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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 24-8-2016****Judgment delivered on : 21-9-2016****CR.A. No. 643 OF 2003**

1. Soukhidas, aged about 30 years, S/o. Kalidas Satnami
 2. Shiv Prasad, aged about 24 years, S/o. Anjor Das Satnami
- Both R/o. Village Heerapur, Police Station Pipariya, Tahsil and District Kawardha (CG)

---- Appellants**Versus**

State of Chhattisgarh through the Police Station Pipariya, Tahsil and District Kawardha (CG)

---- Respondent

For appellants : Mr. Vishnu Kosta with Mr. Sobhit Kosta, Adv.
 For Respondent/State : Mr. Ashish Shukla, Govt. Advocate

Criminal Revision No. 292 OF 2003

Soukhidas Satnami, S/o. Kalidas Satnami, aged about 30 years, R/o. Village Heerapur, Police Station Pipariya, Distt. Kawardha (CG)

---- Applicant**Versus**

1. Rupchand S/o. Peeladas Satnami, aged about 50 years.
 2. Fulchand S/o Peeladas Satnami, aged about 55 years.
 3. Shyam Das, S/o. Peeladas Satnami, aged about 46 years
 4. Jaiprakash S/o Rupchand aged about 22 years
 5. Santosh S/o. Rupchand aged about 23 years
 6. Munjuram, S/o. Pusaooram Satnami aged about 24 years
 7. Subechandra S/o Peeladas Satnami aged about 52 years
- (All residents of village Heerapur, P.S. Pipariya, Distt. Kawardha (CG))
8. State of Chhattisgarh through the Police Station Peepariya, Distt. Kawardha (CG)

---- Respondents

For applicant : Mr. Vishnu Kosta with Mr. Sobhit Kosta, Adv.
 For respondents No. 1 to 7 : Ms. Pritha Ghosal, Adv. on behalf of Mr. Awadh Tripathi, Adv.
 For Respondent No. 8 : Mr. Ashish Shukla, Govt. Advocate.

Acquittal Appeal No. 221 OF 2010

State of Chhattisgarh through Station House Officer, P.S. Piparia,
Distt. Kawardha (CG)

---- Appellants

Versus

1. Roopchandra S/o. Piladas Satnami, aged about 50 years.
2. Phoolchandra S/o Piladas Satnami, aged about 55 years.
3. Shyam Das, S/o. Piladas Satnami, aged about 46 years
4. Jay Prakash S/o Roopchandra aged about 22 years
5. Santosh S/o. Roopchandra aged about 23 years
6. Munju Ram, S/o. Pusau Satnami aged about 24 years
7. Subechandra S/o Piladas Satnami aged about 52 years

(All residents of village Heerapur, P.S. Piparia, Distt. Kawardha (CG))

---- Respondents

For appellants	:	Mr. Ashish Shukla, Govt. Adv.
For Respondents	:	Ms. Pritha Ghosal, Adv. on behalf of Mr. Awadh Tripathi, Adv.

**DB : HON'BLE SHRI PRITINKER DIWAKER AND
HON'BLE SHRI CHANDRA BHUSHAN BAJPAI, JJ**

CAV JUDGMENT

Per Bajpai , J

1. Since Criminal Appeal No. 643/2003, Cr. Revision No. 292/2003 and Acquittal Appeal No. 221/2010 arise out of the the same incident, they are being disposed of jointly by this common judgment.
2. Criminal Appeal No. 643/2003 arises out of the judgment of conviction and order of sentence dated 30-4-2003 passed by the Additional Sessions Judge (FTC), Kawardha in Sessions Trial No. 86/2001 whereby and whereunder learned trial Court has convicted both the appellants/accused under Section 324 read with Section 34 (three counts) of the Indian Penal Code and sentenced to undergo RI for one year for each count with a direction to run all the substantive jail sentences concurrently.
3. Criminal Revision No. 292/2010 under Section 397 read with Section 401 of the Code of Criminal Procedure Code, 1973 is directed by Soukhidas Satnami, the injured victim, against the judgment of acquittal dated 30-4-2003 passed by the Additional Sessions Judge (FTC), Kawardha in Sessions Case No. 165/2000 whereby and whereunder, the trial Court acquitted the

respondents No. 1 to 7 of the charges under Sections 148, 323 (six counts), in alternate under Section 323 read with Section 149 (6 counts) and Section 302 in alternate 302 read with Section 149 of the IPC by affording them benefit of doubt.

4. Acquittal Appeal No. 221/2010 has been preferred by State against order of acquittal of respondents No. 1 to 7 mentioned in para 3 of this judgment.

5. Brief facts necessary for disposal of Criminal Appeal No. 643/2003 arising out of S.T. No. 86/2001 are that on 28-7-2000 at 4.30 pm P.W. 1 Roopchand Satnami reached to the Police Station Pipariya and lodged FIR Ex. P-1 against the present appellants and also against acquitted co-accused Devdas Satnami and also against Basant Satnami (succumbed to injuries on 28-7-2000 in the same incident). P.W. 1 Roopchand Satnami stated in the FIR that when his son P.W. 3 Jaiprakash was taking bath in the pond, he said that somebody had played sorcery on his father as a result of which he is unable to walk. Accused Kalidas heard it and called accused Soukhidas. It is further stated that accused Soukhidas ran to assault his son Jaiprakash holding battle axe. His son Jaiprakash (P.W. 3) came to him and informed about the incident. After some times, accused Soukhidas, Basant (deceased), Devdas Satnami and Shiv Satnami came abusing filthy language and threatening to kill. Soukhilal assaulted him on his head by battle axe, Shiv Prasad Satnami assaulted him by a club on his left cheek, Basant assaulted on his back by a club, When his brother Phoolchand, his son Jaiprakash came to intervene, Soukhi Satnami, Shiv Satnami, Devdas and Basant Satnami assaulted them by club, battle axe, axe and threatened to kill them. The incident has been witnessed by Triveni Bai and Santosh. Pipariya police registered the FIR, sent the injured for medical examination. P.W. 7 Dr. R.P. Nonhare examined P.W. 2 Phoolchand, P.W. 3 Jaiprakash, PW. 1 Roopchand and noticed following injuries :-

P.W. 2 Phoolchand Ex. P-11

- i. one lacerated wound size 5 cm x 2 cm x bone deep over right frontoparietal region with bleeding, advised x-ray.
- ii. One incised wound over right parietal region size 8 cm x 2.5 cm x bone deep with bleeding.

iii. One incised wound over right knee joint anterior transversely placed size 3 cm x 1/8 cm x subcutaneous region.

P.W. 3 Jaiprakash Ex. P-12

- I. Multiple contusions over right forearm size 5 cm x 2 cm.
- ii. Abrasion linear in nature size 6 cm x 1/8 cm over left forearm.
- iii. One contusion over right elbow on back side size 3 x 2 cm.
- iv. A linear abrasion over left scapular region size 6.5 cm x 1/8 cm vertical placed.
- v. One incised wound over right frontoparietal region right side size 12 cm x 20 cm x bone deep with bleeding.

P.W. 1 Roopchand Ex. P-13:-

- I. One incised wound over right parital region size 8 cm x 1 ½ cm x bone deep with bleeding.
- ii. One lacerated wound over right parietal region size 10 cm x 2 ½ cm x bone deep with bleeding.
- iii. One contusion over left cheek size 6 cm x 6 cm.

P.W. 3 Jaiprakash, P.W. 1 Roopchand and P.W. 2 Phoolchand were discharged on 31-7-2000 vide Ex. P-14. P.W. 7 Dr. R.P. Nonhare also prepared the treatment chart vide Ex. P-15, P- 16 and P-17. During investigation, he also examined the articles sent to him for examination and gave his report Ex. P-18, P-19 and P-20. He did not notice any fracture on any of the injured. During investigation, police seized blood stained cloths from the injured vide P-2, P-3, P-4A. Spot map Ex. P-4 was prepared. After recording memorandum statements of accused Soukhidas, Devdas and Shiv Prasad vide Ex. P-5, P-6 and P-7, police seized battle axe from Soukhidas vide Ex. P-8, one bamboo stick from Accused Devdas vide Ex. P-9 and one bamboo stick from accused Shiv Prasad vide Ex. P-10. Police also recorded statements of the witnesses under Section 161 of the Cr.P.C. After completion of the investigation, charge sheet was filed before the Chief Judicial Magistrate, Kawardha under Sections 294 and 506-II, 323, 323, 324, 147, 148, 149 of the IPC against accused Soukhidas, Shiv Prasad, Kalidas and Devdas. It was a counter case and same was committed to the Court of Session for trial. Learned Additional Sessions Judge received the case on

transfer and conducted trial.

6. Learned trial Court framed charges against all the four accused for the offence under Sections 147, 148, 324, in alternate 324/149, S. 325, in alternate 325/149, 294, 506-II of the IPC.

7. So as to hold the appellants guilty, prosecution has examined 11 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them, pleaded innocence and false implication in the crime in question. The accused persons examined 4 defence witnesses D.W. 1 Head Constable Bhuwanlal Sahu, in support of Ex. P-6. As per D.W. 2 Lobhandas it was Jaiprakash who plunk down Kalidas twice in the field and thereafter he saw that Basant was assaulted by P.W. 1 Roopchand, p.w. 2 Phoolchand, Shyamdas, Subechand, P.W. 4 Santosh, P.W. 3 Jaiprakash and Munjoram by clubs and Shoukhi, Shiv and Deva took Basant in their house. He has further stated that Kalidas was not present at the spot. D.W. 3 Dayadas is a witness of the fact that when he was taking bath in the pond, Shyamdas assaulted thrice by a club. He lodged a report and was also examined by the doctor. D.W. 4 Dayaldas has given statement that prior to 12-13 years ago, Phoolchand, Roopchand, Subechand and Shyamdas had assaulted him.

8. The trial Court after hearing respective parties and considering the material available on record, by the impugned judgment acquitted co-accused Devadas and Kalidas and convicted and sentenced the present appellants as aforementioned. Hence this appeal.

9. Brief facts required for disposal of Criminal Revision No. 292/2003 and acquittal appeal No. 221/2010 arising out of S.T. No. 165/2000 are that on 28-7-2000 at 11.10 pm, P.W. 10 Soukhidas lodged unnumbered dehati merg intimation at village Heerapur before Pipariya police that at about 1.00 pm he along with his brother Shiv Prasad were sitting outside of the house. His father Kalidas informed him that in the village pond, Jaiprakash (Accused No. 4) alleged that his son had played witchcraft on his father Roopchand and committed marpeet with him. After sometime, Jaiprakash, Roopchand, Santosh, Munju, Phoolchand, Subechand, Shyamdas came with common intention armed with clubs and abused filthy words and threatened to kill them. They started assaulting him. Meanwhile when brother Basant and Devadas came to intervene, they were also beaten. Basant was assaulted

on his head by A-1 Roopchand, A-6 Munjuram A-5 Santosh with clubs as a result of which he got injured and fell down. Then he and Deva lifted him to their house. All the accused persons encircled the house and pelted stones and bricks. P.W. 13 Geetabai sustained injury over left cheek. Due to fear they could not come out of the house. They applied massage over the body of Basant. Ultimately Basant succumbed to his injuries at 10.00 pm in the night. As per Dehati Merg, the incident was seen by Mana Bai, P.W. 13 Geetabai and Rekhabai and told to P.W. 1 Kotwar Shatrughan Gandharv, P.W. 2 Mantram Bareth and Rohit Satnami. Later unnumbered merg was numbered as Ex. P-15. Police also recorded unnumbered Dehati Nalishi at village Heerapur at 11.50 pm at the instance of P.W. 10 Soukhidas as Ex. P-41. Later on FIR was registered as Ex. P-44. Police registered the same as Crime No. 67/2000 under Sections 147, 148, 149, 323, 342, 302 of the IPC against all the 7 accused persons. During investigation, police prepared inquest vide Ex. P-3 on 29-7-2000. Body of deceased Basant was sent for post mortem examination. P.W. 15 Dr. M.R. Deshpandey conducted autopsy vide Ex. P-43 and noticed following injury:-

i. There are multiple bruise present on epigastrium irregular shaped, blue black in colour.

ii. A lacerated wound present with irregular margins upto bone deep 2 cm in length, ½ cm in width, over parieto occipital aspect of skull on the left side of skull. On internal examination, the autopsy surgeon noticed one fracture over temporo parietal aspect. The autopsy surgeon opined that the deceased died due to coma caused by hemorrhage shock due to injuries.

10. After completion of investigation, charge sheet was filed against all the 7 accused persons before the Chief Judicial Magistrate, Kawardha who registered the same as Case no. 740/2000 and as the matter was triable by Sessions Court, committed the same for trial. Learned Additional Sessions Judge, Kawardha (FTC) received the case on transfer and conducted trial. All the accused were charged for the offence under Sections 148, 149, 323 (6 counts) and 302 of the IPC.

11. So as to hold the appellants guilty, prosecution has examined 19 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them, pleaded innocence and false implication in the crime in question. The

accused persons examined 5 defence witnesses.

12. The trial Court after hearing respective parties and considering the material available on record, by the impugned judgment, affording benefit of doubt acquitted all the accused persons of the charges framed against them. Hence the applicant has filed instant Criminal revision and the State has filed the acquittal appeal against the order of the acquittal.

13. Heard learned counsel for the parties.

14. Learned counsel for the appellants Soukhidas and Shivprasad (Cr.A. No. 643/2003) submits that conviction of the appellants by the trial Court is not in accordance with law. Both the convicted accused persons were not aggressor. They have also sustained injuries. Though not specifically pleaded, but they have acted bonafidely in their private defence. Injuries received by the accused-appellants are unexplained. Statements of the witnesses are not reliable and trustworthy, they have improved their diary statements. Therefore, it would not be safe to convict the accused appellants on the basis of the evidence available against them. In the counter case, the accused of that case/complainants of the present case are given benefit of doubt. Present accused/appellants are also entitled for benefit of doubt. In alternate, it is argued that as the incident is about 16 years old, accused/appellants are first offenders with no criminal antecedents, they were young boys aged about 30 and 24 years at the time of incident, during trial they have remained in custody for 2 months and 11 days, after this incident, they are not involved in any other criminal act. There is no minimum sentence prescribed for the offence under Section 324 read with Section 34 of the IPC. Looking to the entire facts and material, both the accused persons may be sentenced to the period already undergone by them. He placed reliance on Bhagwan Sahai and another v. State of Rajasthan reported in AIR 2016 SC 2714 wherein Hon'ble Supreme Court has held that as the prosecution suppressed genesis of occurrence and also failed to explain injuries on person of accused, accused is entitled to get benefit of doubt.

15. Learned State counsel in response to the arguments advanced on behalf of the appellants of Cr. A. No. 643/2003 submits that the judgment of conviction and sentence passed by the trial court is well founded and is strictly in accordance with law and there is no infirmity in the same.

16. Heard learned counsel for the parties in Cr. Revision No. 292/2003 and Acquittal appeal No. 221/2010.

17. Learned counsel for the appellant/State and applicant Soukhidas submit that the judgment of the trial Court is perverse, not in accordance with law. The case of the prosecution was supported by injured eye-witnesses P.W. 10 Soukhidas, P.W. 11 Kalidas, P.W. 13 Geetabai, P.W. 14 Shiv Prasad and P.W. 16 Dayadas. On account of fear, the complainant was not in a position to come out of the house. When police reached the village they promptly lodged unnumbered Dehati Merg intimation and unnumbered Dehati Nalishi wherein P.W. 10 Soukhidas gave detailed description of the incident. Ocular evidence is duly corroborated by medical evidence. All the accused persons after forming unlawful assembly on account of allegation of witchcraft assaulted the witnesses, also assaulted Basant who sustained a lacerated wound, fracture over temporo parietal aspect and succumbed to the injury within 9 hours. There is no question of identification of the accused as both parties were well known to each other. They were armed with lathi and assaulted Basant and all other injured eye-witnesses. FIR was lodged against all the accused persons. As the accused formed unlawful assembly every accused shall be responsible and guilty of offence committed in prosecution of the common object though no specific role is assigned. The accused persons were aggressor. Pleading of alibi taken by some accused is not proved. Right of private defence is not available to any of the accused. They themselves formed unlawful assembly and assaulted all the six eye-witnesses and also assaulted by club to Basant who ultimately died as a result of the injuries. Though prosecution has duly proved its case against all the accused persons but the trial Court in a technical and cryptic manner awarded benefit of doubt. Hence it is prayed that the judgment of acquittal passed by the trial Court may be set aside and this Court while exercising appellate jurisdiction convict the accused persons for the offence committed by them. Learned counsel for the applicant in Criminal revision has duly assisted the State counsel and made submission in support of his arguments.

18. Learned counsel for the respondents No. 1 to 7 in the acquittal appeal and also in criminal revision/acquitted accused submits as under in reply :-

i. that there is only one lacerated wound noticed over the body of

deceased Basant and as per opinion of P.W. 15 Dr. M.R. Deshpandey, the said injury could be caused by falling on the ground. Other multiple bruises are not fatal for life. No witness has specifically said as to who inflicted the injury over the head of deceased Basant. Seizure of the club is not proved as the witnesses have turned hostile. Also in the FSL report Ex. P-39 no blood stain is found on the stick seized from accused Santosh, Roopchand and Munjuram. The complainant party was aggressor. House of both the parties are in the same vicinity. Presence of accused at the spot may not be held as unlawful assembly as they were in their house. In the village carrying lathi is very common and villages carry it for many purposes. The deceased was kept in the house for 9 hours. Had he been taken in the hospital in time, there would have been chances for his survival. The accused lodged FIR against the complainant party prior to the FIR lodged by P.W. 10 Soukhidas. They lodged the FIR at about 4 pm i.e about 5 hours prior to the dehati nalishi lodged by P.W. 10 Shoukhidas. There is no specific role assigned by the witnesses. There are improvement and inconsistency in the statement of the witnesses. The injuries found over the person of accused persons are unexplained. Phoolchand received 2 incised wounds and 1 lacerated wound. Roopchand received one incised and one lacerated wound and one contusion and Jaiprakash also received abrasions, contusions and one incised wounds which goes to show that the complainant party was armed with sharp edged weapon. For this they were tried in a separate case and convicted also. This goes to show that they were aggressor and accused persons at the best acted bonafide to right to private defence of body. Learned counsel further submits that the present is a case where the applicant and the appellant are before the High Court. This is not the first court. Though during hearing of acquittal appeal, the appellate court has every jurisdiction to intervene, reverse, pass any order which the appellate court deems lawful only when the judgment passed by the trial Court is perverse. This court has to see whether the view taken by the trial Court is plausible, if so this court should not interfere with the judgment of acquittal passed by the trial Court. As the view taken by the trial Court is probable view, benefit is to be given to accused. The incident developed from a very trivial issue. The trial Court after appreciating the entire facts and circumstances held that in the present case benefit of doubt should go to the accused and looking to the entire facts as discussed in the judgment, view of

the trial Court cannot be said to be perverse, improbable or otherwise. Hence learned counsel submits that the appellant and the applicant fail to make out a case against the respondents No. 1 to 7. The judgment of the trial Court is well founded. There is no infirmity or perversity in the said judgment, hence the revision and acquittal appeal both may be dismissed.

ii. Learned counsel for the respondents places reliance on Eknath Ganpat Aher and others -v- State of Maharashtra reported in 2010(2) CCSC 727 (SC) wherein Hon'ble Apex Court has held that if it is difficult to hold that any of the appellants had inflicted any particular injury on any of the deceased or injured witnesses and also some of accused persons even received grievous injuries, the appellants are entitled to benefit of doubt. He contended that in the present case also, not even a single witness including the injured witnesses could specifically state as to who had caused injuries either to the deceased or to the injured witnesses or to the accused. A very general statements has been made that the accused persons were armed with deadly weapons and caused injury. Learned Apex Court hold that as both the parties received injuries during the course of incident, hence conviction is against the basic canons of the Evidence Act and the penal law, hence acquitted the accused. Learned counsel for the respondents would submit that the cited case law is applicable in the present case as no witness states has to who assaulted over the head of Basant. On the basis of general statement by the witnesses that all the accused persons had beaten Basant, it cannot be said as to who assaulted Basant. Therefore, as the accused were also received injuries benefit of doubt given to them is proper and justified.

iii. Learned counsel further placed reliance on Golbar Hussain and others -v- State of Assam and another reported in 2015 (11) SCC 242 wherein Hon'ble Apex Court reiterated the powers of the appellate court in para 7 of the judgment.

iv. Learned counsel for the respondents would submit that the case law is applicable in the instant case as the view taken by learned trial Court is plausible on the basis of evidence on record and the decision of the learned trial Court may not be reversed because a different view is possible. Hence it is prayed that revision and acquittal appeal may be dismissed being sans substance.

19. To appreciate the arguments advanced by both the parties in all three cases, we have perused the evidence adduced by the parties in S.T. No. 86/2001 and S.T. No. 165/2000.

20. When we consider the evidence surfaced during trial of S.T. No. 86/2001 relating to Cr.A. No. 643/2003, it appears that P.W. 1 Roopchand is a witness who has deposed that his son Jaiprakash informed him that at village pond, Soukhidas and Kalidas made a dispute and attempted to assault through axe. When he was sitting outside his house beneath the tree, Kalidas, Soukhidas, Basant, Devadas and Shiv came abusing them. Shiv assaulted over his left cheek by club, accused Soukhi assaulted by battle axe, Basant assaulted over his back. Thereafter he fell and became unconscious. Thereafter he lodged the report Ex. P-1. During cross-examination, this witness remained very firm and nothing could be elicited so as to discredit his version. P.W. 2 Phulchand is a witness who saw Jaiprakash and Roopchand lying on the field and accused Soukhidas, Shiv, Revadas, Kali and Basant were abusing. When he intervened, Shiv assaulted with lathi. He saved his body and the lathi hit Basant. Thereafter Shiv inflicted second lathi blow which hit his head. Soukhidas assaulted by battle axe. He also remained very firm during cross-examination. Almost similar statement has been given by P.W. 3 Jaiprakash who was also assaulted by Accused Shiv, Soukhidas and Revadas. P.W. 4 Santosh stated that when he came out on hearing the sound of dispute, he noticed P.W. 1 Roopchand, P.W. 3 Jaiprakash and P.W. 2 Phoolchand lying on the ground and accused Soukhidas, Shiv, Basant, Devadas were going towards their house. Blood was oozing from the body of Roopchand and Jaiprakash. P.W. 5 Sukhchain Singh is a witness of memorandum Ex. P-5 and P-6 and the seizure of article Lathis vide Ex. P-8 and P-9 and also witness of other seizure. P.W. 6 Lakhanlal is also a witness of memorandum and seizure and duly supported the same. P.W. 7 Dr. R.P. Nunhare conducted MLC on the body of Phoolchand, Jaiprakash and Roopchand and gave his report Ex. P-11, 12 and 13. P.W. 8 Smt. Bimleshwari saw accused Soukhidas, Basant, Deva, Shiv and Kaliram were beating Roopchand by battle axe and other articles. P.W. 9 Durga Prasad admitted his signature in seizure memo Ex. P-2, 3 and 4 but not supported their contents. P.W. 10 Vyas Narayan Singh, Head Constable lodged the FIR Ex. P-1 and also sent Phoolchand,

Jaiprakash, Roopchand for medical examination vide Ex. P-11-A, P-12A and P-13-A. P.W. 11 Ramchandra Yadav, Asstt. Sub Inspector is the IO and has duly supported the prosecution case.

21. In S.T. No. 165/2000 P.W. 1 Shatrughan village Kotwar states that when he reached to the spot, he noticed Basant inside the house in an injured condition. He informed the police about the same. He is also the witness of Patwari map Ex. P-1. P.W. 2 Mantram is a witness of inquest Ex. P-2, Patwari map Ex. P-1 and also witness of seizure Ex. P-4 and 5 and has turned hostile and has not supported the contents of the same. P.W. 3 Gyansingh and P.W. 5 Khedudas are witnesses of seizure memo from the accused Santosh, Shyam and Munjoram, signed the documents Ex. P-8 to Ex. P-13 but turned hostile and have not supported the seizure. P.W. 4 Suraj Kumar is a witness of memorandum Ex. P-14, P-16 and Ex. P-18 and also signed the seizure memo Ex. P-15, P-17 and Ex. P-19. They admitted their signatures, but turned hostile and have not supported the case of the prosecution. P.W. 6 Syed Akbar Ali is Patwari. He prepared spot map. P.W. 7 Dr. R.P. Nonhare examined the injured P.W. 13 Geeta, P.W. 10 Soukhidas, P.W. 14 Shiv Prasad, Devadas and Kalidas, prepared report Ex. P-20, 21, 22, 23 and noticed following injuries:

P.W. 13 Geeta Bai Ex. P-20.

- I. One lacerated wound over left maxillary region size 2.5 cm x ½ cm x muscle deep.

P.W. 10 Soukhiram Ex. P-21

- I. A contusion over left wrist size about 2 x 2 cm.
- ii. A contusion over posterio lateral aspect of right forearm size 6 x 3 cm.

P.W. 14 Shiv Prasad Ex. P-22

- I. One lacerated wound over left frontal region size about 2 x 1 cm x muscle deep.
- ii. One lacerated wound over right parieto occipital region size about ½ x ½ cm x skin deep with bleeding.
- iii. An abrasion over post aspect of left elbow ¼ x ¼ cm .
- iv. One contusion over left forearm post aspect size about 4 x 4 cm.

- v. One lacerated wound over post aspect of left pinna size about $\frac{1}{2}$ x 4 cm

Devadas S/o. Anjor Das Ex. P-23

- I. One contusion over left upper of forearm post aspect size 3cm x 2.5 cm.
- ii. One lacerated wound over right parietal region size about $\frac{1}{2}$ x $\frac{1}{2}$ cm x subcutaneous region.

P.W. 11 Kalidas Ex. P-24

- I. Patient complained Pain in left chest. Tenderness over 5th, 6th and 7th ribs.
- ii. Multiple abrasion over back of neck size 3 x $\frac{1}{3}$ cm.

P.W. 16 Dayadas Ex. P-25

- I. Patient complained pain in nap of neck which is sprain.
- ii. Patient complained pain in right forearm which sprain.

22. P.W. 7 Dr. R.P. Nonhare also examined the articles sent and advised for chemical analysis, not noticed any fracture to any of the injured.

23. P.W. 8 K.P.S. Paikra is a witness of seizure of clothes of the deceased vide Ex. P-38 and also sent seized articles to FSL, report of which is Ex. P-39. P.W. 9 Vyas Singh, Head Constable recorded the Rojnamcha Ex. P-40.

24. P.W. 10 Soukhidas is an injured eye-witness. As per him when he along with P.W. 14 Shiv Prasad were sitting in the veranda, P.W. 11 Kalidas came and informed that in the village Pond, accused Jaiprakash had beaten him and made allegation that he had committed some witchcraft on his father. He further states that Jaiprakash was sitting in the Jaitkhamb and Roopchand was sitting near a tree. Both the accused again abused filthy words and thereafter they assaulted Shiv Prasad and this witness by club. When Basant and Deva came out on hearing the noise then Phoolchand, Shyamdas, Subechand, Munju and Santosh also came. Basant was assaulted by accused Roopchand, Santosh, Munju by clubs. Deva was assaulted by accused Subechand and Shyamdas by clubs. P.W. 13 Geetabai was in the veranda. She was assaulted by bricks and stones by Bedan, Bela, Hironda and Triveni. Thereafter all the 7 accused beat Basant.

Basant fell down on the veranda and thereafter they took Basant inside their house. P.W. 11 Kalidas was also chased by all the accused persons. At about 8-9 pm Basant died on account of the injuries. He lodged unnumbered merged Ex. P-42, unnumbered Dehati Nalishi Ex. P-41. He is also a witness of spot map Ex. P-6. In cross-examination, it is surfaced that this witness has improved his version from his diary statement Ex. D-10 and Dehati Nalishi Ex. P-41. This witness has not said anything regarding the injuries received by the accused persons and denied the fact that they assaulted the accused persons with battle axe and other weapon.

25. P.W. 11 Kalidas is also a witness of the incident. As per him, in the village pond, accused Jaiprakash made an allegation that he had committed some witchcraft on his father then he denied the same. Accused Jaiprakash assaulted him by fists and also pushed him on the ground and gave threat to kill him. Again Jaiprakash asked him to cure his father otherwise he will kill him and again assaulted by fists. Thereafter he went to his house. When he heard the noise and abusing words, he came out and saw all the 7 accused persons standing near the tree holding lathis. He also noticed Soukhidas and Shiv Prasad sitting in the veranda. Thereafter he saw all the 7 accused persons assaulting Soukhidas and Shiv Prasad. Thereafter they assaulted Basant by club. Basant received injuries on his head. Accused Roopchand and Jaiprakash also assaulted Devadas. He tried to intervene. Thereafter all the accused persons assaulted Basant by clubs. Accused Roopchand assaulted Geetabai by stone. Basant was lifted into house and he died at about 10 pm. Accused persons encircled his house and were pelting stones. At about 8 to 10 pm, Kotwar Shatrughan came. They asked him to inform the police. He is also witness of inquest Ex. P-3 and seizure memo Ex. P-5. This witness has made different statement that all the accused persons had beaten Basant and all the accused persons came out together whereas P.W. 10 Soukhidas has some different saying. This witness has also improved materially from that of his diary statement Ex. D-11 and has also not said anything regarding the injuries found over the body of the accused persons.

26. P.W. 12 Lobhandas though is a hearsay witness according to his diary statement Ex. P-12 but in the court statement he turned himself into an eye-witness and as per this witness, he saw all the accused persons assaulting Basant. P.W. 13 Geetabai has stated that when she was inside

the house, she heard abuses. When she came out, she saw all the 7 accused persons assaulting Shiv Prasad and Soukhidas. During this, Devadas and Basant came out and asked not to beat them. Thereafter all the accused persons assaulted Basant. Basant fell down. Accused Roopchand assaulted by a brick which hit his left cheek and thereafter the accused persons fled away from the spot. They took Basant inside the house and closed the door. Subsequently he died at about 10 pm. This witness has improved his version materially from his diary statement Ex. D-13. As per this witness, all the accused persons assaulted Basant on the other hand, P.W. 10 Devadas does not say so. P.W. 14 Shiv Prasad has also made almost similar statement. He had also materially improved his diary statement Ex. D-14 and has not stated anything regarding any injury noticed over the body of the accused persons and made contradictory statement that all the accused persons assaulted Basant. P.W. 15 Dr. M.R. Deshpandey has conducted autopsy and noticed that there are multiple bruise present on epigastrium irregular shaped, blue black in colour. He also noticed a lacerated wound present with irregular margins upto bone deep 2 cm in length $\frac{1}{2}$ cm in width over parieto occipital aspect of skull on the left side of skull. On internal examination, the autopsy surgeon noticed one fracture over temporo parietal aspect. He opined that the deceased died due to coma caused by hemorrhage shock due to injuries. His report is Ex. P-43. In the cross-examination, he has deposed that if a person is pushed and he fell on hard and rough surface, he may receive the injury as noticed on the head of the deceased. He has also admitted that if some one falls with force on rough surface he may sustain bruises as noticed on the body of Basant. P.W. 16 Dayadas is a witness who saw accused Roopchand, Munjuram, Jaiprakash and Phoolchand near the place of incident. He went to the village pond. When he was returning, accused Jaiprakash gave one lathi blow over his neck. He gave second blow over his right hand which he stopped by his hand and thereafter he left the place and went to his house. After one or two hours he heard the voice of Kalidas to save his son. He saw accused Munju, Shyamdas, Subechand encircling the house of Kalidas and abusing and also giving threat to kill. This witness does not say the presence of accused Santosh and Phoolchand. P.W. 17 Amarpal Singh, Head Constable has helped in initial part of investigation. P.W. 18 Durga Prasad is a witness of memo and seizure Ex. P-14, 15, 16, 17, 18 and 19. He has admitted his

signatures but has not said anything regarding the contents. P.W. 19 R.C. Jatav, Asstt. Sub Inspector is the investigating officer and has duly supported the investigation.

27. D.W. 1 Beepat has deposed that when P.W. 14 Shiv Prasad assaulted accused Phoolchand, Phoolchand saved said assault which hit Basant. Shiv Prasad again assaulted Phoolchand on his head. Due to fear he ran away from the spot. D.W. 2 Kehardas is a witness of the fact that two days prior to the incident Subechand had gone to Surat and was not present at the spot. D.W. 3 Roop Singh has stated that Shyamdas went to sell coriander to village Dashrangpur and was not present at the time of incident at the spot. D.W. 4 Sukhau has stated that Munjoram was not present at the time of incident at the village instead he was in the field to guard crop. P.W. 5 Kaliram has stated that he saw Jaiprakash and Roopchand injured and blood was coming out from the injury.

28. Minute examination of the evidence of the witness during trial Court S.T. No. 86/2001 relating to Cr.A. No. 643/2003 goes to show that the FIR was lodged immediately without any delay. Injured witness P.W. 1 Roopchand, P.W. 2 Phoolchand and P.W. 3 Jaiprakash remained very firm during cross-examination. They have received injuries by sharp edged weapon and also by hard and blunt object. No explanation has been offered by accused Soukhi and Shiv Prasad in their statement under Section 313 of the Cr.P.C. As per prosecution case, they were aggressor caused injuries to above three injured eye-witnesses. There is no reason to disbelieve their statements. The case law of Bhagwan (Supra) is not applicable in the present case as the genesis of occurrence is not suppressed, further no defence is taken in their statement under Section 313, Cr.P.C. Simply the accused/ appellants have denied the incident. Their presence is undoubtedly proved. Looking to the entire facts and circumstances of the case, this court is of the view that the judgment of conviction passed by the trial Court convicting both accused Soukhidas and Shiv Prasad for offence under Section 324 read with Section 34 of the IPC (on three counts) is proper and based on admissible evidence. We are not agree with the arguments advanced on behalf of learned counsel for the appellants that benefit of doubt may be given to the accused persons. Consequently, the judgment of conviction of both the accused appellants under challenge in Cr.A. No.

643/2003 is hereby affirmed.

29. Now the question arises as to what sentence would be proper for their offence in the facts and circumstances of the case. Both the accused persons were aged about 24 and 30 years at the time of incident with no previous criminal antecedent. On a trivial suspicion they assaulted all the three injured by sharp edged and lethal weapon. The incident is more than 16 years old. As submitted they have remained in jail during trial for 2 months and 11 days, no minimum sentence is prescribed for the offence under Section 324 of the IPC. Considering entire facts and circumstances of the case, ends of justice would be served in sentencing them to the period already undergone by them.

30. Now we appreciate the evidence adduced by the parties in S.T. No. 165/2000 which is required for adjudication of Criminal revision No. 292/2003 and Acquittal Appeal No. 221/2010.

31. Minute examination of evidence makes it clear that no witness has explained the injuries found over the body of accused persons. Looking to the first part of the incident in the village pond, it appears that the accused persons are not aggressor. The houses of the accused and the complainant party are in the same locality near to each other. Therefore, presence of the accused persons at the spot is natural and it cannot be said that they came at the place of incident with some ulterior motive. It is also apparent from the statement of the witnesses that they have improved their diary statement and FIR in their court statement. Further the statement of the witnesses are not consistent. It is also not proved as to who inflicted the said injury over the head of the deceased responsible for his death. Villagers normally keep lathis with them for various purposes. Therefore, keeping lathis by the accused persons cannot be held as preparation to commit offence unless it is proved. Some of the accused persons were present at the spot and some came afterward. Therefore, it is not proved that they appeared in seen after preparation to assault. The autopsy surgeon opined that the injuries over the head of deceased Basant may be caused on account of fall on hard and rough surface. It is also proved that the complainant party was having axe, battle axe and lathis and they assaulted accused Phoolchand, Roopchand and Jaiprakash. They received some injuries on vital part of the body. It goes to show that the complainant party initially assaulted the accused persons. In

the shadow of first dispute at the pond where it is alleged that Jaiprakash assaulted Kalidas with an allegation that he had played some witchcraft to his father and when Kalidas narrated this incident to his son and family members, second part of the incident took place thereafter. This also proves that the complainant party is aggressor. The accused persons lodged the report about 6 hours prior to the report lodged against them. It is also surfaced that the accused persons in their statements under Section 313 of the Cr.P.C. have taken the defence that they were beaten by the complainant party and received injuries. On the other hand, no witness has offered any explanation regarding the injuries found over the body of the accused persons. It is submitted by learned counsel for the respondents that respondents Munjuram died about 3 years ago during pendency of the instant criminal revision and the acquittal appeal. The incident took place over a trivial issue. The prosecution has failed to prove formation of the unlawful assembly as few witnesses do not say that all the accused persons came together. In the unnumbered merge and FIR it is alleged that Sanhtosh, Munju and Roopchand only assaulted Basant hence the version that all the 7 accused persons assaulted Basant makes statements of some witnesses suspicious and the witnesses cannot be relied for this. The panch witnesses before whom the lathis were seized have turned hostile. This apart, no blood has been found on the lathi seized from accused Roopchand, Munju and Santosh during chemical analysis vide Ex. P-39. If we consider the statement of P.W. 10 Soukhidas, it appears that accused Roopchand and Jaiprakash assaulted Shiv Prasad first and then 5 other accused persons came on the spot. This again goes against the theory of formation of unlawful assembly. This witness also has improved his diary statement Ex. D-10 and Dehati Nalishi Ex. P-41 and has also not said anything regarding the injuries of the accused persons. P.W. 1 Shatrughan says that all the accused persons came and assaulted Basant but the same is not supported by P.W. 10 Soukhidas. This witness has also made material improvement in the diary statement Ex. D-11 and has also not said anything regarding the injuries of the accused persons. P.W. 12 Lobhandas is a hearsay witness. Looking to the diary statement Ex. D-12, P.W. 13 Geetabai also speaks that all the accused persons assaulted Basant but the same is not supported by P.W. 10 Soukhidas. In addition to this, this witness has also made many material improvement in the court statement in comparison to her diary

statement Ex. D-13.

32. As per settled law, this is not a trial. The trial Court has taken a view and awarded benefit of doubt to the accused persons. This court has to see whether the view taken by the trial Court is perverse or not. If the same is not perverse and the view taken by the trial Court is plausible and possible then the appellate court ought not to interfere with the judgment. The trial Court in its judgment specifically in para 24, 26, 27, 28, 29, 30, 34, 37 and 38 held that in entirety the prosecution has failed to prove its case beyond all reasonable doubt against the accused/appellants and acquitted the accused persons of the charges framed against them.

33. On due consideration, the Golbar's case (supra) reiterating the role of the High Court is applicable in the present case. We are agree that the view taken by the trial Court is reasonable, plausible and the decision of the trial Court may not be reversed merely because a different view is possible. We are also agree that the reasons shown in the said judgment are not perverse which requires interference by the appellate court/revisional court.

34. In the result, Cr.A. No. 643/2003 is partly allowed. Conviction of appellants under Section 324 read with Section 34 (three counts) is affirmed and they are sentenced to the period already undergone. They are on bail, therefore, no further order is required.

35. Further Criminal Revision No. 292/2003 and Acquittal Appeal No. 221/2010 are dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge