Reserved
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Criminal Appeal No. 4702 of 2007

Vijay Narayan Misra ……..……Appellant

Versus

State of U.P……..……..Respondent

Connected with

Criminal appeal No. 6109 of 2007

Shobh Nath and Others……..……Appellants.

Versus

State of U.P……..……..Respondent

Hon'ble Vinod Prasad J.

Hon'ble Surendra Singh J.

(Delivered By Hon'ble Vinod Prasad J.)

These two connected appeals are directed against the impugned judgement and order dated 18.7.2007 passed by Additional Sessions Judge, FTC 1, District Bhadoi Gyanpur (Now Sant Ravi Das Nagar) recorded in S.T.No. 416 of 1998, State versus Shobh Nath and others, by which learned trial Judge has convicted all the four appellants herein namely Vijay Narayan Misra, Shobh Nath, Ram Chandra, and Kailash for committing offences u/s 302/149, 147,148,

323/149,324/149 I.P.C. and has sentenced them for life imprisonment with Rs 5000/= fine, 6months RI, 1 year RI, 6months RI, and 1 year RI respectively for all the charges with further direction that in the event of default of payment of fine each one of the appellants shall undergo 6 months further RI and all the implanted sentences of them shall run concurrently.

Succinctly narrating the prosecution version, as it emerges from the FIR, Ext. Ka-1 and depositions of fact witnesses during the trial, both the factions involved in the incident are the residents of village Kankapur, P.S. Bhadoi district Bhadoi. Rajmani, deceased in the incident was the father of the Hub Narain (PW1/informant) and Yagya Narain (PW2). They have a different genealogy than rest of the persons involved in the incident, who all are the descendants of a common ancestor Mohan. Disclosed pedigree indicates that Mohan had three sons Ram Sumer, Gajadhar and Kamlesh. Ram Sumer also had three sons Kalika, Shiv Nayak and Shiv Bachcha. Rajendra Prasad (one of the injured in the incident from the informant's faction) is the son of Shiv Nayak. Shiv Bachcha had two sons Sarvajeet and Indrajeet. Since Indrajeet was issueless therefore his estate delved upon Sarvajeet who had sold his ancestral house to Rajendra Prasad aforesaid. This was one of the motives for the incident. Gajadhar had two sons Ram Mati and Ram Nihor. Shobh Nath (appellant) and Amar Nath are the sons of Ram Mati whereas Chandra Bali is the son of Ram Nihor. Vijay Narayan (appellant) is the son of Chandra Bali who himself was an accused in the incident but during trial had died. Kamlesh, nephew of Shobh Nath and Chandra Bali accused had a son Dev Raj. Appellant Ram Chandra is the

son of Dev Raj and appellant Kailash is the son of appellant Ram Chandra and grandson of Dev Raj. So much is for the relationships of the persons involved in the appeals.

As mentioned above Sarvajeet s/o Shiva Bachcha had inherited ancestral property of his sibling brother Indrajeet who had died intestate. Sarvajeet aforesaid sold his residential house to Rajendra Prasad (injured from the prosecution side) which cropped up a dispute between Rajendra Prasad and appellants from rival sides as in the sold house Ram Sumer (grandfather of Rajendra) Gajadhar (grandfather of Shobh Nath and Chandra Bali and great grandfather of Vijay Narayan) and Kalika (uncle of Rajendra) each had 1/3 share. Grove No. 163 and plot no. 162 were also bone of contentions between the rival sides. Though it is not very evident but it seems that concerning plot no. 162 an oral family settlement was arrived at between both the sides but the same was never documented.

Regarding topography, in village Kankapur, south of the house of Rajendra Prasad is a passage and further south of the passage lies house and the disputed purchased open land of Rajendra Prasad. On the incident date 11.4.98 at 1 P.M. Rajendra Prasad was stacking his pigeon pie/ yellow lentil *(Arahar)* shrubs in the open space purchased from Sarvajeet and because of that firstly a verbal tirade ensued between Rajendra Prasad and the appellants which soon transformed into an affray and battery, in which both the sides started assaulting the other with *lathi*(clubs), *dandas*(sticks) and spears*(bhala)*. At that time informant /PW1 Hub Narayan and his father Rajmani(deceased) were at their machine. They after hearing the commotion and assault rushed to the assault scene to intervene and pacify

both the sides and subside the quarrel but then, it is alleged, that all the five accused, the appellants herein, and dead accused Chandra Bali instigated to settle the scores with the informant and the deceased as they were unwanted interveners in the fight and immediately thereafter appellant Shobh Nath assaulted Raj Mani (deceased) on his head with spear (*ballam)* and rest of the appellants assaulted him with *lathi & danda*. In the incident informant Hub Narayan (PW1) Rajmani (deceased), Rajendra Prasad, Yagya Narayan (PW2), and Shyamdhar had sustained grievous injuries. After making assault as aforesaid accused escaped from the incident scene. Arranging a jeep all the injured were taken to the district hospital at Bhadoi, but en-route Rajmani lost his life and no sooner arrival of the jeep in the hospital he was pronounced dead by the doctor on duty.

Informant Hub Narayan, PW1 got the incident FIR, Ext. Ka-1, scribed through injured Rajendra and after being read over the same and after verifying it's contents he signed on it and thereafter carried it to the police station Bhadoi were he lodged it.

Head Moharrir Jiut Prasad,PW4 registered the crime at 4.45 P.M.by preparing Chik FIR No.92 /98, Ext. ka-3, vide crime number 111/98 u/s 147,148,149, 323,324,302 I.P.C. and Constable Moharrir 113 Bhupendra Nath Shukla PW3 prepared the crime registration GD No. 25 vide Ext. Ka-2.

Investigation into the crime was set out by SSI Sarvar Khan, PW5 who after copying chik FIR and GD entry came to Bhadoi hospital where under his instructions got the inquest on the cadaver of the deceased performed through SI R.D. Varma. Inquest memo is Ext. Ka-4 and other relevant papers prepared simultaneously like photo lash , chalan

lash, letters to RI and to CMO, all are Exts. Ka-5 to Ka-8. Completing inquest proceedings corpse of the deceased was sealed and was handed over to constables Shashikant Singh and Bhupendra Singh to be carried to the mortuary for autopsy examination. Accused Chandra Bali, Shobh Nath and Ram Chandra were arrested same day and their statements were recorded. Following day(12.4.98) I.O. penned down statement of Rajendra Prasad and at his pointing out conducted spot inspection and prepared site plan Ext. Ka-9. Blood stained earth and plain earth, broken piece of spear were seized from the spot and were sealed separately and it's recovery memo, Ext. Ka-10, and seal impressions were prepared. Other two accused, Kailash Nath and Vijay Narayan had surrendered in the court. I.O. thereafter observed other investigatory formalities, recorded the statements of witnesses and accused on 12.5.98 and the same day, charge sheeted all the five accused u/s 147,148 149,323,302 I.P.C. which is Ext. ka-11, vide memo no.7A. Seized broken piece of spear is material Ext. 1, and soils are Ext. 2 &3.

Dr. R.D. Diwedi, P.W.6 conducted post mortem examination on the cadaver of the deceased and had prepared his post mortem examination report Ext. Ka-12. According to the doctor deceased was 65 years of age having an average built body and rigor mortis had passed off from the entire corpse but decomposition had not started. On internal examination skull bones were cut and brain was soft. Semi digested food material was present in the stomach, small intestines had pasty material and large intestines had faeces. 1 to 2 days had lapsed since death and hemorrhage and shock due to sustained injuries were

the cause of death. Following ante mortem injuries were detected on the cadaver of the deceased:-

(1) Lacerated wound 1c.m.x1c.m.xskin deep in size on the left of the face 0.5 cm below the outer angel of chin.

(2) 1c.m.x1c.m. in size on the left side of the face chest below the injury no.1

(3) Incise wound 15 c.m.x1.5 cm x deep up to cranial cavity on the right side of the skull 7 cm above the upper head of right ear pinna.

(4) P.M. contusion 2 cm x 2 cm interior the upper surface of the left shoulder.

(5) P.M. abrasion 2c.m.x 2 cm interior medial side of the right lower leg 3 cm proximal right medial malleus.

Injuries No. 1&2 were the result of assault by blunt objects whereas injury no. 3 was the outcome of assault by some wide sharp edged weapon like *ballam* etc.

All the injured were examined by Dr. A.K. Singh, PW7 on 11.4.98 at 3.50 P.M. (Shyam Dhar Misra), 4.05 P.M. (Hublal Misra), 4.20 P.M.(Rajendra Prasad) and 4.30 P.M. (Jaynarayan) vide their medical examination reports Exts. Ka-13, 14, 15 & 16. These injured had sustained following injuries on their persons:-

Ext. ka-13

Injuries of Shyamdhar Misra:- (1) Abrasion 2-1/2 cm X 1 cm on left the side face 1-1/2 cm lateral to the lateral carnal to the left eye.

(2) Contusion 8 cm x 1-1/2 cm left side angel of left mandible lateral traversaly colour reddish.

(3) Abrasion 1c.m.x 1c.m. on the top of left shoulder.

(4) Contusion 7 cm x 2 cm outer reddish side of left forearm 3 cm above left wrist colour reddish duration all injuries fresh caused by blunt object. Nature all injuries are simple.

Ext. Ka-14:-

Injuries Of Hublal Misra:-

(1) Lacerated wound 1- ½ cm x ½ cm muscle deep on the left side forehead 10 cm below lateral end of left eyebrow.

(2) Traumatic swelling 4 cm x ½ cm x all around the left middle finger----------kept U-O. Advised X-ray left middle finger.

(3) Traumatic swelling 1-1/2c.m. X 2 cm over the proximal I.P. Joint.

(4) Injury no.1 from ---------injury no.2 could not be ascertained caused by blunt object injury no.1 fresh injury nos.2 and 3 could not be ascertained caused by blunt object, nature injury nos.1 and 3 simple injury no.2 kept U-O advised x-ray.

Ext. ka-15:-

Injuries of Rajendra Prasad:-

(1) Lacerated wound 2-1/2 c.m.x1/4 cm x muscle deep x right side scalp 10 cm above right eyebrow.

(2) lacerated wound 3 cm x ½ cm x ½ cm x bone deep on the right side forehead above right eyebrow situated vertically.

(3) lacerated 2c.m.x ¼ cm x muscle deep on the left side scalp 7 cm above left ear.

(4) lacerated wound 2 c.m.x1/2c.m.x muscle deep 7c.m. Below left eyebrow.

(5) Contusion 15 cm x 2-1/2 cm on the right side back on scapula region colour reddish.

(6) Contusion 5 cm x 2 cm on the dorsum of left hand in lower half kept U-O advised X-ray. Left hand right and left colour reddish, duration all injuries are fresh caused by blunt object. Injury no.6 kept observation. Injury nos.1 to 5 are simple.

Ext.ka-16:-

Injuries of Jayanarayan :-

(1) Lacerated wound 2-1/2 cm x ½ cm x muscle deep on left side scalp 9 cm above left ear.

(2) C-O pain in the middle finger. No-------of external injury.

(3) Complaints of pains left side -----scapular region. No ----------of external injury.

(4) C-O pains of left thigh on left thigh of lateral aspect.

(5) N/O of external injury seen.

Duration injury no.1 fresh injury nos.2 and 3 could not be ascertained caused by blunt object. All injuries are simple.

According to the doctor these injuries could have been inflicted at or about the time of the incident by blunt objects.

On the strength of charge sheet Ext. Ka-11 court proceedings against the charge sheeted accused commenced on 7.7.98 by registration of case No. 603 of 98, State versus Chandra Bali and others in the committal court of CJM, Bhadoi in which all the accused were summoned to stand trial for the charge sheeted offences. Finding the disclosed offence of murder exclusively triable by Sessions Court, CJM committed the case to the court of Sessions vide committal order dated 1.12.98 and in the Sessions Court it was registered as S.T.No. 416 of 98, State versus Chandra Bali and 4 others. It seems that after committal of case but before the charge could be framed accused Chandra Bali

expired as framed charge page does not contain his signature.

Additional Sessions Judge, court No.1 Bhadoi charged surviving four accused Shobh Nath, Ram Chandra, Vijay Narayan(nath) and kailash Nath, with offences u/s 147,148, 323/149,302/149,324/149 on 29.8.2001. Since all the four accused abjured those charges after it being read over and explained to them hence to establish their guilt Sessions trial procedure was resorted to by the learned trial Judge.

During the trial prosecution examined in all seven of it's witnesses, two of whom informant Hub Narayan (PW1) and Jag Narayan (PW2)were fact witnesses. Rest of the formal witnesses included Head Moharrirs, I.O. and the doctors as mentioned above.

In their statements under section 313 Cr.P.C, the accused-appellants denied the incriminating circumstances appearing against them and stated that the witnesses have given a mendacious version. Appellant Shobh Nath further stated that he had seisin over the grove and plot nos. 162 and 111. Rajmani (deceased), Hub Narayan (informant/ PW1), Jag Narayan (P.W.2), Gulab Dhar, Shyam Dhar and Guddu armed with spear, *chopar*, *lathi* and *danda* illegally attempted to grab the said plots. Jag Narayan, assaulted Shobh Nath with *gadasa* but Shobh Nath managed to escape but the hurled blow caused injury to Rajmani on his head in the melee. The miscreants caused injuries to Shobh Nath, Chandra Bali, Kailash and Ram Chandra. Because of sustained injury Chandra Bali expired after few days. Before the incident Shobh Nath had testified against Rajmani(deceased) and because of the aforesaid reasons prosecution side had assaulted the appellants and others.

Shobh Nath further stated that cross case is also pending against informant's side. Appellant accused Kailash also stated that adjacent to the place of the incident he had a grove land. Hub Narayan had assaulted him. His right leg had been fractured in 1994 and since then he is handicapped. Thus, it is perceptible that through statements of Shobh Nath and Kailash, the appellants have set up a cross version respecting which a cross case was also pending against the informant, deceased, P.W. 2 and others in the same court.

Learned trial judge after appreciating oral and documentary evidences found guilt of the accused established beyond doubt and consequently convicted and sentenced them as above and hence this appeal by the convicted accused challenging the aforesaid impugned judgement and order dated 18.7.2007.

In the background of the aforesaid facts, we have heard Sri S.P.Giri learned counsel for the appellants and Sri Sangam Lal Kesarvani, learned AGA for the respondent State and have ourselves perused the trial court record.

Castigating and criticizing the impugned judgment, appellants' counsel submitted that none of the prosecution witnesses are reliable and they have narrated a false story. In fact, it was the informant and the deceased and their associates who were the aggressors to grab the disputed property and the grove belonging to the appellants and it were they who had started assaulting the appellants side and in exercise of right of private defence, the injuries were caused to the informant's side. Learned counsel submitted that no explanation of the injuries sustained from the appellants' side has been offered by the prosecution. Perusal

of medical reports from the appellants' side duly proved as Exhibit Kha 1 to Kha 4 indicates that the appellants side had also sustained serious injuries including lacerated wounds and, therefore, it was incumbent upon the prosecution to explain those injuries. Deposition of the doctor P.W. 7 unerringly establishes that the injuries sustained by the appellants could have been caused to them at or about the time of the incident and, therefore, the prosecution was under obligation to explain those injuries. Rajendra Prasad, star prosecution witness with whom the incident had started was intentionally withheld by the prosecution ostensibly for the motives to tell tale a story against the appellants. The two witnesses examined during the trial are the real brothers both beings sons of the deceased and they have narrated a concocted story. Chandra Bali, one of the person from the side of the appellants later on died due to sustained injuries in the incident and, therefore, prosecution witnesses are not wholly reliable. It is further submitted that there was no unlawful assembly and conviction of all the appellants for the charge under section 147/148 IPC and for other offences with the aid of section 149 I.P.C. is wholly unsustainable. Those persons, who were armed with blunt objects could not have been convicted under section 148 IPC and that accused, who had wielded the *ballam* (spear) could not have been convicted under section 147 urged appellants' counsel. It was further submitted that the depositions of the interested, related, partisan witnesses, who were eager to nail-in the appellants being accused in the cross version could not have been relied upon by the learned trial court. Learned counsel further urged that the depositions of both the fact witnesses P.W.1 and P.W.2 do not inspire any

confidence, as they had tried to suppress the injuries sustained by the accused appellants in the same incident, which were neither insignificant nor manufactured and, therefore, they had tried to suppress the genesis of the incident or at least they are not telling the whole truth. In either case it is hazardous to place any reliance on their testimonies and dub them as wholly truthful witness. Learned counsel further urged that the grove, which was the bone of discord was also owned by the appellant side and therefore, there was a genuine exercise of right of private defence by the appellants. Some of the findings recorded by the learned trial Judge is contrary to the weight of evidences on record and at places, learned trial Judge has misread the evidences and has convicted the appellants without dispassionately examining the record and therefore, impugned judgment is unsustainable. For the aforesaid reasons, it was submitted by learned counsel for the appellants that the appeal be allowed and conviction and sentence recorded through the impugned judgment be set aside and appellants be acquitted of the charges leveled against them.

Learned AGA arguing to the contrary made all efforts to countenance the impugned judgment and contended that it were the appellants, who had murdered the deceased and therefore, their conviction be affirmed.

We have bestowed our thoughts to the rival contentions. Since both the sides have stated their own versions, therefore to unravel the truth, it is apt to scan testimonies of witnesses. So far as relationships and pedigree mentioned herein above are concerned, there is no dispute that the above to referred genealogy is correct. No

serious attempt was made to contradict it and hence the relationships between the rival sides slated in preceding paragraph has to be accepted as correct, the residue being that both the sides had a common ancestor except the informant, the deceased and PW2, who were father and sons and sibling brothers.

Regarding the topography both the fact witnesses were cross examined searchingly wherein they have disclosed that the openings of the house of Chandra Bali are towards east and north both. He has got an open place outside northern door. There is no way and *chak* road west to the house of Chandra Bali. The road is towards south of the house of Rajendra. The aforesaid passage comes from the west and then bends towards north and thereafter bends towards east. House of Rajendra is south of the house of Chandra Bali. The afore mentioned common pathway is narrow and only two wheelers can ply on it. The Yadav locality is towards north of the house of Chandra Bali and from the said locality house of Chandra Bali is visible. East and west to the Yadav's locality is the locality of scheduled castes people. On the western sides of the passage lies the houses of Yadav community and seven and eight houses of scheduled castes community. It was further stated that Shobhnath and Chandra Bali resided in the same house. P.W.1 further stated that west to the house of Rajendra Prasad is the common grove. It was further stated that south of the house of Rajendra Prasad is the disputed grove.

Vetting and summating their evidences further it becomes more than evident that both the fact witnesses are unreliable, incredible and untrustworthy. They both had testified a mendacious story with complete suppression of

real genesis of the incident and injuries caused to the accused side. As stated above the accused also has a cross version. Through the deposition of head mohrir Jiut Prasad P.W.4, they have proved their chik F.I.R., Ext. Kha 1, registered as cross case being crime no.111A of 1998, u/s 147, 148, 149, 323 and 366 IPC lodged by informant Rakesh Kumar Mishra s/o Amar Nath Mishra. Accused arraigned in that cross FIR were Rajmani (deceased), Hub Narayan, (informant), Gulab Dhar and Shyam Dhar. The said FIR was registered on 11.4.1998 at 6.30 p.m. From Dr. A.K. Singh, P.W.7, the appellants have proved the injuries of Kailash, Chandra Bali, Shobh Nath and Ram Chandra as Exhibits Kha 1 to Kha 4.According to the doctor these injuries could have been inflicted at or about the date and time of the incident. The injury reports from the side of the appellants Exhibit Kha 1 to Kha 4 are reproduced herein below:-

Exhibit Kha1

Injuries of Kailash Mani Mishra, aged about 25 years, son of Ram Chandra Mishra R/o Kanakpur P.S. Bhadohi District Sant Ravi Das Nagar examined on 11/4/98 at 3.20 p.m.

Injuries: 1) Lacerated wound 6 cm. X ½ cm. Lt. scalp 8 cm above Lt. ear.

2) Abrasion 7 cm. X ¼ cm. on the anterior aspect of it arm 2 cm above Lt.

Duration fresh, Caused by blunt object,Nature all injuries are simple.

Exhibit Kha2

Examined Chandrabali Mishra aged about 60 years, Resident of village Kanakpur P.S. Bhadohi, District Sant Ravi Das Nagar on 11.4.98 at 3.00 p.m.

Injuries :

1) Lacerated wound 3 cm. X ½ cm. X Bone deep on Lt. side scalp 7 ½ cm above Lt. eye brow.

2) Lacerated wound 4 cm. X ½ cm. X Bone deep on the middle of scalp 7 cm. Above the bridge of Nose. 3) Abraded contusion 7 cmx 1 ½ cm border of Rt. Forearm just above Rt. wrist with traumatic swelling 7 cm.

Kept U.O. adv. for X-Ray Rt. forearm and wrist-A.P.- Lat. Colour reddish.

4) Lacerated wound ½ cm. X ¼ cm at the nail bed with traumatic swelling all around of Rt. middle finger.

Duration All injuries are fresh,Caused by blunt object, nature Injury No.3 is kept U.O.Injury No.1,2 and 4 are simple.

Exhibit Kha3

Examined Shobh Nath Mishra aged about 60 years R/o Village Kanakpur P.S. Bhadohi District Sant Ravi Das Nagar.

Injuries: 1) Lacerated wound 6 cm. X Bone deep on Lt. side scalp Lt. ear.

2) Contusion 10 cm. X ½ cm. On the dorsum of Lt. forearm and elbow. Colour reddish.

3) Lacerated wound 1 ½ cm. X 0.2 cm. X muscle deep on Rt. side upper lip.

4) Lacerated wound 3 cm. X ½ cm. Muscle deep over aspect of Lt. middle Kept U.O.

5) Traumatic swelling 9 cm. X 7 cm. Over Lt. thumb.

Duration Injury (1) (2) (3) (4) are fresh,Injury No.5 could not ascertained, Caused by blunt object, Nature Injury No.1,2 and 3 and (5) are simple injury No.4 kept U.O.

Exhibit Kha 4

Examined Ram Chander Mishra aged about 58 years R/o Village Kanakpur P.S. Bhadohi District Sant Ravidas Nagar on 11.4.98 at 3.10 p.m.

Injuries : 1) Lacerated wound 4 cm. X ½ cm x muscle deep on Lt. side scab Lt. eye brow.

2) Abraded contusion 5 cm. X 3 cm. Mid line of scalp and anterior to the colour reddish.

3) Contusion 30 cm. X 3 ½ cm. 3 cm below colour reddish
4) Contusion 8 cm. X 6 cm. On Lt. side back …
5) Abraded contusion 8 cm. X 2 ½ cm on the scapular region. Anterior to injury No.4 colour reddish.
6) Contusion 4 cm. X 1 ½ cm. On lateral aspect of Rt. elbow colour reddish.
7) Contusion 5 cm. X 1 ½ cm. In dorsum of Rt. colour reddish.
8) Lacerated wound 1 cm. X 1 ½ cm. X scalp deep at the..
Duration All Injuries are fresh,Caused by blunt object, Nature All injuries are simple."

A glimpse of injuries sustained by four persons from the appellant's side leaves no room for doubt that some of them which are lacerated wounds on the head were inflicted on the vital part of the body (head) which could not have been self- inflicted or self-suffered. They were neither insignificant nor trivial. Not one but four persons from the appellant's side had sustained those injuries. What is most significant is that prosecution side has not challenged existence, nature and duration of those injuries. Both the fact witnesses have completely feigned ignorance about all these injuries and have concealed it. Thus what transpires is that both of them are tutored witnesses who have deposed a tutored mugged up story in a parrot like manner. What is still most significant of immense importance is that neither of them had divulged how the incident started and who were the aggressors. They both claimed to have arrived at the assault scene after hearing the commotion and assault by each faction and therefore the genesis of the incident lies in mystery and we are left to grope into that. In such a view when informant and the deceased intervened into the

incident siding with Rajendra Prasad, the appellants who according to the defence case were attacked, had a genuine apprehension of sustaining grievous injuries and hence if they caused injuries to the prosecution side they cannot be faulted with. Reiterating of the FIR version by both P.W. 1 and P.W. 2 too is a fib as in their FIR also they have concealed the factum of inflicting injuries on the appellants side. Thus the painted picture which emerges is that the depositions of both the fact witnesses had an air of mendacity creating a serious doubt on it's authenticity. This makes a serious inroad in accepting prosecution allegations as a true story inspiring confidence. It is recollected here that both, informant PW1 and Jayanarayan P.W.2 have deposed without any ambiguity that they had not assaulted the appellant's side nor they had seen any injury on their persons, while admitting the fact that they were being prosecuted in a cross version, State Vs. Hub Narayan and others, for committing crimes respecting the same incident in the same court initiated by the appellant side. Thus what is established on record is that prosecution has suppressed accused injuries without offering any explanation for it. In such fact scenario the inevitable conclusion which can be drawn is that none of two fact witnesses are worthy of being relied upon. Their depositions are untruthful concealed in suppression of facts. Hence we find it difficult to place any reliance on them moreso when perusal of the injury reports Ext. Kha 1 to 4 indicates that appellant Kailash had sustained a lacerated wound of 6 cm x 1-1/2 cm bone deep on the left side of the scalp, 8 cm above left ear. Appellant Chandrabali had also sustained three lacerated wounds, two of which were on scalp 3 cm x ½ cm x bone deep and 4 cm

x ½ cm x bone deep. Both the lacerated wounds were 7 cm above the bridge of nose and left eyebrow. He had also sustained a third lacerated wound 4 cm x ¼ cm at the right middle finger. So also Shobnath, appellant had sustained a lacerated wound 6 cm x ½ cm x bone deep on the left side scalp 9 cm above left ear. He had another lacerated wound on the left side upper lip and a third lacerated wound muscle deep on the phalang of left middle finger. Appellant Ramchandra had sustained a lacerated wound 4 cm x ½ cm on the scalp with four contusions and others injuries. In all, from the side of the appellants, four accused had sustained 19 injuries. At the cost of repetition we note that it is categorical depositions of both the fact witnesses P.W.1 at internal page 2 of his testimony and P.W.2 at page 10 of his depositions that they had not assaulted appellants side nor had seen their injuries. P.W.1had stated "*we have not assaulted the accused nor seen the injury of any of the accused. A criminal case State Vs. Hoob Narayan is pending against us in this court regarding this incident"*. So also P.W.2 has deposed. The Public Prosecutor had not cross-examined the doctor on this aspect of the matter and to get it elicited from him that the injuries sustained by the appellant accused could have been self- suffered, manufactured, insignificant and trivial. In such a view, non-explanation of injuries of the accused by the two fact witnesses creates an irreparable inroad and dent in the prosecution story and shows that they are not telling the whole truth. In either case it is wholly unsafe to place any reliance on their testimonies. Learned trial Judge while dealing with the said aspect of the matter committed a manifest error as he himself has opined that in both the

cross versions, the prosecution has suppressed the injuries of the other side yet he acquitted one side and convicted the appellants. Such a scrutiny and opinion by the learned trial Judge is ex-facie illegal. The opinion by the learned trial Judge that the accused have not pleaded exercise of right of private defence was not relevant as, the prosecution had failed to satisfactorily explained the injuries sustained by the accused side. Thus, the reasonings of the learned trial Judge are faulty. In our view we benefittigly derive support from following apex court decisions:-

In **Lakshmi Singh and others etc. vs. State of Bihar:AIR 1976 SC 2263** it has been held by the apex court as under:-

"According to the Doctor injury No.1 was grievous in nature as it resulted in compound fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a sharp-cutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries in the course of the assault, because it has not been suggested or contended that the injuries could be self-inflicted nor it is believable. In these circumstances, therefore, it was the bounded duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witnesses have made a clear statement that they did not see any injuries on the person of the accused. Indeed it the eye-witnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the

person of the accused, this is a most importance circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai v. State of Bihar, (1968) 3 SCR 525 = (AIR 1968 SC 1281) tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very Doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasarath Singh also. In the case referred to above, this Court clearly observed as follows :

"The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W.15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabilised. Under these circumstances the prosecution had a duty to explain those injuries ..... In our judgement the failure of the

prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilities the plea taken by the appellants." This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow : (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In Puran Singh v. The State of Punjab, Criminal Appeal No. 266 of 1971 decided on April 25, 1975 = (reported in AIR 1975 SC 1674) which was also a murder case, this Court, while following an earlier case, observed as follows :

"In State of Gujarat v. Bai Fatima (Criminal Appeal No. 67 of 1971 decided on March 19, 1975) = (reported in AIR 1975 SC 1478) one of us (Untwalia, J.,) speaking for the Court, observed as follows :

"In a situation like this when the prosecution fails to explain the injuries on the person of an accused depending on the facts of each case, any of the three results may follow :

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this

judgement. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case."

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

Opining thus apex court in that decision has acquitted the accused by perorating thus:-

"17. Thus in view of the inherent improbabilities, the serious omissions and infirmities, the interested or inimical

nature of the evidence and other circumstances pointed out by us, we are clearly of the opinion that the prosecution has miserably failed to prove the case against the appellants beyond reasonable doubt. Normally this Court does not interfere in an appeal by special leave with concurrent finding of fact, but this is one of these cases where the judgement of the High Court is manifestly perverse and where the High Court has not considered important circumstances which completely demolish the prosecution case. In fact the High Court has hardly made any real attempt to analyse or discuss the evidence and has merely affirmed the finding of the Sessions Judge by narrating the evidence relied upon by it. We have already pointed out that on one of the most important points arising in a criminal trail, namely, the non-explanation of the injuries on the person of the accused by the prosecution, the High Court has not only committed an error of fact but an error of law by showing a lack of proper appreciation of the principles decided by this Court."

In **State of M.P. vs Mishrilal (dead) and others:AIR 2003 SC 4089** it has been observed by the apex court as under:-

"NON-EXPLANATION OF THE INJURIES SUSTAINED BY THE ACCUSED

17.The last and which appears to be fatal to the prosecution case is non-explanation of the injuries sustained by the accused. As already said accused Mishri lal received as many as five injuries, which were dangerous to life. Madusudan and Jamuna prasad received simple injuries. In Ex. P-1 as well as in the entire deposition of PWs, the

prosecution has not explained the injuries sustained by the accused. In the background of the defence, as set up by the accused, it was incumbent on the part of the prosecution, to have explained the injuries sustained by the accused. The defence version is that on being retreated the bullock-cart of Babulal, the complainant party - Maharaj Singh, Gopal, Mathura Lal, Lakhan, Jagdish, Mulia, Kailash and Karan Singh came with lathis and farsa. Mathura Lal hit Mishrilal's head with the farsa and Babulal, Maharaj Singh and Karan Singh beat Mishrilal with lathis. Madhusudan ran to save his father Mishrilal and they also beat him. When Jamuna prasad came to save, he was also beaten up and on that Jamuna prasad ran towards the house and made two fires in the air to save his father. It is the case of defence that the bullet, which struck Bhavar singh, came from towards the house of Babulal. In the face of defence version, which competes in probability with that of the prosecution case, it was mandatory on the part of the prosecution to have explained the injuries sustained by the accused and non-explanation of the injuries is fatal to the prosecution case. In Lakshmi Singh and others v. State of Bihar, (1976) 4 SCC 394, referring to earlier decisions in Mohar Rai v. State of Bihar, (1968) 3 SCR 525 : AIR 1968 SC 1281 : 1968 Cri LJ 1479, it was held by this Court:

". . . . . .where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants. . .

. . . .in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important

circumstance from which the Court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. . . . .

. . . . .However there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries."

18.In State of Rajasthan v. Madho, AIR 1991 SC 1065 at page 1067 this Court held as under :

"The fact remains that both the respondents had sustained serious injuries, Kishna mainly on the skull whereas Madho on the skull as well as scapular region. If the prosecution

witnesses shy away from the reality and do not explain the injuries caused to the respondents herein it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident. The High Court was, therefore, of the opinion that having regard to the fact that they have failed to explain the injuries sustained by the two respondents in the course of the same transaction, the respondents were entitled to the benefit of the doubt as it was hazardous to place implicit reliance on the testimony of the injured PW-2."

19. In Ex. P-1, as already noticed, there is no explanation about the injuries sustained by the three accused. None of the prosecution witnesses explained the injuries sustained by the accused. The injuries sustained by Mishrilal were dangerous to life. The prosecution witnesses consist of interested and inimical witnesses. We are, therefore, of the view that the prosecution has not presented the true version on most material part of the story. Their evidential value does not inspire confidence and it cannot be accepted on its face value and relied upon. It is in these circumstances that non-explanation of the injuries sustained by the accused proved fatal to the prosecution case."

In **Raghubir Singh Vs State of Rajasthan and Others:**

(2011)12 SCC 235 it has been held by the apex court as Under:-

"14. *It has firstly to be borne in mind that the injuries on the accused had not been explained as the prosecution*

witness did not utter a single word as to how they had been suffered by them. In this view of the matter, the defence can legitimately raise a suspicion that the genesis of the incident was shrouded in mystery and the prosecution had suppressed a part of the proceeding. It is true, as contended by Dr. Manish Singhvi, that each and every injury on an accused is not required to be explained and more particularly where all the injuries caused to the accused are simple in nature (as in the present case) and the facts of the case have to be assessed on the nature of probabilities. Examining the incident in the light of the above, we find that the injuries in the present case were required to be explained as there is a serious dispute as to the possession of the land in which the incident had happened, more particularly as Raghuveer Singh himself was uncertain as to the nature of the possession as per the statements on record and the Patwari had also warned the complainant party not to trespass into the land. Undoubtedly, there are a large number of injured witnesses, some of them grievously hurt, to support the prosecution case, but in the light of the finding of the High Court that there was uncertainty about the possession, this fact by itself cannot preclude the

accused from claiming that no case was made out against them."

Recently in **Mohd. Khalil Chisti vs State Of Rajasthan: (2013) 2 SCC 541** apex court affirmed the same view after taking stock of various other pronouncements in **Waman vs State of Maharastra (2011) 7 SCC 295;Raghubir Singh (Supra);Krishnan vs State of T.N.(2006)11 SCC 304.**

Turning towards instant appeal and applying the ratio of the above decisions we are of the view that both the prosecution witnesses are untrustworthy and no reliance can be placed on their testimonies.

Here at this point we would like to revert back to the impugned judgement of the trial court which indicates that the reasonings adopted by the learned trial Judge are faulty and completely misdirected. Contrary to the well settled and well established principles of law trial judge has failed to confer benefit of exercise of right private defence on the accused appellants for the reason that they have not specifically pleaded the same. However the decisions are to the contrary. Nowhere it is required in law that unless accused specifically pleads or claims exercise of right of private defence he cannot be conferred with such a right.

Unambiguous law is that if from the facts and circumstances of the case if the accused is able to establish exercise of right of private defence he has to be conferred the benefit of the same and no special pleading is required for the same. Right of self-preservation is too precious and sacrosanct a right to be denied to the claimant thereof in deserving cases on the technicalities of pleadings and suggestions and while evaluating the evidences in such cases the courts should not construe it narrowly. The opinion by the learned trial judge that appellants cannot be anointed with that benefit because they had not claimed or suggested it is a too feeble and fragile opinion to be countenanced. Non explanation of the injuries from the appellants side by the prosecution and complete denial of the same irreparably damages authenticity of the prosecution version which is liable to be discarded. Both the witnesses are inimical, partisan, interested and related. They both are accused in cross version lodged from the appellate side and hence they cannot be bracketed as independent and above board witnesses. Their testimonies are of impeachable and assailable character and hence it is too hazardous to place any reliance on them. In fact prosecution has completely left unchallenged the appellants injuries which was a must for it

to explain and since it has failed to offer any explanation for the same we perorate that they have not disclosed the truth and have suppressed the real genesis of the incident.

Besides above disquieting feature there are other factors also which impels us to reject the prosecution case. Ab initio we take up the FIR. It is the clear case of the prosecution that after the incident first of all the injured and the witnesses had gone to the hospital for medical aid in a jeep and when the doctor declared the father dead that the informant had gone to the police station leaving the corpse of the father at the hospital. Informant Pw1 further testified that only he and Rajendra Prasad had gone to the police station immediately after the news of demise of the father was divulged to them. He further deposed that after reaching the police station, he orally narrated the entire incident to the head constable, who directed him to get himself medical aid first and get the bleeding stopped. P.W.1 further deposed that he had informed the head constable regarding the demise of his father orally. He admitted that the head constable and the other police personnel at the police station had even come to the hospital. He further admitted that in the presence of the constable a medical prescription was also prepared by the doctor. The informant

and other persons stayed in hospital for half or quarter to one hour during which period the constables remained present. From these statements and circumstances what is perceived is that it all introduces an element of concoction and fabrication of FIR and into the prosecution story with the aid of police personnel and thereby creates a doubt on the authenticity of the FIR version.

Moreover it transpires from the impugned judgement that learned trial court has looked into the evidences of cross case also to pass the impugned judgement. This approach by the learned trial Judge is against the settled principles of procedural law. This is so evident from page 10 of the impugned judgement as the learned trial court had considered the prosecution version of cross case where appellants as prosecution witnesses have denied injuries from the prosecution side in the instant case. Law relating to the cross cases are very clear. Cross versions/cross cases have to be tried by the same court one after another and the judgment be also pronounced simultaneously but the evidences of one case cannot be read into another. This aspect of the matter is settled by a catena of Apex Court decisions. In **Mitthulal versus State of M.P.: (1975) 3 SCC 529** it has been held as under:-

"4. It is apparent from a bare reading of the judgment of the High Court that it suffers from a serious infirmity and it is impossible to sustain it. The High Court has based its conclusion not only on the evidence recorded in the case against the appellants and the four other accused but has also taken into account the evidence recorded in the cross-

case against Ganpat, Rajdhar and others. This is what the High Court has stated in so many terms in paragraph 7 of the judgment:

" The two cases Cr. A. No. 188 and Cr. A. No. 202 of 1968 have to be read together and then alone the real position can be understood. The witnesses in one case are undoubtedly accused in the other. It is by going through the evidence in both the cases that we can come to the real story. The Nandwanshis claim that the fight took place in the field belonging to them, and, therefore, they had a right of private defence, whereas the other party similarly claims that the fight took place in their field and they had a right of private defence. Curiously enough both claim that the origin of the trouble is the grazing of the cattle. If we read both the cases together with the statement of the accused in one case and the version of the witnesses of the prosecution in the other along with the statement of the accused and the version of the prosecution witnesses in the other we can come to the true story. Independently considered a particular case, it creates some confusion. If both the cases are read together there leaves no room for doubt that the incident happened in the following manner.... After going through the evidence of both the cases I have come to the conclusion that the convictions in both the cases are in order. This was clearly impermissible to the High Court. It is difficult to comprehend as to how the High Court could decide the appeal before it by taking into account evidence recorded in another case, even though it might be what is loosely called a cross-case. It is elementary that each case must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in

arriving at the decision. Even in civil cases this cannot be done unless the parties are agreed that the evidence in one case may be treated as evidence in the other. Much more so in criminal cases would this be impermissible. It is doubtful whether the evidence recorded in one criminal case can be treated as evidence in the other, even with the consent of the accused. But here there was clearly no consent of the appellants to treat the evidence recorded in the cross-case against Ganpat and Rajdhar as evidence in the case against them. The High Court was, therefore, clearly in error in taking into consideration the evidence recorded in the cross-case against Ganpat and Rajdhar. The High Court ought to have decided the appeal before it only on the basis of the evidence recorded in the present case and ought not to have allowed itself to be influenced by the evidence recorded in the cross-case against Ganpat and Rajdhar. It is regrettable that the High Court should have fallen into such an obvious error. The judgment of the High Court must, therefore, be set aside and we must proceed to consider whether on the evidence recorded in the present case - without looking into the evidence recorded in the other cross-case - the conviction and sentence recorded against the appellants can be sustained."

The above view has been recently reiterated in **Mohd. Khalil Chisti(Supra)** vide para 38, wherein it has been held as under:-

"*Mr. Jasbir Singh Malik, learned counsel for the State by relying on a decision of this Court in Mitthulal V. State of M.P. submitted that evidence in cross-case cannot be relied upon. It is true that in the said decision, this Court held that it has not accepted the procedure followed by the High Court which has based its conclusion not only*

on the finding recorded in the case against the appellants therein and the four other accused but also taken into account the evidence recorded in the cross-case against Ganpat, Rajdhar and others. This Court held that the course adopted by the High Court was clearly impermissible. There is no dispute about the said proposition and in fact in the case on hand, neither the trial court nor the High Court relied on the evidence led in the cross-case but the same were tried separately and in fact appeals are still pending before the High Court against the conviction in the cross-case."

Another damaging aspect of prosecution allegation which goes to the root of the matter and makes the prosecution version suspect is that the incident is alleged to have started by a verbal onslaught and assault in between Rajendra Prasad on the one hand and the appellants on the other. Significant to note is also the fact that Rajendra Prasad is also the scribe of the FIR Ext ka-1. He however was not produced in the trial and, therefore, how the incident started and who were the aggressors have been clearly suppressed by the prosecution. It is the case of the prosecution that the informant and the deceased had arrived amidst the assault and had intervened in the incident from the side of Rajendra Prasad and, therefore, it is difficult to rely upon the prosecution story especially when the appellants characterise them as aggressors. Non examination of Rajendra Prasad is a significant omission on the part of the prosecution because in absence of his testimony we do not know how the incident had started. On this score also learned trial Judge adopted a weird reasoning of not multiplying the witnesses instead of considering viability of accused submissioning and thereby fell in grave error.

Another important aspect of the matter is that the deceased had sustained a single fatal injury on the head, which was an incised wound. According to the doctor the said injury was most probable by a *gadasa* (chopar) blow. In the F.I.R. it is not mentioned that the *ballam* was not used in a piercing manner however to make the prosecution story consistent with the medical evidences it was expatiate in the trial that *ballam* was used like a *lathi*. Be that as it may, it does not indicate any intention to commit murder by forming of an unlawful assembly by all the six accused persons with that common object. Otherwise also the number of injuries sustained by the deceased were only three whereas he was alleged to have been assaulted by as many as six accused persons. The injury of the deceased being non-commensurate with the number of the accused makes it evident that bereft of common object all the accused persons did not participate in the assault. Two of the non-fatal injuries sustained by the deceased were simple in nature which also is a clear indication that there was no unlawful assembly with a common object to commit the murder of the deceased and hence at the worst each accused could have been made liable for his individual act and this flaw in the impugned judgment makes recorded convictions under sections 147, 148, 323/149, 324/149 and 302/149 unsustainable. The core issue which emerges is that the entire approach adopted by the learned judge was misdirected and faulty.

It further transpires that conviction of all the appellants except Shobhnath who had wielded the *ballam* under section 148 IPC is unsustainable as none of the other accused persons had any sharp edged cutting weapon in their hands

and so also conviction of Shobhnath for the charge under section 147 I.P.C. is unsustainable because he was armed with a ballam. Conviction of rest of the appellants except Shobhnath u/s section 324/149 IPC is also unsustainable because no other accused person was armed with any sharp edged weapon and there was no unlawful assembly in existence to commit such a crime. In such fact scenario each accused could have made liable for his individual act only. Since it is not known who were the three accused who had assaulted the deceased and who three abstained from doing so, therefore each of the accused could not have been convicted u/s 302/149 I.P.C. as it is impossible to separate the grain from the chaff and fathom out the exact truth. In such a view, the opinion of the learned trial Judge in the impugned judgment and order cannot be sustained at all.

No independent witnesses has been examined by the prosecution. The two fact witnesses are the sons of the deceased. There was no occasion for them and their deceased father to participate in the incident and assault the appellants. They had nothing to do with the property in dispute as they belonged to separate pedigree altogether than rest of the persons from both the sides. It is noticeable that in the F.I.R. lodged from the appellants side, informant P.W.1, P.W.2 and deceased Rajmani have been arraigned as accused along with Guddu, Shyam Dhar and others as the aggressors. The said F.I.R. of the cross version has been duly proved as Exhibit Kha1, which has not been contested by the prosecution side. Thus, on an overall examination of facts and circumstances, the out come which can be safely arrived at is that the prosecution has not been able to establish the guilt of the appellant beyond all reasonable

doubt and has suppressed the real genesis of the incident. Its witnesses have not deposed real truth and has concealed very significant aspect of accused injuries, which makes them untrustworthy witnesses. FIR is imbibed with an element of concoction and hence looses its authenticity and corroborative value and consequently for all these reasons all the accused appellants are entitled to acquittal.

The net result is that both the above appeals are **allowed**. Conviction and sentences of appellants namely, Vijay Narayan Mishra, Shobh Nath, Ram Chandra, and Kailash recorded through impugned judgment and order dated 18.07.2007 passed by Additional Sessions Judge, Fast Track Court No.1, Bhadohi-Gyanpur in S.T.No. 416 of 1998, State vs. Shobh Nath and others are hereby set aside and all the appellants are acquitted of the charge framed against them.

All the appellants are on bail, they need not surrender, their personal and surety bonds are discharged.

Let the copy of this judgment be certified to the trial court for it's intimation.

Dt.2.8.2013.

RK/Tamang/-