

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 20.02.2018

Judgment delivered on 21.03.2018

CRA No. 838 of 2011

- Raju @ Manharan Sahu S/o Lakhan Sahu, aged about 35 years, R/o Village Dunda, Thana Tikrapara, Distt.-Raipur, C.G

---- Appellant

Versus

- State Of Chhattisgarh, through District Magistrate Raipur, District Raipur.

---- Respondent

CRA No. 32 of 2012

1. Lalaram Sahu, son of Ramchanra Sahu, aged 35 years, resident of village Dunda, Police Station Tikrapara, Raipur, District Raipur (CG)
2. Tilak Sahu, S/o Reva Sahu, aged 45 years, R/o village Dunda, PS Tikrapara, Raipur, District Raipur (CG)

---- Appellants

Versus

- State Of C.G. through Police Station Tikrapara, District Raipur.

---- Respondent

CRA No. 60 of 2012

- Chhabiram Sahu S/o. Dukhu Ram Sahu, aged about 45 years, R/o. Cultivator of Village Dunda, P.S. Tikrapara, Raipur, Distt. Raipur C.G.

---- Appellant

Versus

- State Of Chhattisgarh, through the Police Station House Officer Tikrapara, Raipur, District Raipur, Chhattisgarh.

---- Respondent

CRA No. 124 of 2012

- Ramji Sahu S/o Tijauram Sahu, aged about 35 years, R/o Village Dunda, Thana Tikrapara , Raipur Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Tikrapara, District Raipur, Chhattisgarh

---- Respondent

CRA No. 194 of 2012

- Mahendra Sahu (disputed name added as) @ Mahesh, son of Sada Ram Sahu, aged about 29 years, resident of Cultivator of village Dunda, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh, through the Police Station House Officer Tikrapara, Raipur, District Raipur, Chhattisgarh

---- Respondent

CRA No. 197 of 2012

- Heero Bai W/o Chhabiram Sahu, aged about 40 years, R/o Village Dunda, P.S. Tikrapara, Raipur, Distt. Raipur C.G.

---- Appellant

Versus

- State Of Chhattisgarh , through the Police Station House Officer Tikrapara, Raipur, District Raipur, Chhattisgarh.

---- Respondent

CRA No. 198 of 2012

- Bhagwati Sahu S/o Chhabiram Sahu, aged about 27 years, resident of and cultivator of Village Dunda, Police Station Tikrapara, Raipur , Distt. Raipur C.G.

---- Appellant

Versus

- State Of Chhattisgarh, through the Police Station House Officer Tikrapara, Raipur, District Raipur, Chhattisgarh

---- Respondent

CRA No. 230 of 2012

- Ramu @ Rameshwar Sahu S/o Mansingh Sahu, aged about 22 years, R/o Shriram Chowk , Thana Pirani Basti , Distt. Raipur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - P.S. Tikrapara , Distt. Raipur C.G.

---- Respondent

CRA No. 873 of 2011

- Khilawan Ram Sahu S/o Banshi Sahu, aged about 23 years, R/o Village Dunda, P.S. Tikrapara, Distt.-Raipur, C.G.

---- Appellant

Versus

- State Of Chhattisgarh, through the Police Station House Officer Tikrapara, Raipur, District Raipur, Chhattisgarh

---- Respondent

CRA No. 966 of 2012

- Santram Sahu S/o Sukru Sahu Aged About 19 Years R/o Village Dunda , P.S. Tikrapara , Raipur , Distt. Raipur C.G.

---- Appellant

Versus

- State Of Chhattisgarh S/o Through - District Magistrate , Raipur , Distt. Raipur C.G.

---- Respondent

Criminal Appeal Nos.873/11, 60/2012, 197/12, 198/12, 32/2012

For Appellants: Shri Y.C. Sharma, Advocates.
For Respondent : Shri V.A. Goverdhan, Panel Lawyer.

Criminal Appeal Nos.838/11 & 966/2012

For Appellants: Smt. Indira Tripathi, Advocate.
For Respondent : Shri V.A. Goverdhan, Panel Lawyer.

Criminal Appeal No.124/2012

For Appellant: Shri Amrito Das, Advocate
For Respondent : Shri V.A. Goverdhan, Panel Lawyer.

Criminal Appeal No.194/2012

For Appellant: Shri Ranbir Singh Marhas, Advocate
For Respondent : Shri V.A. Goverdhan, Panel Lawyer.

Criminal Appeal No.230/2012

For Appellant: Shri Y.C. Sharma, Advocate under the authority of
Shri Vimlesh Kumar Bajpai, Advocate.
For Respondent : Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement

Per P. Diwaker, J

21/03/2018

1. The above appeals since arising out of a common judgment, are heard together and being disposed of by this common judgment.
2. Challenge in the present set of appeals is to the judgment of conviction and order of sentence dated 14.10.2011 passed by the learned 4th Additional Sessions Judge, Raipur in Sessions Trial No.37/10 whereby the learned Additional Sessions Judge has convicted the accused/appellants for the offences punishable under Sections 147, 302/149, 323/149 & 354/149 of the Indian Penal Code (henceforth 'the IPC') and sentenced each of them to undergo RI for 1 year; RI for life with fine of Rs.3,000/-; RI for 1 year & RI for 2 years, plus default stipulations, respectively.
3. Brief facts of the case are that marriage of Suresh (deceased) was solemnized with Yashoda (PW-7) about three years prior to the date of incident i.e. 18.10.2009, and he was living in his in-laws house situate at village Dunda. On 18.10.2019 the accused persons were abusing the deceased in filthy language and when the deceased objected to the same, he was beaten by them. On the same day at about 6 in the evening Bhagwati Bai (PW-1) and her husband Gaurishankar (PW-9) visited village Dunda to meet the deceased and on reaching there, they found him lying on the road in injured condition. They brought him back to home and on being asked, the deceased told them that accused Chhabiram, Santram, Khilawan, Tilak & others had abused and beat him. Yashoda Bai (PW-1) telephonically informed about the incident to Kumaribai, Devnarayan, Bindubai, Santosh Sahu and thereupon they also reached

the house of deceased in village Dunda. It is further case of the prosecution that when all the aforesaid persons along with deceased were going to Raipur from village Dunda, on the way the accused persons met them and started beating them by saying that all of them are thieves. On hearing this, the villagers also gathered there and all of them assaulted the deceased by hands, fists, kicks & stone as a result of which he died on the spot. Accused persons had also caused injuries to Kumari Bai, Santosh, Bhagwati, Gaurishankar. Incident was witnessed by PW-1, PW-8, PW-9, PW-10 & PW-12. Merg Intimation (Ex.P-1) was recorded on 18.10.2009 at 8 pm at the instance of Bhagwati Bai (PW-1. Immediately thereafter FIR (Ex.P-2) was registered at 8.02 p.m. for commission of offence under Sections 149, 194, 323, 302 of IPC. Nineteen persons were named in the FIR. Inquest (Ex.P-3) was prepared on the body of deceased on 19.10.2009. Body of the deceased was sent for post-mortem examination which was conducted by Dr. S.N. Manjhi (PW-19) and he noticed following injuries;-

- Contusion & abrasion on forearm anteriorly of 4x2cm in size.
- Contusion & abrasion on right forearm of 5x4cm in size. Same on the left side.
- Contusion & abrasion with friction at the back side of both the elbows.
- Contusion & abrasion on left upper side of chest of 10x5cm in size. Ecchymosis were also present on 8th, 9th & 10th ribs. Fracture of 8th, 9th & 10th ribs. Thoracic cavity contains about 500 ml blood.
- Contusion & abrasion on the right side of chest below nipple to hypo-cardinal region of 15x10cm in size. On dissection of chest, 4th to 10th were found fractured from middle.
- Contusion & abrasion over upper part of stomach and below right ribs of 5cm radius. Same wound at the left side of ribs in 4x3cm size. On dissection of stomach, liver & spleen were found ruptured. thoracic cavity contains 1.5 liter blood.
- Contusion & abrasion on right iliac crest region of 10x4cm in size.

- Imprecated abrasion over both the knees anteriorly.
- Rail pattern bruise on left thigh in the size of 10x4cm.
- Rail pattern wound in right thigh.
- Abrasion on the neck with reddishness and thyroid cartilage & cricoid cartilage were intact.
- friction abrasion on both cheeks and zygomatic region.
- Red colour ecchymosis all over occipital region, all over parieto temporal region, fracture of both parietal temporal bone.

The cause of death assigned by the doctor was due to haemorrhage and shock as a result of multiple injuries to the body caused by hard and blunt object and the death was homicidal in nature.

Bhagwati Bai (PW-1), Santosh Sahu (PW-8), Kumari Bai (PW-10) have also suffered injuries in the incident in question. Bhagwati (PW-1) & Kumari Bai (PW-10) were medically examined by Dr. Tarun Kumar Dhruv (PW-18) vide Ex.P-45 and Ex.P-46 & P-22. Santosh Sahu (PW-8) was medically examined by Dr. A. Bose (PW-14) vide Ex.P-18 & P-23. Memorandum statement of accused/appellant Tilak was recorded vide Ex.P-6 and on the basis of which a club was seized vide seizure memo Ex.P-7. Likewise, on the basis of memorandum statement of accused/appellant Chhabiram, one t-shirt & lungi was seized vide seizure memo Ex.P-8. Seized articles were sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-41 has been received in which t-shirt & lungi seized at the instance of accused/appellant Chhabiram were found to be stained with blood. However, there is no serological report in respect of aforesaid articles confirming the origin and group of blood.

4. On completion of investigation, charge sheet was filed against as many as 18 accused persons under Sections 147, 148, 149, 294, 323, 354, 302 of

IPC. After filing of charge sheet, the trial Court framed the charges under Sections 147, 294, 302, 354, 323 read with Section 149 of IPC. The prosecution in order to bring home the charges levelled against the accused/appellants examined 19 witnesses in all. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication. They have examined six defence witnesses in support of plea of alibi.

5. After hearing counsel for the parties, the trial Court by the impugned judgment convicted and sentenced the accused/appellants in the manner as described above.
6. We have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
7. Learned counsel for the appellants submits that;-
 - PW-1, PW-8, PW-9, PW-10 & PW-12 were not the eye-witnesses to the incident and they were subsequently planted as eyewitnesses.
 - PW-1, lodger of FIR, hails from a distant place and she was a total stranger to the accused persons, therefore, no mention of their names could be made in FIR.
 - no specific overtact has been attributed to appellant Hiroo Bai by any of the prosecution witnesses to have assaulted the deceased or injured person. Even it has come in the testimony of PW-10 that she was not even present on the spot.
 - name of appellant No.2 did not figure in FIR and he has been wrongly made accused in this case by showing him as 'Mahendra alias Mahesh Sahu'.
 - on hearing the shout "thief thief" in the night of occurrence, numbers of villagers gathered on the spot and thinking that the deceased and other injured persons were thieves attacked on them and injured

them. Thus it is clear that the incident had taken place as a result of misunderstanding and therefore the appellants cannot be convicted under Section 302 with the aid of Section 149 of IPC. The appellants are in jail for the last more than seven years, therefore, after converting their conviction into lesser offence, they be set free forthwith.

8. Supporting the impugned judgment, it has been argued by the State Counsel that;

- all the eyewitnesses, out of which three are injured witnesses, are natural witnesses and the question of planting them or fabricating the case of prosecution does not arise. These witnesses have identified the accused/appellants in the Court and stated on oath that they have actively participated in the crime in question. Therefore, conviction of accused/appellants with the aid of Section 149 of IPC is in accordance with law.
- TIP proceeding is merely a corroborative in nature and the purpose behind TIP is to give direction to the investigation. Thus, non-conduction of TIP parade would not be fatal to the case of prosecution.
- case of the appellants does not fall under any exception to Section 300 of IPC and therefore it cannot be converted for any lesser offence.
- if accused No.12 has wrongly been arrayed as accused, he ought to have objected the same at the initial stage, but he failed to do so and now at the appellate stage he cannot be permitted to raise such objection.

9. Bhagwati Bai (PW-1) is the lodger of FIR (Ex.P-1). He is also sister of the deceased. She has deposed that she knew all the accused persons present in the Court and also other accused persons who have not been arrested yet. She has further deposed that on the date of occurrence she

along with her husband Gaurishankar had gone to village Dunda to meet her brother Suresh (deceased). When they reached near the boring of village, she found her brother Suresh lying there. She along with others took her brother to his house. She has further stated that all of a sudden, accused/appellant Chhabiram, Bhagwati, Santram, Anant, Ramu, Khilawan and his brother, whose name is not known to her, came there and brought all of them near the canal. Accused Chhabi started shouting 'thief - thief' and thereafter all the accused persons attacked and assaulted her, Suresh, Kumari Bai, Bindu & Santosh. Accused Chhabiram caused injury on the head of deceased by stone. Santram & Khilawan were carrying knife and they caused injuries to deceased by the same. Accused Anant, who was carrying club in his hand, also caused injury to the deceased. Accused Khilawan caused injury on the head of Kumari Bai by stone. Chhabiram assaulted her by belt. She has further stated that wives of Chhabiram, Khilawan & Bhagwati had snatched her earrings and mangasutra. They have also snatched mobile and necklace of her sister Kumari Bai. After tying a rope around the neck of Suresh they toed him to the motorcycle and dragged him upto the pond. She somehow managed to flee from there and straight-away went to the police station and lodged the report. She has further stated that when accused Chhabiram was about to cause injury to her sister Kumari Bai by stone, the same was snatched by one police person namely Mahesh. Thereafter all the accused persons fled from there. She has further deposed that accused Santram, Khilawan, Chhabi, Anant made Kumari Bai naked by removing her clothes. Nothing could be elicited in the lengthy cross-examination of this witness which makes her testimony unreliable or untrustworthy.

10. Jagatram Yadav (PW-2) is the witness of seizure memo Ex.P-4.

Ravishankar (PW-3) is the witness of inquest Ex.P-3.

11. Ashwini Sahu (PW-4), Rakesh Sahu (PW-5), Devnarayan Sahu (PW-6) & Yashoda Bai (PW-8) are other eyewitnesses of the incident but they did not support the prosecution case and turned hostile.
12. Santosh Sahu (PW-8), elder brother of deceased, has stated that on the date of occurrence, he along with his elder sister and brother-in-law had gone to village Dunda and on reaching there, he found his younger brother Suresh (deceased) lying unconscious on the road. He has further stated that when they were taking the deceased with them to their house situate at Tikrapara, Raipur on the way the accused persons attacked and assaulted them. He received injury on his face. Accused persons assaulted him by club & belt. On being asked, this witness has pointed towards accused Santram as the person who caused injuries to him by belt & club. This witness further pointed towards accused Mahendra Kumar as the one who had assaulted the deceased by stone. In the cross-examination this witness has admitted that he had not disclosed the names of all the persons in his statement recorded by the police.
13. Gaurishankar Sahu (PW-9), husband of PW-1 and brother-in-law of the deceased, is another eyewitness of the incident. He has deposed that he along with his wife (PW-1) had gone to village Dunda to meet the deceased. On reaching there, they found the deceased lying beside the road in unconscious condition. They brought back the deceased to home where on regaining consciousness, he informed them names of accused Chhabilal, Santram, Ramu & others as the persons who assaulted him. He has further deposed that when they were going to Raipur along with deceased, on the way the accused persons attacked & assaulted them. This witness had identified accused Mahendra Singh, Khilawan, Bhagwati, Lalaram, Chhabiram & Tilak in the Court by touching them.
14. Kumari Bai (PW-10), sister of deceased, Bindubai (PW-12), sister-in-law

of deceased, are other two who have also witnessed the incident. While supporting the prosecution case, these witnesses have deposed about the occurrence more or less in almost similar terms as has been stated by PW-1, PW-8 & PW-9. According to these witnesses, when they were going to Raipur along with the deceased, the accused persons encircled them and beat them.

According to Kumari Bai (PW-10), the accused persons present in the Court were the assailants, however, she denies the presence of lady accused at the time of occurrence. She pointed out towards one accused i.e. Mahendra @ Mahesh Sahu, and told that he is the person who caused stone injury to the deceased. While pointing towards accused Chhabiram, Dhanriam & Bhagwati, she told that they assaulted the deceased with club. She pointed out towards accused Chhabiram as the person who had assaulted on her head by club. She has further stated that accused persons have not only undressed her but also inserted hands in her private part.

According to Bindu Sahu (PW-12), when they were going in auto-rickshaw to Raipur, one lady shouted do not allow them to go else they would lodge report in the police and hearing this, many persons came there and started beating them. She has further stated that after tying a rope around the neck of Suresh (deceased) they toed him to the motorcycle. She has admitted that she does not know names of the assailants but recognized them by face. Thereafter she has identified accused persons namely Bhagwati, Raju alias Manharan, Laxminarayan, Tilak, Lala alias Ramcharan, Chhabiram, Khilawan & Mahendra in the Court, that is to say, points to him in the dock and states that they were the assailants.

15. Ravi Chandra (PW-13) & Kuldeep Ram Netam (PW-15) are the police

personnel who helped in the initial investigation.

16. Dr. (Smt.) A. Bose (PW-14) is the person who examined injuries of Santosh Sahu (PW-8) vide Ex.P-18. Dr. Rajesh Suryavanshi (PW-16) is the person who examined injuries of Kumari Bai (PW-10) vide Ex.P-22 & Ex.P-23. Ramkrishna Dubey (PW-17) is the investigating officer who has duly supported the prosecution case. Dr. Tarun Kumar Dhruv (PW-18) is the doctor who examined injuries of Bhagwati Bai (PW-1) vide Ex.P-46.
17. Dr. Shiv Narayan Manjhi (PW-19) is the doctor who conducted post-mortem examination over the body of deceased vide Ex.P-47 and noticed the injuries as described above. He has opined that cause of death of the deceased was due to haemorrhage and shock as a result of multiple injuries to the deceased and death was homicidal in nature. Duration of injuries was within 12 hours prior to death and duration of death was 24 hours prior to the post-mortem examination. He has further opined that the injuries caused to the deceased were sufficient to cause his death in the ordinary course of nature.
18. In the present case, conviction is substantially based on the ground of formation of unlawful assembly having its common object of commission of culpable homicide amounting to murder of Suresh and injuries to other persons.
19. As regards the complicity of accused/appellants in the crime in question, the prosecution has examined Bhagwati (PW-1), Santosh Sahu (PW-8), Gouri Shankar (PW-9), Kumari Bai (PW-10) & Bindu Bai (PW-12) as having witnessed the occurrence. Bhagwati (PW-1), Santosh Sahu (PW-9), Kumari Bai (PW-10) are sisters & brother, whereas Gouri Shankar (PW-9) & Bindu Bai (PW-12) are his brother-in-law & sister-in-law.

Bhagwati Bai (PW-1) was also injured during the occurrence and according to him, on the occurrence day i.e. 19.10.2009 at about 5-6 in

the evening when she along with her husband (PW-9) reached village Dunda to meet her brother (deceased), they found her lying beside the road in unconscious state. They took the deceased to his home. Accused Chhabiram, Bhagwati, Santram, Anant,Ramu, Khilawan & his brother whose name is not known to her, entered the house and forcibly took them towards the canal where accused Chhabi raised shout "thief-thief" and thereafter all the accused persons beat them. Thereafter this witness stated as to the manner in which the incident took place and they were subjected to assault by the accused persons. This witness sustained two abrasion injuries on her person as a result of attacks made by the accused on her at the time of occurrence. She has also identified the accused persons in the Court as the persons who caused injuries to the deceased and injured persons.

Testimony of Bhagwati (PW-1) to the extent of attack and assault by accused/appellants gets corroboration from the statements of Santosh Sahu (PW-8) & Kumari Bai (PW-10), other injured eyewitnesses of the incident, who have deposed in the Court as to the manner in which they were assaulted by the appellants. According to these witness, while they were going to Raipur in auto-rickshaw, the accused persons attacked and assaulted the deceased as a result of which he died. These witnesses have also identified the accused persons in the Court as the persons who caused injuries to the deceased and injured persons. Evidence of injured eyewitnesses finds due support from other eyewitnesses i.e. Gouri Shankar (PW-9), & Bindu Bai (PW-12) and the medical evidence also. Further, FSL report (Ex.P-41) shows that blood stains were found on the articles seized from accused Tilak & Chhabiram and they failed to offer any explanation as to how the articles seized at their instance were found to be bloodstained. This apart, no previous enmity has been alleged

between the accused persons and the eyewitnesses to give suspicion to false implication of accused by them.

It appears that there is some contradiction in the evidence of PW-1 and other eyewitnesses with respect to genesis of incident, but the main substratum of testimony of PW-1, that is to say, it is the accused/appellants who attacked and assaulted her and the deceased, has remained unshaken. It is now by well settled law that it may be in given case, a particular statement of the witnesses or the testimony of the witnesses may not be in conformity with the statement of other eyewitnesses or that there is contradiction in the cross-examination to a particular portion of the testimony but thereby it cannot be said that whole testimony of the witness is to be discarded unless the Court finds that the witness has no sanctity for the truth and is stating falsehood before the Court. Thus, un-contradictory testimony of PW-1 to the extent of attacking and assaulting the deceased & injured eyewitnesses by the accused/appellants can be relied upon and it would not be judicious to reject her statement on that count. Even on ignoring the testimony of Bhagwati Bai (PW-1), the testimonial assertions of other eyewitnesses i.e. Santosh Sahu (PW-8), Gouri Shankar (PW-9), Kumari Bai (PW-10) & Bindu Bai (PW-12) proved to the hilt that the assailants of deceased Suresh were the accused/appellants and none else.

20. As regards the submission of learned counsel for accused/ appellants that even though accused/appellants have been identified by the eyewitnesses in the Court as the perpetrators of offence in question, the same cannot be relied against them since no formal TIP was got conducted by the investigating officer at the time of investigation. It is true that formal test identification parade was not got conducted by the investigating officer and had it been done by him, it would have further strengthened the

prosecution case, but its absence in the facts and circumstances of the case cannot have the effect of proper identification of accused persons by witnesses in the court. In the case in hand, Bhagwati Bai (PW-1), lodger of FIR, had disclosed the names of assailants in the promptly lodged FIR (Ex.P-1). Accused/appellants were also named in her statement recorded by the police under Section 161 CrPC. In the Court, she identified the accused involved in the incident by saying that “the accused persons present in Court today are the same persons who were assaulting deceased Suresh and others”. Other injured witnesses have also duly identified their assailant who are none but amongst the persons named in the FIR. No anomaly has been pointed out by the defence in the identification in Court. It is settled legal preposition that identification of the accused by witness in the court during the course of trial while his deposition is being recorded is substantive piece of evidence whereas holding of TIP during the course of investigation is mere corroborative piece of evidence. The defence cannot be allowed to dislodge the substance piece of evidence on a plea that the corroboration piece of evidence which could have been arranged is not available. Thus, non-conducting of TIP is not fatal to the prosecution case. Moreover, it is further settled legal preposition that irregularity or omission on the part of investigating officer during the course of investigation should not be allowed to make a tool to dislodge the otherwise believe-worthy prosecution story.

21. So far as the submission of learned counsel for accused/appellant Mahendra Sahu in Criminal Appeal No.194/2012 that his name is 'Mahendra Sahu' and not “Mahesh Sahu' and he has been wrongly prosecuted by the police by showing him as 'Mahendra alias Mahesh Sahu' is concerned, from perusal of the record, it is clear that when this

accused was heard at the time of framing of charge, no such objection or protest was raised by him that he is 'Mahendra Sahu' and not 'Mahesh alias Mahendra Sahu'. On the contrary, he appended his signature on the order framing charge as "Mahesh alias Mahendra". Furthermore, any application for discharge on the aforesaid ground has also not been filed by this appellant before or at the time of framing charge. Most importantly, this appellant was duly identified by the injured eyewitnesses i.e. PW-8, PW-9, PW-10 in the Court and a specific overtact was attributed to this appellant by them that he is the person who caused stone injury on the head of deceased. In this situation, the discrepancy, as tried to be projected by the defence, in the FIR is of no help to this appellant and accordingly, the argument in this regard is rejected.

22. As far as involvement of accused/appellant Hiroo Bai in Criminal Appeal No.197/2012 is concerned, though the eyewitnesses to the incident have attributed specific overtact to each of the appellants, but they did not attribute any overtact against this appellant. Even one of the eyewitnesses had denied presence of this appellant on the spot at the relevant point of time. In absence of any overtact against this appellant, she is entitled for the benefit of doubt since the death was caused due to the assaults made by all the accused/appellants collectively.

23. According to Kumari Bai (PW-10), all the accused persons were pressing her breast. Accused/appellant Raju tore her saree and inserted his finger in her private parts. This has been corroborated by Bhagwati Bai (PW-1) & Gaurishankar (PW-9). Thus, it is clear that there was intentional assault or use of criminal force to Kumari Bai (PW-10) by the accused/appellants to outrage her modesty. Being so, the offence under Section 354 of IPC is proved against the accused/appellants.

24. For the foregoing discussion, we are of the considered view, that the prosecution has successfully proved the complicity of all the accused/appellants, except accused/appellant Hiroo Bai, in the crime in question.
25. Accused/appellants have been sentenced for life under Section 302 of IPC with the aid of Section 149 of IPC. Section 149 of IPC says that every member of an unlawful assembly at the time of committing the offence is guilty of that offence. This section creates a specific and distinct offence by creating constructive or obligatory liability of the members of unlawful assembly for the unlawful acts committed pursuant to the common object. For proving common object the prosecution has to establish that the accused persons were having common object as laid down under Section 141 of IPC. The prosecution must show that the illegal act was committed by a member of assembly which had common object. In the case in hand, the common object for which the accused/appellants have been convicted is of murdering Suresh.
26. From the entire facts of the case, it appears that the common object of the appellants was to catch and teach lesson to the thieves. No evidence has come that they were having common object of murdering the deceased. As per prosecution case, as many as 19 accused persons had attacked the complainant party. Post-mortem report of the deceased reveals that he received abrasions & contusions caused by hard & blunt object although sufficient to cause his death in the ordinary course of nature. Further, MLC reports of injured persons show the nature of injuries as 'simple'. Had there been any common object to cause murder of the deceased or any member of complainant side, there would have been many injuries on deceased as well as other injured persons on the vital parts of their body. Evidence on record further goes to show that there is

no evidence of motive or previous enmity between the complainant party and the accused party. The available evidence would further show that it was a case of sudden quarrel and as such there was no premeditation on the part of the appellants. In these circumstances, in our opinion, the charge under Section 302/149 of IPC against the accused/appellants is not proved, however, looking to the nature of injuries sustained by the deceased, which were sufficient to cause his death, and manner in which the deceased was assaulted, it can be safely held that while inflicting injuries on the deceased, the appellants had the intention of causing such injuries as would result in his death but had no knowledge that such injuries were likely to cause his death and being so, the accused/appellants cannot escape their conviction under Section 304 Part I read with Section 149 of IPC. In these circumstances, the accused/appellants could, at the most, can be held guilty under Section 304 Part-I/149 of IPC and not under Section 302/149 of IPC as has been done by the trial Court.

27. From the facts and circumstances of the instant case, as discussed herein above, commissioning of offence in question by the accused/appellants or their participation in unlawful assembly using force or violence as a member of unlawful assembly is proved beyond reasonable doubt. So, we are of the opinion that the learned trial Judge was right in convicting the appellants for commissioning of offence under Section 147 of I.P.C.

28. In the result;-

- Criminal Appeal No.197/2012 preferred on behalf of accused/appellant Heero Bai Sahu is allowed. Impugned judgment so far as it relates to convicting and sentencing her under Sections 147, 302/149, 323/149 & 354/149 of the Indian Penal Code is hereby set aside. She is acquitted of those charges by extending

her benefit of doubt. She is reported to be on bail. Her bail bonds stand discharged.

- Other criminal appeals are partly allowed. While maintaining conviction and sentence of the appellants under Sections 147, 323/149 & 354/149 of the Indian Penal Code, their conviction under Section 302/149 is altered to Section 304 Part-I r/w Section 149 of IPC and they are sentenced to undergo RI for 10 years with fine of Rs.3,000/- each, in addition to the fine already imposed by the trial Court vide impugned judgment, and in default of payment of fine to further undergo additional R.I. for 6 months. Fine amount, if deposited, by accused/appellants shall be paid to the widow of deceased Suresh, as compensation under Section 357 of CrPC, by the trial Court after due verification. Since the appellants in these criminal appeals are already in jail, no further order regarding their surrender etc. is needed.

(Pritinker Diwaker)
Judge

(Sanjay Agrawal)
Judge

roshan/-