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BHERU LAL & ORS.  
v.  
STATE OF RAJASTHAN  
(Criminal Appeal No. 898 of 2004)

B

AUGUST 10, 2009

**[V.S. SIRPURKAR AND J.M. PANCHAL, JJ.]**

*PENAL CODE, 1860:*

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*ss. 302/34 and 436/34 – Two sons of complainant murdered and property set on fire by accused – Conviction by trial court upheld by High Court – HELD: Pleas of accused regarding interested witness, non-explanation of injuries on one of the accused, and right of private defence were rightly rejected by courts below – Injuries on accused, being extremely insignificant, and defence witnesses found unbelievable, did not require any explanation from prosecution – From the evidence of the mother of deceased, recovery of blood stained articles and clothes it has been fully established that accused committed the offences – Right of private defence – Evidence.*

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*EVIDENCE:*

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*Testimony of interested witness – In a trial for murder of two brothers, testimony of their mother as the sole eye witness – Challenged by accused as evidence of interested witness – HELD: Testimony of the witness about assault by accused on her sons has totally gone unchallenged in cross-examination – Merely because a witness exaggerates or is an interested witness, the evidence cannot be thrown out.*

G

*APPEAL*

*Appeal against acquittal – High Court in appeal acquitting one of the accused convicted by trial court – HELD:*

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*High Court has taken a possible view and there cannot be any interference as it has not been shown that acquittal of the said accused is unsustainable or perverse.*

The three appellants along with four others faced trial for commission of offences punishable u/ss. 147, 148 and 302 read with s.149 IPC. The prosecution case was that the accused killed two sons of PW-7. Accused 1 and 3 attacked her son "S" with sword and accused 4 and accused 5 attacked her other son "D" with sword and spear. Accused 1 and 6 crushed the heads of the deceased with stones. Thereafter, A-1, A-3 and A-5 set on fire her tractor trolley and stack of onion and groundnut. The trial court convicted A-1 and A-3 to A-6 of the offences charged. On appeal, the High Court acquitted A-6; convicted and sentenced A-1 u/s.302 IPC and u/s.436 read with s.34 IPC. The remaining three accused were convicted and sentenced u/s.302 read with s.34 and s.436 read with s.34 IPC.

In the appeal filed by A-1, A-3 and A-5 it was, inter alia, contended for the appellants that PW-7 was an interested witness and, therefore, the courts below erred in relying upon her evidence; and that the accused acted in exercise of their right of private defence. The State filed petition for special leave against acquittal of A-6.

Dismissing the appeal as also the petition for special leave, the Court

HELD: 1.1. PW-7, the mother of the deceased, claimed to have seen the incident from some distance, and has graphically described the role played by the appellants-accused-1, 3 and 5. According to her, A-1 had given a sword blow on the neck of 'S' and A-3 gave a sword blow on his hand, while A-4 gave a blow with a sword on the neck of 'B' and A-5 hit 'B' with Ballam. She then described that A-1 pelted stones on them and the

A other accused persons also stoned them, as a result of which their heads were crushed. She has thereafter said that even she was followed up to the house and thereafter, the accused persons set articles in her house and tractor on fire. There could hardly be any doubt regarding the presence of this witness on the spot.

B Significantly enough, there is no cross-examination in respect of the incident and version of PW-7 about the assault by the accused on her sons and the same has totally gone unchallenged. About the gun and the katta being found near the body, the witness has specifically refuted the suggestion that the deceased persons had gone there with an idea to assault the accused persons. She also refuted the suggestion that village persons had given beating to her sons. [Para 7 and 8] [221-D-H; 222-B-C-F; 223-A]

D 1.2. There can be no doubt that PW-7 has exaggerated, but those exaggerations have been rightly ignored. She was deposing about the assault on her sons and as such, she certainly would not be interested in allowing the real culprits to go unpunished. Merely because a witness exaggerates or is an interested witness, the evidence cannot be thrown, where it is found that there is a ring of truth to the version of the witness. The task of the courts is to separate the chaff from the grain and that is exactly what has been done by the trial court as well as the appellate court. The court of facts, which appreciates the evidence, should show that it was aware of the fact that the witness is an interested witness. Once that realization comes from the evidence, then there is nothing wrong if the evidence of such person is believed. In fact, there were as many as 7 accused persons. A-6 and another woman have already been acquitted by the courts below. [Para 8] [223-B-D]

H 2. As regards injuries on the accused there can be

no dispute that A-3 had suffered injuries on the day of occurrence. The doctor has certified (Ext.B-2) that all the injuries are simple in nature. In his cross-examination, the doctor very specifically admitted that none of the injury was serious in nature. The trial court and the appellate court scanned the injuries and held that even if they were established to have been suffered by A-3, the same were extremely insignificant and, therefore, did not require any explanation on the part of the prosecution and it cannot be said that the prosecution, in not explaining those injuries, had suppressed the genesis of the incident. [Para 9 and 11] [223-F; 224-A-E]

*State of Rajasthan vs. Madho & Anr. 1991 Suppl. (2) SCC 396; State of Bihar vs. Mohammad Khursheed 1971(3) SCC 423; Jagdish vs. State of Rajasthan 1979(2) SCC 178, relied on.*

3.1. So far as the plea of right of private defence is concerned, it was stated that deceased 'B' was armed with 12 Bore Gun and there was a katta with the other deceased. The injuries suffered by A-3 are incised wounds attributable only to sharp edged weapon and are simple in nature. There was no recovery of any sharp edged weapon from the place of incident. Though A-1 and A-3 had entered the witness box, their evidence does not support their stand nor is their evidence reliable in view of the inter se contradictions in their evidence regarding the presence of A-4 and A-6. Nothing has come out in the evidence, suggesting that the appellants were put under the situation, where they could reasonably had apprehended any grievous hurt to any of them. On the other hand, the defence came out with a fantastic theory that the deceased persons were killed by the villagers. It is significant to consider as to whether the injuries suffered by A-3 were actually caused during the incident. What is most significant is that A-3 and A-1 after the

A incident, chose to go to a different police station after five  
 hours of the incident and not to the police station that had  
 jurisdiction. It is after reaching the said police station, A-  
 3 chose to go to the hospital there. All this has been  
 considered by the trial court as also the appellate court  
 B and both the courts have come to the conclusion that  
 both these witnesses were unreliable. Considering the  
 overall evidence of the two defence witnesses, it is  
 extremely doubtful whether the injuries were caused  
 during the incident. [Para 11, 12 and 13] [225-C-H; 226-  
 C A-C; 227-B-E]

3.2. PW-7 who had seen the incident from a distance  
 could not have been in a position to even notice any  
 injury on the body of A-3. She had after all seen her two  
 sons being assaulted mercilessly and being dealt with by  
 D the accused. She, therefore, asserted that she did not see  
 any injury at that time on the person of A-3. Therefore,  
 evidence of PW-7 cannot be rejected on this point and  
 the trial court and the appellate courts are right in relying  
 on her evidence. Once evidence of PW-7 is believed then  
 E there would be no question of going to any other piece  
 of evidence as her evidence by itself is sufficient to  
 convict the accused as was rightly done by the trial court  
 and the appellate court. This is apart from the fact that  
 the recovery memo Ex.P-11, P-12, P-13 and P-14 through  
 F which blood stained spear, blood stained lathi, blood  
 stained sword were recovered from A-1, A-3, A-5 and A-4  
 as also Ex. 15, the recovery memo of the blood stained  
 clothes which were recovered from A-1 as also Ex. C-1,  
 the Forensic Science Laboratory (FSL) report provide  
 G enough corroboration to the evidence of PW-7. [Para 13,  
 14 and 15] [227-F; 228-A-D]

3.3. From the evidence led on behalf of the  
 prosecution, the eye witness account by PW-7 and the  
 other substantial evidence of recovery of the blood  
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stained articles and clothes, it is fully established that the accused persons not only murdered 'B' and 'S' but also committed the offence u/s. 436 read with s. 34, IPC by setting on fire the tractor and household articles of the complainant; and the theory propounded by the defence that they acted in exercise of their right to private defence is baseless, and has been rightly rejected. [Para 15 and 16] [228-F-H; 229-A]

4.2. As regards the petition filed by the State against the acquittal of A-6, there is no substantial material against A-6. The High Court has taken a possible view of the matter and has given good reasons for his acquittal. It is trite that when a possible view is taken, then there cannot be an interference in an appeal against acquittal unless it is shown that the acquittal is unsustainable or perverse. Such is not the position here. [Para 18] [229-B-C]

**Case Law Reference:**

1991 Suppl. (2) SCC 396	relied on	para 9
1971(3) SCC 423	relied on	para 9
1979(2) SCC 178	relied on	para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 898 of 2004.

From the Judgment & Order dated 14.10.2003 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Criminal Appeal No. 998 of 2001.

WITH

SLP (Cri.) No. 169 of 2005.

Manish Singhvi, Addl. A.G. Sushil Kr. Jain, Pratibha Jain, Puneet Jain, Archana Tiwari, Gopal Krishna for the appearing parties.

A The Judgment of the Court was delivered by

B **V.S. SIRPURKAR, J.** 1. This judgment will dispose of the  
 C Criminal Appeal No. 898 of 2004 filed by three appellants as  
 D also the Special Leave Petition filed by the State of Rajasthan  
 E against the acquittal of one of the accused who was convicted  
 by the Trial Court but was acquitted by the High Court. The three  
 accused persons, namely, original accused No. 1 Bheru Lal,  
 original accused No.3, Kailash Chandra and original accused  
 No. 5, Purushottam have come up before us challenging their  
 conviction for various offences including offences under  
 Sections 147, 148, 302 read with Section 149, Indian Penal  
 Code (for short "IPC"), 436 read with Section 149, IPC and  
 confirmed by the High Court. Originally, as many as seven  
 accused persons were tried for all these offences. However,  
 the Sessions Judge convicted in all five accused persons  
 including the present three appellants and two others, namely,  
 Girraj, original accused No. 6 and Gopal, original accused No.4.  
 The High Court allowed the appeal of accused Girraj and  
 acquitted him. It confirmed the conviction and sentence of the  
 remaining four accused persons. In that, the Court convicted  
 Bheru Lal for the offence under Section 302, IPC simpliciter and  
 for offence under Section 436 read with Section 34, IPC. The  
 remaining three accused were also convicted for the offence  
 under Section 302 and Section 436 read with Section 34, IPC.

F 2. In short, the High Court rejected the offences having  
 been committed by the unlawful assembly and set aside their  
 convictions ordered by the Trial Court which were in the aid of  
 Section 149, IPC and held that the offences were committed  
 in furtherance of the common intention of the accused persons.  
 G Out of the four accused persons so convicted, only three have  
 come up before us. Originally, the appeal seems to have been  
 filed on behalf of all the four accused including Gopal but the  
 name of Gopal was thereafter removed from the array of  
 appellants. We enquired from the Registry as to whether Gopal  
 had filed any appeal but we were informed that there was no

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appeal filed by him. We are, therefore, left with the appeal filed by the three appellants named above.

3. Shortly stated the prosecution case is that one Basanti Bai, PW-7 lodged a report with police station Raipur, District Jhalawar on 26.10.1997 at about 4:30 p.m. to the effect that her sons, Shayam Lal and Balkishan were belaboured by the seven accused persons. It was further stated that the appellant Bheru Lal and Kailash Chandra had inflicted sword blows on the left and right hand and neck of Shayam Lal while appellant Purushottam and Gopal gave sword and spear blows, respectively, on the back and head of Balkishan. Thus all the appellants had indiscriminately inflicted injuries on the person of deceased Shayam Lal and Balkishan, while appellant Girraj and Bheru Lal crushed their heads with stones. It was further alleged that after this ghastly incident, the appellants had set at fire the tractor trolley, stack of onion and groundnut. Offence was registered on these basis and after due investigation as many as seven persons came to be charged of offences under Section 147, 148, 341, 302, IPC and in the alternative Section 302 read with Sections 149, 436, IPC substantively as well as Section 436 read with Section 149, IPC as also Section 435 and 435 read with Section 149, IPC and Section 427 and in the alternative Section 427 read with Section 149, IPC. As has been stated earlier two of the accused persons were acquitted by the Trial Court and now we are left with this appeal at the instance of the three accused.

4. Shri Sushil Kumar Jain, learned counsel appearing for the appellants firstly urged that the evidence of the eye witness, namely, PW-7, Basanti Bai and the other eye witnesses, namely, Ram Prasad (PW-3), Kanwar Lal (PW-5) and Puri Lal (PW-6) was wrongly relied upon by the Trial Court as well as the High Court. It was pointed out that barring Basanti Bai (PW-7), all these witnesses had turned hostile and, therefore, the prosecution was left with the evidence of Basanti Bai alone. Learned counsel urged that Basanti Bai was the mother of the

A deceased persons and there was enmity between the accused persons and her family which had emanated from the property dispute. Learned counsel pointed out that both the deceased as well as the accused were relatives of each other and there was a property feud amongst the two sides which had caused this ghastly incident. Learned counsel dubbed the evidence of Basanti Bai as being untrustworthy and unnatural. He further pointed out that other witnesses, namely, Ram Prasad (PW-3), Kanwar Lal (PW-5) and Puri Lal (PW-6) who were the occupants of the nearby places of the incident had refused to support the prosecution as the accused persons had no hand in the incident complained of. It was further suggested that Basanti Bai had claimed to have seen the incident from a distance of about 200-250 steps and on that count also she was not in a position to see the incident. However, she had given the graphic description of the role played by each accused which makes her evidence suspicious.

5. Learned counsel also urged that a gun and Katta (country made pistol) were found near the body of the deceased which suggested that the deceased Shayam Lal and Balkishan had gone to the place of incident prepared and with intention to cause grievous hurt or death of the appellant Kailash Chandra. However, since the gun did not fire (on account of development of dampness) they did not succeed in their object and, therefore, the villagers, being angry killed the deceased on the place of the incident itself. It was also pointed out that the appellant Kailash Chandra had 11 injuries on the various parts of the body which remained unexplained by the prosecution and thus it was obvious that the prosecution had not unfolded its case properly and had suppressed the generis of the incident. Alternatively, the argument proceeds on the basis that there was a right of private defence of body as well as the property. It was also urged by the learned counsel that the so-called discoveries of the weapons were farcical and further since the blood group of the blood allegedly found on the weapons could not be decided that evidence was also of

no consequence. In short, learned counsel urged that the whole prosecution story was unbelievable and, therefore, the appellants were entitled to be acquitted. A

6. As against this the learned counsel appearing on behalf of the State, Shri Manish Singhvi, Additional Advocate General for the State of Rajasthan wholly supported the judgments and urged that the prosecution had fully proved its version and the Courts below had rightly convicted the accused-appellants. Shri Singhvi also pressed in service the appeal filed on behalf of the State of Rajasthan against the acquittal of accused Girraj, and pointed out that the accused Girraj could not have been acquitted as he was present throughout and had taken active part in the whole affair. Shri Singhvi severally criticized the High Court judgment in so far as it pertained to the acquittal of accused Girraj. B C

7. Basanti Bai, PW-7, undoubtedly, was an interested witness being mother of the deceased persons. Some evidence has come on record that everything was not well between the two families of the deceased and the accused. Her evidence was, therefore, dubbed as the "evidence of an interested witness". Her evidence was criticized as untrustworthy and unnatural. The other witnesses, namely, Ram Prasad (PW-3), Kanwar Lal (PW-5) and Puri Lal (PW-6) have not chosen to support the prosecution and they were rightly declared hostile. We have, therefore, gone through the evidence of Basanti Bai very closely. There can be no dispute that in her evidence, she has also roped in Girraj (original accused No. 6), Badam Bai (co-accused) and Tara Bai (co-accused) and that was an exaggeration on her part. She claimed to have seen the incident from some distance, but has graphically described the role played by accused Bheru Lal, Kailash Chandra and Purushottam, the appellants herein. According to her, Bheru Lal had given a sword blow on the neck of Shayam Lal and Kailash Chandra gave a sword blow on the hand of Shayam Lal, while Gopal gave a blow with a D E F G H

A sword on the neck of Balkishan and Purushottam hit Balkishan with Ballam (spear like weapon). She has not stopped here, but has assigned a role specifically to Girraj, Badam Bai and Tara Bai, as also her daughters-in-law, saying that they also gave blows with the sticks. She then described that Bheru Lal pelted stones on them and the other accused persons also stoned them, as a result of which their heads were crushed. She has thereafter said that even she was followed up to the house and thereafter, the accused persons set articles in her house and tractor on fire. There could hardly be any doubt regarding the presence of this witness on the spot. She candidly admitted that when her sons Balkishan and Shayam Lal had left the house, they might have taken gun and a katta (country made revolver) with them. She, however, denied that the said gun and the katta were lying near the bodies of her sons. She naturally refuted the suggestions made to her that her sons had gone armed only to give beating to Kailash Chandra and Purushottam. She also refuted the suggestion that village persons had given beating to her sons. She asserted that she did not see any injury on Kailash Chandra at the place of occurrence and no such injury was caused to Kailash Chandra by any sharp edged weapon.

8. Significantly enough, there is not even an iota of cross-examination in respect of the incident and her version about the assault by the accused on her sons and the same has totally gone unchallenged. There can be no dispute about her being an interested witness, as also her having exaggerated her version. There can also be no dispute that she has specifically denied there being any injuries on Kailash Chandra, which injuries were ultimately proved. However, that by itself, will not make her evidence unbelievable. We have taken into consideration that here was a mother, who was deposing about the assault on her sons and she certainly would not be interested in allowing the real culprits to go unpunished. The task of the Courts is to separate the chaff from the grain and that is exactly what has been done by the Trial Court, as well

as, the Appellate Court. About the gun and the katta being found near the body, the witness has specifically refuted the suggestion that the deceased persons had gone there with an idea to assault the accused persons. We are not much impressed by the argument of the Learned Counsel for the appellants that this witness had tried to mislead the Court on the genesis of the case and, therefore, her whole version becomes suspicious. There is a definite ring of truth. There can be no doubt that the witness has exaggerated, but as has been stated earlier, those exaggerations would have to be ignored and have been rightly ignored. In fact, there were as many as 7 accused persons. Accused Girraj and accused Tara Bai have already been acquitted by the Courts below. However, merely because a witness exaggerates or is an interested witness, the evidence cannot be thrown, where it is found that there is a ring of truth to the version of the witness. The Court of facts, which appreciates the evidence, should show that they were aware of the fact that the witness is an interested witness. Once that realization comes from the evidence, then there is nothing wrong if the evidence of such person is believed.

9. It was suggested by Shri Jain that Basanti Bai had not admitted or deposed about the injury suffered by the accused. Our attention was invited to the evidence of DW-1, Dr. Chandra Kishore Srivastava and DW-2, Kailash Chandra. Dr. Chandra Kishore Srivastava in his evidence has established that he had examined Kailash Chandra and found that he had suffered as many as 11 injuries. Kailash Chandra himself also, when he entered the witness box, established his own injuries. There can be no dispute that Kailash Chandra had suffered injuries on that day. The evidence of the doctor shows that he had suffered 10 incised wounds. Most of the injuries were on the left side of the body, one of them on the left hand, one on left wrist, one on left palm and one on the scapular region. The other injuries were on the right upper arm on the lower side. The other injuries include two injuries on the right upper arm on the lower side while one appears to be on left frontal part of the head 3 inch

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A above the left eyebrow. The doctor has certified that all these injuries including even the contusion suffered was a simple injury, that is clear from the report Ex. B-2. In his cross-examination, the doctor very specifically admitted that none of the injury was serious in nature nor was any one of them

B sufficient to cause death in the ordinary course of nature and they were simple. It is true that Kailash Chandra had also given a report on which case No. 190 of 1997 was registered. On the basis of this, the learned counsel pointed out that if PW-7 Basanti Bai had not mentioned or denied these injuries in her

C evidence then it was clear that she was lying in the most significant point and thus was trying to hide the genesis of the incident and the prosecution story, therefore, was shrouded in suspicion. Shri Jain, for this proposition, has relied on a number of decisions like *State of Rajasthan v. Madho & Anr.* [1991 Suppl.(2) SCC 396], *State of Bihar v. Mohammad Khursheed* [1971 (3) SCC 423]. We, therefore, examined her evidence from this angle also. On the other hand, learned counsel appearing on behalf of the State relied on the judgment reported in *Jagdish v. State of Rajasthan* [(1979) 2 SCC 178]. There can be no dispute that this evidence was scanned by the

E trial Court and the Appellate Court which held that the injuries, even if they were established to have been suffered by Kailash Chandra, were extremely insignificant injuries and, therefore, those injuries did not need any explanation on the part of the prosecution. The witness undoubtedly states in her cross

F examination, "I did not see any injury to the Kailash Chandra on spot. Kailash Chandra was not injured with sharp weapon". In the judgment of *Jagdish v. State of Rajasthan* [(1979) 2 SCC 178] this Court has specifically observed that:

G "there is an obligation on the prosecution to explain the injuries so as to satisfy the Court as to the circumstances under which the occurrence originated. Before this obligation is placed on the prosecution, two conditions must be satisfied:

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- (1) that the injuries on the person of the accused must be very serious and severe and not superficial; A
- (2) that it must be shown that these injuries must have been caused at the time of the occurrence in question." B

10. Thus it is very doubtful as to whether the injuries had been caused at the time of occurrence as such.

11. Shri Sushil Kumar Jain, appearing on behalf of the Learned Counsel for the appellants spoke about the right of private defence on the basis of the fact that Balkishan was armed with 12 Bore Gun and there was a katta being carried by the other deceased. Kailash Chandra, undoubtedly, has suffered some injuries, but all those injuries are simple in nature. We have seen the Injury Report (Exhibit D-2), which suggests that they were very insignificant injuries, which were placed not on the vital portions of the body. We are in agreement with the High Court and the Trial Court that the non-explanation of those injuries cannot be advantageous to the defence nor can it be said that the prosecution, in not explaining those injuries, had suppressed the genesis of the incident. We have very carefully seen the cross-examination of Basanti Bai, who was not even asked about the deceased being armed with any sharp edged weapon, so as to cause injuries to Kailash Chandra, who sustained about 10 incised wounds, attributable only to the assault by a sharp weapon. There was no recovery of any sharp edged weapon from the place of incident or even from the person of the deceased and even the Investigating Officer was not asked anything about any sharp edged weapon being used by the deceased. The accused persons had shown the courage to enter the witness box. We have seen their evidence carefully. However, we are of the opinion that their evidence does not take us too far nor is their evidence reliable in view of the inter se contradictions in the evidence of Kailash Chandra and Bheru Lal regarding the presence of Gopal and Girraj. Nothing has come out in the prosecution case, suggesting that the

A appellants were put under the situation, where they could reasonably had apprehended any grievous hurt to even one of them. On the other hand, the defence came out with a fantastic theory that the deceased persons were killed by the villagers.

B 12. The law is now well settled that where there is a failure on the part of the prosecution witness to explain injuries on the accused caused in the same incident, implicit reliance cannot be placed on the prosecution which suppressed part of the incident. The two rulings cited by Shri Jain do support this proposition. The question is, however, whether the injuries suffered by Kailash Chandra were actually caused during the incident and they were substantial enough so as to attract the attention of the witness and whether the witness had any opportunity to see the injuries as such. When Kailash Chandra stepped into the witness box, he deposed that deceased D Shayam Lal had a spear in his hand and a loaded Katta in his pocket. He further evidenced that Balkishan and Shayam Lal abused his sister and mother and pointed out the gun at them and when Balkishan's gun failed to fire, he attacked with sword on his right hand at several places. He further asserted that had E he not taken sword in his hand, he would have died. In his examination-in-chief also he had suggested that Balkishan had a sword besides a 12 bore loaded gun. In his cross examination, he claimed complete ignorance as to what had happened with Balkishan and Shayam Lal. He also went to the F extent of suggesting that he did not know as to how they died. The evidence of this witness has been disbelieved totally by both the Courts below. It is very significant to see that the evidence of DW-2 Bherulal also is to the same effect that Balkishan was beating Kailash Chandra with the sword and he G also had a gun with him. Bherulal was at least candid enough to admit that Shayam Lal and Balkishan had died in the same incident, however, both these witnesses brought about a fantastic theory that villagers had attacked Balkishan and Shayam Lal and they were killed in the same incident. What is H most significant is that Kailash Chandra and Bherulal, after the

incident, chose to go to Sunair after five hours of the incident and did not go to Raipur police station under which jurisdiction all this had taken place. It is after reaching Sunair that Kailash Chandra chose to go to the hospital at Sunair. All this has been considered by the Trial Court as also the Appellate Court and both the Courts have come to the conclusion that both these witnesses were unreliable witnesses. There can be no doubt that they claimed to have been injured in the same incident but that by itself would not be sufficient because there does not appear to be any sword seized by the police on the spot. If Balkishan and Shayam Lal had carried a sword for injuring this witness and if both of them died on the spot, surely the sword could not have disappeared.

13. Therefore, both the Courts were right in disbelieving the story put forth by these two accused-witnesses. However, the question still remains that there were injuries which have been seen by the doctor much after the incident. As per the evidence, the report was made in the police station Sunair which was about 15 KM from the village Himmatgarh. There can be no dispute about the proposition that the injuries on the person of the accused must be explained. However, considering the overall evidence of the two defence witnesses, it is extremely doubtful whether the injuries were caused during the incident. This is apart from the fact that Basanti Bai who had seen the incident from a distance could not have been in a position to even notice any injury on the body of Kailash Chandra. She had after all seen her two sons being assaulted mercilessly and being dealt with by the accused. She, therefore, asserted that she did not see any injury at that time on the person of Kailash Chandra.

14. In order to reap the benefit of the proposition laid down by this Court, there must be an opportunity to the witness to watch and there must be deliberate refusal on the part of the witness to explain the injuries if the witness is not in a position to note the injuries or if the Court comes to the conclusion that

A it was not possible for the witness to see any injuries or that the injuries were not actually caused during the incident itself then the defence will not be able to reap any benefit. We are, therefore, of the opinion that Basanti Bai's evidence cannot be rejected on this point and that the Trial and the Appellate Courts are right in relying on her evidence. Once Basanti Bai's evidence is believed then there would be no question of going to any other piece of evidence as her evidence by itself is sufficient to convict the accused as was rightly done by the Trial Court and the Appellate Court.

C 15. This is apart from the fact that the recovery memo Ex.P-11, P-12, P-13 and P-14 through which blood stained spear, blood stained lathi, blood stained sword were recovered from Bheru Lal, Kailash Chandra, Purushottam and Gopal as also Ex. 15, the recovery memo of the blood stained clothes which were recovered from Bherulal as also Ex. C-1, the Forensic Science Laboratory (FSL) report provide enough corroboration to the evidence of Basanti Bai. We are, therefore, of the considered opinion that:

E "firstly, it is completely established that the appellants as also the other accused who has not filed appeal had caused the murder of Shayam Lal and Balkishan;

F secondly, the theory propounded by the defence that it was done in the exercise of right to private defence is baseless and has been rightly rejected;

G thirdly, that the evidence led on behalf of the prosecution, the eye witness account by Basanti Bai PW-7 and the other substantial evidence of recovery of the blood stained articles and clothes is fully established."

H 16. Further it is fully established that the accused persons not only murdered Balkishan and Shayam Lal but also committed the offence under Section 436 read with Section 34, IPC by setting at fire the tractor and household articles of the

complainant.

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17. No other point was urged before us. The appeal has no merits, it is accordingly dismissed.

18. At this stage, Shri Manish Singhvi, Learned Counsel for the State pressed the petition filed by the State against the acquittal of Girraj (original accused No. 6). We have seen the judgment of the High Court carefully. We do not find any substantial material against original accused No. 6 Girraj. The High Court has given good reasons for his acquittal. The High Court has taken a possible view of the matter. It is trite that when a possible view is taken, then there cannot be an interference in an appeal against acquittal unless it is shown that the acquittal is unsustainable or perverse. Such is not the position here. In that view of the matter, we dismiss the Special Leave Petition (Criminal) No. 169 of 2005 filed by the State.

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R.P.

Matters dismissed.