

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 11/12/2019****Judgment delivered on : 11/02/2020****CRA No. 857 of 2012**

- Nilesh Kashyap S/o Umashankar Kashyap Aged About 22 Years R/o Kududand, PS Civil Line, Distt. Bilaspur C.G.

---- Appellant**Versus**

- State Of C.G. Through SHO, PS Civil Line, Bilaspur, Distt. Bilaspur C.G.

---- Respondent**CRA No. 903 of 2012**

- Raju @ Basant Kashyap S/o Ramawatar Kashyap Aged About 35 Years R/o Kududand, PS Civil Line, Distt. Bilaspur C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through PS Civil Line, Distt. Bilaspur C.G.

---- Respondent**ACQA No. 23 of 2013**

- Jamuna Bai Yadav Wd/o Late Bhangilal Yadav, Aged About 51 Years R/o Kududand, Besides Jain STD, Bilaspur, Distt. Bilaspur C.G.

---- Appellant/complainant**Versus**

1. Rakesh Kashyap S/o Horilal Kashyap Aged About 32 Years R/o Kududand, PS Civil Lines, Distt. Bilaspur C.G.
2. Pammi Alias Prashant Kashyap S/o Ramgopal Kashyap Aged About 22 Years R/o Kududand, P.S. Civil Lines Distt. Bilaspur

C.G.

3. Kamlesh Kashyap S/o Jiyalal Kashyap Aged About 34 Years R/o Mangla, Bilaspur C.G.
4. Mukesh Rajak @ Mukesh Kashyap S/o Dinesh Rajak, Aged About 21 Years R/o Bajpai Bada, Madhya Nagri, Bilaspur C.G.
5. State Of Chhattisgarh Through - The P.S. Civil Lines Bilaspur C.G.

---- Respondents

For Appellant in CRA No.857/2012.	:	Shri Manoj Paranjpe & Shri Vaibhav Goverdhan, Advocates.
For Appellant in CRA No.903/2012	:	Smt. Indira Tripathi, Advocate.
For Appellant in ACQA No.23/2013	:	Shri Rajeev Shrivastava & Shri Avinash Choubey, Advocates.
For Respondents No. 1 to 4 in ACQA No.23 of 2013	:	Shri Vinay Dubey, Advocate.
For Respondent/State	:	Shri RS Baghel, Dy. A.G., Shri KK Singh, G.A. & Shri Pawan Kesharwani, Panel Lawyer.

Hon'ble Shri Prashant Kumar Mishra, &

Hon'ble Shri Gautam Chourdiya, JJ

C A V JUDGMENT

Per Gautam Chourdiya, J

01. Since all these appeals arise out of the judgment dated 4th September, 2012 passed by 5th Additional Sessions Judge, Bilaspur in ST No.200/2010, they are being disposed of by this common judgment.

02. Cr.A.No.857/2012 has been preferred by the accused/appellant-Nilesh Kashyap whereas Cr.A.No.903/2012 has been filed by

accused/appellant Raju @ Basant Kashyap challenging the legality and validity of the judgment of the trial Court convicting them under Sections 147, 148 & 302/149 of IPC and sentencing to undergo RI for two years, pay a fine of Rs.200/- and imprisonment for life, pay a fine of Rs.200/- with default stipulations under Sections 148 & 302/149 of IPC respectively. Since offence under Section 148 of IPC is graver than one under Section 147 of IPC, no separate sentence was awarded under Section 147 of IPC. All the sentences were directed to run concurrently.

03. Acq. A. No.23/2013 has been filed by Jamuna Bai Yadav, mother of the deceased, challenging the judgment of the trial Court to the extent it records acquittal of the respondents/accused Rakesh Kashyap, Pammi @ Prashant Kashyap, Kamlesh Kashyap & Mukesh Rajak of the charges under Sections 147, 148 & 302/149 of IPC.

04. As per the prosecution case, Rakesh Yadav (PW-2) lodged FIR (Ex.P/2) on 8th July, 2010 at 17:15 hours at Police Station – Civil Line, Bilaspur to the effect that on 7th July, 2010 at about 22:30 hours he was informed by Sakshi Gopal Yadav (PW-19) that some persons of Kachhi community are assaulting Ramesh Yadav, brother of complainant, by means of rod, baseball stick and other articles and he is lying near water tank. On this, Rakesh Yadav rushed to the place of occurrence where he found his brother Ramesh Yadav lying near culvert in pool of blood. At that time, friend of Ramesh namely Bablu Shrivastava (PW-3) was also present at the spot. When complainant Rakesh Yadav enquired from Bablu Shrivastava and Ramesh Yadav, they informed that

Raja Kashyap, Nilesh Kashyap, Umashankar Kashyap, Deepak Kashyap, Sahdev Kashyap, Vinod Kashyap and Raju @ Basant Kashyap after quarreling with Ramesh, hurled abuses at him and assaulted Ramesh to kill him. They also damaged Pleasure scooter and the house at the place of occurrence. They threatened to kill if the matter is reported to the police. While complainant Rakesh Yadav was taking his injured brother Ramesh Yadav along with Bablu Shrivastava on motorcycle to police station for lodging report, at that time accused Raja and others came and assaulted him (Rakesh Yadav) also. However, somehow Rakesh Yadav with his brother injured Ramesh Yadav escaped from there and admitted Ramesh Yadav in CIMS, Bilaspur where he was treated by PW-20 Dr. Anil Kumar vide MLC of Ex.P/33. As per said MLC, injured Ramesh Kumar sustained lacerated wound over chin, 3 cm x ½ cm x deep, contusion over frontal head, 2" x 2" and mild contusion over occipital region. These injuries were caused by hard and blunt object. The doctor advised for CT scan and the patient was admitted in Male Casualty Ward (MCW) for further treatment and expert opinion. As per Referral Ticket of CIMS, injured Ramesh Yadav was discharged on 8.7.2010 and referred to higher center. As per Ex.P/37, injured Ramesh was admitted in Modern Medical Institute, Raipur on 9.7.2010 at 4.45 pm for further treatment and during treatment he expired on 26.8.2010 at 5.10 am.

Merg intimation Ex.P/25 was registered under Merg No.0/100/2010 at Police Station-Tikrapara, Raipur on the information of Rajesh Kumar, Security Guard of MMI, Raipur. Thereafter, on the basis of said merg, Police Station-Civil Line, Raipur registered Merg

Intimation No.93/2010 on 30.8.2010 vide Ex.P/26. As per Ex.P/4 inquest over the dead body of Ramesh Yadav was conducted in presence of brother of deceased Rakesh Yadav and other witnesses. Thereafter, postmortem of the deceased was conducted on 26.8.2010 by PW-21 Dr. SK Bagh vide Ex.P/36 wherein the doctor noticed following symptoms/injuries over the person of the deceased:

“Eyes closed, cornea hazy, lip approximated. Rigor mortis present in strong phase and fixed, surgical gauge piece present on abdomen, feeding tube present in between umbilicus and xephoid process and bed sore present on back. Sacrum region 6 x 5 cm and both greater trachentory region 4 x 3 cm respectively. Tracheotomy wound on neck present.

Injury: (1) Old scar mark healed with black coloured scab present on right frontal region 5 x 4 cm sagittaly located,

(2) contused lacerated wound with black coloured scab present on left pinna (ear), old healed scar mark present on abdomen below umbilicus 2 x 1 cm,

(3) impacted abrasion with black coloured scab present (healed wound) present on right lower leg anterior aspect with size 6 x 2 cm obliquely,

(4) Old scar mark (healed wound) present on upper part of the occipital bone 3 x 2 cm obliquely,

Both lower limb and upper limb oedematous (swelled up). Injury were caused with hard and blunt object.

In his opinion, the cause of death was cardiorespiratory failure as a result of head injuries and its complications and the duration of death was within 24 hours prior to postmortem examination.

05. From each of the accused Nilesh Kashyap, Rakesh Kashyap, Pammi @ Prashant Kashyap, Basant Kumar Kashyap & Kamlesh Kashyap, iron rod was seized in presence of witnesses vide Ex.P/5, P/6, P/7, P/10 & P/13 respectively. PW-2 Rakesh Yadav was also

medically examined and as per his medical report he suffered tenderness over right elbow caused by hard and blunt object which was simple in nature and duration of which was more than seven days vide Ex.P/20. During investigation statements of witnesses were recorded. After completing investigation, charge sheet was filed under Sections 147, 148, 149, 294, 506, 323, 427 & 302 of IPC against two accused persons namely Nilesh Kashyap & Raju @ Basant Kashyap, showing other 09 accused persons namely Raja Kashyap, Sahdev Kashyap, Deepak Kashyap, Vinod Kashyap, Umashankar Kashyap, Rakesh Kashyap, Kamlesh Kashyap, Pammi Kashyap & Mukesh Kashyap, absconding. Thereafter, charge sheet under the aforesaid sections was filed against accused Rakesh Kashyap, Pammi @ Prashant Kashyap, Kamlesh Kashyap and Mukesh Rajak @ Mukesh Kashyap showing remaining five accused Raja Kashyap, Sahdev Kashyap, Deepak Kashyap, Umashankar Kashyap and Vinod Kashyap absconding.

06. The trial Court framed charges under Sections 147, 148, 302/149 & 427 of IPC against accused Nilesh Kashyap, Raju @ Basant Kashyap, Rakesh Kashyap, Pammi @ Prashant Kashyap, Kamlesh Kashyap and Mukesh Rajak @ Mukesh Kashyap, which were denied by them and they pleaded for trial.

07. In order to prove its case, the prosecution examined as many as 22 witnesses. Statements of the accused persons were recorded under Section 313 of CrPC in which they denied the incriminating circumstances appearing against them in the prosecution case,

pleaded innocence and false implication. In their defence they stated that due to political rivalry they have been falsely implicated in this crime since in the election of Ward Member they had campaigned for Anarkali, a candidate of a national party whereas the deceased party had campaigned for one Shail Yadav, an independent candidate. They stated that in fact the deceased died in an accident but the complainant party in collusion with the police have falsely roped them in this crime.

08. The trial Court after hearing counsel for the respective parties, considering the overall material available on record, by the impugned judgment while acquitting accused Rakesh Kashyap, Pammi @ Prashant Kashyap, Kamlesh Kashyap & Mukesh Rajak of the charges under Sections 147, 148 & 302/149 of IPC, convicted and sentenced accused/appellants Nilesh Kashyap and Raju @ Basant Kashyap as mentioned in para-2 of this judgment.

09. It is pertinent to mention here that as per judgment dated 26.11.2015 passed in ST No.200/2010 by III Additional Sessions Judge, Bilaspur, accused Vinod Kumar Kashyap, Raja @ Ashish Kashyap and Deepak Kashyap were acquitted of the charges under Sections 147 148, 427 and 302/149 of IPC. Likewise, as per judgment dated 5.5.2018 passed in ST No.200/2010, accused Umashankar Kashyap has also been acquitted of the charges under Sections 147, 148, 427 & 302/149 of IPC. In para-37 of the said judgment, it has been mentioned that accused Sahdev Kashyap is still absconding. However, no appeal against the aforesaid judgments of acquittal has been filed either by the State or by the complainant party.

10. Learned counsel for the appellants in both the appeals submit as under:

- that in this case, no prompt FIR is lodged by PW-2 Rakesh Yadav, brother of the deceased nor he is an eyewitness to the incident.
- that no injury was found on the body of the complainant Rakesh Yadav (PW-2) nor his injury report filed by the prosecution has been duly proved whereas according to the complainant the accused persons, 11 in number, assaulted him.
- that looking to nature of injuries found on the body of the deceased, the same were not sufficient in the ordinary course of nature to cause his death. As per Ex.P/33 MLC of injured Ramesh Kumar which was prepared on the date of incident itself, he sustained lacerated wound over chin, 3 cm x ½ cm x deep, contusion over frontal head, 2" x 2" and mild contusion over occipital region. These injuries were caused by hard and blunt object and were simple in nature.
- that injured Ramesh Yadav was shifted to MMI, Raipur for further treatment on 9.7.2010 and he died in the said hospital during treatment on 26.8.2010 at 5.10 am. Therefore, there is no nexus with the injuries sustained by the deceased and his death looking to the long gap between the date of incident and his death.
- that according to the complainant Rakesh Yadav, his scooter

Pleasure was also damaged by the appellant but no damaged scooter has been seized from the place of incident.

- that as per spot map Ex.P/18, the incident took place in a densely populated area which is surrounded by the residential houses of Rahul Das Manikpuri, Ganesh Pandey, Manohar Nirmalkar, Bhikham Manikpuri and Durgesh Nirmalkar but none of them has been cited as a witness in the charge sheet and not examined before the Court by the prosecution for the reasons best known to it.
- that the trial Court has failed to appreciate the defence of the appellants that they have been falsely implicated in the crime due to political rivalry. No independent witness has been examined by the prosecution. PW-2 Rakesh Yadav is brother of the deceased whereas PW-3 Bablu Shrivastava and PW-4 Gautam Yadav belong to the political group of the complainant party and have relation with each other.
- that according to PW-2 Rakesh Yadav he was informed by PW-19 Sakshi Gopal Yadav about the assault made by the accused persons on the deceased, however, PW-19 Sakshi Gopal Yadav has turned hostile and not supported the prosecution case.
- that as per CT scan report of the deceased produced by the prosecution along with bedhead ticket of CIMS, no serious injury was found on the head of the deceased. Though this document has not been proved by the prosecution but it is taken on record

looking to the defence of the appellants.

- that from perusal of the statements of PW-2 Rakesh Yadav, PW-2 Bablu Shrivastava and PW-4 Gautam Yadav it is clear that they have made contradictory statements.
- that FIR (Ex.P/2) is initially lodged against seven persons and thereafter when charge sheet is filed, four other persons were implicated falsely in this case. Further, from the FIR it is also seen that the same was subsequently tampered by deleting the name of one accused Munna and in his place, one Raja Kashyap has been mentioned on the written request made by PW-2 Rakesh Yadav which is not permissible under the law.
- that as per seizure memos Exs.P/5, P/6, P/7, P/10 & P/13 no blood was found on the iron rods allegedly seized from the accused persons and further, the independent witnesses of the seizure have not supported the prosecution case.
- that on the same set of evidence, co-accused Rakesh Kashyap, Pammi @ Prashant Kashyap, Kamlesh Kashyap and Mukesh Rajak @ Mukesh Kashyap against whom same charges were framed, have been acquitted by the trial Court by the impugned judgment. Likewise, vide judgment dated 26.11.2015 passed in ST No.200/2010 by III Additional Sessions Judge, Bilaspur, accused Vinod Kumar Kashyap, Raja @ Ashish Kashyap and Deepak Kashyap were acquitted of the same charges and vide judgment dated 5.5.2018 passed in ST No.200/2010, accused

Umashankar Kashyap has also been acquitted of the same charges. No appeal against the aforesaid judgments of acquittal dated 26.11.2015 & 5.5.2018 has been filed either by the State or by the complainant party. Therefore, the trial Court has committed an illegality by convicting the appellants on the same set of evidence while acquitting other co-accused persons and as such, the appellants are also entitled for acquittal of the charges leveled against them.

11. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter in light of the evidence adduced by the prosecution has rightly convicted and sentenced the appellants which needs no interference by this Court.

12. As regards ACQA No.23/2013, learned counsel for the appellant/complainant has contended that the trial Court committed a grave illegality by acquitting accused/respondents No.1 to 4 namely Rakesh Kashyap, Pammi @ Prashant Kashyap, Kamlesh Kashyap and Mukesh Rajak @ Mukesh Kashyap whereas in view of evidence of PW-3 Bablu Shrivastava and PW-4 Gautam Yadav which is further supported by the medical evidence, these accused persons are also liable to be convicted for the offence under Sections 147, 148, 302/149 of IPC. It is submitted that on the same set of evidence, accused Nilesh Kashyap and Raju @ Basant Kashyap have been convicted under the aforesaid sections but respondents No. 1 to 4 have wrongly been acquitted by the trial Court.

13. Opposing the above contention, learned counsel for respondents No. 1 to 4/accused has submitted that these accused persons were falsely implicated in the crime in question on account of political rivalry and this fact has been properly appreciated by the trial Court. He submits that there is no evidence, direct or circumstantial, on record showing the complicity of these accused persons in the present crime. He submits that the trial Court on due appreciation of the entire evidence on record has rightly acquitted these accused persons of all the charges and therefore, no appeal against their acquittal has been filed by the State, and the complainant has filed this acquittal appeal on untenable grounds due to political rivalry and these accused persons being related to the convicted accused.

13. Heard learned counsel for the parties and perused the material available on record.

14. This case is mainly based on the evidence of star witnesses of the prosecution namely PW-2 Rakesh Yadav, PW-3 Bablu Shrivastava and PW-4 Gautam Yadav. They all belong to the same political party. FIR (Ex.P/2) was lodged by PW-2 Rakesh Yadav, brother of the deceased, one day after the incident on 8.7.2010 at 5.15 pm and 11 persons were charge sheeted for the offence under Sections 147, 148, 149, 294, 506, 323, 427, 302 of IPC. In this case, four co-accused persons namely Vinod Kumar Kashyap, Raja @ Ashish Kashyap, Deepak Kashyap & Umashankar Kashyap have been acquitted of all the charges by the trial Court vide judgments dated 26.11.2015 & 5.5.2018 passed in ST No.200/2010 which is available in Paper Book (Part-III)

from page Nos. 170 to 207. No appeal against the said judgments of acquittal has been filed either by the State or by the complainant party.

15. Looking to the political rivalry and previous enmity between the accused persons and the complainant party as admitted by PW-2 Rakesh Yadav and the delay in lodging the FIR, the evidence of the witnesses needs to be examined with due care and caution.

16. It is proved by the prosecution that deceased Ramesh Yadav was initially admitted in CIMS on the same day i.e. 7.7.2010, his MLC (Ex.P/33) was prepared by PW-20 Dr. Anil Kumar wherein he noticed that injured Ramesh Yadav has suffered lacerated wound over chin, 3 cm x ½ cm x deep, contusion over frontal head, 2" x 2" and mild contusion over occipital region and that these injuries were caused by hard and blunt object. As per Ex.P/1, MRI of the victim was also conducted at Apollo Hospital, Bilaspur on 8.7.2010. Thereafter, on the same day CT Scan of head was also conducted by Dr. RK Singh, MD (Radiologist) of RK CT Scan Centre, Bilaspur, wherein no abnormality was found by the doctor in the skull or brain. The said report reads as under:

"CT Scan Head (Plain)

Axial slices were obtained from base of the skull to the vault at the interval of 10 mm & 5 mm sections without contrast.

4th ventricle is normal & is in midline.

Brain stem & both cerebellar hemispheres are normal.

Third ventricle is normal & is in midline.

Both frontal horns & body of the both ventricles are

normal with septum is in mid line.

Basal cisterns, both sylvian fissures & cortical sulci are normal.

Brain parenchyma is normal in density & attenuation pattern.

IMPRESSION: CT IMAGE MORPHOLOGY FINDINGS ARE WITHIN NORMAL LIMITS."

17. Injured victim Ramesh Yadav was discharged from CIMS on 8.7.2010 and referred to higher center as mentioned in the discharge ticket. Then Ramesh Yadav was shifted to MMI, Lalpur, Distt. Raipur (CG) where he was treated from 9.7.2010 to 26.8.2010 and during treatment he died on 26.8.2010 at 5.10 am vide Ex.P/37. Merg intimation (Ex.P/25) was lodged on the information being given by Rajesh Kumar, Security Guard of MMI, Lalpur.

18. Inquest Ex.P/4 was prepared in presence of witnesses in the mortuary at Raipur. Thereafter, postmortem of the deceased was conducted on 26.8.2010 by PW-21 Dr. SK Bagh vide Ex.P/36 wherein the doctor noticed certain injuries as mentioned above in para-18 and opined that the cause of death was cardiorespiratory failure as a result of head injuries and its complications and the duration of death was within 24 hours prior to postmortem examination. Thus, this fact is also proved by the prosecution that from the date of incident i.e. 7.7.2010 to 26.8.2010 deceased Ramesh Yadav was under continuous treatment in CIMS, Bilaspur, Apollo Hospital, Bilaspur and MMI, Raipur and that he died due to head injuries and its complications.

19. From close scrutiny of the evidence it is found that no specific

allegation has been made by any of the witnesses as to who actually caused the head injury to the deceased and with which weapon such injuries were caused by which of the accused persons. Only general and omnibus statement has been made by PW-2 Rakesh Yadav, who is not an eyewitness to the incident.

20. As per Ex.P/18 i.e. spot map, the place of incident is specifically mentioned therein. According to the said map, the incident took place in front of houses of Rahul Das Manikpuri and Ganesh Pandey and near the place of occurrence, there are other houses of Manohar Nirmalkar, Bhikham Manikpuri and Durgesh Nirmalkar. However, none of them have been either incorporated in the charge sheet as witness nor examined by the prosecution before the Court.

21. PW-3 Bablu Shrivastava claims himself to be an eyewitness to the incident but according to him, the place of incident is totally different from what is mentioned in the spot map of Ex.P/18. In para-2 this witness states that on the date of incident at around 9-10 pm he along with Chhota Matin & Ramesh Yadav (injured victim) was in the house of Sukhdev. At that time, accused Munna @ Umashankar, Nilesh, Kamlesh, Rakesh, Vinod, Deepak, Pammi, Mukesh, Sahdev Kashyap, Raja Kashyap and Raju Kashyap came there and after abusing filthily started severely assaulting upon Ramesh Yadav with rod, club, stick, baseball as a result of which Ramesh started bleeding profusely. Thereafter, Sukhdev and Chhota were sent for vehicle towards Mungeli Naka and after some time when brother of deceased namely Rakesh came there on motorcycle, he was informed about the incident by

Ramesh Yadav. While injured Ramesh Yadav was being taken to hospital in the vehicle, on the way near Shiv Chowk they were again beaten by the accused persons and due to this severe assault, Ramesh Yadav died.

Further, PW-3 Bablu Shrivastava in para-9 stated that the said incident of assault continued for near about 15-20 minutes or about half an hour and that though they, who were five in number, intervened but none of them was assaulted. In para-10 he admits that the house of Sukhdev is situated in a densely populated residential area and water tank is far away from his house.

Thus, from the evidence of the so-called eyewitness PW-3 Bablu Shrivastava, the place of incident is the house of Sukhdev, but as per spot map Ex.P/18, the house of Sukhdev does not find place in the said map. In his case diary statement (unexhibited), PW-3 has also stated that the incident took place in the house of Sukhdev. However, neither Sukhdev nor Chhota Matin, who according to PW-3 were eyewitnesses to the incident, or any other person from the nearby houses, has been examined by the prosecution. According to this witness, all the 11 accused persons severely assaulted victim Ramesh Yadav with rod, club, stick, baseball as a result of which Ramesh started bleeding profusely, however, as per MLC (Ex.P/33) which was prepared on the same day i.e. 7.7.2010, Ramesh Yadav had suffered only three injuries i.e. lacerated wound over chin, 3 cm x ½ cm x deep, contusion over frontal head, 2" x 2" and mild contusion over occipital region and as per CT Scan report given by Dr. RK Singh, MD (Radiologist) of RK CT

Scan Centre, Bilaspur, no abnormality was found by the doctor in the skull or brain of the victim. If 11 persons had beaten the deceased with the aforesaid weapons for about half an hour as stated by PW-3, then it is very unnatural that the victim would have suffered only three injuries as mentioned above.

22. The Hon'ble Supreme Court in the matter of ***Jagdish and another Vs. State of Haryana***, reported in **(2019) 7 SCC 711**, while dealing with the identical issue considering the fact that the deceased was said to have been assaulted by all 13 accused with their respective weapons and the number of injuries found on the person of the deceased, observed as under:

“10. Therefore, in the entirety of the facts and circumstances of the case, the relationship between PW-1 and the deceased, the existence of previous animosity, we do not consider it safe and cannot rule out false implication to uphold the conviction of the appellants on the evidence of a doubtful solitary witness, as observed in [State of Rajasthan vs. Bhola Singh and Anr.](#) AIR 1994 SC 542, (Crl. Appeal No. 65 of 1980 decided on 25.08.1993):

“4. From the above-stated facts, it can be seen that the case is rested entirely on the solitary evidence of P.W.1. The High Court has pointed out several infirmities in the evidence of P.W.1. It is well-settled that if the case is rested entirely on the sole evidence of eye-witness, such testimony should be wholly reliable. In this case, occurrence admittedly took place in the darkness....”

11. [In Lallu Manjhi and another vs. State of Jharkhand](#), (2003) 2 SCC 401, it was observed that if ten persons

were stated to have dealt with blows with their respective weapons on the body of the deceased, and that if each one of them assaulted then there would have been minimum of ten injuries on the person of the deceased. In the present case, as noticed there are 11 injuries on the person of the deceased. Giving the benefit of doubt granting acquittal, it was observed as follows:

“13..... The version of the incident given by the sole eyewitness who is also an interested witness on account of his relationship with the deceased and being inimically disposed against the accused persons is highly exaggerated and not fully corroborated by medical evidence. The version of the incident as given in the Court is substantially in departure from the earlier version as contained and available in the first information report. We cannot, therefore, place reliance on the sole testimony of Mannu (PW 9) for the purpose of recording the conviction of all the accused persons.”

23. Thus, in the given facts and circumstances of the case, the inconsistency between the evidence of PW-3 Bablu Shrivastava and the medical evidence, the fact that the place of incident has totally been changed by this witness and he being the member of the political group of the complainant party, it would be hazardous to place reliance on the evidence of PW-3 Bablu Shrivastava and we have to look for evidence of other witnesses to ascertain the veracity of the prosecution case.

24. Another important witness of the prosecution is PW-4 Gautam Yadav. But he is not an eyewitness to the first incident of assault allegedly made by the accused persons on Ramesh but he has been cited as an eyewitness to the incident of assault made on Ramesh by

the accused persons while he was being taken to hospital for treatment by his brother Rakesh Yadav (PW-2) along with Bablu Shrivastava (PW-3). According to this witness (PW-4), all the accused persons assaulted Ramesh Yadav and Rakesh Yadav near the house of Nilesh and thereafter, injured Ramesh was taken to CIMS hospital by him along with Rakesh and Bablu. Thus, according to the depositions of PW-3 Bablu Shrivastava and PW-4 Gautam Yadav, all the 11 accused persons again assaulted Ramesh Yadav brutally while he was being taken to hospital after the first incident of assault by these accused persons but as per MLC Ex.P/33 of the victim, he suffered only three injuries. Therefore, their evidence being totally inconsistent with the medical evidence, is not acceptable.

25. PW-2 Rakesh Yadav, another important witness of the prosecution, in para-2 of his deposition states that he was informed about the incident by PW-19 Sakshi Gopal Yadav that his brother Ramesh Yadav is being beaten by *Kachhi* people near water tank and when he reached there on motorcycle, on being asked his brother Ramesh Yadav and Bablu Shrivastava informed him that Nilesh Kashyap, Raja Kashyap, Sahdev Kashyap, Deepak Kashyap, Raju @ Basant Kashyap, Vinod Kashyap, Kamlesh Kashyap, Rakesh Kashyap, Pammi Kashyap, Mukesh Rajak @ Mukesh Kashyap and Umashankar Kashyap, total 11 persons, assaulted Ramesh Yadav with baseball stick, rod etc. This witness further states in para-3 that while he was taking Ramesh Yadav on motorcycle along with Bablu Shrivastava, he (PW-2) was also assaulted by these accused persons.

The evidence of this witness (PW-2) is not worth reliance, firstly for the reason that no such injury has been found on his person which could suggest that he was assaulted by as many as 11 accused persons because as per his injury report (Ex.P/20), he was medically examined on 19.7.2010 i.e. about 12 days after the incident and was found to have sustained only tenderness over right elbow which was caused by hard and blunt object and was simple in nature. Secondly, according to PW-4 Rakesh Yadav he was informed about the incident of assault by the accused persons on the victim by PW-19 Sakshi Gopal Yadav but this witness (PW-19) has turned hostile and not supported the prosecution case. PW-19 in para-2 states that while he was going to his house through Mungeli Naka, he saw Ramesh Yadav lying on the road near Kududand Govt. School and thereafter he informed about the same to Rakesh Yadav over telephone. He admits that no incident of assault took place in his presence. Further, as per PW-3 Bablu Shrivastava no incident happened at the place mentioned in the spot map of Ex.P/18 and it took place in the house of one Sukhdev whereas in the spot map Ex.P/18, house of Sukhdev or Mata Chaura Chowk is not mentioned. Thus, the evidence of PW-2 Rakesh Yadav and PW-3 Bablu Shrivastava run contrary to each other.

26. PW-4 Gautam Yadav in para-12 states that in the house of illegal possession of the deceased, the incident of *marpeet* lasted for 10 minutes and during this period he also reached there and intervened in the matter, on which he also suffered some simple injuries. However, no medical evidence is available on record to show that this witness also suffered any injury.

In para-13 this witness states that they (Gautam Yadav, Rakesh Yadav, Bablu Shrivastava & Ramesh Yadav) were riding on the same motorcycle for taking Ramesh Yadav to hospital. PW-4 Gautam Yadav admits that Ramesh Yadav had fallen down from the motorcycle and that Rakesh Yadav suffered injury in his right hand including fracture and Rakesh Yadav was bleeding profusely. However, as discussed above, no such injury was found on the person of Rakesh Yadav. Further, PW-2 Rakesh Yadav and PW-3 Bablu Shrivastava have nowhere stated that while Ramesh Yadav was being taken to hospital on motorcycle, PW-4 Gautam Yadav was also with them and that Ramesh Yadav fell down from the motorcycle. Therefore, PW-4 Gautam Yadav has exaggerated the prosecution case and he appears to be a tutored witness because in para-18 he admits that he is making statement at the instance of Jyoti (sister of the deceased), her maternal uncle and Rakesh Yadav and that Ramesh Yadav is his relative. He further admits that at the place where incident of *marpeet* took place, no body had come.

In para-14 he stated that in his statement given to the police on 24th October, 2010 he did not disclose the name of any person who assaulted Ramesh Yadav whereas from his diary statement dated 24.10.2010 it is clear that he disclosed the names of Kamlesh, Rakesh Kashyap, Pammi and Mukesh as the assailants. His first statement was recorded on 17.8.2010 by the police i.e. after about 10 days of the incident wherein he mentioned the names of only six persons i.e. Nilesh, Umashankar, Rakesh Kashyap, Raju Kashyap, Raja Kashyap and Kamlesh Kashyap and subsequently, when his statement was

recorded on 24.10.2010 he named four other accused persons as mentioned above. For the aforesaid reasons, the evidence of this witness also does not inspire confidence.

27. PW-3 Bablu Shrivastava in para-15 states that on the date of incident when he asked Rakesh Yadav (PW-2) about lodging of report, Rakesh Yadav told that report of the incident has been lodged. He further states that in the same night just after the incident Rakesh Yadav along with him went to police station and lodged FIR. This fact also creates doubt on the prosecution case because as per Ex.P/2, FIR was lodged on 8.7.2010 at 17:15 hours by Rakesh Yadav. In para-10 PW-2 Rakesh Yadav admits that he informed the police of Police Outpost at CIMS regarding the incident at 10 am on the next day of incident and in para-12 states that at that time he did not disclose the names of the accused persons to the police and that the police told him that his report has been registered on zero number and the same would be investigated by the police of Civil Line.

28. As regards the seizure of iron rods from accused Nilesh Kashyap, Rakesh Kashyap, Pammi @ Prashant Kashyap, Basant Kumar Kashyap & Kamlesh Kashyap vide Ex.P/5, P/6, P/7, P/10 & P/13 respectively, the same is of no consequence for the reasons that no blood was found on the iron rods allegedly seized from these accused persons and further, the independent witnesses of the seizure have not supported the prosecution case. The said seizure has also not been effected pursuant to the memorandum statements of the accused persons.

29. PW-5 Jagdish Prasad Mishra, PW-6 Kalicharan Kashyap, PW-7 Anil, PW-8 Kishorilal Goswami, PW-9 Abhishek Kesharwani, PW-11 Sanjay Pandey and PW-12 Deepak Shrivastava have turned hostile and not supported the prosecution case. They have stated that they heard that Ramesh Yadav has met with an accident and died in hospital due to injuries suffered in the accident.

30. In this case, so-called eyewitness PW-3 Bablu Shrivastava has made allegations that all the 11 accused persons assaulted Ramesh and Rakesh Yadav but no categorical statement is made by PW-2 Rakesh Yadav & PW-3 Bablu Shrivastava as to which of the accused person caused injury to Ramesh over his head and chin as only three injuries were noticed by PW-20 Dr. Anil Kumar vide Ex.P/33 on the body of the injured victim. In the FIR (Ex.P/2) also similar injuries have been mentioned by Rakesh Yadav (PW-2). In para-7 of his deposition PW-4 admits that while lodging FIR he informed the police about the injuries suffered by his brother Ramesh over his neck and chin and that blood was oozing from near the chin.

31. PW-2 Rakesh Yadav states in para-2 about the dying declaration of the deceased. According to him, when he asked Ramesh Yadav in presence of Bablu Shrivastava about the incident and the assailants, Ramesh informed that all 11 accused persons assaulted him with baseball stick, rod etc. But PW-3 Bablu Shrivastava has not stated about such dying declaration by the deceased. In para-2 he states that just after the incident, Rakesh Yadav reached the place of occurrence and thereafter they took Ramesh, who was lying in pool of blood, to

hospital and Bablu was sitting behind Ramesh on the motorcycle which was being ridden by Rakesh Yadav. However, PW-4 Gautam Yadav states that he was also sitting on the said motorcycle with them whereas PW-2 & PW-3 have nowhere stated that PW-4 Gautam Yadav was also sitting on the same motorcycle with them. Therefore, in view of the contradictions and improvements in the statements of the aforesaid witnesses, the entire case of the prosecution becomes doubtful.

32. As regards the offence under Section 427 of IPC, though according to the complainant Rakesh Yadav, his scooter Pleasure was also damaged by the accused persons but no damaged scooter has been seized from the place of incident. From the evidence of the prosecution witnesses also it does not reflect that scooter of the complainant was damaged by the accused persons. Hence the trial Court was fully justified in acquitting the accused persons of the said charge.

33. The accused persons have taken a defence that due to political rivalry they have been falsely implicated in this crime since in the election of Ward Member they had campaigned for Anarkali, a candidate of a national party whereas the deceased party had campaigned for one Shail Yadav, an independent candidate. They stated that in fact the deceased died in an accident but the complainant party in collusion with the police have falsely roped them in this crime.

It is a well settled principle of law that mere availability of motive with the accused or previous enmity between the parties is not

sufficient to hold him guilty in absence of any cogent and trustworthy corroboratory piece of evidence proving his involvement in the crime because motive is a double-edged weapon as it may be the cause of a crime as well as the reason for false implication.

34. If the overall evidence, oral, documentary and medical adduced by the prosecution, are viewed from a different angle, they do raise a suspicion against the accused persons, however, the basic rule of criminal jurisprudence comes to their rescue which mandates that suspicion howsoever strong cannot take the place of proof, and in the eventuality of there being two possible views – one pointing to the guilt of the accused and other to his innocence, the latter favourable to the accused should be adopted.

35. In the case in hand, keeping in view the totality of the facts and circumstances of the case, omissions, contradictions, improvements/exaggerations in the statements of the prosecution witnesses PW-2 Rakesh Yadav, PW-3 Bablu Shrivastava & PW-4 Gautam Yadav, upon whose evidence the prosecution case mainly rests; inconsistency between their evidence and the medical evidence; different version given by these witnesses regarding the place of incident; no evidence being there on record as to which of the accused persons caused injuries on head and chin of the deceased; non-examination of the independent witnesses by the prosecution and the political rivalry between the parties, we are of the opinion that the prosecution has failed to prove its case against the accused persons beyond all reasonable doubt and therefore, the benefit of doubt has to be credited to them.

36. In the result:

- Cr.A.Nos.857/2012 & 903/2012 preferred by accused/appellants Nilesh Kashyap and Raju @ Basant Kashyap are allowed. They are acquitted of the charges under Sections 148 & 302/149 of IPC. They are reported to be in jail, therefore, they be released forthwith if not required to be detained in connection with any other offence, on each of them furnishing bail bond for a sum of Rs.25,000/- with one surety of the like sum to the satisfaction of the trial Court in view of provisions of Section 437A of CrPC for their appearance before the higher forum as and when required. These bail bonds shall be in force for a period of six months from today.
- Acq.A.No.23/2013 filed by Jamuna Bai Yadav being without any substance is hereby dismissed.

**Sd/
(Prashant Kumar Mishra)
Judge**

**Sd/
(Gautam Chourdiya)
Judge**