

(2018) 06 MP CK 0153

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.600, 647 Of 2000

Patru S/o Kapura

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 30, 147, 148, 149, 302, 324, 325, 506II
Code Of Criminal Procedure, 1973 — Section 161, 313, 318, 374

Citation : (2018) 06 MP CK 0153

Hon'ble Judges : ASHOK KUMAR JOSHI, J;SANJAY YADAV, J

Bench : Division Bench

Advocate : R.K.Shrivastava, B.P.S. Chouhan

Final Decision : Partly Allowed

Judgement

Ashok Kumar Joshi, J.

By this common judgment being passed in Criminal Appeal No.600/2000, another Criminal Appeal No. 647/2000 is also being decided as both these

appeals have been filed by relating appellant under Section 374 of the CrPC against the judgment dated 10th August, 2000, passed by Second

Additional Sessions Judge, Ashoknagar, District Guna in Sessions Trial No. 53/1999, whereby each of the appellants of both these appeals has been

convicted and sentenced under Section 302 of the IPC to undergo life imprisonment and a fine of Rs.200/-with default stipulation; under Section 325

of the IPC to undergo three years RI with a fine of Rs.100/- with default stipulation; under Section 324/149 of the IPC to undergo two years RI with a

fine of Rs.100/- with default stipulation; under Section 148 of the IPC to undergo one year RI with fine of Rs.100/-; and under Section 147 of the IPC

to undergo one year RI with fine of Rs.100/- with default stipulation, and it is

also directed by the impugned judgment that all the main jail sentences of each appellant to run concurrently.

2. Admittedly appellants Lallu, Madan and Maniram are sons of appellant Parma and appellant Patru and co-accused Hamira are sons of Kapura and

co-accused Hamira is a deaf and dumb person, hence the trial Court vide impugned judgment convicted Hamira for the above mentioned offences but

it referred Hamira's case under Section 318 of the CrPC to this Court and this Court has decided the reference in relation to Hamira vide judgment

dated 30.4.2001 passed in Misc. Cri. Case No. 2217/2000. Similarly, injured prosecution witnesses, complainant Munnalal (PW-1), Dulichand (PW-4),

Udham (PW-5) and deceased Bharosa are real brothers and Parwati Bai (PW-3) is mother of the deceased and in village Gata, both parties are

neighbourers and deceased Bharosa and other injured prosecution witnesses were residing jointly in a house at the time of incident and the distance of

village Gata from Police Station Shadora is about 8 Kms.

3. Prosecution's case in brief is that on the date of incident 8.8.1998 complainant Munnalal (PW-1) with his mother Parwati Bai and brothers Udham,

Dulichand and Bharosa reached to Police Station Shadora and at 9=00 pm lodged FIR (Ex.P/2) regarding incident occurred at 7=00 pm of same day

to the effect that at 7=00 pm after returning from field to house, he was putting his plough in his house, then all five appellants of both these appeals

with Hamira came to complainant's house and asked the complainant that why he carried out his plough with oxen from their field, then complainant

replied that his oxen were not climbing on par, therefore, he took out plough from their land and in future plough will not be carried out from their field.

On this issue, appellant Maniram inflicted injury by his stick over Munnalal's left shoulder. Appellant Lallu caused farsa injury over the head of

Munnalal and blood was oozing out, then complainant's mother Parwati Bai (PW-3) and his brothers Bharosa, Udham and Dulichand came on scene

of occurrence to save complainant, then appellant Parma gave lathi blows to Parwati Bai and caused injuries. Appellant Lallu caused farsa injury over

Bharosa's forehead and blood was oozing out from that injury. Other brothers of complainant Dulichand and Udham were jointly beaten by all the

appellants and Hamira by sticks, farsa and axe. Appellants gave threatening to complainant and injured persons that if the matter is reported then they

would be killed in future. The incident was seen by Shivraj Singh (PW-8), Ramdayal, Salman (PW-10), who also intervened. After incident by tractor

all the injured persons with complainant reached police station and the FIR lodged by Munnalal (PW-1) was scribed by ASI Baijnath Singh (PW-17).

4. After lodging the FIR, injured persons were sent for medical examination to Primary Health Centre (PHC) Shadora, where Block Medical

Education (BMO) Dr. H.H.N. Garg (PW-20) medically examined Bharosa, Munnalal, Dulichand, Parwati Bai and Udham Singh and recorded their

MLCs (Ex.P/38 to P/42, respectively). Dr. Garg advised for radiological examination of some injuries of Parwati Bai and for abdomen injury of

Bharosa. In the same night appellant Patru and his brother Hamira were also examined by Dr. H.H.N. Garg (PW-20), who recorded their MLCs (Ex.

D/2 and D/3 respectively). The radiological examination of Parwati Bai and Bharosa was performed by Dr. R.K.Jain (PW-6) on 10.8.1998 at District

Hospital, Guna and in x-ray investigation fracture of metacarpal bone of right hand's index finger of Parwati Bai was found and in this regard x-ray

report (Ex.P/13) was recorded by Dr. Jain (PW-6). After radiological examination of abdomen of Bharosa on 10.8.1998, Dr. R.K.Jain (PW-6)

referred his x-ray photoplates for expert opinion to Medical College, Gwalior and Medical College Gwalior's radiological expert Dr. Gupta by his

report (Ex.P/19) opined that no abnormality is found. During investigation, Head Constable Radheshyam (PW-19) on 8.8.1998 recorded police

statements of injured Bharosa with some other witnesses. From 9.8.1998 Bharosa was admitted in District Hospital, Guna being referred from

Shadora Hospital and at District Hospital, Guna during treatment, his abdomen was operated, but he died in District Hospital, Guna on 28.8.1998.

After receiving report about death of admitted Bharosa from Guna Hospital, merg report (Ex. P/28) was registered by Head Constable Jagmohan

(PW-14) at Police Station Guna and after receiving information regarding death of Bharosa at Police Station Shadora merg report (Ex.P/29) was

recorded by Shiv Mangal Singh (PW-15) and in previously registered crime No. 120/1998 arisen on FIR of complainant Munnalal, offence punishable

under Section 302 of the IPC was added.

5. Dr. N.K.Sharma (PW-9) on 28.8.1998 conducted autopsy of deceased Bharosa and recorded post-mortem report (Ex.P/22). Further investigation

was conducted by S.H.O. Shadora Brijendra Singh Kushwaha (PW-16), who arrested present appellants and Hamira and seized a stick from Hamira vide seizure memo (Ex.P/36) and also seized a stick from appellant Parma vide seizure memo (Ex.P/37). During investigation, an axe was seized from appellant Patru, a farsa was seized from appellant Lallu. Seized weapons with blood-stained clothes of deceased were sent by S.P.Guna to Regional Forensic Science Laboratory Gwalior for examination vide a letter dated 30.10.1998. After completing the formalities of investigation, charge sheet was filed before JMFC, Ashok Nagar, who committed the relating criminal case to Sessions Judge, Guna, who transferred relating sessions trial to above mentioned trial Court.

6. The trial Court framed charge under Section 302/149, 147, 148, 325/149, 324/149 and 506 (Part-II_ of the IPC against each appellant and Hamira.

Present appellants and Hamira abjured the guilt. Before trial Court, twenty prosecution witnesses were examined. As accused Hamira was deaf and

dumb, his examination could not be conducted. It was the defence of appellants that they have been falsely implicated. It was the specific defence of

appellant Madan that on the date of incident he was at village Dhamnar. It was the specific defence of appellant Patru of Criminal Appeal

No.600/2000 that in the evening on the date of incident he was seated with his deaf and dumb real brother Hamira at the platform of his house and in

front his house there exists a Kharanja (made of stones) then Udham, Dulichand, Bharosa and complainant Munnalal came there, each having a stick

and objected that his dumb brother Hamira made obstruction, when they passed through their agricultural land and above mentioned persons started

hurling abuses, then he objected, thereafter above mentioned family members with complainant jointly gave beating to him and his brother Hamira, then

in self-defence he and Hamira exercised right of their self-defence and at that time there was darkness on spot, then prosecution witnesses caused

injuries to each other in darkness and at that time Bharosa fell down on Kharanja by the side of his abdomen, hence, Bharosa received injury in his

abdomen and actually he and his brother Hamira were beaten by complainant and his brothers and the matter was reported at Police Station Shadora

by him. Defence witness Visheshwar Singh (DW-1) was examined regarding plea of alibi of appellant Madan that on the date of incident Madan was

at Dhamnar.

7. Trial Court after hearing, placing reliance on eye-witness account given by injured prosecution witnesses including complainant, also treated the police statement of Bharosa, recorded on the date of incident under Section 161 of the CrPC by Head Constable Radheshyam (PW-19) as dying declaration and convicted each appellant and Hamira under Sections 147, 148, 302, 325 and 324 of the IPC and sentenced the present appellants as aforesaid.

8. Appearing counsel for the appellants vehemently contended that Bharosa was injured on 8.8.1998, whereas he died in District Hospital Guna on 28.8.1998 and it was clear from the evidence of Dr. N.K.Sharma (PW-9), who conducted his post-mortem that Bharosa died due to complications

arose from post-surgical complication and cause of death was shown perforation peritonitis and according to evidence of Dr. H.H.N. Garg (PW-20),

who examined injured Hamira on the date of incident, all his three visible external injuries were of simple nature and he advised for Bharosa's x-ray

examination of abdomen as he was complaining pain in abdomen and according to the evidence of Dr. R.K.Jain (PW-6), the radiological expert of

Medical College, Gwalior after seeing x-ray photoplate of Bharosa, opined that there was no abnormality in the abdomen and later on at the time of

post-mortem of Bharosa, his two ribs on right side were also found fractured, hence the possibility of these fractures of ribs caused after the date of

incident could not be ruled out. Therefore, it is argued that the trial Court erred in convicting each appellant under Section 302 of the IPC, whereas

each appellant was charged under Section 302/149 of the IPC and on the basis of Ex. D/1 (report lodged by appellant Patru) on the date of incident at

Police Station Shadora recorded for non-cognizable offences and MLCs of Patru and his brother Hamira proved by Dr. H.H.N. Garg, it is contended

that the possibility of mutual fighting between two groups could not be ruled out and there was no explanation of injuries found on the body of accused

Patru and his real brother Hamira. Hence, the evidence of family members of complainant could not be believed, as independent witnesses

Bhanwarlal (PW-7), Shivraj Singh (PW-8) and Salman (PW-10) have not supported the prosecution's case and they were declared hostile. Hence, it

is prayed that appeals filed by each appellant be allowed and he be acquitted

from above mentioned offences.

9. Per Contra, Public Prosecutor appearing on behalf of the respondent/State supporting the impugned judgment contends that the evidence available

on record has been minutely analyzed and appreciated by the trial Court and the police statement recorded of injured Bharosa by Head Constable

Radheshyam (PW-19) was rightly treated by the trial Court as dying declaration, as later on Bharosa died during his continuous treatment and his

police statement was relating to the reasons which are attributable for his death. Therefore, dismissal of both these appeals is prayed for.

10. Deceased Bharosa, in his life time, was examined on the date of incident 8.8.1998 by B.M.O. Dr. H.H.N. Garg (PW-20) at P.H.C. Shadora. It is

clear from the evidence of Dr. Garg (PW-20) and his recorded MLC (Ex. P/38) that he found following injuries on the body of deceased :

(i) Incised Wound whose margins were clear cut of size $\hat{A}1\frac{1}{2} \times \hat{A}1\frac{1}{4} \times$ skin deep over right eye-brow lateral aspect, appearing to be caused by sharp

cutting object and its nature was simple.

(ii) Contusion with abrasion size 4' x 1' on left side of back, lower one third part, appearing to be caused by hard and blunt object and its nature was

simple.

(iii) Contusion 1' x $\hat{A}1\frac{1}{2}$ ' over left elbow posterior aspect, appearing to be caused by hard and blunt object and its nature was also simple.

(iv) Examined Bharosa was complaining pain in abdomen, where tenderness was appearing, hence x-ray examination was advised for abdomen of

Bharosa.

11. Dr. H.H.N. Garg (PW-20) opined that nature of fourth injury of abdomen of Bharosa could be ascertained only after radiological examination.

12. Much emphasis has been given by the learned counsel for the appellants that except abdomen injury of Bharosa, other three injuries of Bharosa

were of simple nature according to Dr. Garg's evidence. Dr. R.K.Jain (PW-6) deposed that on 10.8.1998 at District Hospital, Guna radiological

examination of abdomen of Bharosa was conducted by him but relating x-ray photoplate was sent by him for getting expert opinion from the head of

the radiological department of Medical College, Gwalior and his referral report is Ex.P/17 and from Medical College, Gwalior report (Ex.P/19) signed

by Dr. Gupta was received, according to which no any fracture or abnormality

was found by the above-mentioned expert. Dr. Jain deposed in cross-examination that in abdomen of Bharosa, no injury was found by the above-mentioned expert of Medical College.

13. It is clear from the evidence of Dr. N.K.Sharma (PW-9) and his post-mortem report (Ex.P/22) that on 28.8.1998 at 6=00 pm at the time of

starting of post-mortem of dead body of Bharosa, about 40 years old, he found that rigor mortis was not present and found following injuries on the

dead body :

(i) Healed wound, size 2.5 cm long over right eyebrow;

(ii) Healed contusion, size 10x2 cm over right side of back, which was 4 cm lateral from the midline;

(iii) Healed abrasion, size 2x2 cm on back side of right scapular region;

(iv) Healed contusion, size 5x2 cm on right iliac fossa of abdomen;

(v) A 12 cm long wound caused during operation appearing on right paramedian region of abdomen which was extending up to 2 cm below umbilicus

and this wound was also appearing in healed condition and the stitches from this wound were removed, but about 4 cm lower portion of this wound

was not healed and there was existing gap in this lower portion of wound.

14. Dr. N.K.Sharma (PW-9) deposed that in dis-section of the dead body he found that 7th and 8th ribs of the deceased were fractured on right side

and the loops of small intestine were mutually stuck and the lower part of the small intestine which was stitched under operation, was found open

and due to this fecal matter was coming out from that portion and the open part of small intestine was having about 2 cm diameter, wherein parts of

previously stitched part of previously given stitches were appearing. Dr. Sharma opined that the healed external injuries found on the dead body were

appearing to be caused about 2 to 3 weeks prior to the death and it was clear from the record that Bharosa was admitted in male surgical ward of

District Hospital, Guna on 8.8.1998 as a referred patient from Shadora Hospital and his abdomen was operated in Guna Hospital due to internal

injuries of the abdomen which were anti-mortem. He also opined that deceased had died due to cardio respiratory failure caused by perforation

peritonitis and due to internal injuries of abdomen and its complication, within six hours from starting of his post-mortem. In cross-examination Dr.

Sharma deposed that he had not seen the bedhead ticket of the deceased or record regarding operation of the deceased and he could not say that

what were the reasons for operation of deceased, but he admitted that the deceased died due to operation because his intestine was found ruptured.

15. Dr. N.K.Sharma (PW-9) clearly deposed in para 3 of his statement that Bharosa died because of failure of operation of his abdomen. On this

point his evidence is not challenged by the prosecution, therefore, his above-mentioned evidence is binding on prosecution. It is clear from Bharosa's

MLC report recorded by Dr. H.H.N. Garg (PW-20) that Bharosa was complaining pain in his abdomen at the time of his examination by Dr. Garg,

hence radiological examination of his abdomen was advised by Dr. Garg. There is no evidence or record available in the case that on which date

operation of Bharosa was performed in the District Hospital, Guna.

16. The doctor who conducted autopsy found blunt injury on back of Bharosa and tenderness in Bharosa's abdomen and at the time of MLC

examination Bharosa complained about pain in his abdomen, therefore, it is clear that whatever may be the internal injury or blunt injury caused on

abdomen of Bharosa was caused only at the time of incident and thereafter he remained under medical examination or hospitalised at Shadora and

Guna Hospital and died in the District Hospital, Guna.

17. Before the trial Court complainant Munnalal (PW-1) deposed that on the date of incident, in evening at 7=00 pm he returned to his house from his

field taking back the plough, thereafter appellant Parma and other appellants asked him that from which land he has brought plough back, then he

replied that as his oxen were not climbing on the par, therefore, he carried out the plough from the agricultural land, then appellant Maniram inflicted

stick on his left hand and appellant Patru inflicted an axe blow over his head and appellant Lallu inflicted a falsa blow on his left hand and appellants

were hurling abuses to him. After hearing noise, his brother Bharosa came out of his house and tried to save him, then appellant Lallu gave a farsa

blow on forehead of Bharosa and appellant Patru gave axe blows by its blunt side on abdomen and back of Bharosa. He also deposed that his

brother Dulichand (PW-4), Udham (PW-5) and their mother Parwati Bai (PW-3) came on spot to save him, then appellants also gave beating to these

witnesses and thereafter all the appellants jointly gave beating to Bharosa and

appellants were threatening that if the matter is reported then in the way they will be killed. Complainant deposed that Shivraj Singh (PW-8), Ramdayal and Salman (PW-10) also came on spot and he and other injured witnesses were taken to Shadora Police Station by tractor driven by Shivraj (PW-8) and at Police Station he lodged FIR (Ex.P/2), which is signed by him and thereafter he and other injured witnesses were sent to Shadora Hospital and thereafter to Guna Hospital. Bharosa's wife Ramwati Bai (PW-2) deposed in cross-examination (para 2) that on the next morning after the date of incident, she took her husband Bharosa to Guna Hospital and at that time her husband was unable to speak properly and he was able only to speak incomplete or unclear words.

18. Complainant Munnalal's (PW-1) evidence is corroborated by evidence of other injured witnesses Parwati Bai (PW-3), Dulichand (PW-4) and Udham (PW-5) and also by Bharosa's wife Parwati Bai (PW-2) but above-mentioned witnesses Shivraj Singh (PW-8), Salman (PW-10) and one another Bhanwarlal (PW-7) have not supported the prosecution's case by their evidence. Therefore, Bhanwarlal (PW-7), Shivraj Singh (PW-8) and Salman (PW-10) were declared hostile and questions of the nature of cross-examination were put to them for the prosecution, wherein they denied from giving their relating police statements. Bhanwarlal (PW-7) deposed in his examination-in-chief that on the date of incident in the evening at 7=00 pm, when he came out from his house after hearing noise outside, then he saw that Hamira, Patru, Bharosa, Udham, Dulichand and Munna were quarreling but he immediately entered into his house and he did not saw any beating. Bhanwarlal deposed that appellants are his relatives and similarly deceased Bharosa was his Uncle's son. In cross-examination, he deposed that except Patru and his brother Hamira no other appellant was present at the scene of occurrence and appellant Maniram was with him at that time. It is clear from total evidence of Bhanwarlal (PW-7) that he was not ready to disclose all the facts.

19. Shivraj Singh (PW-8) deposed that on the date of incident Hamira returned to village at 7=00 pm and by signs indicated that he was beaten and thereafter Bharosa, Udham, Munnalal and Dulichand and thereafter appellant Patru came on spot and thereafter Bharosa, Udham, Munnalal and Dulichand started beating of Patru and Hamira. Much emphasis has been given

by appellants' counsel that Shivraj Singh (PW-8) by his evidence has supported the defence version put by appellant Patru, but he deposed in cross-examination (para 6) that after the incident, by his tractor he brought complainant Munnalal (PW-1), Udham (PW-5), Dulichand (PW-4), Parwati Bai (PW-3) and Bharosa to Shadora Hospital and in his presence at Police Station complainant party's FIR was recorded. Hence, from total evidence of Shivraj Singh (PW-8), it is clear that he was also not ready to depose the entire truth.

20. Much emphasis has been given by learned counsel for the appellants on some contradictions on the point that which appellant caused which injury over which organ of injured prosecution witnesses. There appears some contradictions on this point but in the light of the case of Masalti and others vs. State of UP (AIR 1965 SC 202), it is clear that where beating of some persons was continued by some accused persons then such contradictions are natural and do not affect the core of the prosecution's case.

21. From spot map (Ex. P/3) prepared by Head Constable Radheshyam Yadav (PW-19) it is clear that incident occurred in front the house of complainant Munnalal (PW-1). Complainant Munnalal has deposed that at the time of incident he was living jointly with all his brothers and mother in a house.

22. It is clear from the evidence of Dr. H.H.N. Garg (PW-20) that injured prosecution witnesses Munnalal and Dulichand received incised wounds in the incident. Hence, the evidence of these injured witnesses is corroborated by medical evidence available on record that during incident these prosecution witnesses and Bharosa received injuries by sharp cutting weapons like farsa and axe. It is clear from the evidence that Parwati Bai has received only blunt injuries caused by hard and blunt object and she received fracture in the metacarpal bone of her right index finger.

23. The trial Court has referred to the police statement of injured Bharosa, recorded by Head Constable Radheshyam Yadav (PW-19) during investigation and Bharosa in that police statement has clearly stated that at the time of incident when in front his house, his brother Munnalal was being beaten by appellants, after hearing crying of Munnalal he with his other brothers and mother reached after running, thereafter appellant Lallu inflicted farsa injury on his right eye-brow and Bharosa's above-mentioned

statement is corroborated by medical evidence appearing from his MLC report. Bharosa stated in his police statement that thereafter appellant Maniram inflicted a stick (lathi) blow over his back, which caused blunt injury and Maniram gave his lathi's second knock over his abdomen and immediately he fell down and due to this, his body also received abrasion injury due to he being dragged. It is clear that internal injuries caused on Bharosa's abdomen during incident necessitated his operation. It is clear from total evidence that incident occurred on 8.8.1998 but Bharosa died on 28.8.1998.

24. Though the trial Court inferred that as per statement of N.K.Sharma (PW-9), grievous injuries in the shape of fracture of two ribs of Bharosa and his internal injury caused to the abdomen were sufficient in ordinary course of nature to cause death, but these facts are not mentioned in the post-mortem report recorded on 28.8.1998, but this inference drawn by learned trial Court is not supported by evidence of Dr. N.K.Sharma (PW-9) and his post-mortem report (Ex.P/22).

25. In the last paragraph of post-mortem report (Ex.P/22), Dr. N.K.Sharma (PW-9) opined as follows :

â??In our considered opinion the cause of death of Bharosa S/o Phosha was cardio respiratory failure due to perforation peritonitis (faeces) as a result of blunt injury of abdomen and its complications. The time since death within six hours.â??

26. Dr. N.K. Sharma deposed before the trial Court in his cross-examination that the reason of death of Bharosa was failure of surgical operation.

27. The meaning of 'perforation' given in Black's Medical Dictionary (41st Edition) is as follows:

â??Perforation

The perforation of one of the hollow organs of the abdomen or major blood vessels may occur spontaneously in the case of an ulcer or an advanced

tumour, or may be secondary to trauma such as a knife wound or penetrating injury from a traffic or industrial accident. Whatever the cause,

perforation is a surgical emergency. The intestinal contents, which contain large numbers of bacteria, pass freely out into the abdominal cavity and

cause a severe chemical or bacterial PERITONITIS. This is usually accompanied by severe abdominal pain, collapse or even death. There may also

be evidence of free fluid or gas within the abdominal cavity. Surgical

intervention, to repair the leak and wash out the contamination, is often necessary. Perforation or rupture of major blood vessels, whether from disease or injury, is an acute emergency for which urgent surgical repair is usually necessary. Perforation of hollow structures elsewhere than in the abdomen â?" for example, the heart or oesophagus â?" may be caused by congenital weaknesses, disease or injury. Treatment is usually surgical but depends on the cause.â??

28. There is no evidence on record or even it is not suggested to any prosecution witnesses like mother and brothers of the deceased that before the incident Bharosa was suffering from any severe disease, therefore, it appears that whatever the external and internal injuries were found on or in the body of Bharosa were caused at the time of incident.

29. It appears that the evidence of above-mentioned prosecution witnesses, who received injuries in the incident and their evidence is corroborated by

available medical evidence and complainant Munnalal's (PW-1) evidence is substantially corroborated by his FIR (Ex.P/2) and it is clear from the spot

map that the incident started with complainant Munnalal in front his house, where present appellants of both the appeals and co-accused Hamira came

there and on the point of passing of plough through the appellants' land they started beating of complainant Munnalal and at that time after hearing

noise Bharosa came out of his house and tried to save his brother complainant, then Bharosa was subjected to beating by the appellants and at the

same time some other family members of complainant were also beaten, therefore, the inference drawn by the trial Court that the present appellants

of both these appeals, who are in total five and Hamira constituted unlawful assembly, whose common object was to give beating to Munnalal by

sharp cutting objects and hard and blunt objects and on intervention by Bharosa, Dulichand, Udham and Parwati Bai were also beaten by appellants

but it is clear that only Parwati Bai received grievous injury, therefore it could not be inferred that it was the common object of the constituted

unlawful assembly to murder complainant Munnalal or any of his family members, who tried to save complainant Munnalal. As Munnalal, Udham and

Dulichand received only simple injuries, therefore, the inference drawn by the trial Court that it was the common object of the unlawful assembly to

cause murder of Bharosa or any of his family members, in view of the medical

evidence available on record, appears to be erroneous and contrary to medical evidence.

30. As pointed out earlier, Bharosa received three simple injuries according to the medical evidence of Dr. H.H.N. Garg (PW-20) and his fourth

internal injury is due to knocking by some hard and blunt object, but Bharosa died in District Hospital, Guna on 28.8.1998 and according to medical

evidence of Dr. N.K.Sharma (PW-9) and his evidence, the reason of Bharosa's death was failure of operation and Dr. N.K.Sharma's above-

mentioned evidence given in examination-in-chief, was not even challenged by the prosecution, therefore, it is binding on the prosecution. Hence, in

view of above-mentioned total facts and circumstances, the inference drawn by trial Court that the injuries sufficient in ordinary course of nature to

cause death were inflicted to Bharosa is contrary to the medical evidence available on record. Therefore, we are of the considered opinion that it was

not proved by the evidence available on record that Bharosa's death was homicidal.

31. As pointed out earlier, three injured prosecution witnesses complainant Munnalal, Udham and Dulichand received only simple injuries and

complainant's mother Parwati Bai received a grievous injury of fracture in metacarpal bone of her right index finger, which was also not on vital

organ, and Bharosa died after twenty days after receiving injury on abdomen and his three injuries were of simple nature, which is clear by the

evidence of Dr. H.H.N. Garg (PW-20) and Dr. R.K.Jain (PW-6), therefore, at the most, it was proved by the evidence available on record that

common object of the unlawful assembly was to cause grievous injury to the family members of the complainant, who tried to save the complainant

Munnalal during his beating given by appellants and Hamira.

32. We are of the considered opinion that the offence punishable under Section 302 of the IPC was not proved against any of the appellants, but in

relation to deceased Bharosa, only the offence punishable under Section 325/149 of the IPC was proved against each of the appellants.

33. Much emphasis has been given by the learned counsel for the appellants on the report (Ex.D/1) lodged by appellant Patru at Police Station

Shadora in the night on the date of incident and MLC reports of appellant Patru and his brother Hamira, Ex.D/2 and D/3 respectively, proved by

above mentioned Dr. H.H.N. Garg (PW-20) but it is clear that lacerated wound of Patru found on left parietal region of skull and contusion injury

found on his right back, both appearing to be caused by hard and blunt object and were of simple nature and similarly one lacerated wound found on

right eye-brow of Hamira and two contusion injuries found on right side of chest and right hand, all were of simple nature and caused by hard and

blunt objects, whereas prosecution witnesses and Bharosa received injuries caused by sharp cutting weapons.

34. Appellant Patru in his examination conducted by the trial Court under Section 313 of the CrPC stated that when he was seated in front his house,

then prosecution witnesses Udham, Dulichand, Munnalal and Bharosa came there with sticks and caused injuries to Patru and his deaf and dumb

brother Hamira and both these brothers exercised their right of self-defence and in the dark, prosecution witnesses caused injuries to each other but it

is clear from the spot map (Ex. P/3) prepared by Head Constable Radheshyam Yadav (PW-19) that incident had occurred in front the house of

complainant Munnalal (PW-1) and it is clear that comparatively Patru and his brother Hamira received injuries only by hard and blunt object and were

of simple nature. Hence, only due to this fact that some simple injuries were received by appellant Patru and his brother Hamira, the total evidence of

the injured prosecution witnesses substantially corroborated by medical evidence could not be discarded.

35. It is clear from the above-mentioned discussion of the evidence available on record that the conviction and sentence recorded by the trial Court

against each appellant under Section 302 of the IPC in relation to deceased Bharosa is erroneous and defective and on this point appeal filed by each

appellant appears to be worthy of acceptance and in relation to deceased Bharosa, in above-mentioned peculiar facts and circumstances of the case,

each appellant should have been convicted under Section 325/149 of the IPC.

36. Learned trial Court has convicted and sentenced separately under Sections 148 and 147 of the IPC, whereas it is well established that offence

punishable under Section 148 of the IPC is graver offence than the offence punishable under Section 147 of the IPC. When each appellant was

convicted and sentenced under Section 148 of the IPC, then separate conviction and sentence under Section 147 of the IPC appears to be

unnecessary and unwarranted. Therefore, each appellant's separate conviction and sentence under Section 147 of the IPC is liable to be set aside.

37. Each appellant's conviction recorded by the trial Court under Section 325 of the IPC in reference to injured Parwati Bai appears to be justified, but

on this count the sentence of three years RI with a fine of Rs.100/- appears to be harsh, excessive and unbalanced.

38. From the record it appears that after arrest, appellants Patru, Parma, Maniram and Lallu have suffered detention in jail for a period of more than

one year and appellant-Madan after his arrest has suffered detention for a period of ten months and eighteen days. The incident occurred on 8.8.1998.

Looking to the totality of the facts and circumstances of the case, it appears proper that the sentence to each of the appellants for the offence

punishable under Section 325/149 of the IPC in relation to deceased Bharosa to the period of imprisonment already undergone by him with a fine of

Rs.200/- and similarly the sentence to each of the appellants for the offence punishable under Section 325 of the IPC in relation to causing grievous

injury to injured Parwati Bai to the period of imprisonment already undergone by him with a fine of Rs.100/- would meet the ends of justice.

39. The trial Court has convicted and sentenced each appellant under Section 324/149 of the IPC to undergo two years RI with a fine of Rs.100/- in

reference to injured Munnalal and Dulichand. It appears proper that the sentence to each appellant under Section 324/149 of the IPC on each count to

the period of imprisonment already undergone by him with a fine of Rs.100/- would meet the ends of justice.

40. The sentence recorded by the trial Court for the offence under Section 148 of the IPC regarding appellants Patru, Parma, Maniram and Lallu

appears to be proper and so far as appellant Madan is concerned, since he has already suffered ten months eighteen days' detention, therefore, the

ends of justice would meet if he is sentenced to the period of imprisonment already undergone by him for the offence punishable under Section 148 of

the IPC. To above extent both these appeals appear to be worthy of acceptance.

41. Consequently, both these appeals filed by different appellants are partially allowed and each appellant's conviction and sentence under Section 302

of the IPC in reference to deceased Bharosa is set aside and each appellant is convicted in reference to injury caused to Bharosa under Section

325/149 of the IPC and each appellant is sentenced to the period already undergone by him with a fine of Rs.200/-; each appellant's separate

conviction and sentence under Section 147 of the IPC is set aside; each appellant's conviction under Section 325 of the IPC in relation to injured

Parwati Bai is affirmed, but each appellant's sentence as awarded by the trial Court on this point is set aside and each appellant is sentenced to the

period of imprisonment already undergone by him with a fine of Rs.100/- in relation to injured Parwati Bai; each appellant's conviction under Section

324/149 of the IPC is affirmed, but each appellant's sentence awarded by the trial Court is set aside and each appellant is sentenced under Section

324/149 of the IPC to the period of imprisonment already undergone by him with a fine of Rs.100/-; and, conviction and sentence of appellants Patru,

Parma, Maniram and Lallu under Section 148 of the IPC is affirmed, however, the sentence to appellant Madan awarded by trial Court under Section

148 of the IPC is set aside and he is sentenced to the period of imprisonment already undergone by him with a fine of Rs.100/-.

42. All appellants were released on bail after suspending their jail sentence awarded by the trial Court and relating fine amount has already been

deposited by them before the trial Court, hence their presence is no more required before this Court and, therefore, it is directed that bail bonds of

each appellant shall stand discharged. The trial Court's order regarding disposal of seized property is affirmed.

With a copy of this judgment record of the trial Court be sent back immediately.