Appellants 1, 2 & 3 along with two more accused persons namely Bauwa Marar @ Suresh and Pradeep Sharma stopped the deceased and the Appellant No.1 and another accomplice drew a long knife and gave repeated stab injuries to the deceased and immediately thereafter all the accused persons fled away from the scene.

3. The deceased on receiving the stab injuries ran towards the Court premises for shelter from where PW-1 along with another person namely Chitrasen Singh took the deceased to the hospital on a rickshaw where the doctors declared him dead. Immediately thereafter PW-1 is said to have lodged an FIR exhibit P-1 wherein he had specifically named Appellant No.1 and stated that there were four other persons along with Appellant No.1 who had attacked the deceased. Later on, postmortem was also conducted marked exhibit P-29. In the course of postmortem, the doctor found following injuries on the body of the deceased:

i) Perforated (Stab) injury 2 x 1 cm x muscle deep over posterior aspect of right shoulder joint. Direction directed downwards & forwards cutting muscles towards bone.

ii) Stab injury 2 x 1 cm deep to abdominal cavity cutting spleen at hilum at left costal marginal mid axillary line. Direction of injury

directed backwards & medially towards mid line from left side to right side.

iii) Stab injury over back on left side near medial border of left scapula at its midpoint Cutting intercostal muscles, lung at hilum and left ventricle of heart on posterior aspect. Direction of wound is directed forward, downwards towards outerior side from back. Size 2 x 1 cm x deep up to heart.

4. In the course of investigation, all the accused persons were found to be given shelter by Appellant No.4 and they were hiding themselves in the Kanan Pendari park, Bilaspur fromwhere the Police arrested them. Later on, charge sheet was filed before the concerned Court and the matter was registered as Sessions Trial No. 91 of 2000 and was put to trial before the first Additional Sessions Judge, Bilaspur.

5. During the course of trial, the prosecution examined as many as 20 prosecution witnesses of which PW-1 Shankar Singh and PW-20 Chitrasen Singh are cited as eye witnesses. In the course of investigation as well as during the course of trial, the eye witnesses have identified the Appellants in the test identification parade.

6. After completion of trial, finally vide its impugned judgment dated 18.04.2001 the trial Court found the Appellants 1 to 3 guilty for the offence under Section 302 and 148 of IPC and Appellant No.4 for the offence under Section 212 of IPC. Accordingly, the trial Court sentenced all the four Appellants. Co-accused Bauwa @ Suresh and Pradeep Sharma were acquitted of all the charges levelled against them.

7. Counsel for the Appellants has assailed the impugned judgement and stated that:

- The conviction is not sustainable as the version of the eyewitnesses which has been recorded by the Court below is not at all trustworthy. There are many contradictions and omissions which on an overall assessment lead to a great element of doubt as to whether they were eyewitnesses.

- Even the version of PW-1 before the Court below is full of conflicting statements when compared to the deposition of the other witnesses and is therefore not worth believing.

- There is no corroborative evidence to the version rendered by PW-1 so as to substantiate his contentions. Counsel for the Appellants also stressed upon the conduct of PW-1 immediately after the incident by which it could be established that neither he was present at the place of incident to have witnessed the same nor had he accompanied the deceased when he was taken to the hospital.

- There was a difference of timing about the incident rendered by all the important prosecution witnesses and therefore also the case of the prosecution becomes doubtful.

- There is considerable delay for the deceased to be taken to the hospital which also gives rise to a doubt about the presence of PW-1 and PW-20 at the place of incident for the reason that if they had been witnessing the incident, they would have immediately rushed the deceased to the hospital.

- So far as the conduct of PW-1 is concerned, according to the counsel for the Appellants, admittedly PW-1 Shankar Singh was working for the deceased and as such he was an employee of the deceased and was sent by the father of the deceased as a

protection to accompany the deceased where he was to attend the Court proceeding. If that be the case, PW-1 not coming forward to protect the deceased at the time of assault and further not approaching the Police Personnel at the Police out post present in the District Court and reporting the incident also gives rise to a great element of doubt about his presence at the place of incident.

- Similarly, when PW-3 Bhanjan Singh reached the hospital, he did not find PW-1 in the hospital nor did PW-1 disclose anything to PW-3 about the incident which also gives rise to a great element of doubt for the reason that PW-3 was the uncle of the deceased and PW-1 was an employee of the deceased and as such PW-1 should have disclosed the entire factual matrix of the incident. Further, neither PW-1 nor PW-20 did anything for rushing home for informing the incident to the family members of the deceased particularly when PW-1 had been sent along with the deceased for the purpose of protection, safety or security.

- The further bone of contention on the part of the Appellants was that the test identification parade conducted by the prosecution also stands vitiated for more than one reason; firstly when Appellant No.1 Neeraj Mali was known to PW-1 as he was named in the FIR, there was no occasion for the prosecution to have put Appellant No.1 for the identification.

- Similarly, the procedure adopted for the test identification parade also appears to be bad in law for the reason that the prosecution has not been able to establish that the persons put along with the Appellants for test identification parade were of same and similar age group and therefore also the TIP would get vitiated as

according to PW-1, all the assailants were aged between 18 to 20 as is evident from the FIR and therefore the prosecution should have established the fact that all the persons put for the TIP also were of the age group of 18-20.

- None of the prosecution witnesses are any material witnesses but all are planted witnesses tutored for somehow getting the Appellants convicted.

- The version of PW-1 also becomes doubtful for the reason that in his deposition he submitted that there was no blood stains on his shirt which could not have been possible for the reason that the deceased was stabbed on his stomach as well as on his back and if PW-1 had given him support immediately after the incident, the shirt of PW-1 would have received blood stains.

- The prosecution story also is doubtful so far as the place of incident is concerned for the reason that there was no blood recovered from the place of incident but the blood was collected from where the deceased was sitting under a tree after the incident which again gives rise to a great element of doubt on the prosecution story so far as the place of incident is concerned.

- The co-accused persons Bauwa Marar @ Suresh and Pradeep Sharma have been acquitted on identical set of facts and if the said two co-accused persons could be acquitted, there was no reason for the Court to give a finding that with the same amount of proof and evidence the present Appellants were found to be guilty and convicted for the offence charged particularly the Appellants 2 & 3 were also not named in the FIR.

- Lastly, the Appellants' counsel submitted that in any case, no case whatsoever is made out against Appellant No.4 convicting him for the offence under Section 212 of IPC. Since there is no ingredients of the offence under Section 212 of IPC established by the prosecution before the Court below, the conviction of Appellant No.4 for the offence under Section 212 is not sustainable and deserves to be set aside.

8. Relying upon (2014) 12 SCC 389 (Ganesh Datt versus State of Uttarakhand) and (2004) 11 SCC 241 (Abdul Wahid v. State of Rajasthan) counsel for the Appellants submits that the prosecution has not been able to establish the exact place of assault. He submits that from the place where the assault was committed, no blood stained earth was seized which gives rise to doubt whether the assault did take place at the place as claimed by the prosecution in the FIR. Counsel for the appellants referring to Paragraph-22 in the case of Ganesh Datt (Supra) states that the situs of attack is also not established by the prosecution. He further submits that as there were discrepancies in the evidence of the witnesses regarding the manner and the place of incident, the prosecution case cannot be said to have been fully proved beyond reasonable doubt and therefore the advantage of the same should be given to the Appellants.

9. Referring on the judgments of the Hon'ble Supreme Court in the case of Nagappan v. State by Inspector of Police, Tamil Nadu reported in (2013) 15 SCC 252 and in the case of Jalpat Rai & Ors. v. State of Haryana reported in AIR 2011 SC 2719, counsel for the Appellants submits that from the evidence which has come on record it is clearly established that PW-1, Shankar Singh was an employee of the deceased and his

father and except PW-1, there is no other witness to corroborate the statement of PW-1, therefore, much credibility cannot be given to the Statement of PW-1. He further submits that the entire conviction of the Appellants has been based relying upon the deposition of PW-1 and there is no other independent witnesses examined particularly when the alleged place of incident firstly is a main road and secondly the place is also a court premises and both the places being a busy area, yet the prosecution could not produce any independent witness to substantiate their case.

10. Lastly, referring to 1986 CRI.L.J. 117 (Jayasingh Madakami v. The State) counsel for the Appellants submits that in Para-4 of the said judgment, the Supreme Court has held that only on the basis of memorandum statement and blood stained knife recovered at the instance of Appellants, they cannot be convicted in the absence of any other evidence supporting the memorandum and the recovery/seizure made there on.

11. Per contra, State counsel submitted that all the submissions and contentions put forth by the counsel for the Appellants are not sustainable and tenable for the reason that the charges levelled against the Appellants have been duly proved beyond all reasonable doubts and there is not much scope of interference. According to the State counsel, the timing of the incident, the lodging of the FIR, taking the deceased to the hospital and the statement of PW-1 recorded are at such short intervals itself would show that it is not a case of false implication or that PW-1 is a planted witness brought into the play only to prove the charges against the Appellants and to substantiate the case of the prosecution. Whereas the chain of events would by itself establish the fact that PW-1 was a natural

witness and that he had narrated the true facts about the incident to the Police authorities and therefore he is a trustworthy witness. According to the state counsel, from the FIR itself it is revealed that the incident took place at around 12.30 to 1 p.m. and the FIR was lodged immediately after the incident at around 1.25 p.m. which itself establishes the fact that the lodger of the FIR could not have been a planted witness as there was not much time gap for preparation of a false story to be planted through PW-1 against the Appellants. Referring to the contents of the FIR State counsel submitted that the report was lodged within 30 minutes from the time of incident and that the lodger of the FIR has given detailed description about the incident and regarding the assailants which also establishes the veracity of PW-1 and his version. Further it was also contended that a perusal of the contents of the FIR, the statement of PW-1 under Section 161 Cr.P.C. and also the statement made by PW-1 before the Court do not reveal any material contradiction and omission nor has the defence been able to extract much from the cross-examination of PW-1 so as to disprove the averments made by PW-1 in the FIR as well as in his Court statement. State counsel further referring to the Statement of PW-20 submits that the version made by PW-1 stands corroborated with the deposition of PW-20, Chitrasen Singh to the extent of the injuries sustained by the deceased and immediately taking him to the hospital where he was declared dead. According to the State counsel, though PW-20 has been declared hostile but certain facts stands proved such as PW-20 accompanying PW-1 to the hospital and the test identification parade conducted by Niab Tahsildar. State counsel further referred to the statement of PW-5, Santosh Singh stating that on the date of incident PW-5 had asked PW-1 to accompany his son i.e. the deceased to Bilaspur for

attending the Court hearing. PW-5 further in his deposition has also deposed about an earlier rivalry between him and the assailants which establishes the motive on the part of the Appellants in committing the offence. PW-5 has also stated that there was a case lodged by him a few days back against the Appellants and in connection with the said case, the deceased had to go to the Court for attending the hearing. PW-5 further substantiates the contention of PW-1 to the extent that after he received the information about the incident and reached the hospital, it was PW-1 who gave the details of the incident. So far as the fact of PW-1 being a natural witness is concerned, the same also stands established from the fact that PW-1 is also a witness to the punchnama of the dead body (Sav Panchnama) exhibit P-2 as he has accepted having put his signature on it. Likewise, the State counsel also referred to the memorandum statement of the accused persons on the basis of which seizure exhibits P-10 & P-11 were prepared. According to the State counsel, the seizure of weapon of assault used in the incident at the instance of the accused persons further proves the case of the prosecution. State counsel referring to the records of the Court below submitted that the prosecution has also been able to establish the case against the Appellants beyond reasonable doubt by putting the Appellants for identification and in the identification parade the accused persons were identified by PW-1 as well as PW-20. PW-1 and PW-20 both have accepted of their having participated in the identification parade and signing the proceedings drawn during the identification proceeding conducted by the Tahsildar in the jail and their signature in the identification proceeding exhibits P-6 & P-7. Thus, the accused persons stand clearly identified by the prosecution witnesses and therefore the identification stands proved and established

against the Appellants 1 to 3 and prayed for rejection of the appeal.

12. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the records particularly the evidence adduced by the prosecution it clearly shows that PW-1 is the main eyewitness and was accompanying the deceased on his motorcycle when the accused persons stopped them and assaulted. PW-1 has in very categorical terms given the details of the entire episode corroborating and substantiating the case of the prosecution. PW-1 has named accused No.1 Neeraj Mali alias Golu to have first given the stab injury to the deceased and subsequently another accused person also stabbed the deceased on the lower part of his back. PW-1 had immediately lodged the FIR which has been proved before the Court and later on, during the course of investigation again he is said to have identified the Appellants 1, 2 & 3. The prosecution story further stands substantiated by the deposition of PW-1 to the extent that it was PW-1 who along with PW-20 had taken the deceased to the hospital which also stands proved from the forensic report wherein clothes of PW-1 as well as PW-20 have been confirmed of having blood stains.

13. Likewise, if we see the deposition of PW-2 Nayab Tahsildar Shyam Sundar Dubey, it would establish the fact that the said witness has proved the test identification parade conducted under his supervision and the said identification proceedings marked as Exhibits P/6 and P/7 bearing signature of the witness as well as that of PW-2. The said PW-2 further in his evidence has stated that there is no mistake on the part of the witness in identifying the accused persons. He had subjected the persons to be identified twice and on both the occasions the witness identified the same persons and thus the identification can not be faulted at. Likewise, the

said witness also has established the fact that the persons who were put along with accused persons during the course of identification parade were all of similar physic, thus the identification proceedings stand proved.

14. Further, PW-3 Bhajan Singh Thakur, the real uncle of the deceased in his deposition has accepted the fact that when the panchanama of the dead body was being prepared at the hospital, PW-1 Shankar Singh was present. PW-4 Pramod Singh who is a witness to the seizure proceedings of the memorandum statement and the recovery made on the basis of memorandum statement while deposing before the Court has proved the seizure proceedings. The said witness has proved the memorandum statement of Raja Dubey as well as Neeraj Mali recorded as Exhibits P/8 and P/9 and also proved the seizure memo as Exhibits P/10 and P/11 wherein two knives used by the Appellants Raja Dubey and Neeraj Mali have been recovered at their instance. He has also substantiated the prosecution case of the recovery proceedings wherein the recovery was made by digging out from the place shown by the two accused persons who had hidden the knives under the earth beneath a Babool tree. The said witness also had proved the arrest memo pertaining to the accused persons who were hiding themselves at Kanan Pendari Park, Bilaspur.

15. Likewise PW-5 Santosh Singh in his deposition before the Court has proved the prosecution story to the extent, firstly proving the fact that PW-1 had accompanied the deceased on the fateful day which corroborates the statement of PW-1, secondly he has disclosed the motive on the part of the accused person by stating that earlier PW-5 was a contractor of PWD and during the said period the accused persons had a fight with him and they had also attacked him and his office against which he had lodged a

report at Police Station Sarkanda. Further, the Appellants had on an earlier occasion attacked the deceased in the college where the deceased was studying and because of this vengeance the Appellants attacked the deceased. The said PW-5 Santosh Singh who is the father of the deceased has also affirmed the presence of PW-1 Shankar Singh in the hospital and having collected all the information from PW-1.

16. PW-10, Surendra Kumar Pathak who was the Patwari of the village while deposing before the Court has proved the spot map prepared by him. PW-13 Dr. R.K. Gupta who conducted the postmortem has substantiated the medical evidence as per the postmortem report as Exhibit P-21. PW-13 has also stated before the Court that injuries caused upon the deceased could have been inflicted by the weapon of assault seized i.e. two knives. PW-16, Lubru Kerketta, the constable at Civil Lines Police Station, while deposing before the Court has proved the seizure proceedings marked Exhibit P/5 pertaining to the trouser worn by PW-1. Similarly, PW-19 Nagendra Kumar Pateriya while deposing before the Court has proved the prosecution case by proving Exhibit P/1, the Dehati Nalishi and has also proved the fact that when he had gone to the hospital, he met PW-1 and at the instance of PW-1 Dehati Nalishi was recorded. This witness has further proved the other documents relating to the investigation and that there is not much which the defence could extract from the cross-examination of PW-19.

17. PW-20, Chitrasen Singh was cited as eye-witness but in the course of his evidence before the Court below he has turned hostile. However, from the deposition that he has made before the Court below, the identification proceeding conducted in respect of the accused persons,

stands duly proved as he has accepted putting his signature in the identification proceedings marked Exhibit P/7. Another aspect which has been established from his deposition is that PW-20 was the other person who had carried the deceased to the hospital from the place of incident and which stands established from his blood stained shirt. PW-20 in his statement has accepted the fact that when the deceased was being taken to the hospital, his shirt received blood stains.

18. From the evidence which has come before the Court below certain facts which crystallizes is that PW-1 Shankar Singh had accompanied the deceased to the District Court, Bilaspur and he had also witnessed the incident of the deceased being stabbed by the accused persons. The chain of event immediately after the incident like the quick registration of First Information Report and the immediate rushing of the deceased to the hospital by PW-1 Shankar Singh along with PW-20 Chitrasen Singh establishes the fact that it is not the case where PW-1 can be stated to be a planted witness. Further, the detailed report lodged by PW-1 further substantiated in the course of evidence in the Court establishes the fact that he is in fact a trustworthy witness and his version can not be doubted at all.

19. So far as the question of PW-1 being a natural witness is concerned, the Supreme Court in the case of Shyamal Ghosh v. State of West Bengal reported in (2012) 7 SCC 646 has held that merely because the witnesses were related to the deceased, would not attract any suspicion of the Court on the credibility and worthiness of the said case if the examination of the interested witnesses are unavoidable particularly if they are eye-witnesses, the question of disbelieving the interested

witnesses does not arise and their statements are fully reliable and trustworthy unless proved otherwise.

20. In respect of the witnesses who have turned hostile particularly the witnesses relating to the memorandum, recovery and the seizure, the Supreme Court in the case of Rohtash Kumar v. State of Haryana reported in (2013) 14 SCC 434 relying upon (1996) 10 SCC 360, (2010) 9 SCC 567, (2011) 2 SCC 36 and (2012) 5 SCC 777 held as under:

> "It is a settled legal proposition that evidence of a prosecution witness cannot be rejected in toto, merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced, or washed off the record altogether. The same can be accepted to the extent that their version is found to be dependable, upon a careful scrutiny thereof."

21. So far as the contention of the Appellants in respect of different timing about the incident rendered by different prosecution witnesses is concerned, if we peruse the time given by the different witnesses it would reveal that there was hardly 30 minutes difference in the time of incident stated by the prosecution witnesses and which can not be said to be so crucial and vital so as to disbelieve the entire version of the prosecution. Further, the corroborative pieces of evidence firstly by the uncle of the deceased PW-3 Bhajan Singh Thakur, the father of the deceased PW-5 Santosh Singh and the statement of I.O. PW-19 Nagendra Kumar Pateriya establish the fact that PW-1 was the person who had brought the deceased to the hospital and that it was at his instance the FIR was lodged and that there was hardly any delay in taking the deceased to the hospital on the part of PW-1. Thus, all these facts lead us to the safest conclusion that PW-1 was a natural witness and is not a planted witness. Thus, all the contentions put forth by the counsel for the Appellants

questioning the genuineness of PW-1 is without any substance.

22. The Supreme Court in the case of Rakesh and another v. State of Madhya Pradesh reported in (2011) 9 SCC 698 has held that minor inconsistency in respect of timing would not tilt the balance in favour of the accused. It is a settled proposition of law that ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. The time of incident, the time of FIR and the time at which the deceased was taken to the hospital show that there was no time for manipulation. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version.

23. So far as the objection pertaining to the test identification parade conducted by the prosecution is concerned, it also does not have force for the reason that, the test identification parade was conducted on two simultaneous dates and on both the dates all the accused persons were put to test among the persons of similar physic and characteristic and in the process, if Appellant No.1 Neeraj Mali @ Golu has been put for identification in spite of the fact that both the witnesses i.e. PW-1 and PW-20 have stated that they knew Neera Mali @ Golu, the same can not be said to be bad in law for the reason that no prejudice has been caused to the defence. Therefore, only because the Appellant No.1 was also put to identification by itself would not vitiate the entire proceedings. The objection of the defence that persons of the same age group have not been put for identification along with the accused persons also would not have much force for the reason that Nayab Tahsildar PW-2 Shyam Sundar Dubey in his deposition during the course of his cross examination has categorically stated that all the persons put for identification along with

accused persons were of similar physical built up like that of accused persons which would be inclusive of the age factor also.

24. Further allegation of the Appellants that since the shirt of PW-1 Shankar Singh had not received blood stain, his presence at the place of incident and also carrying the deceased to the hospital becomes doubtful is unfounded, for the reason that the medical evidence itself shows that the deceased had received injuries on the lower part of his stomach as well as lower portion of his back and therefore PW-1 had assisted the deceased to sit under a tree and subsequently taken the deceased to the hospital and therefore blood would have naturally fallen only on the trouser of the person carrying the deceased. Further, since PW-20 while taking the deceased to the hospital had given support to the deceased and hence his shirt had received blood stains as is established from the FSL report.

25. On the issue of identification of the accused persons, in (2012) 7 SCC 646 (Shyamal Ghosh v. State of West Bengal), the Supreme Court has held that minor contradictions, inconsistencies or embellishment of trivial nature not affecting the core of prosecution case, should not be taken to be the ground of rejecting the prosecution case in its entirety. The said judgment also reiterated the fact that it would be unreasonable to term variation of 15-20 minutes as a material contradiction. Every discrepancy in the investigation does not weigh with court to an extent that it unnecessarily results in acquittal of the accused.

26. In respect of discrepancy in the identification of the accused persons, the Supreme Court in (2008) 11 SCC 352 (Mohd. Kalam alias Abdul Kalam v. State of Rajasthan) relying upon an earlier decision in the case of Matru v. State of U.P. reported in (1971) 2 SCC 75 held as under:

> "11. ……identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in the court. ……..The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity."

27. So far as the arguments of the Appellants that the prosecution did not collect any blood from the place of incident where the Appellants had assaulted the deceased is concerned, the same is also unfounded for the reason that admittedly the assault was made on a busy street and as per the prosecution which also stands established by the statement of PW-1 that after the accused persons had stabbed the deceased, he had moved away from the said spot and came near the main gate of District Court where he sat under a tree and therefore blood stained earth was seized from the said place. Since the attack was made on the main road, the accused persons having run away and the deceased had also moved to a different place, the movement of the road got restored and the possibility of getting blood from the said place does not arises at all. Therefore, only because blood from the place where the accused persons had first attacked the deceased has not been seized, it can not be the reasons to disbelieve the entire prosecution story. Thus, the said ground raised by the Appellants is not sustainable.

28. So far as getting an advantage of the acquittal of the two accused persons namely Bauwa Marar @ Suresh and Pradeep Sharma is concerned, the Appellants can not be given benefit for the same for the reason that the two persons who have been acquitted by the Court below have not been properly identified by the prosecution witnesses. Since

their identity itself was not established by the prosecution, they have been granted benefit of the same and acquitted but such is not the case of the Appellants 1, 2 and 3 who have been specifically identified by the prosecution witnesses and therefore they would not get the advantage of the same in any manner particularly for the reason that firstly the Appellant No.1 has been named in the FIR. So far as the Appellants 2 and 3 are concerned, the recovery has been made on the basis of memorandum statement at the instance of the Appellants 2 & 3 coupled with the identification of Appellants 2 and 3 in the course of test identification parade by PW-1 proves the case against Appellants 2 and 3.

29. In view of the foregoing discussions, it can be clearly held that the eyewitness PW-1 had given the true and believable disclosure of the incident and that consistency in the deposition of PW-1 substantiates the prosecution case and makes his deposition as cogent, convincing and truthful. The Supreme Court in a series of decisions has held that where the evidence is that of an interested witness but is consistent and duly corroborated by medical evidence, it is not possible to discard the same merely on the ground that he is an interested witness. This view stands fortified by the judgments of the Supreme Court reported in (2011) 7 SCC 295 (Waman and Others v. State of Maharashtra), (2012) 5 SCC 171 (State of Haryana v. Shakuntla and Others), (2012) 12 SCC 701 (Raju alias Balachandran and Others v. State of Tamil Nadu) and (2013) 4 SCC 607 (Subal Ghorai and Others v. State of West Bengal).

30. Thus, the finding arrived at by the Court below in respect of the conviction of the Appellants 1, 2 & 3 being proper, legal and justified does not call for any interference and the same is confirmed and affirmed.

31. So far as the case of Appellant No.4 is concerned, admittedly, in the entire evidence which has come on record, no ingredients whatsoever for the offence under Section 212 IPC has been brought on record to be proved and established beyond reasonable doubt firstly for implicating Appellant no.4 and secondly convicting him for the said offence. A clear reading of Section 212 IPC shows that whoever harbours or conceals a person with the intention of screening him from legal punishment whom he knows or has reason to believe to be the offender would be guilty of the offence u/s 212 IPC. Therefore, firstly the prosecution will have to prove that Appellant No.4 had harboured and concealed Appellants 1, 2 & 3 knowing well that they have murdered the deceased and also will have to prove that the harbor and concealment was with a clear intention of screening them from legal punishment. In the instant case, the prosecution has not been able to establish any such facts in the course of leading evidence except the fact that when the Police Authorities had gone to arrest the accused persons from Kanan Pendari Park, Bilaspur, Appellant No.4 was also found there in the company of the accused persons. Thus, in absence of any ingredients mandatorily required for establishing an offence under Section 212 IPC brought by way of evidence before the Court below, the conviction of Appellant No.4 Shankar Mali for the offence under Section 212 IPC is not appropriate and the finding arrived at by the trial Court convicting him for the said offence is not sustainable in the eye of law.

32. Accordingly, the instant Appeal so far as Appellants 1, 2 & 3 namely Neeraj Mali alias Golu, Raja Dubey alias Praveen and Sanjai Pandey alias Sanjoo are concerned stands dismissed. The Appellants 1, 2 & 3 are on bail. Their bail bonds stand cancelled. They be sent to jail forthwith to

serve the remaining part of the sentence imposed on them.

33. The Appeal so far as appellant No.4 is concerned stands allowed and the conviction of Appellant No.4 Shankar Mali for the offence under Section 212 IPC is set aside/quashed. The Appellant No.4 is set at liberty subject to the conditions of Section 437A Cr.P.C.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Bhola