

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 203 of 2014**

1. Subhash Verma S/o. Towaram Verma Aged About 50 Years R/o. Vill. Anya Nawagaon, P.S. Dongargarh, Civil And Rev. Distt. Rajnandgaon, C.G.
2. Manish Kumar Verma S/o. Late Jagnuram Verma Aged About 33 Years R/o. Vill. Anya Nawagaon, P.S. Dongargarh, Civil And Rev. Distt. Rajnandgaon, C.G.
3. Laleshwar Verma S/o. Subhash Verma Aged About 28 Years R/o. Vill. Anya Nawagaon, P.S. Dongargarh, Civil And Rev. Distt. Rajnandgaon, C.G.
4. Panna Lal Verma S/o. Pitambar Verma Aged About 37 Years R/o. Vill. Anya Nawagaon, P.S. Dongargarh, Civil And Rev. Distt. Rajnandgaon, C.G.
5. Umlal Verma S/o. Manrakhan Verma Aged About 42 Years R/o. Vill. Anya Nawagaon, P.S. Dongargarh, Civil And Rev. Distt. Rajnandgaon, C.G.
6. Sudama Ram Verma S/o. Jangalu Ram Verma Aged About 38 Years R/o. Vill. Anya Nawagaon, P.S. Dongargarh, Civil And Rev. Distt. Rajnandgaon, C.G.
7. Chatur Verma S/o. Kushal Verma Aged About 35 Years R/o. Vill. Anya Nawagaon, P.S. Dongargarh, Civil And Rev. Distt. Rajnandgaon, C.G.
8. Goverdhan Verma S/o. Jamalu Verma Aged About 32 Years R/o. Vill. Anya Nawagaon, P.S. Dongargarh, Civil And Rev. Distt. Rajnandgaon, C.G.

---- Appellants**Versus**

- State Of Chhattisgarh Through The District Magistrate Rajnandgaon C.G.

---- Respondent**&****CRA No. 260 of 2014**

- Mahendra Vishwakarma S/o. Late Shri Bisauha Ram Vishwakarma Aged About 22 Years R/o. Vill.-Anyanawagaon, P.S. And Tah. Dongargarh, Session Division And Rev. Distt. Rajnandgaon C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through The District Magistrate Rajnandgaon C.G.

---- Respondent

CRA No. 276 of 2014

1. Onkar Verma S/o. Late Gopal Verma Aged About 63 Years R/o. Vill.Anya Nawagaon, P.S. Dongargarh, Distt. Rajnangdaon C.G.
2. Shiv Kumar Verma S/o. Omkar Verma Aged About 41 Years R/o. Vill.-Anya Nawagaon, P.S. Dongargarh, Distt. Rajnangdaon C.G.

---- Appellants**Versus**

- State Of Chhattisgarh Through P.S. Dongargarh, Distt. Rajnandgaon C.G.

---- Respondent

For respective Appellants : Shri PKC Tiwari, Senior Advocate with Shri Shashi Bhushan Tiwari, Shri C.K.Kesharwani and Shri Shyam Sundarlal Tekchandani, Advocates

For State : Shri Anand Verma, Dy.G.A.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board****10/04/2019****Per Manindra Mohan Shrivastava, J.**

These appeals arise out of common judgment of conviction and order of sentence dated 06/02/2014 passed by the learned Additional Sessions Judge, Camp Court, Dongargarh, District - Rajnandgaon (CG) in Sessions Trial No.17/2012 whereby and whereunder, the appellants have been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 147 of IPC	R.I. for 6 months and fine of Rs.100/- (in default of payment of fine, 2 months additional R.I.)
2.	U/s 148 of IPC	R.I. for 1 year and fine of Rs.100/- (in default of payment of fine, 2 months additional R.I.)

3.	U/s 452 of IPC	R.I. for 1½ years and fine of Rs.100/- (in default of payment of fine, 2 months additional R.I.)
4.	U/s 302 R/W Section 149 of IPC	Life imprisonment and fine of Rs.1,000/- (in default of payment of fine, 3 years additional R.I.)
All the sentences to run concurrently		

2. The prosecution case, as is unfolded from the impugned judgment and the records of the case is that an incident of assault happened in the night between 11 and 12 O'clock in village – Anya Nawagaon and the police, upon receiving information reached at the spot. A dehati morgue in Ex.P/12 was recorded at the spot where the dead body was lying. This was at the instance of Shivratri Verma (PW6). 15 minutes thereafter, a spot FIR was also recorded in Ex.P/13. In the morgue intimation as well as in the FIR, it was recorded that at about 11:30 in the night, when the informant was taking rest in the house of her brother – Ramkumar along with his sister-in-law – Sonam Verma and niece – Devki Verma as also with Lekhram Sahu (the deceased), the appellants arrived at the spot, armed with clubs, broke open the door, entered the house and opened assault. The informant and her sister-in-law, who tried to obstruct their entry, were caught hold of and kept aside and thereafter, Lekhram (the deceased) was assaulted, due to which, Lekhram died at the spot. Upon taking morgue and *nalishi* (FIR), at the spot, the police officer - Girish Dhurwe (PW10) prepared inquest over the dead body in Ex.P/3 in the presence of the witnesses. The dead body of Lekhram was sent for post mortem which was conducted by Dr. B.K.Chandravanshi who found as many as nine injuries. Noting a crack in the parieto occipital bone and fracture of mandible bone, the doctor opined that the cause of death was serious injury leading to coma and death. He prepared post mortem report in Ex.P/8. The police, thereafter, carried out investigation and according to the prosecution, the accused were taken into custody and their respective memoranda and on that basis, it is said that the weapons like club were

seized. Upon completion of usual investigation, charge sheet was filed. Along with present appellants, four other accused (now acquitted) were also charge- sheeted. After framing of charges, trial was held, in which, the prosecution came out with the eye witnesses – Shivratri Verma (PW6) and Sonam Verma (PW7). The prosecution also examined one Sukaloram (PW9). Relying mainly on the eye witness account of the two witnesses, the evidence of Sukaloram, homicidal death, multiple injuries caused to the deceased and background of the motive, learned Trial Court held the appellants guilty of commission of offence. Four other accused were acquitted of charges under Section 302 IPC though convicted on other lesser charges.

3. Learned senior counsel, attacking the judgment of conviction, argued that the evidence of the two eye witnesses is not reliable and liable to be discarded. It is argued that the learned Trial Court has found that the other four accused were not guilty of commission of offence which shows that the eye witnesses - Shivratri Verma (PW6) and Sonam Verma (PW7) are not reliable and therefore, their evidence ought to be discarded in *toto* as against present appellants also. He would argue that as far as appellant – Mahendra Vishwakarma is concerned, his name was not stated at the time when morgue report was taken, though in that report, complete prosecution story and persons who had played role in assaulting the deceased were mentioned. Therefore, as far as Mahendra Vishwakarma is concerned, it is a case of false implication. Next submission of learned counsel for the appellant is that the evidence of Shivratri Verma (PW6) is liable to be discarded because in her evidence, she has stated that she was present at the time of preparation of inquest but in the inquest report (Ex.P/3), there is no mention that she had disclosed to the investigating officer, at the time of preparation of inquest, regarding involvement of the present appellants in the alleged commission of offence. She has gone to the extent of stating that even the accused were also present. Therefore, the prosecution case is based only on afterthought allegations. It is next contended that this witness has been confronted

with the diary statement and number of contradictions and omissions have been elicited with regard to minor injuries, caused by accused persons who entered and said to have assaulted the deceased. These contradictions and omissions with regard to the manner of commission of offence, renders highly doubtful, the testimony of Shivratri Verma (PW6). She has not clearly stated as to which of the appellants assaulted which part of the body of the deceased and with what weapon. An omnibus statement of involvement has been given. The next submission is that according to this witness as also the investigating officer-Girish Dhurwe (PW10), the incident is said to be informed over mobile phone to the police parties in the police station – Dongargarh but in the *rojnamcha sanha* (Ex.D/5), there is no specific information with regard to the manner in which the incident happened or the persons involved in the alleged commission of offence. This further renders doubtful the evidence of Shivratri Verma (PW6) that initially, soon after the incident, the names of the appellants were not disclosed by her, either to the police while informing over mobile phone nor any inquest was prepared and it is only that later on, on suspicion, the appellants' names have been stated en bloc with a view to falsely implicate them. Learned senior counsel would also highlight that the evidence of Shivratri Verma (PW6) and Sonam Verma (PW7) and Ramkumar Verma (PW8) prove that initially, the police officials of another police station – Lalbagh had arrived at the spot and some kind of statements were also recorded by them. But then, the prosecution has failed to produce before the Court, those statements. Non-production of those records, statements or proceedings drawn by the police officers of police station – Lalbagh and there being no explanation for non-production, an adverse inference is liable to be drawn against the prosecution as those records would falsify the case of the prosecution.

4. As far as other eye witness – Sonam Verma (PW7) is concerned, it is argued that she has admitted that she is not the resident of village – Anya Nawagaon. She stated that she usually resides at Rajnandgaon. Moreover, this witness having stated

that she does not know the accused by name, failure on the part of the prosecution to lead any evidence of identification parade prior to examination of this witness, further renders prosecution story doubtful, particularly when there is no clear evidence of identification and evidence is quite omnibus in nature. Further, this witness has not given any specific detail of the incident with regard to specific overt act of appellants nor does she state as to which part of the body of the deceased was assaulted by which of the appellants and by what weapon. There are general allegations.

The other submission is that Ramkumar Verma (PW8)-husband of Sonam Verma has not supported the evidence of Shivratri Verma (PW6), his sister, on material aspects regarding he having been informed regarding the incident and involvement of the present appellants. It is further argued that the prosecution has not clearly come out with clear and coherent evidence with regard to the exact time of preparation of inquest over dead body, said to be prepared in Ex.P/3 by the investigating officer. Even according to the investigating officer, as has been elicited in cross-examination, inquest was prepared at around 1 a.m. in the night. If that be so, it is contended, non-disclosure of names of the appellants by Shivratri Verma (PW6), who was present at the time of inquest, makes the prosecution case extremely doubtful as far as involvement of the present appellants is concerned. It has also been argued that though according to Shivratri Verma (PW6) and Sonam Verma (PW7), the so called eye witnesses, daughter of Sonam Verma (PW7) namely Devki was also present at the spot, but the prosecution has not examined Devki, who was a child witness and would have come out with an independent version of the incident. For this reason also, the prosecution case is liable to be disbelieved. Last, but not the least, the submission with regard to recovery part is advanced. The submission is that when the recovery of alleged weapon itself has been found doubtful by the learned Trial Court, the appellants' conviction is unsustainable in law.

5. While adopting the common argument made by learned senior counsel,

learned counsel appearing for other accused argued that in the cross-examination of Shivratri Verma (PW6) and Sonam Verma (PW7), it has been elicited and doubt has been successfully created that there was no proper light at the place of incident. This is also corroborated from the evidence of Shivratri Verma (PW6). Shivratri Verma (PW6) and other witnesses have admitted that she ordinarily resides with the deceased – Lekhram in a separate house whereas her brother – Ramkumar with his wife and children was residing in another house. Therefore, the mention of house of Ramkumar as the place of incident, also makes the prosecution case extremely doubtful. Learned counsel for the parties also point out that while from the dead body, only underwear is said to be recovered, Sonam Verma (PW7) stated that at the time, when the deceased was being assaulted and died, he was wearing a full pant. In addition, the *plea of alibi* has also been taken in respect of some of the appellants namely Subhash Verma, Goverdhan Verma, Sudama Ram Verma, Manish, Mahendra, Girdhar, Shiv Kumar Verma and Omkar Verma that on the date of incident, they were sleeping in their respective houses and were not present at the spot.

It has also been argued that in the requisition memo sent by the police officer for conducting post mortem, there is no specific detail of the incident or name of many of the accused.

6. On the other hand, learned State counsel supports the impugned judgment of conviction and order of sentence and argued that the prosecution case is based on clinching evidence of prompt morgue and FIR at the spot, immediately after the incident. The two eye witnesses of the case, Shivratri Verma (PW6) and Sonam Verma (PW7) have clearly stated regarding alleged incident and except minor contradictions and omissions, nothing could be elicited to doubt their testimony with regard to arrival of the appellants in the midnight in the house where Shivratri Verma (PW6) and Sonam Verma (PW7) were taking rest / sleeping and thereafter, assaulted

Lekhram till his death. He would argue that amongst various appellants – Shivkumar Verma is the brother and Omkar Verma is the father and there is no reason why Shivratri Verma (PW6), the eye witness, would falsely implicate her own father in the incident. It is further argued that Sonam Verma (PW7) is the wife of Ramkumar Verma (PW8) and she is the daughter-in-law of Omkar Verma and sister-in-law of Shivkumar Verma. Both these eye witnesses are related to Shivkumar Verma and Omkar Verma. Their version is natural and inspires confidence. According to him, the witnesses have clearly stated regarding availability of light at the spot. It is argued that one of the prosecution witnesses i.e. Sukaloram (PW9) has stated regarding an incident of assault given on him by some of the appellants when they insisted him to call Lekhram. But when Lekhram did not come, he was again assaulted. Lekhram was in his house along with Shivratri Verma (PW6) and Sonam Verma (PW7) where he was assaulted and he sustained multiple injuries on various parts of the body including vital parts leading to coma and death. Therefore, their conviction does not warrant any interference.

7. We have heard learned counsel for the parties and perused the records.

8. Recording of morgue in Ex.P/12 and *nalishi* in Ex.P/13 at the spot between 2:30 and 2:45 a.m. in the midnight, by Shivratri Verma (PW6) has been proved from her evidence and that of the investigating officer (PW10). Shivratri Verma has stated that after the incident, she gave *merg intimation* in Ex.P/12 and has proved her signature. She has further stated that *dehati nalishi* was also reported which was recorded in Ex.P/13 and has also proved her signature. The evidence of the police officer proves that after receiving information regarding the incident of murder in village – Anya Nawagaon, he proceeded to the spot, reached there and then he recorded at the spot, a *dehati morgue* (spot morgue intimation) and *dehati nalishi* (sport FIR). These two documents show that the morgue and *dehati nalishi* were recorded almost at the same time with a gap of about 15 minutes i.e. at 2:30 and 2:45

a.m. in the night. The time of incident of assault is said to be between 11:30 to 12:30 in the night. This means that immediately after the incident, morgue and *nalishi* was recorded at the spot itself by the police at the instance of Shivratri Verma.

9. Homicidal death of Lekhram was not substantially disputed in view of unimpeachable medical evidence and post mortem report, nature and extent of injury and cause of death as deposed by Dr. B.K.Chandrawanshi (PW4) who has stated that upon examination of the dead body, following injuries were found -

- “1. एक कटा फटा घाव 6 गुणा 1 से.मी. सिर के बाये पीछे भाग पर
2. कटा फटा घाव 3 गुणा 1 से.मी. जो सिर के बाये भाग पर
3. कटा फटा घाव 3 गुणा 2 से.मी. नाक में।
4. कटा फटा घाव 3 गुणा 1 से.मी. बाये आंख के निचले भाग पर।
5. कटा फटा घाव 7 गुणा 3 से.मी. ठूड्डी के मध्य में।
6. कटा फटा घाव 5 गुणा 1 से.मी. बाये गाल पर
7. कटा फटा घाव 2 गुणा 1 से.मी. दाये आंख के निचले भाग पर।
8. कन्ट्यूजन 10 गुणा 4 से.मी. पीठ में।
9. खून का थक्का 6 गुणा 3 से.मी. मस्तिष्क में बाये पीछे तरफ।”

He has further deposed that there was a crack found in the parieto occipital bone in the head as also fracture in the middle part of mandible bone. The opinion that the cause of death is due to grievous injuries to the brain leading to hemorrhage and shock resulting in death remains unimpeached in his detailed cross-examination. The injuries are also reported to be not only multiple, as we see, the injuries on the vital part of the head and all around facial part. All these injuries were confined to the head and face of the deceased, except one contusion found on the back. Therefore, the evidence of the doctor proves that the deceased died of assault given on him and was clearly homicidal in nature.

10. The conviction of the appellants is mainly based on two pillars in the form of eye witness account given by Shivratri Verma (PW6) and Sonam Verma (PW7). It is

extremely relevant to note here that out of eleven, two accused namely Omkar Verma and Shiv Kumar Verma are closely related to these two witnesses. While Shivratri Verma is the daughter of Omkar Verma, Sonam Verma (PW7) is the daughter-in-law. The other accused / appellant – Shivkumar is also very closely related to these two witnesses. He is the brother of Shivratri Verma and brother-in-law of Sonam Verma. Sonam Verma is the wife of Ramkumar Verma (PW8) who is the son of Omkar Verma and real brother of Shivkumar Verma. We mention this because present is a case where two witnesses are directly related to two of the appellants and they have been involved in the alleged commission of offence as the assailants who assaulted and killed Lekhram. Shivratri Verma (PW6) has stated in her evidence that on 01/07/2012, she was staying in the house of her brother – Ramkumar Verma and at that time, Panch – Manish Verma along with all other accused, broke open the door and forcibly entered. Lekhram was dragged out by the male members of the assembly and was assaulted near the door. She deposed that as far as female members of unlawful assembly are concerned, they caught hold of her and her sister-in-law and all the appellants continued to assault Lekhram until he died at the spot. Thereafter, she informed police station – Dongargarh on mobile and also her brother – Ramkumar Verma. She has stated that Lekhram was assaulted by Manish Verma, Shivkumar Verma, Subhash Verma, Upkar Verma Laleswar, Mahendra Vishwakarma, Sudama Verma, Goverdhan Verma, Kumbhlal Verma and Chatur Verma. Name of four lady members of the assembly is not being mentioned as their appeal is not before us. This witness has been subjected to a very detailed cross-examination. Her evidence is assailed mainly on the ground that firstly, at the time of preparation of inquest, she did not say anything nor in the inquest (Ex.P/3), there was any mention regarding involvement of present appellants and there are material contradictions and omissions in her Court statement when confronted with her diary statement which are at variance. The manner in which she stated regarding happening of the incident of assault, though Rojnamcha Sanha (Ex.D/5) does not contain specific details of the

incident though she claims to have informed the incident to the police and that the statement recorded by the police officers of police station – Lalbagh who had earlier arrived at the spot, has not been produced before the Court.

11. As to what was the time of preparation of inquest, there is variance in the evidence led by the prosecution. Therefore, we would examine the material on record as to which version appears to be probable regarding preparation of Ex.P/3 is concerned.

12. In this regard, we find that out of five witnesses of inquest, only two of them, Devsingh (PW2) and Ramkumar Verma (PW8) have been examined. It is relevant to note that Shivratri Verma is not one of the witnesses of inquest. According to Devsingh (PW2), the kotwar of the village, he was called by the police people at about 3 to 4 a.m. and he went to the spot. The evidence of Shivratri Verma that she is not the witness of inquest, states that the inquest proceedings were drawn early in the morning. We also find that in Ex.D/5 of the police station - Dongargarh and the evidence of investigating officer (PW10) shows that information regarding the incident was received in the night and the police party had left the police station at about 2 a.m. in the night. In the inquest (Ex.P/3), the time of incident is said to be at 1 a.m. As against this coherent statement, report shows that inquest was prepared sometime early in the morning. There is elicitation in the cross-examination of investigating officer (PW10) that inquest was prepared at about 1 a.m. in the night. In our opinion, against overwhelming evidence that inquest was prepared early in the morning as stated by Devsingh (PW2) - the witness of inquest and that the police officer had left the police station at about 2 a.m. as evidenced from the document in writing i.e. Ex.D/5 as also taking into consideration that the incident itself is said to be happened between 11:30 to 12 in the night, it is wholly improbable that the inquest was prepared at about 1 a.m. when the police party itself left the place at about 2

a.m. in the night. Therefore, aberration in the statement of the investigating officer must yield to other evidence on record that the time of preparation of record earlier in the memorandum, in any case, after 4 a.m., as stated by independent witness – Devsingh (PW2) who is the Kotwar and has stated that he was called at about 3 to 4 a.m., whereafter, he proceeded to the spot and inquest was prepared in his presence and signature was obtained in the said inquest.

If that be so, recording of morgue intimation and FIR between 2:30 to 2:45 a.m. is much prior to the preparation of inquest report. Names of the accused were disclosed by Shivratri Verma much prior to preparation of inquest. Therefore, there is no reason for us to doubt the contents of the morgue (Ex.P/12) and *dehati nalishi* (Ex.P/13) recorded immediately after the incident.

Even if we assume for the sake of arguments that the inquest was prepared immediately before that, say at about 1 a.m. in the night, time lag between the inquest, morgue and FIR is not so much, so as to render the prosecution story doubtful. It is to be noted that Shivratri Verma (PW6) was not witness to the inquest. Therefore, if the wholesome view with regard to preparation of inquest is taken into consideration, in juxtaposition with the time of FIR, much credence cannot be given to the contradictions and omissions so as to dislodge the statement of Shivratri Verma.

13. It has also been stated that in the requisition memo sent by the police for conducting post mortem (Ex.P/8), details of the incident were not given but only name of the accused were mentioned as “resident of Village – Anya Nawagaon”. The purpose and object of sending requisition memo was not the same as recording FIR. Such memos are only sent for the purpose of seeking report of post mortem and not to give details of the whole incident as to how it happened, where happened and who were involved. Therefore, that argument does not hold water.

14. We find that in the cross-examination of Shivratri Verma (PW6), she has been

confronted with her own diary statement and certain contradictions and omissions have been elicited particularly with regard to the manner of assault. What has been elicited is that there is some contradictions with regard to whether the assault was made inside the room itself or whether deceased was first dragged out and then assault given to him at the door. Further, it has also been elicited that Shivratri Verma (PW6) had not remained firm, whether at the time of assault, she stayed at the spot or whether she, along with Sonam Verma was thrown little away from the place of incident so as to take the incident away from their view. We do not think that these omissions and contradictions are so material as to dislodge her evidence with regard to the person who arrived at the spot and assaults given to the deceased. She has remained firm with regard to the involvement of the appellants regarding all of them arriving in the house, armed with clubs and while this witness and other witnesses – Sonam Verma disabled by lady members of unlawful assembly, the appellants opened assaults on the deceased.

15. It is not the case where the entire case of the prosecution rests wholly and solely on the testimony of Shivratri Verma only, as other eye witness of the incident is Sonam Verma (PW7). She has also stated regarding the incident that in the night, when she was sleeping in the house along with Shivratri and Lekhram, the appellants entered the house and started assaulting. Both the witnesses have come out with coherent story that the lady members of the unlawful assembly (other four accused who were convicted for lesser offence) caught hold of both of them, so that they could not do anything and other members had started assaulting the deceased. Both of them stated that Lekhram was assaulted and beaten to death at the spot itself.

An argument raised to doubt the testimony of Sonam Verma (PW7) that she could not identify the appellants on the doc and has not specifically named them, does not impress because she has stated regarding all the appellants being part of the assembly and criminal overt act assigned to them and given repeated assaults to

the deceased.

16. The prosecution case, in so far as time and place of incident is concerned, is proved from the evidence of the aforesaid two eye witnesses. Time of incident was in the midnight. Moreover, the place of incident was the house of Ramkumar, brother of Shivratri and husband of Sonam Verma (PW7). At this juncture, we must consider the argument that according to the evidence of the prosecution witnesses, Shivratri was maintaining an illicit relation and she was residing with the deceased – Lekhram as his wife in another house. No doubt, there is evidence of Ramkumar Verma (PW8) and also of these two witnesses, that Shivratri usually resides with Lekhram in adjacent house whereas Ramkumar has another house. But then, both these witnesses have clearly stated that on the date of incident, Shivratri and Lekhram had come to the house of Ramkumar and both of them were sleeping in the same house along with Sonam Verma and daughter – Devki. There is no reason why Sonam Verma would speak against her father-in-law and brother-in-law having been involved in unlawful assembly hurled into the house of Lekhram, armed with club and opened assault on him until death.

17. Learned counsel for the appellants have also argued that the evidence of Shivratri Verma (PW6) and Sonam Verma (PW7) is doubtful because it is not clear that there was enough light at the spot. For this purpose, while drawing attention of this Court to the cross-examination of these two witnesses - Shivratri Verma (PW6) and Sonam Verma (PW7), attention of this Court was also invited to the evidence of one of the defence witnesses i.e. Dayalu Verma (DW5).

In para 27, Shivratri Verma (PW6) has admitted that there was no street light on the road going towards Ruatala and also that there are no street lights in the village. In para 36, this witness has stated that tube light in the verandah was broken by the assailants but has denied suggestion that there was no bulb in the verandah (Aangan). This witness state that at the time of incident, this bulb was not broken.

She stated that when the door was broken, it fell inside the house. A suggestion that she could not see in the night, has also been denied by this witness. Importantly, no suggestion has been given to Sonam Verma (PW7) who was also present at the spot that because of darkness, it was not possible to see the assault. Therefore, the evidence of Shivratri Verma (PW6) and Sonam Verma (PW7) cannot be doubted on such ground.

The investigating officer (PW10) has also proved from his evidence regarding damages caused to the doors, roof tiles, tube light and watch vide *nuksaani panchnama* (memo of damages found at the spot) in Ex.P/4 supported from the evidence of Devsingh (PW2) and Ramkumar Verma (PW8).

18. One of the argument raised by counsel for the appellant – Mahendra Vishwakarma is that immediately after the incident, when the police arrived at the spot and morgue intimation was recorded, Mahendra's name was not mentioned. This argument would have certainly weighed in our mind to create a doubt of his involvement but there is immediate spot FIR recorded almost at the same time with a gap of 10-15 minutes. This FIR was given by Shivratri. It is not a case that involvement of Mahendra Vishwakarma is based only on the evidence of Shivratri. The other eye witness – Sonam Verma has also involved Mahendra. From the cross-examination, we could not find any omission with regard to respective diary statements. The defence has come out with a set of defence witness mainly to establish *plea of alibi* as far as appellants – Subhash Verma, Goverdhan Verma, Sudama Ram Verma, Manish Kumar Verma, Mahendra, Shiv Kumar Verma and Omkar are concerned.

Bhuneshwar (DW1) and Dhanesh Verma (DW2), who are residents of Gram Panchayat – Litiya, have stated in their evidence that in the night of 01/07/2012, Subhash was called and he had come to repair fault in electricity lines and after completion of work, they stayed in the Panchayat building along with Subhash Mistri.

The evidence with regard to alibi of Subhash does not appear to be convincing mainly for the reason that Subhash, who claims to be employee of electricity department, if had gone for repair of electricity line in village – Litiya, best evidence would have been that certificate of his department is submitted. Why he chose to bring the resident of village – Litiya rather than producing the certificate by his own department, remains unanswered. Moreover, the statement that after conducting repair, he stayed overnight, also appears to be improbable because this accused is resident of village – Anya Nawagaon and it is not that village - Litiya is so far that it was not possible to come to Anya Nawagaon. The *plea of alibi* is not at all convincing, particularly, when we examine in the light of evidence of eye witnesses of the incident who have clearly named the appellant – Subhash Verma as one of the assailants in the case right from the contents of morgue till the evidence of Shivratri (PW6).

The evidence of other witnesses that in the night, some of the accused were sitting with those witnesses or that they were sleeping in their house has no legs to stand. The evidence given by family members of Shiv Kumar Verma and Omkar Verma that they took their meal in the house and kept sleeping till morning, is liable to be discarded on the basis of reliable testimony of two eye witnesses.

19. In the present case, soon before the incident of assault, there is clinching and reliable evidence of Sukaloram (PW9), who has stated that he was called by some of the appellants, assaulted by saying that he was working for Lekhram and infact, this witness states that it was insisted that he should call Lekhram in the meeting. This witness says that he was assaulted and injuries have been proved from the evidence of Dr. B.K.Chandrawanshi (PW4) who has proved MLC in Ex.P/9.

There is an argument raised that as the two eye witnesses have not clearly stated as to how each of the appellants assaulted the deceased and on which part of the body, we find that the prosecution case, as is proved from the evidence that all the appellants arrived in the house of the deceased in the midnight and all of them

were armed with club and they all opened assault on Lekhram and beaten to death. The evidence of the prosecution establish that unlawful assembly was formed with common object. In furtherance of this common object, whoever may have given assault, which is proved to be fatal, each of the appellants are vicariously liable for multiple assaults and death of Lekhram.

20. In view of the aforesaid consideration, we find no ground to interfere with the impugned judgment of conviction and order of sentence. The appeals, three in number, are accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge