

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 834 of 2013**

1. Jagoutin Bai W/o Kartik Ram Satnami Aged About 40 Years
2. Santoshi Bai W/o Deva Satnami Aged About 20 Years
3. Ku. Deepa D/o Kartik Ram Satnami Aged About 20 Years
4. Onkar Bai W/o Santram Satnami Aged About 31 Years

All R/o Village Tengenagarh, PS Pathariya, Distt. Bilaspur Now Distt. Mungeli Rev. Distt. Mungeli Civil Distt. Bilaspur C.G.

---- Appellants**Versus**

State of Chhattisgarh Through The PS Pathariya, Distt. Bilaspur Now Distt. Mungeli Rev. Distt. Mungeli Civil Distt. Bilaspur C.G.

---- Respondent**And****CRA No. 499 of 2014**

1. Kartik Ram S/o Kunwar Singh Satnami Aged About 47 Years
2. Deva S/o Kartik Ram Satnami Aged About 22 Years
3. Santram S/o Kunwar Singh Satnami Aged About 40 Years

All R/o Village Tengenagarh, PS Pathariya Civil Distt. Bilaspur, Rev. Distt. Mungeli C.G.

---- Appellants**Vs**

State of Chhattisgarh Through PS Pathariya, Civil Distt. Bilaspur, Rev. Distt. Mungeli C.G.

---- Respondent

For appellants	: Mr. P.P. Sahu, Adv. in Cr.A. No. 834/2013.
For appellants	: Mrs. Kiran Jain, Adv. in Cr.a. No. 499/2014.
For Respondent/State	: Mr. Sangharsh Pandey, Dy. Govt. Adv.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

C A V Judgment**Per Chandra Bhushan Bajpai, J****17/02/2016**

1. By this judgment, Cr.A. No. 834/2013 and Cr.A. No. 499/2014 are being disposed of as both these appeals arise out of the judgment of conviction and order of sentence dated 7th August, 2013 passed by the Additional Sessions Judge, Mungeli, Distt. Bilaspur in S.T. No. 55/2009 convicting and sentencing the appellants as under :

Name of accused	Section of IPC	Sentence with fine	Default clause
Kartikram Deva, Santoshibai Omkarbai	302	Life imprisonment + Rs. 1000/-	Additional imprisonment for one year
Santram Deepa Jagautinbai	302	Life Imprisonment + Rs. 1000/-	Additional imprisonment for one year
Santoshibai Omkarbai Santram	323	RI for 3 months + Rs. 100/-	Additional imprisonment for 1 month
Deepa Jagautinbai	323	RI for 3 months + Rs. 100/-	Additional imprisonment for 1 month

All the substantive jail sentences are directed to run concurrently.

- Brief facts of the case are that deceased Uttam, deceased Hardev, A-1 Kartik Ram, A-3 Janakram, A-4 Rikhiram and A-10 Santram are real brothers. P.W. 1 Dinesh and P.W. 8 Namuram are real brothers and son of deceased Hardev. P.W. 8 Namudas is injured eye-witness, P.W. 9 Shakun Bai is wife of deceased Hardev and is an injured eye-witness. On account of partition of land and partition of kitchen garden, relation between all the accused persons and deceased and their family members were inimical. On 27-7-2009 during morning hours, there was a dispute between P.W. 9 Shakunbai and A-6 Jagautin Bai, A-7 Santoshi Bai, A-8 Deepabai, A-9 Omkarbai. After the incident, P.W. 9 Shakun Bai went to police station along with her husband Hardev. In the field also when A-1 Kartikram attempted to assault P.W. 8 Namudas, the persons present intervened and saved him. In the evening of 27-7-2009, deceased Hardev, P.W. 1 Dinesh, P.W. 8 Namudas had taken meal at the residence of deceased Uttam, thereafter all the four left for the house of Hardev, the deceased. Uttam was holding a battle axe. Hardev was holding stick, P.W. 1 Dinesh was not having any arm. Near their house, they met A-8 Deepa. Their (accused party) cattle were kept in the kitchen garden of the victims which was objected by Uttam and Hardev and they asked the accused persons to remove the cattle from their kitchen garden. A-2 Deva refused to do so. At that time A-1 Kartikram came with an axe. A-2 Deva snatched the battle axe from Uttam and assaulted over his head by said battle axe. A-1 Kartikram also assaulted Hardev by the axe. Thereafter accused persons Santram, Jagautinbai, Omkarbai, Santoshibai and Deepabai assaulted Uttam and Hardev by clubs. Uttam and Hardev fell down. Accused Deepa also assaulted P.W. 8 Namudas. After the assault, P.W. 8 Namudas became unconscious.

Thereafter they were taken to the Pathariya hospital where the doctor declared Hardev dead. Uttam also succumbed to his injuries during treatment. This incident was committed by accused persons as accused Janakram, Rikhiram and Jaikumar used to instigate other accused persons and as per their instigation and conspiracy, P.W. 8 Uttam and Hardev were done to death and P.W. 8 Namudas and P.W. 9 Shakunbai received injuries. P.W. 8 Namudas lodged FIR on 27-7-2009 at 11.50 pm at police station Pathariya. Pathariya police registered offence under Sections 147, 148, 149, 323, 302, 120-B of the IPC at crime no. 249/2009. Upon the information given by the doctor, Pathariya police registered merg Ex. P-44 for death of Uttam and Ex. P-45 for death of Hardev. FIR Ex. P-39 was lodged against all 10 accused persons. Injured P.W. 9 Shakunbai was examined by P.W. 10 Dr. D.R. Singrol who found following injuries vide report Ex. P-41: -

- i. One abrasion 2 x $\frac{1}{4}$ inches on dorsal aspect of left hand, reddish.
- ii. One abrasion 1 $\frac{1}{2}$ x $\frac{1}{4}$ inches on dorsal aspect of left hand, reddish.
- iii. One contusion $\frac{1}{2}$ x $\frac{1}{2}$ inches over right temporal region, reddish.
- iv. One contusion 1 x $\frac{1}{2}$ inches below right scapula, reddish.

The doctor opined that the injuries were simple in nature.

P.W. 7 Dr. S.S. Manjhi examined P.W. 8 Namudas and vide his report Ex. P-34 found following injuries:-

- i. Contusion over right scapular region size 4 x 1 inches tender.
- ii. Contusion over left sided back size 5 x 1 inches tender.
- iii. Contusion over forearm 3 x 1 inches tender.
- iv. Contusion over left hand dorsal size 2 x $\frac{1}{2}$ inches tender.

The injuries were caused by hard and blunt object and simple in nature.

P.W. 11 S.R. Thakur is the investigating officer. He performed inquest over the body of the deceased Uttam vide Ex. P-48 and sent the dead bodies to the autopsy surgeon. P.W. 7 Dr. S.S. Manjhi conducted autopsy over the bodies of the deceased Uttam and Hardev vide Ex. 35 and Ex. P-36 and found following injuries :-

Uttam Satnami

- i. Incised wound over occipital region size 3 x $\frac{1}{2}$ inches with long cracked skull bone.
- ii. Incised wound over below injury No.1, 2 x $\frac{1}{2}$ inches size blood staining locally.

- iii. Contusion over left wrist size 4 x 3 inches swelling present.
- iv. Contusion over right parietal region size 5 x 2 inches cracked skull bone blood discharge from ear and nose.
- v. Incised wound over left thigh size 2 x ½ inches depth up to muscle and whole body appears pale.

Hardev

- i. Incised wound over scalp centrally size 3 x ½ inches with swelling.
- ii. Incised wound over scalp right lateral to Injury No.1, 3 ½ x 1 ½ inches.
- iii. Lacerated wound over scalp below Injury No.1, 4 x 1 inches melted hair with blood.
- iv. Lacerated wound right lower leg size 1 x ¼ inches swelling locally.
- v. Contusion over right scapular region size 5 x 2 inches swelling locally.

The doctor opined that cause of death of both the deceased is head injury and excessive loss of blood and nature of death is homicidal. Patwari prepared spot map Ex. P-3. During investigation, P.W. 11 S.R. Thakur, IO recorded disclosure statement of appellants Devadas (Ex. P-6), Jagautin Bai (Ex. P-7), Kartikram (Ex. P-8), Santoshibai (Ex. P-9), Deepa (Ex. P-10), Omkarbai (Ex. P-11) and Santram (Ex. P-12). After disclosure statements, a club at the instance of appellant Santram (Ex. P-13), an axe at the instance of Kartikram (Ex. P-14), a battle axe at the instance of Devadas (Ex. P-15), a club at the instance of Jagautinbai (Ex. P-16), a club at the instance of Omkarbai (Ex. P-17), a club at the instance of accused Deepa (Ex. P-18), a club from accused Santoshibai (Ex. P-19), blood stained baniyan from accused Devadas and Kartikram (Ex. P-20 and P-21) were seized. Police seized blood stained soil and plain soil from the spot, one towel stained with blood vide Ex. P-22. After investigation charge sheet was filed against all the 10 accused persons. The trial Court framed charges against all the appellants under Sections 148, 302, 302/149, 302/149, 323/149, 323/149 and 120-B of the IPC. The trial Court also framed charges against acquitted co-accused Janakram, Jaikumar and Rikhiram under Sections 302/149, 302/149, 323/149, 323/149 and 120-B of the IPC.

- 3. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication in the crime in question. One defence witness Dr. D.R.

Singrol was also examined by the accused/appellants.

4. The trial court after hearing the respective parties and considering the material available on record, by the impugned judgment acquitted co-accused persons Janak Ram, Rikhiram and Jai Kumar and convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment.
5. State has not preferred any appeal against acquittal of Janak Ram, Rikhiram and Jaikumar.
6. Learned counsel for the accused / appellants contended that the deceased and the injured eye-witnesses came near the house of appellants. Accused/Appellants Kartikram and Ku. Deepa also sustained injuries in the incident by hard and blunt object. They were examined and their MLC reports are Ex. D-1 and D-2. Deceased Uttam was armed with battle axe. Both the deceased consumed liquor. There was no intention of the accused persons to kill the deceased. The accused persons were assaulted first and then to save themselves they acted in their self-defence. In the post mortem reports, the autopsy surgeon noticed smell of alcohol in the stomach of both the deceased. Presence of the appellants on the spot is not denied but they were not aggressor. The women appellants did not have any meeting of mind with other accused. They have not participated in marpeet. They simply defended themselves. On account of earlier dispute regarding partition of land and kitchen garden, the deceased along with other injured persons reached near the house of appellants and assaulted accused Kartikram and Deepa. There was dispute for keeping cattle in the land of victims. The incident occurred in front of the house of accused Kartikram which goes to show that the deceased were aggressor. At the most the women appellants may be convicted under Section 325 of the IPC and the male appellants may be convicted under Section 304-I of the IPC as there was no pre-meditation. It was a case of sudden fight in a heat of passion due to the incident happened in the morning hours. Statements of eye-witnesses P.W. 1 Dinesh, P.W. 8 Namudas and P.W. 9 Shakun are not trustworthy. They are not reliable as there are material omission and contradiction in their statements and the prosecution has failed to prove that the appellants were aggressor. Hence it is argued that all the appellants may be acquitted of the charges as prosecution has failed to prove any offence against them.
7. Learned counsel for the appellants Mr. P.P. Sahu in Cr.A. No. 834/2013 placed reliance on **Dev Narayan and others -v- State of M.P. and others** reported in (2006) 13 SCC 187, in the case where there was long standing

enmity, the witness was in a position to see the accused in scooter light, active partition of some of the accused member was established and specific role was assigned to them, injuries of the deceased could be inflicted by the weapon with which they were armed, Hon'ble Apex Court held that in such circumstances, conviction of only those accused whose specific role was assigned can be maintained and benefit of doubt is to be given to the remaining accused by way of abundant caution.

8. Reliance is further placed on **Laxman Anaji Dhundale and another -v- State of Maharashtra** reported in (2007) 10 SCC 771 in which case there was no credible evidence connecting the appellants to the chain of links of circumstantial evidence and neither common intention nor participation of the appellant in commission of offence was established beyond reasonable doubt, Hon'ble Apex Court held that though direct proof of common intention is seldom available to bring home the charge of common intention the prosecution has to establish by evidence whether direct or circumstantial that there was plan or meeting of minds of all the accused persons to commit the offence for which they were charged with the aid of Section 34 and the appellants were held entitled to benefit of doubt.
9. He also placed reliance on **State of Uttar Pradesh -v- Farid Khan and others** reported in AIR 2004 SC 5050. In this case the Apex Court has taken a view that evidence of eye-witness with criminal background has to be viewed with caution but the same is credible if sufficiently corroborated by evidence of other witnesses.
10. Mrs. Kiran Jain, learned counsel for the appellants in Cr.A. No. 499/2014 placed reliance on **Sampat singh and others -v- State of M.P. (now CG)** reported in 2007 (3) CGLJ 117 (DB) in which case complainant party went and started digging the field which was in possession of the accused party, few of them were already working in their field at that time, the accused persons asked them not to indulge in digging of the field but they did not accede to their request, thereafter few accused persons snatched the axe and attacked those ladies on the spur of moment, the Division Bench of this court held that certainly there was no common object of the accused persons to attack and cause death of the ladies, even knowledge cannot be attributed to any person that they were knowing that their family members were going to attack the ladies to the extent of causing death, therefore, none of the accused persons can be convicted with the aid of S. 149 of IPC.
11. She further placed reliance on **Sonau and others -v- State of M.P. (now CG)** reported in 2011 (2) CGLJ 470 (DB). It was a case where assault was

made by lathi and the witness did not know who caused injury to Dukalu, there was free fight, no previous enmity, the eye-witness did not know the name of the accused persons, there was darkness, no identity parade was arranged, in these circumstances, the DB of this Court held that appellant cannot be convicted with the aid of S. 149, IPC. Further reliance is placed on **Ganpat -v- State of haryana and others** reported in 2011 Cri.L.J. 701 wherein the Apex Court held that in absence of definite material and explanation from prosecution side, the acquittal of accused person is proper. Further reliance is placed on **Ranveer Singh -v- State of M.P.** reported in 2009 Cri.L.J. 1534 wherein it was proved that the accused had exceeded right of private defence, it was held that accused is liable to be convicted under Section 304-I, IPC read with Section 109, 34, IPC. The Hon'ble Apex Court affirmed the judgment passed by the High Court for conviction of appellant under Section 304-I, IPC and dismissed the appeal.

12. On the other hand, supporting the impugned judgment, learned counsel for the State argued that there is no reason to disbelieve the eye-witnesses P.W. 1 Dinesh, P.W. 8 Namudas and P.W. 9 Shakunbai and out of them P.W. 8 Namudas and P.W. 9 Shakunbai are also injured eye-witnesses. They have received injuries. The doctor corroborated their statements regarding the injuries. Both the parties are relatives. There was dispute regarding partition. During morning hours there was quarrel for keeping cattle in the kitchen garden of the deceased persons and in the background of the above incident and marpeet committed in the morning our, keeping battle axe by deceased Uttam cannot be held as unusual. The club is a common item villagers used to keep it with them. In the incident two persons were killed. The doctor opined the nature of injuries as homicidal. The injuries caused to the deceased were caused by hard and blunt object and also by sharp and hard object, thereby evidence of eye-witnesses finds corroboration from the medical evidence. The women appellants also took part in the incident. They assaulted by club. Injuries by hard and sharp and hard and blunt object were also noticed on the body of both the deceased and as well as both the injured eye-witnesses. The deceased, P.W. 1 Dinesh and P.W. 8 Namudas after taking meal in the house of Uttam were going to the house of Hardev which is near the house of accused Kartikram. It cannot be said that all those four persons came near the house of Kartikram and they were aggressor. In fact they were going towards their house which is near to the of accused Kartikram. It goes to show that there was no intention to take revenge or of any offence. At the spot there was no dispute. The deceased

party objected for keeping cattle of accused party in the kitchen garden of deceased party which was refused by the appellant and then after altercation this incident happened. Learned counsel submits that the prosecution has proved its case. There is no scope for any interference in the impugned judgment. The same is well founded. Hence the appeals may be dismissed.

13. Heard learned counsel for the parties and perused the record.
14. P.W. 1 Dinesh is the eye-witness. As per his statement, accused/appellant Kartikram assaulted his father by axe and accused/appellant Deva snatched the battle axe from his uncle Uttam and assaulted him by the snatched battle axe. Other appellants assaulted both the deceased by club. He attempted to intervene and succeeded to escape for reporting the matter to police. Thereafter they went to police station. This witness has also corroborated regarding the first incident happened in the morning between her mother and accused Jagautin bai, Deepa, Omkarbai and Santoshi. P.W. 2 Aajuram, police constable helped in the initial investigation. P.W. 3 Chamelibai is the hearsay witness. She reached to the spot after the incident and she saw Uttam and Hardev lying on the ground. She also saw injuries on the body of P.W. 8 Namudas and P.W. 9 Shakunbai. When she reached to the spot, she saw all the accused appellants present on the spot and she was chased by accused/appellants Devadas and Kartikram. P.W. 4 Ramesh Vaishnav, Patwari prepared spot map Ex. P-3. P.W. 5 Tulsiram and P.W. 6 Chinharam are witnesses of memorandum Ex. P-6 to Ex. P-12 and seizure memo Ex. P-13 to Ex. P-21. Though they have admitted their signatures but have not supported the contents of memo and seizure. P.W. 7 Dr. S.S. Manjhi examined injured P.W. 8 Namudas and gave his report Ex. P-34. He also conducted autopsy on the body of deceased Uttam and Hardev and opined that cause of death is head injury and excessive loss of blood and nature of injury is homicidal. His reports are Ex. P-35 and 36. He also examined seized axe, battle axe and 5 clubs and opined vide Ex. P-37 that the injuries noticed on the body of deceased Uttam and Hardev could be caused by the weapons examined by him.
15. P.W. 8 Namudas, lodger of the FIR is also an eye-witness. As per him, when he went to his field, accused/appellant Kartikram chased him for assaulting by axe. Pappu and Laxman intervened and saved him. After half an hour he also returned to his home. When he was going to the house of his uncle, on way accused Kartikram, Santram, Jai, Deva, Rikhi, Janak etc were talking about assaulting to Hardev. He reached to his uncle's house and after taking

meal, he along with his uncle returned to his house. His uncle had a battle axe, his father had a club, he also had a club. When they reached to their house, accused Deepa came out of her house. His father asked accused/appellant Deepa to remove her cattle from their (victims) land which she refused. At that time, and thereafter accused/appellants Kartikram and Deva who went to graze their cattle also returned and accused/appellant Deva after snatching the battle axe from Uttam assaulted him and Kartikram assaulted Hardev by axe and other accused persons also took part in the incident and caused injuries to Uttam, Hardev and other witnesses. Thereafter he lodged FIR before Pathariya police.

16. P.W. 9 Shakun bai, wife of deceased Hardev is a witness of first incident happened in the morning. As per this witness, on account of their objection for keeping cattle of accused party on their land accused/appellant Jagautinbai, Santoshibai, Omkarbai assaulted her and thereafter she went to police station along with her husband deceased Hardev but the police did not write their report. Thereafter they returned to village and had meal in the house of Uttam. Thereafter Hardev, Uttam, Dinesh and Namudas left for their house. She remained in the house. P.W. 8 Dinesh came and informed her that Hardev and Uttam were beaten and lying on the ground. After hearing this when she went to the spot, she saw all the appellants assaulting her husband and Uttam. Accused/appellant Deepa, Jagautin and Omkarbai also assaulted her. She sustained injury on her body. P.W. 10 Dr. D.R. Singrol, examined P.W. 9 Shakunbai and also informed the police about death of Uttam and Hardev vide Ex. P-42 and P-43. P.W. 11 S.R. Thakur is the investigating officer and has supported the prosecution case.
17. D.W. 1 Dr. D.R. Singrol is the witness of MLC of accused/appellants Kartikram and Deepa Ex. D-1 and D-2. As per both the documents, injuries noticed over the bodies of both the accused persons were caused by hard and blunt object and hard and sharp object and were simple in nature.
18. Minute examination of the evidence makes it clear that both parties are near relatives. There was earlier dispute regarding partition of land and kitchen garden. During morning hours prior to the present incident, there was quarrel between P.W. 9 Shakun and all the 4 women accused persons and as per evidence, P.W. 9 Shakun was assaulted on account of dispute regarding keeping cattle unauthorizedly in the land belonging to deceased persons. The appellants have not denied their presence on the spot. The FIR is promptly lodged. As per spot map Ex. P-3 prepared by the patwari and also the spot map Ex. P-33 prepared by the IO, the house of deceased

Hardev and appellant Kartik are nearby and the spot as shown in the map is a kitchen garden an open place near both the houses. The case of the prosecution is that all the four persons came from the house of Uttam to the house of deceased Hardev. Upon perusal of both the maps it cannot be said that all the four, P.W. 1 Dinesh, P.W. 8 Namudas and both the deceased reached near the house of accused/appellant Kartikram. Though the spot is near the house of Kartikram but at the same time, it is also in front of the house of Hardev. Accused/appellant Kartikram and Deepa also sustained injuries from hard and sharp object and also hard and blunt object, though the injuries noticed vide Ex. D-1 and D-2 are simple in nature. There are no material omission or contradiction in the statements of injured eye-witnesses which can be said to be fatal to the prosecution case. As per FSL report Ex. P-51 blood was noticed over the battle axe and the clubs seized from the appellants. Though the attesting witnesses of the memorandum and seizure have turned hostile but they have admitted their signatures and the IO has duly proved the memorandum and seizure. There is no serological report in the case, hence the presence of blood is merely a corroboration as the human blood and the origin were not duly proved. The present case is based on evidence of injured eye-witnesses and other eye-witnesses. Therefore, absence of serological report is of no relevance. The appellants argued that during autopsy, the doctor noticed smell of alcohol in the abdomen of both the deceased. Presence of alcohol smell does not support the appellants. Much is argued that the women appellants have not participated in the incident. It is evident from the promptly lodged FIR that all the woman appellants assaulted by clubs. The doctor also noticed certain injuries in the autopsy of both the deceased caused by hard and blunt object and also by hard and sharp object. As per prosecution story, accused/appellant Deva snatched the battle axe from deceased Uttam and assaulted him. Accused/appellant Kartikram assaulted Hardev by axe and other appellants assaulted through clubs. From the entire evidence it is clear that that it was the appellants who after the altercation between two parties started assaulting both the deceased and other witnesses. It goes to show that after some altercation and verbal duel, when the fight started, all the appellants became member of unlawful assembly and started taking part in the incident. We do not find any substance in the argument that at the most the women appellants may be convicted for the offence under Section 325 of the IPC.

19. As regards the argument that the appellants acted in their defence, the

deceased and other eye-witnesses reached to the place which is near to the house of Kartikram and a bit away from the house of Hardev. Hardev objected for keeping cattle of accused persons in his kitchen garden and the same was refused by accused/appellant Deepa and thereafter when accused /appellants Deva and Kartikram returned after grazing their cattle, the incident developed and reached to present form. It is apparent from the statement of eye-witnesses that injuries were received by accused/appellants Kartik and Deepa during incident when the eye-witnesses attempted to save the deceased. Hence upon due appreciation it is not proved that initially the deceased party assaulted accused Deepa and Kartik. In view of above we do not agree that the appellants acted in their self-defence.

20. A perusal of evidence also makes it clear that the was made by the appellants without pre-meditation in a sudden fight in heat of passion i.e. in the background of morning incident in which P.W. 9 Shakun was beaten by all the 4 women accused persons and keeping of cattle in the land of deceased and thereby a sudden quarrel developed and in the such development, the appellants have not taken undue advantage and assaulted the deceased in a sudden fight and quarrel. In our considered opinion the act of the accused appellants is covered by Exception 4 of Section 300 of the IPC i.e. culpable homicide not amounting to murder.
21. Now coming to next question as to whether the act of appellants would fall under Section 304-I or 304-II of the IPC.
22. From the medical report of both the deceased persons, it is apparent that number of injuries on vital parts of the body were caused to the deceased persons resulting into their death. Thus considering the ocular and medical evidence it is clear that the appellants had intention to cause such bodily injury as is likely to cause death because the injuries were caused by axe, battle axe and clubs. As such, the offence of the accused/ appellants is punishable under Section 304-I of IPC and not under Section 304-II of the IPC.
23. So far as the case laws cited by Mr. Sahu are concerned, the case of **Devnarayan and others (supra)** is of no help as there was sufficient light at the time of incident in the present case, parties were known to each other, near relatives and there was active participation of all the accused persons as stated by eye-witnesses. Statements of eye-witnesses are trustworthy and truthful and there is no doubt regarding identification. The case law of **Laxman (supra)** is based on different facts as in the present case, the

appellants gathered at the place of incident and in the light of earlier dispute, there was altercation and thereafter all the appellants assaulted the deceaseds which goes to show that at the spot itself appellants have meeting of their minds and their act is covered under Section 149, IPC for committing the offence. Their act is well described by the eye-witnesses including injured eye-witnesses and their statement inspires confidence. The case of **State of UP** (supra) is also of no help as witnesses in the present case have no criminal background and their statements are duly corroborated by medical evidence i.e. PM reports and MLC reports and their presence on the spot is natural.

24. As regards the case laws cited by Mrs. Kiran Jain, learned counsel for the appellants in Cr.A. No. 499/2014, in **Sampat** (supra), complainant party went and started digging the field which was in possession of the accused party and after some altercation few accused persons snatched axe and attacked those ladies with spur of moment. Certainly in that case, the court held that there was no common object or intention but in the present case, as the complainant party objected for keeping cattle of the appellants in their land and when they refused to remove the cattle, the incident happened. In the present case it is proved that the appellants had common intention and common object to assault the deceased and other injured persons. Therefore this case is of no help to appellants.
25. As regards the case of **Sonau** (supra), in the present case there was no free fight rather the injured witnesses were attempting to save themselves and during this, two accused persons received injuries. Both the parties are well known to each other and specific role has been assigned to each of the accused persons. The injuries found over the body of the deceased and injured eye-witnesses corroborate their statements and thus trustworthy and truthful. Therefore, the case law cited is of no help to the appellants.
26. In the case of **Ganpat** (supra), two groups of people clashed *inter se* with the weapon causing injury to each other but in the present case, appellant Deva snatched the battle axe from Uttam and assaulted him by the same weapon and accused Kartik assaulted Hardev by axe. The injuries caused by hard and blunt object and hard and sharp object noticed in the PM report go to show that the appellants were aggressor and they assaulted the deceased by hard and blunt and hard and sharp objects. Therefore, the case of **Ganpat** is also of no help to the appellants.
27. So far as the case of **Ranbir Singh** (supra) is concerned, the Hon'ble Apex court held that the appellants exceeded right of private defence and

convicted them under Section 304-I, IPC. But the present is not a case of private defence. The complainant party only to save themselves caused minor injuries to two accused persons. Hence the above case is not applicable in the present case.

28. In view of aforesaid discussion, the appeals are allowed in part. Conviction of all the accused/ appellants under Section 302 on two counts is set aside, instead they are convicted under Section 304-I read with Section 149 of the IPC on two counts and sentenced to undergo RI for 10 years for two counts with fine of Rs. 1,000/- for each count, in default of payment of fine to further undergo additional imprisonment for one year for each count. Conviction of accused/appellants Santoshibai, Omkarbai, Santram, Deepa, Jagautinbai also under Section 323 of IPC on two counts and the sentence imposed on them by the trial court are affirmed. All the substantive jail sentences awarded to the appellants shall run concurrently.

Sd/-
(Printinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge