

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.461 of 2004

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1. Sheonandan Singh, aged about 73 years.
 2. Rampravesh Singh, aged about 68 years, both sons of late Kesho singh.
 3. Binay Kumar Singh, aged about 43 years.
 4. Rajiv Kumar Singh, aged about 34 years.
 5. Ranjan Kumar Singh, aged about 27 years, all sons of Sheonandan Singh, resident of village Bharwar, P.S. Aurangabad (M). Distt. Aurangabad.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajeev Kumar Singh, Adv
	:	Mr. Mohit Ranjan, Adv
	:	Mr. Harsh Raj, Adv
For the Respondent/s	:	Mr. AMP Mehta, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-12-2025

At the outset, it is submitted that appellant no. 2 namely, Rampravesh Singh died during the pendency of present appeal. Accordingly, present appeal stands abated against him.

2. In view of aforesaid, now this appeal survives against appellant no(s). 1, 3, 4 and 5.

3. The present appeal has been preferred by the appellants-convicts under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 28.06.2004 and order of sentence dated 29.06.2004 passed by learned Additional Sessions Judge (Fast Track Court No. III), Aurangabad in Sessions Trial No.



305 of 1990/194 of 2002, whereby the concerned Trial Court has convicted the appellants under Section 148, 307 and 149 of the Indian Penal Code (for short 'IPC') and appellants have been sentenced to undergo R.I. for two years under Section 148 of the IPC and ten years R.I. under Section 307/149 of the IPC. All aforesaid sentences ordered to run concurrently.

4. The brief facts of the prosecution case as it is apparent from *fardbeyan* of informant namely, Harihar Singh that his uncle Nand Kishore Singh resided with the informant promising to transfer his land property to the informant. It is alleged that on 25.04.1989 at about 5:30 P.M. when informant along with his son Umesh Singh and Vijay Singh was separating paddy grains from the hay, his brother Sheonandan Singh armed with *gada*, Ram Pravesh Singh armed with *sabba* and Binay Kr. Singh, Rajiv Kr. Singh and Ranjan Kr. Singh all sons of Sheonandan Singh having been respectively armed with pistol, *bhala* and *lathi* surrounded the informant and his sons. They assaulted the informant and Vijay Singh with their weapon as a result they sustained injuries and bleeding. Rajeev Kr. Singh hurled *bhala* on the informant's head due to which there was bleeding. Umesh Singh son of informant started fleeing away as a result Binay Kr. Singh started firing upon him, but he escaped unhurt. On the alarm raised by Umesh Singh



his brother Anuj Kumar Singh reached at the P.O. upon which appellant Ram Pravesh Singh assaulted him with *sabbal*. Informant's uncle Nand Kishore Singh also ran from his courtyard to the informant's grain yard and he was assaulted in head by *gadasa* of accused Sheonandan Singh which was witnessed by Satyendra Singh, Upendra Singh and Surendra Singh. The informant has alleged that since his brothers Sheonandan Singh and Ram Pravesh Singh felt annoyed believing that his uncle Nand Kishore Singh shall transfer his share of land to the informant, therefore, all the accused having formed an unlawful assembly armed with deadly weapons assaulted the informant and his two sons as well as uncle Nand Kishore Singh, with the intention to kill them infurtherance of their common intention.

5. On the basis of informant's fardbeyan a case was registered as Town P.S. Case No. 131 of 1989 against all above named five accused persons for the offence punishable under Sections 147, 148, 149, 323, 324, 341 and 307 of the Indian Penal Code, where Section 27 of the Arms Act was also added by order dated 29.04.1989.

6. Learned Chief Judicial Magistrate, Aurangabad on the basis of materials collected during investigation took cognizance and committed this case to court of Sessions on



25.07.1990 for its trial and disposal. Learned trial court accordingly framed charges against appellants-accused, which upon explanation to accused/appellants, pleaded as “not guilty” and claimed trial.

7. To substantiate its case, before learned Trial Court the prosecution has examined altogether 8 witnesses. Three defence witness were also examined in defence. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Dr. Wasim Ahmad
P.W. 2	Dilip Kumar Singh
P.W. 3	Umesh Kumar Singh
P.W. 4	Anuj Kumar Singh
P.W. 5	Jagdish Singh
P.W. 6	Harihar Singh (informant)
P.W. 7	Vijay Kumar Singh
P.W. 8	Ashok Kumar (I.O.)
Defence Witnesses	
D.W. 1	Dinesh Kumar Singh
D.W. 2	Ramashish Ram
D.W. 3	Anirudh Prasad

8. Apart from the oral evidence, the prosecution has also proved the following documents in order to prove the charges and certain documents in defence also:-

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1 to 1/3	Injury report
2.	Exhibit-2	Signature on fardbeyan
3.	Exhibit-3	Fardbeyan 1



4.	Exhibit-4	Formal FIR
5.	Exhibit-5 to 5/3	Four pages injury report.
Documents from Defence		
1.	Exhibit-A	Sign of Harihar Singh on Compromise Petition.
2.	Exhibit-A/1 to A/4	Signature of accused persons on Compromise Petition.
3.	Exhibit-A/5	Sign of Amarnath Singh on Certificate
4.	Exhibit-B/5	Certificate issued by Navinagar Block Office.
5.	Exhibit-C	The certified copy of Compromise Petition and Decree of T.S. 85/93 & 80/95.

9. The statement of the appellants-accused were recorded under Section 313 of the Code after stating them incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

10. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellants/convict for the offences under Sections 148 and 307/149 of IPC and sentenced them in the manner as stated above.

11. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellants/convicts have preferred the present appeal.

12. Hence, the present appeal.



Submission on behalf of appellants:

13. It is submitted by learned counsel appearing on behalf of the appellants-accused that occurrence as alleged appears out of deposition of prosecution witnesses of free fight in nature, where both parties received injuries. It is pointed out that injury as alleged to be received by injured witness upon medical examination found simple in nature, in terms of testimony of P.W. 1 i.e., doctor. There are material contradictions in view of nature of weapons used and injury as alleged to be caused by accused/appellants by using same. It is submitted further that injury was alleged to be caused by using sharp edged weapon but injuries appears bruise and abrasions. It is submitted that ignoring all such major contradictions and nature of injuries learned Trial Court recorded judgment of conviction for the offence punishable under Section 307 of the IPC, which appears non-convincing for the reason as there are several factors which are required to be considered while making out a case under Section 307 of the IPC i.e., nature of injury, nature of weapons, pre and post conduct of the parties *qua* occurrence etc. In support of his submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Jage Ram and Others Vs. State of Haryana, [(2015) 11 SCC 366]**.



14. Arguing further, it is submitted that all the injured witnesses are relatives of the informant and, therefore, their testimony cannot be relied wholly because being interested with outcome of the case in form of conviction, particularly in the background of admitted previous enmity and land dispute. In support of his submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Nand Lal Vs. State of Chhatisgarh, [(2023) 10 SCC 470]**.

15. It is further argued that during the course of trial matter was compromised between the parties for which the compromise petition was filed, but as it was signed only by P.W.6/informant, same was not accepted by learned Trial Court. It is also pointed out that the reason for non-acceptance was also that the offence as alleged was non-compoundable in nature. It is submitted by learned counsel that this appeal is of the year 2004 for the occurrence which took place in the year 1989 in the background of land dispute, therefore, non-acceptance of compromise particularly when differences settled between the parties is also objectionable. In support of his submission learned counsel relied upon the legal reports of Hon'ble Supreme Court as available through **Narinder Singh and Others Vs. State of Punjab and Another, [(2014) 6 SCC 466] & Naushey Ali**



and Others Vs. State of U.P. and Another, [(2025) SCC OnLine SC 292].

16. While concluding the argument learned counsel for the appellants submitted that statement of appellants/convicts under Section 313 of Cr.P.C. appears recorded in very cryptic and mechanical manner, without putting the relevant evidence as surfaced during the trial against them. It is submitted that such type of statement recording of accused is not permissible under law, in terms of legal report of Hon'ble Supreme Court as available through **Sukhjit Singh Vs. State of Punjab [(2014) 10 SCC 270]** and therefore judgment of conviction and order of sentence are liable to be set aside.

Submission on behalf of State:-

17. Learned APP appearing on behalf of respondent-State, while opposing the appeal submitted that on the ground of minor contradictions as surfaced during the trial the judgment of conviction as recorded by learned Trial Court cannot be viewed with doubt, therefore, judgment of conviction as recorded by learned Trial Court cannot be viewed with doubt. In support of his submission learned APP relied upon the legal report of Hon'ble Supreme Court as available through **Bharvada Bhoginbhai Hirjibhai Vs. State of Gujarat, [AIR 1983 SC 753].**



However, he fairly conceded that P.W. 1/doctor upon medical examination found nature of injury as alleged to be caused by appellants “simple” in nature. It is also stated that other prosecution witnesses are relative of P.W. 6/informant.

18. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

Deposition of Witnesses

20. From the testimony of all prosecution witnesses it transpires that occurrence took place in the background of land dispute.

21. **P.W. 2 is Dilip Kumar Singh**, it appears from his testimony that he is a heresay witness of the occurrence and therefore his testimony appears not so relevant *qua* occurrence.

22. **P.W. 3 is Umesh Kumar Singh**, it appears from his testimony that informant P.W.-6 who is his father namely, Jagdish Singh and his brother namely, Vijay Kr. Singh was present with him while he was separating paddy from husk. As per his testimony appellant no. 1 Sheonandan Singh was equipped with *gada*, appellant no. 2 (since dead) equipped with *sabhal*, appellant no. 4 Rajiv Kr. Singh was equipped with “*bhala*”,



appellant no. 5 Ranjan Singh was equipped with *lathi* and appellant no. 3 Binay Kr. Singh was not carrying any weapon. It appears from his testimony that appellant no. 4 who was equipped with *bhala* assaulted his father and brother Vijay Kumar and caused bleeding injury on his head and other body parts. It appears from his cross-examination that on the date of occurrence the appellant no. 1 was retired from service and he was present over there. He identified signature of his father Harihar Singh/ pw-6, informant of this case, on compromise petition and upon his identification same was exhibited as **Exhibit-A**.

23. **PW-4- Anuj Kumar Singh**, is also one of the injured. It appears from his examination-in-chief that he came to know from his father Harihar Singh/P.W. 6 that he was assaulted by appellant no. 2 (since dead) on his head by sabbal and appellant no. 5 assaulted by *lathi*. It also transpires from his testimony that one of the injured Nand Keshwar Singh, died during the pendency of the trial. It also transpired from his testimony out of cross-examination that no empty cartidge was found at place of occurrence though blood stain was there.

24. **PW-5-Jagdish Singh**, turned hostile during the course of trial and nothing surfaced out of his cross examination which may used for the purpose of corroboration of the



contradiction that testimony of other prosecution witnesses, who appears supported the occurrence during the trial.

25. **P.W. 6 is Harihar Singh (informant)**, it appears from his testimony that he received injury on his head by “*bhala*” blow caused by appellant no. 4. It transpires from his testimony that the occurrence took place out of land disputes. It also transpires from his cross-examination that at the time of occurrence the appellant no. 1-Sheonandan Singh was in service though he was present in village. It also transpires from his testimony that during the occurrence none received injury out of *lathi* blow.

26. **P.W. 7 is Vijay Kr. Singh**, it appears from his testimony that his grand father Nand Keshwar Singh was assaulted by *gadasa* blow caused by appellant no. 1. It also transpired from his testimony that partition suit which was pending between them now compromised and the criminal case also compromised between them. He also testified that at the time of occurrence appellant no. 1 was in service. His testimony make a serious doubt *qua* involvement of appellant no. 1 in occurrence.

27. **P.W. 8 is Ashok Singh**, who is the IO of this case, supported the occurrence and deposed that he found blood in courtyard of the informant, but same not appears collected by him



during investigation and the weapons as alleged to be testified to be used in occurrence was also not seized by the I.O. of this case during investigation.

28. Three witnesses were examined in support of defence who are D.W. 1- Dinesh Kumar Singh, D.W. 2- Ramashish Ram and D.W. 3- Anirudh Prasad. It was deposed by them that they know both the parties and the dispute between the parties now appears settled out of compromise.

29. It appears from the impugned judgment that discussing the compromise version as deposed by defence witnesses, same was not taken into consideration by the learned Trial Court for the reason that D.W.1 was not the eye witness of the occurrence. The version of D.W.2 shows that at the time of occurrence appellant no. 1 was present in the BDO office, Navinagar, which was also not taken into consideration for the simple reason that it was not disclosing the time. The defence witnesses also deposed about the land disputes for which the Title Suit No. 85/93 was pending between the parties which now appears settled/ compromised.

30. It would be apposite to reproduce para no(s). **12, 13 & 14** of the judgment of Hon'ble Apex Court in the case of **Jage Ram (supra)**, which reads as under for a ready reference:



"12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.

13. In *State of M.P. v. Kashiram* [State of M.P. v. Kashiram, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40 : AIR 2009 SC 1642], the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under: (SCC pp. 29-30, paras 12-13)

"12. ... '13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil* [State of Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28 : 1983 SCC (Cri) 320] , *Girija Shankar v. State of U.P.* [Girija Shankar v. State of U.P., (2004) 3 SCC 793 : 2004 SCC (Cri) 863] and *R. Prakash v. State of Karnataka* [R. Prakash v. State of Karnataka, (2004) 9 SCC 27 : 2004 SCC (Cri) 1408] .

* * *

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The



circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.’

See State of M.P. v. Saleem [Saleem case, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC pp. 559-60, paras 13-14 and 16.

13. ‘6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N. [Sevaka Perumal v. State of T.N., (1991) 3 SCC 471 : 1991 SCC (Cri) 724] ’ (Saleem case [Saleem case, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC p. 558, para 6)”

14. Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injuries, situs of the injuries and the severity of the blows, the courts below recorded concurrent findings convicting the second appellant under Section 307 IPC. In our considered view, the conviction of the second appellant Rajbir alias Raju under Section 307 IPC is unassailable.”

31. It would be apposite to reproduce para no(s). **10, 11, 12 & 13** of the legal report of Hon’ble Apex Court in the matter of **Sukhjit Singh Case (supra)**, which reads as under:

*“10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in **Ranvir Yadav v. State of Bihar [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92]**. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction*



vitiating in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in **Tara Singh v. State [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491]** wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30).

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In **Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933]**, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp.



469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. *The aforesaid principle has been reiterated in **Ajay Singh v. State of Maharashtra [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371]** in following terms: (SCC pp. 347-48, para 14)*

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

32. It would be apposite to reproduce para no. **29** of the legal report of Hon’ble Supreme Court in the matter of **Narinder Singh Case (supra)**, which reads as under:



29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

33. It would be apposite to reproduce para no. **22** of the legal report of Hon'ble Supreme Court in the matter of **Naushey Ali Case (supra)**, which reads as under:

22. Before we apply this judgment to the facts, it will be worthwhile to recall the observations of Sikri, J. in *Narinder Singh [Narinder Singh v. State of Punjab, (2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] : (SCC p. 481, para 26)*

“26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307IPC as well.”

34. It would be apposite to reproduce para no. **5** of the legal report of Hon'ble Supreme Court in the matter of **Bharvada Bhoginbhai Hirjibhai Case (supra)**, which reads as



under:

5. It appears that the parents of PW 1 as well as parents of PW 2 wanted to hush up the matter. Some unexpected developments however forced the issue. The residents of the locality somehow came to know about the incident. And an alert woman social worker, PW 5 Kundanben, President of the Mahila Mandal in Sector 17, Gandhinagar, took up the cause. She felt indignant at the way in which the appellant had misbehaved with two girls of the age of his own daughter, who also happened to be friends of his daughter, taking advantage of their helplessness, when no one else was present. Having ascertained from PW 1 and PW 2 as to what had transpired, she felt that the appellant should atone for his infamous conduct. She therefore called on the appellant at his house. It appears that about 500 women of the locality had also gathered near the house of the appellant. Kundanben requested the appellant to apologize publicly in the presence of the women who had assembled there. If the appellant had acceded to this request possibly the matter might have rested there and might not have come to the court. The appellant, however, made it a prestige issue and refused to apologize. Thereupon the police was contacted and a complaint was lodged by PW 1 on September 19, 1975. PW 1 was then sent to the Medical Officer for medical examination. The medical examination disclosed that there was evidence to show that an attempt to commit rape on her had been made a few days back.



The Sessions Court as well as the High Court have accepted the evidence and concluded that the appellant was guilty of sexual misbehaviour with PW 1 and PW 2 in the manner alleged by the prosecution and established by the evidence of PW 1 and PW 2. Their evidence has been considered to be worthy of acceptance. It is a pure finding of fact recorded by the Sessions Court and affirmed by the High Court. Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. The finding of guilt recorded by the Sessions Court as affirmed by the High Court has been challenged mainly on the basis of minor discrepancies in the evidence. We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :



“(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person. (6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.



(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

-: Discussion & Conclusion :-

35. In view of aforesaid discussion *qua* evidence as available on record it transpires that there are major contradictions amongst witnesses *qua* presence of appellant no. 1 and also the nature of weapon which was equipped by different persons during the course of occurrence. Maximum of the injuries as alleged to be found upon injured in terms of deposition of P.W.1 who is doctor Dr. Wasim Ahmed is of bruise, lacerations, abrasion etc. and out of four injured only Nand Kishore Singh was the injured who received one incised wound and the injured P.W. 7 who received one injury which was also incised wound. But during the course of trial Nand Kishore Singh could not examined. From examination-in-chief of P.W. 7 it appears that after surrounding them, the accused persons appellant no. 4 assaulted by *bhala*, appellant no. 3 was



equipped with pistol who fired upon his younger brother P.W. 3 and his another younger brother P.W. 4 was assaulted by appellant no. 2 and his grandfather Nand Kishore Singh was also assaulted by appellant no. 1. As per his testimony he didn't received any injury during the occurrence as he said nothing about his own injury during his examination-in-chief which also creates a serious doubt *qua* injury as noticed by PW-1 upon appellant no. 3.

36. The statement of accused persons also appears recorded in very cryptic and mechanical manner without putting all incriminating circumstances to them and therefore same also appears questionable, in view of **Sukhjit Singh Case (supra)**.

37. In view of aforesaid discussion it transpires that there are several doubts as discussed aforesaid which must to be answered by prosecution, but could not answered by. In such a circumstance it is not safe to say that prosecution established its case beyond all reasonable doubt and thus, benefit of doubts must be extended to accused/appellants.

38. Accordingly, the appeal stands allowed.

39. The impugned judgment of conviction dated 28.06.2004 and order of sentence dated 29.06.2004 passed by learned Additional Sessions Judge (Fast Track Court No. III), Aurangabad in Sessions Trial No. 305/1990 and 194/2002 arising



out of G.R. Case No. 678 of 1989 is accordingly set aside.

40. The appellants, above-named, are acquitted of the charges levelled against them. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds. Sureties stands discharged. Fine if any paid, be returned to appellants hence forth.

41. Office is directed to send back the lower court records along with a copy of the judgment to the court below, henceforth.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.12.2025
Transmission Date	10.12.2025

